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11 UNITED STATES DISTRICT COURT FOR THE
12 CENTRAL DISTRICT OF CALIFORNIA

13 IN THE MATTER OF THE TAX,)
14 LIABILITIES OF:)
15)
16 JOHN DOES, United States person(s),)
17 who directly or indirectly had authority)
18 over any combination of accounts held)
19 with OX Labs Inc., d/b/a SFOX,)
20 SFOX Inc., sfox.com, or its predecessors,)
21 subsidiaries, divisions, or affiliates)
22 (collectively, "SFOX"), with at least the)
23 equivalent of \$20,000 in value of)
24 transactions (regardless of type) in)
25 cryptocurrency in any one year, for the)
26 period January 1, 2016 through)
27 December 31, 2021.)

Case No.

**UNITED STATES'
MEMORANDUM IN SUPPORT
OF EX PARTE PETITION FOR
LEAVE TO SERVE "JOHN
DOE" SUMMONS**

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1 The United States of America submits this memorandum in support of its ex parte
2 petition for an order approving the service of an Internal Revenue Service John Doe
3 summons on Ox Labs Inc. and Subsidiaries (collectively, “SFOX”). A copy of the
4 summons and summons attachment (listing the items requested) are filed herewith, as
5 well as a proposed order, Declaration of IRS Senior Revenue Agent Seng Tchong Lee
6 (hereinafter “Declaration”) and supporting exhibits.
7
8

9 **I. INTRODUCTION**

10 The proposed summons is sought to be served in furtherance of an ongoing
11 investigation by the IRS to determine the identity and correct federal income tax liability
12 of U.S. persons who have conducted transactions in cryptocurrency (defined below). *See*
13 Declaration ¶¶ 3, 8, 33. Transactions in cryptocurrency have grown substantially in
14 recent years, and the IRS is concerned that taxpayers are not properly reporting these
15 transactions on their tax returns. The summons seeks account and transaction records
16 from SFOX that are expected to aid the IRS’s investigation.
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20 The summons is a so-called “John Doe” summons because it does not identify the
21 persons with respect to whose liabilities the summons is issued. *See generally* 26 U.S.C.
22 § 7609(f). The government therefore must obtain court approval prior to serving the
23 summons. *Id.* As discussed below, the statutory criteria for court approval of a John Doe
24 summons are met.
25

26 Pursuant to 26 U.S.C. § 7609(h)(2), a court’s determination whether a John Doe
27 summons may be served is to be made ex parte based solely on the petition and
28

1 supporting affidavits. The pleadings filed in this proceeding will therefore not be served
2 upon any person or entity, and no other filings are permitted from other persons or
3 entities. The United States respectfully asks the Court to review the petition and
4 supporting documents and enter the proposed order at the Court’s earliest opportunity.
5

6 **II. BACKGROUND**

7
8 The summons seeks account and transaction records from SFOX regarding a group
9 of its users whose identities are not known to the IRS (the “John Does”). The group of
10 John Does is defined as follows: United States person(s), who directly or indirectly had
11 authority over any combination of accounts held with OX Labs Inc., d/b/a SFOX, SFOX,
12 Inc., sfox.com, or its predecessors, subsidiaries, divisions, or affiliates (collectively,
13 “SFOX”), with at least the equivalent of \$20,000 in value of transactions (regardless of
14 type) in cryptocurrency in any one year, for the period January 1, 2016 through
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16 December 31, 2021 (the “John Doe Class”). The five document requests in the summons
17 are directed at two categories: user identity information and transaction activity. Before
18 addressing why a summons for these requested items directed at this John Doe Class
19 meets the criteria in § 7609(f), this brief first provides relevant background regarding (I)
20 the definition of cryptocurrency, (II) its tax treatment, (III) the information regarding
21 taxable cryptocurrency transactions that is in the possession of SFOX, and (IV) the
22 grounds for the IRS’s belief that these transactions are not being properly reported on
23 users’ tax returns.
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1 **A. “Cryptocurrency” Defined**

2 “Cryptocurrency” is one kind of “virtual currency.” IRS Notice 2014-21, 2014-16
3 I.R.B. 938, 2014 WL 1224474 (Mar. 26, 2014). The IRS has defined “virtual currency”
4 as “a digital representation of value that functions as a medium of exchange, a unit of
5 account, and/or a store of value.” *Id.* It sometimes operates like “real” or “fiat” currency,
6 *i.e.*, “the coin and paper money of the United States or of any other country that is
7 designated as legal tender, circulates, and is customarily used and accepted as a medium
8 of exchange in the country of issuance.” *Id.* But virtual currency only has legal tender
9 status in El Salvador.¹ When virtual currency has an equivalent value in real currency, or
10 acts as a substitute for real currency, then it is referred to as “convertible” virtual
11 currency. *See* IRS Notice 2014-21.
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15 The summons at issue here solely concerns “cryptocurrency.” Cryptocurrency is a
16 type of virtual currency that utilizes cryptography to secure transactions that are digitally
17 recorded on a distributed ledger (such as a blockchain). Declaration ¶¶ 16, 18.

18
19 Distributed ledger technology uses independent digital systems to record, share, and
20 synchronize transactions, the details of which are recorded in multiple places at the same
21 time with no central data store or administration functionality. *See generally* U.S. Dep’t
22 of Justice, *Report of the Attorney General’s Cyber Digital Task Force: Cryptocurrency*
23
24

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26 ¹ *See* Joe Hernandez, *El Salvador Just Became the First Country to Accept Bitcoin*
27 *as Legal Tender*, NPR, (Sept. 7, 2021),
28 <https://www.npr.org/2021/09/07/1034838909/bitcoin-el-salvador-legal-tender-official-currency-cryptocurrency> [<https://perma.cc/962W-3P2N>].

1 *Enforcement Framework* (Oct. 8, 2020),

2 <https://www.justice.gov/ag/page/file/1326061/download> [<https://perma.cc/U5Z3-EJK4>]

3
4 (“Report of the Attorney General’s Cyber Digital Task Force”). Units of cryptocurrency
5 are generally referred to as coins or tokens. Declaration ¶ 16. The most common
6 cryptocurrency is Bitcoin, but there are many others.² The technological innovation,
7 rapid growth, and decentralized nature of cryptocurrency have created new challenges for
8 regulators, including the IRS. *See generally Report of the Attorney General’s Cyber*
9 *Digital Task Force.*

11 **B. Tax Treatment of Cryptocurrency Transactions**

12
13 Convertible virtual currencies (including cryptocurrency) are considered property
14 for tax purposes, and a taxpayer can have a taxable gain or loss on the sale or exchange of
15 a virtual currency. *See* IRS Notice 2014-21. Thus, taxpayers who transact in virtual
16 currencies may have related tax filing and reporting requirements under various
17 provisions of the Internal Revenue Code, including 26 U.S.C. §§ 1, 61, 451, 1011, 1211,
18 and 1222.

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21 Taxpayers often complete their virtual currency transactions through businesses
22 known as digital currency exchanges, which allow users to buy and sell cryptocurrency in
23 exchange for fiat currency or other virtual currency. Declaration ¶ 26. Depending on the
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27 ² As of January 7, 2022, cryptocurrency tracking website www.coinmarketcap.com
indicated that more than 16,520 separate cryptocurrencies existed.

28 <https://coinmarketcap.com/all/views/all/> [<https://perma.cc/6TEC-2W8B>].

1 details, these transactions may be taxable. *See id.* ¶ 34. Taxpayers must report income,
2 gain, or loss from all taxable transactions involving virtual currency on their federal
3 income tax returns for the year of the transaction, regardless of the amount or whether
4 they received a payee statement or information return. *See IRS Frequently Asked*
5 *Questions on Virtual Currency Transactions*,
6 [https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-](https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions)
7 [virtual-currency-transactions](https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions) [<https://perma.cc/634V-UW5P>] (Q 4, 42, 43). Specifically,
8 taxpayers must generally report on their tax returns gains or losses upon the disposition of
9 virtual currency—i.e., the difference between their adjusted basis in the currency and the
10 amount received in exchange for it. *See Declaration* ¶¶ 34, 38 & n.4. The IRS notified
11 taxpayers in 2014 that virtual currency is treated as property for tax purposes, *see id.* ¶ 36
12 (citing IRS Notice 2014-21) and added questions specifically about virtual currency
13 transactions to the individual tax forms beginning in 2019. *See id.*

18 **C. Information Regarding Cryptocurrency Transactions Held by SFOX**

19 OX Labs Inc., is the parent company for a U.S.-operating subsidiary that does
20 business under the trade name SFOX. *Declaration* ¶¶ 60-61. SFOX is a cryptocurrency
21 prime dealer and trading platform that connects exchanges, over-the-counter (“OTC”)
22 brokers, and liquidity providers globally. *Id.* ¶ 63. SFOX has over 175,000 registered
23 users and users have undertaken more than \$12 billion in transactions since 2015. *Id.*
24 ¶ 68. As described by Forbes Magazine:

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26
27 Sfox aims to provide a single point of access for institutional
28 investors, like crypto hedge funds and family offices, that move

1 large amounts of money. Its platform plugs into digital
2 currency exchanges and OTC desks . . . and tries to get the
3 lowest price for buyers (and the highest price for sellers). It
4 does that by using a ‘smart router’ that scans the different
trading venues for prices and tries to lock in the best deals
5 To make money, Sfox charges transaction fees, which range
6 from 0.25% to 0.75%, depending on the type of order. Over the
past 12 months, it processed \$5.4 billion in trades and brought
7 in an estimated \$15 million in revenue.

8 *Id.* (quoting Jeff Kauflin, *Startup Raises \$23 Million to Make Crypto Trades Faster and*
9 *Stealthier*, Forbes (Aug. 16, 2018),

10 <https://www.forbes.com/sites/jeffkauflin/2018/08/16/startup-raises-23-million-to-make->
11 [crypto-trades-faster-and-stealthier/](https://www.forbes.com/sites/jeffkauflin/2018/08/16/startup-raises-23-million-to-make-crypto-trades-faster-and-stealthier/) [<https://perma.cc/UNZ9-J8YB>]).

13 SFOX is regulated as a “money services business” (“MSB”), and more specifically
14 as a “money transmitter.” *See* 31 C.F.R. § 1010.100(ff) (defining “money services
15 business”); § 1010.100(ff)(5) (defining “money transmitter” as one type of MSB); *see*
16 *also* Declaration ¶ 71. It is currently registered as an MSB with the Financial Crimes
17 Enforcement Network (FinCEN).³ *Id.*

22 _____
23 ³ FinCEN has issued guidance explaining that digital currency exchanges are
generally to be regulated as money transmitters. *See* FinCEN Guidance No. FIN-2013-
24 G001, Application of FinCEN's Regulations to Persons Administering, Exchanging, or
Using Virtual Currencies (Mar. 18, 2013),
25 <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>
26 [<https://perma.cc/E9C8-YH3C>]; FinCEN Guidance No. FIN-2019-G001, Application of
FinCEN's Regulations to Certain Business Models Involving Convertible Virtual
27 Currencies (May 9, 2019), [https://www.fincen.gov/sites/default/files/2019-](https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf)
28 [05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf](https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf) [[https://perma.cc/6BVK-](https://perma.cc/6BVK-AJVP)
[AJVP](https://perma.cc/6BVK-AJVP)].

1 An MSB like SFOX is required to maintain certain records. *See* 31 C.F.R. §§
2 1010.410 (Records to be made and retained by financial institutions) and 1022.400
3 (making these recordkeeping requirements applicable to MSBs). Those records include,
4 for transactions worth more than \$3,000, the name and address of both the sender and
5 recipient, the amount of the transaction, the date of the transaction, and other identifying
6 information. 31 C.F.R. § 1010.410(e); Declaration ¶¶ 72-76. MSBs are also required to
7 obtain and maintain certain customer identification information and transactional data for
8 the purpose of combating money laundering. 31 C.F.R. § 1022.210; Declaration ¶ 77.
9

10
11
12 In keeping with these rules, SFOX has historically required all new customers to
13 create an account by submitting certain identifying information, including the user's
14 name, email address, telephone number, and date of birth. Declaration ¶¶ 83-84. In
15 addition, SFOX's Terms of Service explain that users "may be required to provide SFOX
16 with certain personal information, including, but not limited to, your name, address,
17 telephone number, e-mail address, date of birth, taxpayer identification number,
18 government identification number, and information regarding your bank account (e.g.,
19 financial institution, account type, routing number, and account number)." *Id.* ¶ 85.
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22
23 Based on the regulations applicable to SFOX, as well as SFOX's historical
24 business practices, the IRS expects that in response to the John Doe summons, SFOX will
25 be able to provide information about the identities and cryptocurrency transactions of
26 SFOX users, which the IRS will then be able to use in conjunction with other publicly
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1 available information to examine whether these users have complied with the internal
2 revenue laws. Declaration ¶¶ 33, 83-88.

3
4 **D. Grounds for the IRS’s Belief that Virtual Currency Transactions Are
Not Being Properly Reported**

5 In recent years, the IRS has become aware of significant tax compliance issues
6 relating to the use of virtual currencies. *Id.* ¶ 4. Of particular relevance, the IRS has
7 reason to believe that virtual currency transactions are not being properly reported based
8 on Agent Lee’s knowledge about likely tax non-compliance by specific SFOX users; the
9 lack of third-party reporting in connection with such transactions; and the IRS’s
10 experience with the John Doe summons that was served on Coinbase, Inc., a U.S.-based
11 digital currency exchange; and internal IRS data.

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15 **1. Suspected Tax Non-Compliance by SFOX Users**

16 As explained in detail in the Declaration, Agent Lee has conducted an investigation
17 and identified specific individuals who held accounts with SFOX and may have failed to
18 comply with their tax reporting requirements under the internal revenue laws.

19 Declaration ¶ 59. Ten specific taxpayers— referred to as “Taxpayer 1” through
20 “Taxpayer 10”—are discussed in the Declaration.

21
22 From 2016 through 2018, Taxpayer 1, personally and through a wholly owned
23 limited liability company (“LLC 1”), was allegedly involved in a Ponzi scheme. *Id.* ¶ 93.
24 As part of the alleged scheme, bank accounts held in the name of Taxpayer 1 and LLC 1
25 were used to receive and transfer funds. Taxpayer 1 and LLC 1 received approximately
26 \$1 million from various third party-merchants, digital currency exchanges, and SFOX.
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28

1 *Id.* Taxpayer 1 reported income on a 2016 tax return stemming primarily from IRS Form
2 W-2 wages and reported income on 2017 and 2018 tax returns stemming primarily from
3 Form W-2 wages and from LLC 1, which was reported on Schedule C (Profit or Loss
4 from Business). *Id.* Although Taxpayer 1 reported approximate Schedule C gross
5 receipts of \$0, \$650,000, and \$125,000 in 2016, 2017, and 2018, respectively, those
6 reported amounts are significantly less than the approximately \$1 million of known
7 reported amounts are significantly less than the approximately \$1 million of known
8 deposits during the same period. *Id.* Furthermore, Taxpayer 1 did not report any gain or
9 loss from virtual currency transactions on a Schedule C or any other schedule or form on
10 the 2016, 2017, or 2018 tax returns. *Id.* Because the sale or exchange of cryptocurrency
11 and the receipt of cryptocurrency as compensation are taxable events, Taxpayer 1’s
12 receipt of U.S. dollars from digital currency exchanges and SFOX should have been
13 reported.

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17 Taxpayer 2 is a YouTube video creator and online gambler who received
18 cryptocurrency deposits from YouTube subscribers and gambling. *Id.* ¶ 94. In 2018 and
19 2019, Taxpayer 2 made cryptocurrency deposits of approximately \$120,000 into an
20 SFOX account. *Id.* The deposited cryptocurrency was immediately exchanged into U.S.
21 dollars and transferred from the SFOX account to a bank account. *Id.* Taxpayer 2
22 answered “Yes” to the 2019 Schedule 1 question, “At any time during 2019, did you
23 receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual
24 currency during the year?” *Id.* Even though the receipt of cryptocurrency as
25 compensation and the exchange of cryptocurrency into U.S. dollars are taxable events,
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1 Taxpayer 2 failed to report any gain or loss from cryptocurrency transactions, including
2 the sales conducted through SFOX, on a Schedule D (Capital Gains or Losses) or any
3 other schedule or form on the 2018 and 2019 tax returns. *Id.*

4
5 In 2018, Taxpayer 3 deposited approximately 20 units of Bitcoin into several
6 SFOX accounts. At the time of the deposits, the Bitcoin was worth approximately
7 \$120,000. *Id.* ¶ 95. On the same day the Bitcoin was deposited, it was exchanged for
8 U.S. dollars and transferred from SFOX to Taxpayer 3's personal bank account. In total,
9 Taxpayer 3 transferred approximately \$115,000 from SFOX to the personal bank
10 account. *Id.* The income reported on Taxpayer 3's 2018 tax return stems from Schedule
11 C income, and the amount reported on the Schedule C is significantly less than the
12 amounts from those transactions. *Id.* In addition, Taxpayer 3 failed to report any gain or
13 loss from cryptocurrency transactions, including the sales conducted with SFOX, on a
14 Schedule D or any other schedule or form on the 2018 tax returns. *Id.*

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18 In 2018 and 2019, Taxpayer 4 deposited approximately 15 total units of Bitcoin
19 into an SFOX account. *Id.* ¶ 96. At the time of the deposits, the Bitcoin was worth
20 approximately \$60,000. *Id.* On the same days the Bitcoin were deposited with SFOX,
21 Taxpayer 4 exchanged the Bitcoin into U.S. dollars and transferred the proceeds into a
22 personal bank account. *Id.* In total, Taxpayer 4 transferred approximately \$55,000 from
23 SFOX to the bank account. Taxpayer 4 did not file a tax return for 2018. Taxpayer 4 did
24 file a 2019 tax return that reported only one dollar of taxable interest income but did not
25 report any gain or loss from virtual currency transactions on any schedule or form. *Id.*

1 Between October 2018 and March 2019, Taxpayer 5 received Automated Clearing
2 House (“ACH”) (*i.e.*, electronic) and cash deposits of approximately \$55,000 into a
3 personal bank account from various third parties. *Id.* ¶ 97. Approximately \$7,000 of
4 such deposits were received from SFOX. *Id.* Taxpayer 5 subsequently withdrew
5 approximately \$30,000 of the deposits in 47 separate cash withdrawals. *Id.* Taxpayer 5’s
6 2018 and 2019 tax returns reported income stemming primarily from wages reported on
7 Forms W-2. Taxpayer 5’s 2018 and 2019 tax returns did not report any gain or loss from
8 the transactions described above or any other income from virtual currency transactions
9 on any schedule or form. *Id.*

10 In 2017 and 2018, Taxpayer 6 received ACH deposits into a personal bank account
11 of approximately \$30,000 from various third parties, including SFOX and a digital
12 currency exchange. *Id.* ¶ 98. During the same period, Taxpayer 6 deposited
13 approximately \$20,000 in cash and checks from unknown sources into the same bank
14 account. *Id.* Taxpayer 6 subsequently withdrew approximately \$45,000 of the deposited
15 funds, primarily in cash or through point-of-sale transactions. *Id.* Taxpayer 6’s 2017 and
16 2018 tax returns only reported income stemming from wages reported on Forms W-2. *Id.*

17 Taxpayer 7 made cryptocurrency deposits into two SFOX accounts of
18 approximately \$20,000 and \$60,000 in 2018 and 2019, respectively. *Id.* ¶ 99. The
19 deposited cryptocurrency was exchanged into U.S. dollars and subsequently transferred
20 out of the SFOX accounts to a bank account. *Id.* Yet, on a 2018 tax return Taxpayer 7
21 only reported income stemming from Form W-2 wages and interest and failed to report

1 any gain or loss from the sales of cryptocurrency, including the sales conducted through
2 SFOX. *Id.* On the 2019 tax return, Taxpayer 7 reported Bitcoin sales of approximately
3 \$10,000 on Schedule D and Form 8949 (Sales and Other Dispositions of Capital Assets).
4
5 *Id.* However, this reported amount is far less than the approximately \$60,000 of known
6 sales conducted through SFOX in 2019. *Id.*

7
8 Taxpayer 8 deposited approximately \$5,000 of cryptocurrency into an SFOX
9 account in November 2018. *Id.* ¶ 100. On the same day the cryptocurrency was
10 deposited, it was exchanged for U.S. dollars and the proceeds transferred from SFOX to
11 Taxpayer 8's personal bank account. *Id.* However, Taxpayer 8's 2018 tax return only
12 reported income stemming from Form W-2 wages and did not report any gain or loss
13 from virtual currency transactions on any schedule or form including the sales conducted
14 through SFOX. *Id.*

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16
17 Taxpayer 9 deposited approximately 2 units of Bitcoin into an SFOX account in
18 June 2018. *Id.* ¶ 101. At the time of the deposits, the Bitcoin was worth approximately
19 \$10,000. *Id.* On the same day it was deposited the Bitcoin was exchanged for U.S.
20 dollars and the proceeds transferred from SFOX to Taxpayer 9's personal bank account.
21
22 *Id.* Taxpayer 9's 2018 tax return only reported income stemming from Form W-2 wages,
23 Individual Retirement Accounts ("IRAs")/pensions/annuities, and unemployment
24 income. Taxpayer 9 failed to report any gain or loss from the sale of cryptocurrency,
25 including the sales conducted with SFOX, on the 2018 tax return.
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28 Between October 2018 and January 2019, Taxpayer 10's personal bank account

1 was funded with approximately \$5,000 in ACH deposits from several digital currency
2 exchanges, including approximately \$4,000 received from SFOX that appear to be
3 proceeds from the exchange of cryptocurrency. *Id.* ¶ 102. During the same period,
4 Taxpayer 10 made an additional 42 cash deposits totaling approximately \$10,000. *Id.*
5 The same bank account also had 62 transfers, totaling approximately \$5,000, to a digital
6 currency exchange and approximately \$5,000 of internet and point of sale/debit card
7 purchases. *Id.* Taxpayer 10's 2018 and 2019 tax returns only reported income stemming
8 from Form W-2 wages, IRAs/pensions/annuities, and social security benefits. Those
9 returns did not report any income from the above referenced transactions or any gains or
10 losses from virtual currency transactions on any schedule or form.
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14 Based on these examples, the IRS suspects that there may be many more SFOX
15 users who have failed to report their cryptocurrency transactions, and to pay their
16 associated tax liabilities, in accordance with the internal revenue laws.
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18 **2. The Lack of Third-Party Reporting to the IRS**

19 SFOX does not make any third-party reports to the IRS of cryptocurrency
20 transactions that occur on its platforms. *Id.* ¶ 45; *see also id.* ¶ 118 (stating that the IRS
21 does not already possess the information requested by the summons). This information
22 gap is a concern for the IRS because, as Agent Lee's Declaration explains,
23 cryptocurrency transactions can already be difficult to trace, with many having an
24 inherently pseudo-anonymous aspect, making them especially attractive to taxpayers who
25 may want to use them to hide taxable income. *Id.* ¶ 44.
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1 More generally, the IRS’s experience is that tax noncompliance increases when
2 there is less third-party information reporting, making the likelihood of underreporting
3 significant. *Id.* ¶ 45; see Barry W. Johnson & Peter J. Rose, IRS Publication 1415,
4 *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2011–2013*, at 13
5 (Sept. 2019), <https://www.irs.gov/pub/irs-pdf/p1415.pdf> [<https://perma.cc/2XM5-PDNH>]
6 (finding that the net misreporting percentage “for income amounts subject to little or no
7 information reporting . . . is 55 percent.”); see also Patricia Cohen, *If the I.R.S. Is*
8 *Watching You, You’ll Pay Up*, N.Y. Times, Jan. 5, 2016, at B1,
9 [https://www.nytimes.com/2016/01/05/business/economy/if-the-irs-is-watching-you-](https://www.nytimes.com/2016/01/05/business/economy/if-the-irs-is-watching-you-youll-pay-up.html)
10 [youll-pay-up.html](https://www.nytimes.com/2016/01/05/business/economy/if-the-irs-is-watching-you-youll-pay-up.html) [<https://perma.cc/S9DK-QYU6>]. Unfortunately, the problem of a lack
11 of third-party reporting of cryptocurrency transactions is not limited to SFOX. See
12 Wendy Walker, *INSIGHT: The 5 Most Common Tax Reportable Crypto Events*,
13 Bloomberg Tax (Aug. 20, 2020), [https://news.bloombergtax.com/daily-tax-report/insight-](https://news.bloombergtax.com/daily-tax-report/insight-the-5-most-common-tax-reportable-crypto-events)
14 [the-5-most-common-tax-reportable-crypto-events](https://news.bloombergtax.com/daily-tax-report/insight-the-5-most-common-tax-reportable-crypto-events) [<https://perma.cc/TH2J-5TT6>] (noting
15 that “a recent survey of crypto CPAs found that more than 35% of crypto investors do not
16 receive Form 1099 information related to their crypto transactions”). As the Treasury
17 Inspector General for Tax Administration (“TIGTA”) has reported, “[t]he IRS cannot
18 easily identify taxpayers with virtual currency transactions because of the lack of third-
19 party information reporting that specifically identifies virtual currency transactions.”
20 TIGTA Ref. No. 2020-30-066, *The Internal Revenue Service Can Improve Taxpayer*
21 *Compliance for Virtual Currency Transactions*, (Sept. 24, 2020),
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1 <https://www.treasury.gov/tigta/auditreports/2020reports/202030066fr.pdf>

2 [\[https://perma.cc/83SZ-YJUK\]](https://perma.cc/83SZ-YJUK).

3 **3. The John Doe Summons to Coinbase, Inc., and Its Aftermath**

4
5 In November 2016, the U.S. District Court for the Northern District of California
6 authorized service of a John Doe summons on Coinbase, Inc. (“Coinbase”), a U.S.-based
7 cryptocurrency exchange, for information to be used in identifying taxpayers who
8 conducted transactions in virtual currency. *See United States v. John Doe*, No. 3:16-cv-
9 06658-JSC, ECF No. 7 (N.D. Cal. Nov. 30, 2016). Coinbase was served with the
10 summons but did not voluntarily comply with it. Declaration ¶ 10. The government then
11 petitioned to enforce the summons, and after the IRS agreed to narrow the scope of the
12 summons, the court granted in part and denied in part the enforcement petition. *See*
13 *United States v. Coinbase, Inc.*, No.17-cv-01431-JSC, 2017 WL 5890052 (N.D. Cal.
14 Nov. 28, 2017). Coinbase was ordered to produce documents for accounts with at least
15 the equivalent of \$20,000 in any one transaction type (buy, sell, send, or receive) in any
16 one year for the period between 2013 and 2015. *Id.* at *8.

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21 Since Coinbase ultimately complied with the John Doe summons, the IRS has
22 continued to reach out to taxpayers engaged in cryptocurrency transactions, regarding
23 their reporting requirements, to conduct examinations, and to make referrals to its
24 Criminal Investigation Division. Declaration ¶ 48. On July 26, 2019, the IRS announced
25 that it had begun sending letters to owners of virtual currency, advising them to pay back
26 taxes and file amended returns. Declaration ¶ 14. By the end of August 2019, the IRS
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1 had sent more than 10,000 such letters to taxpayers who owned virtual currency. *Id.*
2 Following the issuance of such letters, many taxpayers filed amended returns reporting
3 virtual currency transactions for tax years 2013 through 2019 that were not previously
4 reported. *Id.* ¶ 49. To date, these IRS letters have resulted in more than \$17.6 million in
5 assessments. *Id.*

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8 The IRS has also opened audits of taxpayers identified by materials it received in
9 response to the Coinbase John Doe summons, and it has received submissions through its
10 voluntary disclosure practice as well. *Id.* ¶¶ 48-50. Separately, the IRS has contacted
11 taxpayers who have not filed returns reporting virtual currency by sending them notices
12 related to virtual currency. Those notices have already resulted in more than \$92 million
13 in assessments. *Id.* ¶ 49. The IRS expects these numbers to increase as the investigations
14 continue. More recently, the IRS has sent letters to taxpayers who conducted transactions
15 with foreign virtual currency exchanges and may have failed to properly report such
16 transactions and associated income. *Id.* ¶ 50.

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20 During the summons enforcement litigation against Coinbase, the IRS determined,
21 based on searches of internal data that for the years 2013-2015, only 800 to 900 taxpayers
22 per year filed tax returns with a property description related to Bitcoin or virtual
23 currency, even though Coinbase alone had serviced more than 5.9 million customers and
24 handled more than \$6 billion in transactions during that time. This was strong evidence
25 of likely large-scale underreporting of taxable transactions. *See Coinbase*, 2017 WL
26 5890052, at *1-2, 4-5; Declaration ¶ 46. The number of taxpayers filing returns with a
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1 property description related to Bitcoin or virtual currency increased in 2016-2019, but
2 still fall far short of what would be expected given the number of users, transactions, and
3 value that the exchanges publicize occur on an annual basis. *See* Declaration ¶ 47.

5 **III. LAW AND ARGUMENT**

6 **A. Governing Law**

7
8 The IRS is statutorily required to have its employees “proceed, from time to time,
9 through each internal revenue district and inquire after and concerning all persons therein
10 who may be liable to pay any internal revenue tax.” 26 U.S.C. § 7601(a). To this end,
11 the IRS has broad investigative powers “[f]or the purpose of ascertaining the correctness
12 of any return, making a return where none has been made, determining the liability of any
13 person for any internal revenue tax or the liability at law or in equity of any transferee or
14 fiduciary of any person in respect of any internal revenue tax, or collecting any such
15 liability.” *Id.* § 7602(a). To fulfill these purposes, the IRS “is authorized” by statute:
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18 (1) To examine any books, papers, records, or other data which may be
19 relevant or material to such inquiry;

20 (2) To summon the person liable for tax or required to perform the act, or
21 any officer or employee of such person, or any person having possession,
22 custody, or care of books of account containing entries relating to the
23 business of the person liable for tax or required to perform the act, or any
24 other person the Secretary may deem proper, to appear before the Secretary
25 at a time and place named in the summons and to produce such books,
26 papers, records, or other data, and to give such testimony, under oath, as
27 may be relevant or material to such inquiry; and

28 (3) To take such testimony of the person concerned, under oath, as may
be relevant or material to such inquiry.

1 *Id.* Congress intended “to provide the [IRS] with broad latitude to adopt enforcement
2 techniques helpful in the performance of [its] tax collection and assessment
3 responsibilities.” *United States v. Euge*, 444 U.S. 707, 716 n.9 (1980); *see also United*
4 *States v. Jose*, 131 F.3d 1325, 1329 (9th Cir. 1997); *United States v. Bell*, 57 F. Supp. 2d
5 898, 906 (N.D. Cal. 1999) (“The IRS has broad investigatory powers that are set forth in
6 §§ 7601 through 7610 of the Internal Revenue Code.”). Indeed, the Supreme Court has
7
8 noted that the IRS’s summons power forms the “centerpiece” of the agency’s “expansive
9 information-gathering authority.” *United States v. Arthur Young & Co.*, 465 U.S. 805,
10 816 (1984).
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13 When issuing an administrative summons to a third party regarding a taxpayer, the
14 IRS is generally required to give notice to the taxpayer. 26 U.S.C. § 7609(a)(1). The
15 taxpayer then has the right to file a petition in court seeking to quash the summons. *Id.* §
16 7609(b)(2)(A). However, the third-party notice rules do not apply to certain types of
17 summonses, including a so-called “John Doe” summons, *see id.* § 7609(c)(3), defined as
18 a summons that “does not identify the person with respect to whose liability the summons
19 is issued,” *id.* § 7609(f). Instead, a John Doe summons “may be served only after a court
20 proceeding” establishing the elements listed in § 7609(f). *Id.* This proceeding is
21 necessarily *ex parte* because the point of a John Doe summons is to allow the IRS to
22 obtain information when the identity of the taxpayer is unknown. *See id.* § 7609(h)(2)
23 (stating that the court’s determination under § 7609(f) “shall be made *ex parte* and shall
24 be made solely on the petition and supporting affidavits”).
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1 The reviewing court, in such an ex parte proceeding, effectively serves the same
2 function as a taxpayer in a § 7609(b)(2)(A) petition to quash. *See Tiffany Fine Arts, Inc.*
3
4 *v. United States*, 469 U.S. 310, 317 (1985) (“As a substitute for the procedures of §§
5 7609(a) and (b), Congress enacted § 7609(f)[.]”); *United States v. Gertner*, 65 F.3d 963,
6 965 n.1 (1st Cir. 1995) (“[T]he court in effect ‘takes the place of the affected taxpayer’
7 who, being unnamed, cannot herself be expected to know about—let alone to oppose—
8 the summons even if it is irregular.” (quoting *Tiffany Fine Arts*, 469 U.S. at 321)).
9
10 “Congress did not intend to impose stringent restrictions on the [IRS’s] investigatory
11 function but merely sought to prevent the indiscriminate exercise of the John Doe
12 summons power.” *United States v. Ernst & Whinney*, 750 F.2d 516, 519-20 (6th Cir.
13 1984) (internal quotation marks and emphasis omitted).

14
15
16 Section 7609(f) provides that the IRS may not serve a John Doe summons until
17 after a court proceeding in which the government establishes the following three
18 numbered elements:

- 19 (1) the summons relates to the investigation of a particular person or
20 ascertainable group or class of persons,
21
- 22 (2) there is a reasonable basis for believing that such person or group or class of
23 persons may fail or may have failed to comply with any provision of any
24 internal revenue law, and
- 25 (3) the information sought to be obtained from the examination of the records
26 or testimony (and the identity of the person or persons with respect to whose
27 liability the summons is issued) is not readily available from other sources.

28 26 U.S.C. § 7609(f). Additionally, as of 2019, the statute requires that the summons be
“narrowly tailored to information that pertains to the failure (or potential failure) of the

1 person or group or class of persons referred to in paragraph (2) to comply with one or
2 more provisions of the internal revenue law which have been identified for purposes of
3 such paragraph.” *Id.*

5 **B. Application of § 7609(f)**

6 The summons at issue here meets all three of the numbered criteria in § 7609(f) as
7 well as the “narrowly tailored” requirement.⁴

9 **1. The Summons Relates to the Investigation of an Ascertainable Class**

10 The first of the three numbered requirements in § 7609(f) is that “the summons
11 relates to the investigation of a particular person or ascertainable group or class of
12 persons.” *Id.* § 7609(f)(1). This first prong is met here because the John Doe Class is
13 particularized from the general public and SFOX has the information necessary to
14 ascertain whether its customers are members of the class.
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20 ⁴ Recently, the IRS sought leave to serve two John Doe summonses for
21 cryptocurrency-related information like the information sought here and based upon
22 similar evidence. In both cases, the relevant district courts found the IRS had
23 successfully demonstrated the three statutory criteria of § 7609(f) and satisfied the
24 narrowly tailored requirement. The first such John Doe summons was issued on April 9,
25 2021, to Circle Internet Financial, Inc., which offers digital currency exchange services.
26 *See Order, In the Matter of the Tax Liabilities of John Does*, No. 21mc91201-RGS, 2021
27 WL 2291031 at *1 (D. Mass. Apr. 1, 2021) (“Circle”). The second was issued to
28 Payward Ventures Inc. d/b/a Kraken, a digital currency exchange, on May 11, 2021. *See*
Order Granting Narrowed Petition, In re Tax Liability of John Does, No. 21-cv-02201-
JCS, 2021 WL 2314968 at *1 (N.D. Cal. May 5, 2021) (“Kraken”). The United States
and both summoned parties are in the process of negotiating compliance with those
summonses. Declaration ¶ 15.

1 As noted above, the summons defines the John Doe Class as follows: “United
2 States person(s), who directly or indirectly had authority over any combination of
3 accounts held with OX Labs Inc., d/b/a SFOX, SFOX, Inc., sfox.com, or its predecessors,
4 subsidiaries, divisions, or affiliates (collectively, ‘SFOX’), with at least the equivalent of
5 \$20,000 in value of transactions (regardless of type) in cryptocurrency in any one year,
6 for the period January 1, 2016 through December 31, 2020.” This class is ascertainable
7 because it is limited in at least four ways. First, it is limited to SFOX account holders.
8 Second, it is limited to United States persons.⁵ Third, it is limited to those account
9 holders whose transactions were worth at least \$20,000 in a year. Fourth, it is limited to
10 the six-year period of 2016-2021. These class definition limitations are nearly identical
11 to the limitations that were used in two other recent John Doe summons cases where the
12 IRS sought permission to serve summonses for cryptocurrency-related information from
13 Circle and Kraken. In both of those cases, the reviewing district courts found the class
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19 ⁵“As defined in the Internal Revenue Code:

20 The term ‘United States person’ means—

21 (A) a citizen or resident of the United States,

22 (B) a domestic partnership,

23 (C) a domestic corporation,

24 (D) any estate (other than a foreign estate, within the meaning of paragraph (31)),

25 and
26 (E) any trust if—

27 (i) a court within the United States is able to exercise primary supervision
28 over the administration of the trust, and

(ii) one or more United States persons have the authority to control all
substantial decisions of the trust.”

26 U.S.C. § 7701(a)(30).

1 definition to be statutorily sufficient. *Does*, 2021 WL 2291031 at *1; *Does*, 2021 WL
2 2314968 at *1. Prior to those summonses, the IRS issued a John Doe summons to
3 Coinbase after the district court granted it leave to serve. That district court also found
4 the proposed John Doe class ascertainable based on a class definition with similar
5 limitations. *United States v. John Doe*, No. 3:16-cv-06658-JSC, ECF No. 7 (N.D. Cal.
6 Nov. 30, 2016).
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9 Moreover, the John Doe Class identified in the summons is “ascertainable”
10 because courts have repeatedly found § 7609(f)(1) to be satisfied where a summons
11 identifies a particular group of taxpayers in a similar manner. For example, this
12 requirement has also been satisfied where a summons “squarely particularize[d] the
13 individuals sought from the general public” by identifying the class as California
14 residents who, between 2005 and 2010, were involved in certain property transfers for
15 little or no consideration. *See In re Tax Liab. of Does*, No. 2:10-mc-00130-MCE-EFB,
16 2011 WL 6302284, at *2 (E.D. Cal. Dec. 15, 2011). Likewise, the IRS satisfied the
17 “ascertainable group” standard where a summons concerned U.S. taxpayers who, as
18 agents for subsidiaries of a certain company, sold credit insurance policies reinsured with
19 entities in the Turks and Caicos Islands. *See In re Tax Liab. of Does*, No. 03-22793-CIV,
20 2003 WL 22953182, at *1 (S.D. Fla. Oct. 30, 2003) (“*American Bankers Insurance*
21 *Group*”); *see also Matter of Does*, Case No. CV-13-3393 YGR, 2013 WL 5503135
22 (N.D. Cal. Aug. 29, 2013) (approving John Doe class of U.S. taxpayers who had accounts
23 with CIBC First Caribbean International Bank Limited through correspondent account at
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1 Wells Fargo Bank, N.A., during 2004-2012); *In Matter of Tax Liabilities of Does*, Civ.
2 No. 3:96-CV-25(DF), 1996 WL 196633, at *1 (M.D. Ga. Feb. 5, 1996) (“As required by
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4 26 U.S.C. § 7609(f)(1), the summons relates to the investigation of an ascertainable
5 group or class of persons, that is, individuals, businesses, corporations, partnerships, joint
6 ventures, and companies within the State of Georgia that received payments from The
7
8 Loef Company, for the sale of recyclable materials, (also referred to as scrap metal),
9 including commissions, for the calendar years 1992, 1993 and 1994.”).

10
11 Moreover, as discussed in Part II.C above, SFOX should be able to ascertain from
12 its records which of its users were U.S persons, and who among them engaged in
13 transactions equaling or exceeding \$20,000 during the years specified in the summons,
14 based on the information that the IRS expects it collects from its customers. The
15
16 availability of this information to SFOX means that the John Doe Class is an
17 “ascertainable group of class of persons” and that § 7609(f)(1) is satisfied.

18
19 **2. There Is a Reasonable Basis for Believing that the John Doe Class**
20 **May Fail, or May Have Failed, to Comply with the Internal**
21 **Revenue Laws**

22 The second element that the government must establish is that “there is a
23 reasonable basis for believing that such person or group or class of persons may fail or
24 may have failed to comply with any provision of any internal revenue law.” 26 U.S.C.
25 § 7609(f)(2). Taxpayers must report income, gain, or loss from all taxable transactions
26 involving cryptocurrency on their federal income tax returns for the year of the
27
28 transactions. *See* 26 U.S.C. §§ 1, 61, 451, 1011, 1211, and 1222. Here, there is a

1 reasonable basis for believing that members of the John Doe Class may fail (or may have
2 already failed) to report, or to pay tax associated with, cryptocurrency transactions. This
3 belief is based upon the information discussed in Part II.D above: Agent Lee’s personal
4 knowledge of non-compliance by SFOX users; the lack of third-party reporting to the
5 IRS by SFOX regarding its customers’ transactions; the IRS’s experience with the
6 Coinbase John Doe summons and its aftermath; and the search results showing likely
7 large-scale underreporting of taxable cryptocurrency transactions.
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10 To meet the “reasonable basis” prong of § 7609(f)(2), the government need only
11 show that a transaction has occurred that is “of such a nature as to be reasonabl[y]
12 suggestive of the possibility that the correct tax liability with respect to that transaction
13 may not have been reported.” H.R. Rep. No. 94-658 at 311 (1975), *reprinted in* 1976
14 U.S.C.C.A.N. 2897, 3208; *see, e.g., United States v. Ritchie*, 15 F.3d 592, 601 (6th Cir.
15 1994) (clients’ payment for legal services with large amounts of cash provided reasonable
16 basis for John Doe summons). When enacting § 7609(f), Congress did “not intend to
17 impose an undue burden on the [IRS] in connection with obtaining a court authorization
18 to serve this type of summons.” H.R. Rep. No. 94-658 at 311, *reprinted in* 1976
19 U.S.C.C.A.N. at 3207. Rather, it sought to ensure that the IRS would have “a specific
20 situation to present in the court,” instead of using the summonses to engage in a “possible
21 ‘fishing expedition.’” *Id.*; *see also In re Tax Liabs. of Does*, 688 F.2d 144, 149 (2d Cir.
22 1982) (Section 7609(f) was “concerned only with . . . preclud[ing] the IRS from using
23 [John Doe] summonses to engage in possible ‘fishing expeditions.’” (quoting H.R. Rep.
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1 No. 94-658 at 311)). The government need not “produce conclusive evidence of an
2 actual tax violation as a prerequisite to obtaining a John Doe summons.” *In re Does*, 671
3 F.2d 977, 980 (6th Cir. 1982) (per curiam) (“*Columbus Trade Exchange*”). The point of
4 the statute is merely “to prevent the [IRS] from exercising its summons power in an
5 arbitrary or quixotic manner.” *Id.*
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8 In the recent Circle and Kraken John Doe summons cases, the reviewing district
9 courts found that there was a reasonable basis for believing that those similarly defined
10 classes had failed or may have failed to comply with internal revenue laws based upon
11 similar evidence to that presented here. *Does*, 2021 WL 2291031 at *1; *Does*, 2021 WL
12 2314968 at *1.
13

14 Moreover, prior experience with similar transactions involving similar parties is a
15 reasonable basis under § 7609(f)(2). For example, in the early 1980s, the IRS sought
16 approval to serve several John Doe summonses on so-called barter exchanges. *See, e.g.*,
17 *Columbus Trade Exchange*, 671 F.2d 977. Those barter exchanges are analogous to
18 virtual currency exchanges insofar as the IRS’s experience showed that their customers,
19 whose identities were unknown, were likely to be underreporting the tax on their
20 transactions. *See, e.g., id.* at 980. In affirming the district court’s order approving the
21 issuance of the summons, the Sixth Circuit held that the IRS’s “past experience with this
22 problem is a ‘reasonable basis’ for its decision to investigate the returns of Columbus
23 Exchange members.” *Id.*
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1 Other courts made similar rulings. *See United States v. Pittsburgh Trade*
2 *Exchange, Inc.*, 644 F.2d 302, 306 (3d Cir. 1981) (finding, based on IRS agent’s
3 testimony, that “barter transactions such as those arranged by The Exchange are
4 inherently susceptible to tax error since no cash is involved and the only records of the
5 members’ credits are kept by The Exchange, which allegedly does not provide members
6 any information regarding their trade accounts. Such circumstances provide a sufficient
7 basis for the Internal Revenue Service’s action.”); *United States v. Island Trade*
8 *Exchange, Inc.*, 535 F. Supp. 993, 996-97 (E.D.N.Y. 1982) (approving John Doe
9 summons to barter exchange and finding “reasonable basis” requirement in § 7609(f)(2)
10 met based on IRS agent’s declaration that “prior examinations of bartering exchanges and
11 their members by the Internal Revenue Service revealed high levels of omitted or
12 improperly reported income,” as well as features of bartering transactions that made them
13 susceptible to improper tax reporting). Equally here, the IRS’s knowledge of non-
14 compliance by some SFOX users, the Coinbase John Doe summons, the recent Circle and
15 Kraken John Doe summonses, and other situations in which there is a lack of third-party
16 reporting all strongly suggest that there is a reasonable basis for the summons in this case.
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22 As in the barter-exchange cases, in all the John Doe summons cases arising from
23 the IRS’s Offshore Credit Card Project, courts have found a “reasonable basis” for
24 suspecting non-compliance by offshore credit card users based on the IRS’s general
25 experience with undisclosed foreign accounts—even in the absence of audits involving
26 the summoned parties—because individuals using credit cards to repatriate funds from
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1 offshore bank accounts are likely to be engaged in tax evasion. *See, e.g., In re John*
2 *Does*, No. 1:00-CV-3919, 2000 WL 34538137 (S.D. Fla. Oct. 30, 2000) (*American*
3 *Express & MasterCard International, Inc.*); *In re John Does*, No. CV-02-0049-MISC-
4 PJH (N.D. Cal. 2002) (*VISA International*); *In re John Does*, No. 02-22404 CIV-
5 UNGARO-BENAGES 2002 WL 32879613, at *1 (S.D. Fla. Aug. 20, 2002) (*MasterCard*
6 *International, Inc.*); *In re John Does*, No. 03-22177 CIV-Martinez (S.D. Fla. 2003)
7 (*Credomatic of Florida Inc.*); *In re John Does*, No. 04-F-1548 (OES) (D. Colo. 2004)
8 (*First Data Corporation*); *In re John Does*, No. 04-21986-CIV-UNGARO-BENAGES
9 (S.D. Fla. 2004) (*TecniCard, Inc.*); and *In re John Does*, No. 4:04-cv-94-1 (CDL) (M.D.
10 Ga. 2004) (*Total Systems Services, Inc.*).
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14 Here, the evidence the IRS has developed to date is reasonably suggestive of the
15 possibility that the correct tax liabilities with respect to cryptocurrency transactions
16 conducted through SFOX's platforms may not have been properly reported. Declaration
17 ¶ 59. Agent Lee is personally aware of several instances of previously unreported (and
18 likely taxable) transactions involving SFOX users. *Id.* ¶¶ 93-102. Moreover, the IRS
19 knows that when third-party reporting is lacking, the incidence of tax non-compliance
20 increases greatly. And SFOX, like other prime dealers and virtual currency exchanges,
21 does not issue Forms 1099 or otherwise engage in third-party transactional reporting to
22 the IRS. Additionally, as in the barter-exchange cases, the IRS's experience with
23 cryptocurrency, especially with respect to the Coinbase John Doe summons, indicates a
24 likelihood of non-compliance by SFOX customers. This suspicion is bolstered by the
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1 internal IRS data search results.

2 Given all this evidence, the IRS has far more than a mere suspicion that the John
3 Doe Class includes taxpayers who are not complying with the law. Rather, the evidence
4 strongly suggests that there has been, and continues to be, failure by certain SFOX users
5 to comply with the internal revenue laws in reporting the taxable consequences from
6 cryptocurrency transactions. The “reasonable basis” prong of § 7609(f)(2) is therefore
7 satisfied.
8

9
10 **3. The Information Sought in the Summons Is Not Readily Available**
11 **from Other Sources**

12 The third numbered requirement of § 7609(f) is that “the information sought to be
13 obtained from the examination of the records or testimony (and the identity of the person
14 or persons with respect to whose liability the summons is issued) is not readily available
15 from other sources.” This prong is met because the information sought in the summons
16 to SFOX is not readily available to the IRS from other sources. As noted above, there is
17 no third-party reporting by SFOX to the IRS regarding the cryptocurrency transactions
18 that are conducted on its exchanges. Declaration ¶ 45. The IRS also has reason to
19 believe that a significant portion of such transactions are not being properly reported by
20 the taxpayers themselves either, but the IRS is presently unable to audit such taxpayers
21 because their identities are unknown. Further, while the IRS is also filing a petition in the
22 U.S. District Court for the Southern District of New York seeking leave to serve a John
23 Doe summons on M.Y. Safra Bank, FSB (“M.Y. Safra”) itself, the IRS believes—based
24 on information in its possession and because of the account services M.Y. Safra offers its
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1 users—that SFOX and M.Y. Safra may possess related, but qualitatively different, user
2 and transaction information. Accordingly, the John Doe summonses for SFOX and M.Y.
3 Safra make distinct requests that reflect the information each entity is believed to
4 separately possess. Declaration, ¶ 116; *see Am. Bankers Ins. Group*, 2003 WL 22953182,
5 at *1 (finding § 7609(f)(3) met because “information sought by the IRS to continue their
6 investigation is not readily available through a means other than from [the summoned
7 party] itself”).
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10 Where, as here, the IRS is unable to identify the members of the John Doe Class,
11 and one of the principal purposes of the summons is to discover the class members’
12 identities, courts have repeatedly found the § 7609(f)(3) prong of the test to be satisfied.
13 As was the case with the most recent John Does summonses for cryptocurrency-related
14 information directed to Circle and Kraken, and before that Coinbase. *Does*, 2021 WL
15 2291031 at *1; *Does*, 2021 WL 2314968 at *1; *United States v. John Doe*, No. 3:16-cv-
16 06658-JSC, ECF No. 7 (N.D. Cal. Nov. 30, 2016). Other examples include where courts
17 have approved summonses where the identities of the persons to be investigated are not
18 readily available but are known to foreign institutions. *See In re Tax Liabs. of Does*, No.
19 11-cv-01686-PJH, Dkt. No. 10 (N.D. Cal. Apr. 7, 2011) (authorizing John Doe summons
20 to HSBC Bank USA, N.A. seeking financial account records establishing the identities of
21 U.S. taxpayers with interests in HSBC’s Indian bank accounts); *MasterCard*
22 *International, Inc.*, 2002 WL 32879613, at *1 (authorizing service of a John Doe
23 summons seeking the identity of U.S. taxpayers who held certain credit card accounts
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1 with ties to foreign banks); *American Express & MasterCard International, Inc.*, 2000
2 WL 34538137, at *1 (identities of taxpayers not readily available except from American
3 Express and MasterCard International, Inc., who possessed credit card information for
4 cards issued by offshore banks).

5
6 Even if it were theoretically possible for the IRS to obtain some of the information
7 sought in the summons from a labor-intensive review of its own files, that would not
8 prevent § 7609(f)(3) from being satisfied.⁶ Courts take a “practical” approach when
9 information “cannot without unreasonable burden, expense and unwarranted delay be
10 retrieved from the files of the Courts take a “practical” approach when information
11 “cannot without unreasonable burden, expense and unwarranted delay be retrieved from
12 the files of the [IRS].” *United States v. Reprints, Inc.*, 43 A.F.T.R.2d 79-463, 1978 WL
13 1238, at *1 (N.D. Ga. Nov. 18, 1978); *see also United States v. John G. Mutschler &*
14 *Assocs., Inc.*, 734 F.2d 363, 367-68 (8th Cir. 1984) (in summons enforcement proceeding,
15 taking “practical approach to IRS accessibility” in declining to order “manual search of
16 18,000 opinion letter applications” to identify those prepared by summoned party, calling
17 that “an unreasonable and imprecise method” of locating information); *United States v.*
18 *Berkowitz*, 488 F.2d 1235, 1236 (3d Cir. 1973) (per curiam) (noting, in summons
19 enforcement proceeding, that “[t]o require the [IRS] to review individually the millions
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26 ⁶ *Cf. Sugarloaf Funding, LLC v. U.S. Dept. of Treas.*, 584 F.3d 340, 350 (1st Cir.
27 2009) (holding, in summons enforcement proceeding, that “the IRS is entitled to obtain
28 relevant records from third parties to compare for accuracy any records obtained from the
taxpayer”).

1 of forms filed in 1971” to locate those sought by summons “is so obviously burdensome
2 as to make the procedure prohibitive” and concluding “from a practical standpoint those
3 returns would not be readily available to the government”).
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5 The only entities possessing information relating to virtual currency transactions
6 that identify the persons involved in the transactions, and that hold material relating to the
7 transactions, are the exchangers, service providers, and any intermediaries. Therefore, it
8 is logical to summon SFOX for this identifying and transactional information regarding
9 SFOX’s users, which is not readily available from any other source.
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12 **4. The Summons Is Narrowly Tailored to Information that Pertains**
13 **to the Failure (or Potential Failure) of the Class to Comply with**
14 **the Internal Revenue Laws**

15 An additional requirement Congress added to § 7609(f) in 2019 is that a John Doe
16 summons must be “narrowly tailored to information that pertains to the failure (or
17 potential failure) of the person or group or class of persons referred to in paragraph (2) to
18 comply with one or more provisions of the internal revenue law which have been
19 identified for purposes of such paragraph.” This narrow-tailoring requirement is met
20 because the summons’ requests are specifically directed at information that will shed
21 light on the potential non-compliance that the IRS is concerned about—non-reporting of
22 cryptocurrency transactions and non-payment of associated tax—as well as the identities
23 of those taxpayers who may not be complying with tax laws. As mentioned above, this
24 includes potential non-compliance with several provisions of the Internal Revenue Code,
25 such as 26 U.S.C. §§ 1, 61, 451, 1011, 1211, and 1222.
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1 Congress added the new language as part of the Taxpayer First Act, Pub. L. No.
2 116-25, § 1204(a), 133 Stat. 981, 988 (2019), and it applies to summonses served on or
3 after August 16, 2019. Congress’s intent was to ensure that “the information sought in
4 the summons [is] at least potentially relevant to the tax liability of an ascertainable
5 group,” and that the summons is not used “for the purposes of a fishing expedition.”
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7 H.R. Rep No. 116-39, at 41 (2019). The added text “is not intended to change the *Powell*
8 standard”—*i.e.*, the showing the IRS must make in support of summons enforcement—
9 “or otherwise affect the IRS’s burden of proof.” *Id.* at 42 (citing *United States v. Powell*,
10 379 U.S. 48 (1964)); accord Joint Committee on Taxation, *Description of H.R. 1957, the*
11 *“Taxpayer First Act of 2019,”* at 15 (2019),
12 [https://www.jct.gov/CMSPages/GetFile.aspx?guid=673878f4-0d0f-4304-a14c-](https://www.jct.gov/CMSPages/GetFile.aspx?guid=673878f4-0d0f-4304-a14c-c9740276676a)
13 [c9740276676a](https://www.jct.gov/CMSPages/GetFile.aspx?guid=673878f4-0d0f-4304-a14c-c9740276676a) [<https://perma.cc/49QV-GWV6>].

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17 This statutory requirement is satisfied here. Agent Lee’s Declaration explains in
18 detail the direct connection between each of the five items requested in the summons
19 attachment and the IRS’s investigation concerning non-compliance with the internal
20 revenue laws. *See* Declaration ¶¶ 118-166. Those five document requests fit within two
21 categories. *Id.* ¶ 121. The first category of requests is directed at adequately identifying
22 the John Doe class members so that transactional data can reasonably be associated with
23 a particular person. *Id.* ¶ 122. For example, Request No.1 on the summons attachment,
24 seeking account registration records, will assist the IRS in this process. *See id.* ¶¶ 125-
25 150. The second category of requests is directed at obtaining transactional information
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1 that may permit the IRS to evaluate whether a particular taxpayer complied fully with
2 internal revenue laws. *Id.* ¶ 123. For example, Request No. 3 on the summons
3 attachment seeks all records of account activity, including records that reflect the
4 particulars of a transaction such as the date, the amount, the transaction type, the account
5 post-transaction balance, and requests or instructions to send or receive virtual currency.
6 These records should contain the information necessary to determine the correct federal
7 tax liability of applicable SFOX users. *Id.* ¶¶ 155-165. Moreover, the user identity
8 information and the corresponding transactional information the IRS seeks from SFOX is
9 like what was sought in the John Doe summonses recently issued to Circle and Kraken.
10 Both of those reviewing district courts found that the John Doe summons' requests for
11 user identity and transaction information were narrowly tailored to information that
12 pertained to the failure (or potential failure) of the class. *Does*, 2021 WL 2291031 at *1;
13 *Does*, 2021 WL 2314968 at *1.

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15 As these and other more detailed explanations in Agent Lee's Declaration show
16 (¶¶ 125-169), each of the items sought by the summons is specifically targeted toward
17 obtaining information that may further the IRS's investigation of the John Doe Class and
18 its members' failure (or potential failure) to comply with the internal revenue laws. The
19 narrow-tailoring requirement is therefore satisfied.

20 **IV. CONCLUSION**

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22 For the foregoing reasons, the United States' petition to issue the summons should
23 be granted.
24

1 Dated this 8th day of August, 2022.

2 DAVID A. HUBBERT
3 Deputy Assistant Attorney General

4 /s/ Amy Matchison
5 AMY MATCHISON
6 Trial Attorney, Tax Division
7 U.S. Department of Justice
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