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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15
16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 PAYWARD VENTURES, INC., d/b/a
20 KRAKEN OR KRAKEN.COM, OR ITS
PREDECESSORS, SUBSIDIARIES,
21 DIVISIONS, OR AFFILIATES,

22 Respondent.

Case No. 3:23-MC-80029-JCS

**RESPONDENT PAYWARD
VENTURES, INC.'S OPPOSITION TO
PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONS**

Date: May 19, 2023
Time: 9:30 a.m.
Courtroom: F (15th Floor)
Judge: Hon. Joseph C. Spero

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INTRODUCTION

1
2 More than five years ago, this Court admonished the IRS for trying to obtain too much
3 information through a “John Doe” summons issued under 26 U.S.C. § 7602. The Court drastically
4 narrowed the scope of that summons and permitted the IRS to seek only basic personal information
5 and transaction records for Coinbase’s users. *U.S. v. Coinbase, Inc.*, No. 17-cv-1431, 2017 WL
6 5890052 (N.D. Cal. Nov. 28, 2017). Now, the IRS asks this Court to ignore *Coinbase* and permit
7 it to obtain from Payward Ventures, Inc. (“Kraken”) even more categories of information than
8 before, for the sake of convenience. It also asks this Court to impose upon Kraken, a third party,
9 the massive burden of producing all this information—no matter how difficult to retrieve or
10 unnecessary to its investigation—for nearly ██████ users. Kraken opposes this request.

11 The IRS previously asked Coinbase, another digital asset exchange, to produce a wide swath
12 of information about thousands of its users, so that the IRS could investigate its hunch that some
13 users might have underreported their taxes. The Court let the IRS move forward with a summons,
14 but only after eliminating or significantly narrowing several of its overreaching requests that were
15 not tailored to its investigative purpose. The IRS tried to justify its expansive summons by arguing
16 that it would save the Government a second trip to the courthouse to obtain additional information.
17 But this Court found that justification insufficient, even under the deferential standards of § 7602,
18 especially given the substantial burdens imposed on Coinbase and concerns that came with a
19 massive production of potentially irrelevant information. The Court’s bottom-line holding was that
20 the IRS could not seek an expansive number of documents about thousands of users, on the
21 *possibility* that some of them might not have been paying taxes. The Court permitted the IRS to
22 obtain only basic information that might help it identify potentially reportable gains.

23 Rather than abide by *Coinbase*’s ground rules, the IRS doubles down, making even more
24 expansive requests and relying on a thinner rationale. Not only does it ask for several of the same
25 categories of information that were rejected in *Coinbase*, it wants more—and for a much bigger
26 universe of users. Such a Summons is far “broader than necessary to achieve” the IRS’s purpose
27 of investigating potentially underreported taxable gains. *U.S. v. Bisceglia*, 420 U.S. 141 (1975).

28 Section 7602 allows the IRS to either go a mile wide and an inch deep (collecting basic

1 information on many users), or an inch wide and a mile deep (collecting lots of information about
 2 a small subset of users). It certainly does not permit a summons to go a mile wide *and* a mile deep,
 3 seeking nearly everything under the sun for nearly █████ users. Kraken should not be required to
 4 undertake the enormous burdens imposed by the IRS’s unjustified treasure hunt. This Court should
 5 deny the Petition in its entirety.

6 **BACKGROUND AND PROCEDURAL HISTORY**

7 **I. Overview of Kraken and Its Operations**

8 Kraken is a U.S.-based online cryptocurrency exchange platform founded in 2011. Decl.
 9 of Todd Siemers (“Siemers Decl.”) ¶ 4. Kraken offers its services to both U.S. and international
 10 users in more than 190 countries. *Id.* █████

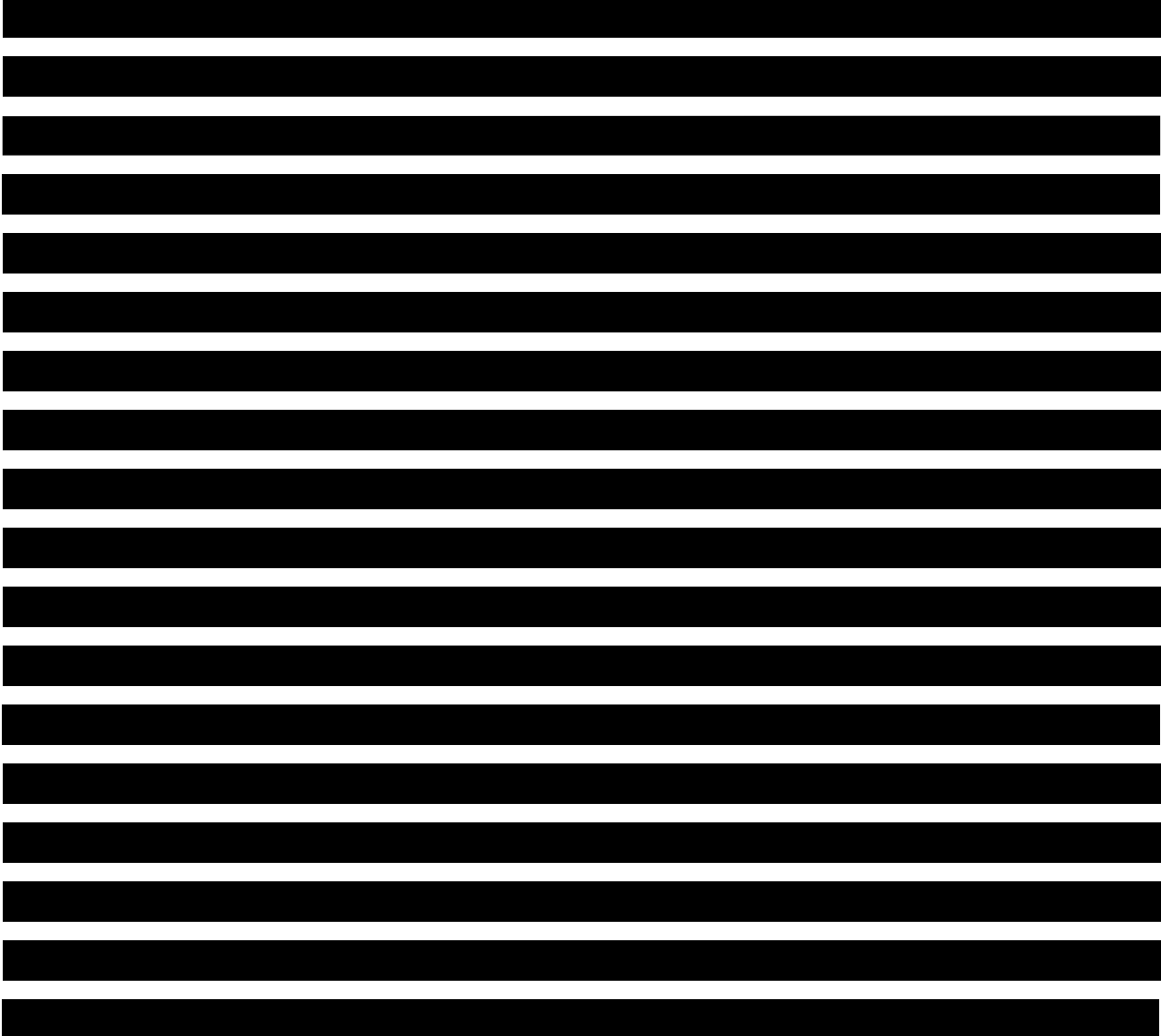
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20 **II. Kraken’s Storage of Relevant Data**

21 The IRS seeks a variety of categories of data from Kraken. While easy to ask for this
 22 information, much of it is not easy to get. Some data sought by the IRS is █████

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19 **III. The IRS Sought an *Ex Parte* Order to Serve a Sweeping John Doe Summons, but This**
20 **Court Determined the Summons Was Too Broad and Must be Narrowed**

21 More than two years ago, the Government filed an *ex parte* petition for leave to serve a John
22 Doe Summons on Kraken. *See* Mar. 30, 2021 *Ex Parte* Petition for Leave to Serve “John Doe”
23 Summons, *In Re Tax Liability of John Does (“Kraken I”)*, No. 21-cv-02201-JCS, ECF No. 1; *see*
24 *also* Decl. of Karen Cincotta (“First Cincotta Decl.”) at ¶ 80, *Kraken I*, ECF No. 1-2. While the
25 Government argued that the summons was narrowly tailored, this Court held otherwise. It
26 expressed concern that the IRS requests were too broad and found IRS Agent Karen Cincotta’s
27 supporting declaration insufficient (i.e., based on “conclusory assertions”) to support that breadth.
28 *See Kraken I*, 2021 WL 1222862, at *1 (N.D. Cal. Mar. 31, 2021). The Court noted that the IRS’s

1 prior attempt to obtain “similarly broad categories of information” from Coinbase had been rejected
 2 and ordered the IRS to show cause why its petition should not be denied for failing to meet 26
 3 U.S.C. § 7609(f)’s “narrowly tailored” requirement. *Id.* at *1-2.

4 **IV. After Issuance of a “Narrowed” Summons, Kraken Tries to Negotiate Scope**

5 Following the Court’s Order, the IRS filed a purported “narrowed” Summons, relying on a
 6 second declaration by Ms. Cincotta (“Second Cincotta Decl.”). *See* Govt.’s Response to Order to
 7 Show Cause, *Kraken I*, ECF No. 8. But, in reality, little had changed; it removed only one request
 8 and made slight changes to two others.¹ The Court allowed the IRS to serve this summons, but
 9 recognized there may be “further disputes as to the scope of the summons [which] would benefit
 10 from adversarial briefing.” *Kraken I*, 2021 WL 2314968 at *1 (N.D. Cal. May 5, 2021).

11 After serving the Summons on Kraken, the two sides had a number of discussions regarding
 12 its scope. *See* Fondo Decl. ¶ 4-5. Kraken expended significant time and resources to provide
 13 information to the IRS about its platform and raised concerns about the overbreadth of the requests.
 14 *Id.* Kraken emphasized its concern that the requests far exceeded what was ordered in *Coinbase*.²
 15 *Id.* ¶ 6.³ It also noted the considerable burdens associated with fulfilling the requests, especially
 16 since the information is not easily retrieved, and concerns about protecting user privacy. *Id.* After
 17 months of negotiation, the parties reached an impasse. *Id.* ¶ 7. Over a year after the parties’ last
 18 discussion, the IRS initiated the instant proceeding on February 3, 2023, without notice. *Id.* ¶ 8.

19 The points of contention regarding the Summons’ scope are as follows:

Summons Provision	Issue
<p>20 Definition of “User”: “[E]ach Kraken user 21 for which your records show any United 22 States-based address, telephone number, 23 email domain, internet protocol address, or 24 associated bank or financial account 25 information, produce the following records, 26 for any combination of accounts with at least the equivalent of \$20,000 in value of transactions (regardless of type) in cryptocurrency in any one year, for the</p>	<p>Kraken objects to this definition because it expands the scope of covered users far beyond what was sought in <i>Coinbase</i>, which encompassed those with “at least the equivalent of \$20,000 in any one transaction type (buy, sell, send, or receive) in any one year” <i>Coinbase</i> at *6 (emphasis added).</p>

27 ¹ Compare Ex. A to First Cincotta Decl., *Kraken I*, ECF No. 1-3, with Ex. B to Second Cincotta
 28 Decl., *Kraken I*, ECF No. 8-2.

² While *Coinbase* is not binding on this Court, it is highly instructive given the factual similarities
 to this case and the District Court’s consideration of nearly identical (but even narrower) requests.

³ See Ex. A to Fondo Decl. for a comparison of IRS requests in *Coinbase* with requests to Kraken.

1	period January 1, 2016 through December	
2	31, 2020 unless otherwise stated[.]”	
3	Request No. 1: “Account registration	Kraken opposes the request for “User profile,
4	records,” including “User profile, User	User preferences, or account application
5	preferences, or account application	information” beyond a user’s name, date of
6	information,” including: name (and	birth, taxpayer ID (where available), address,
7	pseudonym, user ID), date of birth, taxpayer	telephone number (where available), and email
8	ID, physical address, telephone number, email	address. Kraken also opposes the request for a
9	address; history of all changes to personal	history of all changes to personal information
10	information since the inception of the account;	since the inception of a user account; complete
11	complete user IP address history; and complete	user IP address history; and complete user
12	user payment methods regardless of date	payment methods regardless of date.
13	Request No. 2: Know-Your-Customer due	Kraken opposes this request in its entirety.
14	diligence questionnaire information	
15	Request No. 3: AML exception reports and all	Kraken opposes this request in its entirety.
16	investigation records of exceptions	
17	Request No. 4: All records of activity in User	Kraken opposes this request to the extent it
18	accounts	seeks records beyond transactional ledgers
19		reflecting user deposit, withdrawal, trade, and
20		transfer activity during the relevant timeframe.
21		In particular, it opposes the request for
22		transaction hash (ID) and blockchain addresses,
23		as these data are not maintained in Kraken’s
24		transaction ledgers.
25	Request No. 5: All account funding records,	Kraken opposes this request to the extent it
26	and “any and all invoices billing statements,	seeks records beyond transactional ledgers
27	receipts, or other documents memorializing	reflecting user deposit, withdrawal, trade, and
28	and describing such transactions.”	transfer activity during the relevant timeframe.

LEGAL STANDARD

The IRS has no inherent authority to pry unfettered into the affairs of U.S. taxpayers. *U.S. v. LaSalle Nat’l Bank*, 437 U.S. 298, 316 n.18 (1978). It may issue a John Doe summons under 26 U.S.C. § 7602, but only when a “legitimate investigative purpose” exists. *Bisceglia*, 420 U.S. at 146. That means the summons cannot be used to “conduct ‘fishing expeditions’ into the private affairs” of taxpayers. *Id.* at 150-51. A summons is enforceable only when the IRS demonstrates that (i) its investigation is conducted for “a legitimate purpose”; (ii) “the inquiry may be relevant to the purpose”; (iii) “the information sought is not already” possessed by the IRS; and (iv) it has followed the required “administrative steps.” *U.S. v. Powell*, 379 U.S. 48, 57-58 (1964). Critically here, “[a] summons will be deemed unreasonable and unenforceable if it is overbroad and

1 disproportionate to the ends sought.” *U.S. v. Coopers & Lybrand*, 550 F.2d 615, 621 (10th Cir.
 2 1977). Indeed, the statute itself requires that the information requested be “narrowly tailored” to
 3 pertain to a taxpayer’s noncompliance with tax laws. *See* 26 U.S.C. § 7609(f). As a result, a
 4 summons must be “no broader than necessary to achieve its purpose.” *Coinbase* at *6 (quoting
 5 *Bisceglia*, 420 U.S. at 151). Even if the Government facially meets its burden, that only gives rise
 6 to a rebuttable presumption of good faith; a summons may still be defeated if it is in bad faith or an
 7 abuse of process. *Powell*, 379 U.S. at 58. Judicial protection “against the sweeping or irrelevant
 8 order is particularly appropriate” where a summons is directed to a third party. *U.S. v. Theodore*,
 9 479 F.2d 749, 754 (4th Cir. 1973); *see also U.S. v. Monumental Life Ins. Co.*, 440 F.3d 729, 735
 10 (6th Cir. 2006) (“[A] third party to the IRS’s investigation . . . deserves greater protection against
 11 a burdensome summons.”). And “where, as here, the Government seeks records for thousands of
 12 account holders through a John Doe summons, the courts must ensure that the Government is not
 13 collecting thousands and thousands of personal records unnecessarily.” *Coinbase* at *7.

ARGUMENT

I. THE IRS FAILS TO SHOW WHY ITS OVERREACHING AND BURDENSOME REQUESTS SHOULD BE ENFORCED

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 17 One judge of this Court has already admonished the IRS for stretching too far with a similar
 18 John Doe summons to a cryptocurrency exchange—yet the scope of that summons, which the Court
 19 ultimately narrowed, pales in comparison to the breadth of what the IRS seeks here. In *Coinbase*,
 20 the Court allowed the Government to obtain, as to 14,000 users, basic “identity and transaction
 21 records . . . to investigate whether the holder had taxable gains that were not properly declared.” *Id.*
 22 at *6. It rebuffed the IRS’s ask for “account opening records, copies of passport or driver’s licenses,
 23 all wallet addresses, all public keys for all accounts/wallets/vaults, records of Know-Your-
 24 Customer diligence, agreements or instructions granting a third-party access, control, or transaction
 25 approval authority, and correspondence between Coinbase and the account holder.” *Id.* The need
 26 for that information was far too speculative even under § 7602, as the IRS could not establish a
 27 particularized need. *See id.* Only *if* the IRS determined a user had a potentially taxable gain, and,
 28 *if* there was doubt as to user identity, would additional documents be relevant. *See id.*

1 The IRS requests here are much broader; but, as in *Coinbase*, the IRS has utterly failed to
2 establish why the expanded universe of documents it seeks is remotely relevant, particularly at this
3 stage. The IRS seeks almost every document that Kraken may have for nearly ██████ users, more
4 than four times the number in *Coinbase*, without establishing whether any of them may even
5 *potentially* have a tax liability, all so the IRS can skip the step of later asking for more information
6 as to a very small subset of users. Moreover, the IRS’s requests would impose a burden on Kraken
7 that is exponentially greater than *Coinbase*’s—not just because of the number of users, but the
8 wider, yet needless, universe of documents that the IRS seeks here. Whether the IRS likes it or not,
9 the burden on the respondent is important in determining whether a summons is “no broader than
10 necessary to achieve its purpose.” *Bisceglia*, 420 U.S. at 151; *see also Coinbase*, at *6 (rejecting
11 burdensome requests because the information sought was “broader than necessary”).

12 As *Coinbase* explains, the Government’s desire to “not need to return to court to ask for
13 [documents] if and when needed” is not a good enough justification to saddle Kraken with an
14 incredibly onerous set of requests or to invade the personal and financial privacy of tens of
15 thousands of users. *Id.* at *7. To the contrary, the issuance of follow-up summonses specific to
16 taxpayers of particular interest is “a process preferable to a John Doe summons.” *Id.*

17 **A. The Summons’ Definition of User Makes It Broader Than Necessary to Achieve**
18 **the Government’s Investigative Purpose.**

19 The problems with the Summons start with its definition of “User,” which, in relevant part,
20 is: “each Kraken user . . . with at least the equivalent of \$20,000 *in value of transactions (regardless*
21 *of type)* in cryptocurrency in any one year for the period January 1, 2016 through December 31,
22 2020[.]” Ex. A to Third Cincotta Decl. (emphasis added). This definition—far broader than the
23 one in *Coinbase*, could not even *potentially* inform the Government’s investigation of taxpayers,
24 as it (1) improperly blends together all transactions, (2) embraces users who may have had no
25 taxable gain, and (3) extends so far as to cover non-U.S. individuals. Even if the IRS could
26 somehow overcome these hurdles, the incredible burden created by this expansive definition of
27 User demonstrates that the Summons is far broader than necessary.
28

1 **1. The Definition of “User” Exceeds the Definition Used in *Coinbase*,**
2 **Which the Court Barely Approved**

3 Without any explanation, the Summons demands a materially broader search for “Users”
4 than the Court allowed in *Coinbase*. There, the Court approved a narrowed summons that limited
5 the covered “Users” to those “with at least the equivalent of \$20,000 in *any one transaction type*
6 (buy, sell, send, or receive) in any one year ... [but] does not include users ... who only bought and
7 held bitcoin during the [at-issue] period...” *Id.* at *2, *5. Here, however, the IRS expands the scope
8 of covered users far beyond that definition. Now, it expands a “User” to be based on (a) an
9 *aggregate* threshold of at least \$20,000 in cryptocurrency transactions “*regardless of type*” for any
10 one year between 2016 and 2020, and (b) does not exclude users who only bought and held
11 cryptocurrency. In other words, a “User” includes anyone who engaged in *any* cryptocurrency
12 transaction (whether buying, sending, selling, receiving, depositing, withdrawing, transferring, etc.)
13 where the *combined value* of those transactions was \$20,000 or more in any one year. ██████████

14 ██████████
15 ██████████

16 The \$20,000-per-transaction-type definition of User in *Coinbase* already pushed that
17 summons to its limits, with the Court expressing concern that this meant the potential collection of
18 “thousands and thousands of personal records unnecessarily.” *Coinbase* at *7. The definition of
19 “User” here far exceeds the breaking point. Consider how many users—who may transact in small
20 amounts and have no taxable gain whatsoever—might be swept in by this capacious definition.
21 Say a Kraken user buys \$10,000 in Bitcoin. The user then decides to split up his holdings, so he
22 sells \$5,000 in Bitcoin and buys \$5,000 of Ether. That user would be swept into this Summons,
23 while excluded from the *Coinbase* summons—which already captured a significant (but much
24 lower) number of users that gave the Court pause. The IRS provides no justification whatsoever—
25 not in any of its *three* supporting declarations—for its expansion of “User” here.

26 **2. The Expansive Definition of “User” Encompasses Non-Taxable Events**

27 The term “User” also does not exclude those who engaged in only non-taxable events. The
28 narrowed *Coinbase* Summons expressly excluded users “*who only bought and held bitcoin during*

1 *the [subject time] period[.]*” *Id.* at *2 (emphasis added). This makes sense since this would not
 2 give rise to a taxable event. There is no legitimate basis for the IRS’s purported “need” to
 3 investigate users who only make *deposits* or *purchases* (buy-hold crypto) or *withdrawals*. But there
 4 is no similar exclusion here, and the IRS provides no explanation for that. While it concedes that
 5 “[t]he purchase of cryptocurrency is not inherently taxable,” it claims to need “purchase price
 6 information” to *calculate* a taxable gain. Third Cincotta Decl. ¶ 138. Though that may be true,
 7 *Coinbase* makes clear that the documents the IRS may obtain are only ones that might help discern
 8 a potentially unreported taxable gain—users who simply purchased does not help achieve that.

9 The same is true with deposit and withdrawal activity. A deposit alone shows nothing and
 10 would encompass all the people who buy and simply hold cryptocurrency. The IRS vaguely asserts
 11 that deposits and withdrawals are a “clear indicator that the user is holding cryptocurrency in other
 12 places,” and thus “needs” this information “so it can gather as much information as possible” to
 13 determine a user’s tax compliance. *Id.* ¶¶ 142. But that is no different than the type of fishing
 14 expeditions that are not allowed under § 7609(f). *See generally In re Tax Liabilities of John Does*,
 15 688 F.2d 144, 149 (2d Cir. 1982) (Sections 7609(f) and (h) provide a prior restraint on the IRS’s
 16 power to serve John Doe summonses, mainly “to preclude the IRS from using such summonses to
 17 engage in possible ‘fishing expeditions.’”).

18 The IRS also argues that deposits or withdrawals “*may be taxable transactions themselves.*”
 19 *Id.* ¶ 143 (emphasis added). It speculates that a deposit could reflect compensation or a similar
 20 taxable income payment, such as for goods and services, and that a withdrawal could represent a
 21 “taxable disposition” if sent to a third party. *Id.* But this is yet another example of a “conclusory”
 22 assertion that cannot justify enforcement of this more expansive Summons. *U.S. v. Goldman*, 453
 23 F. Supp. 508, 512 (C.D. Cal. 1978) (“Mere idle hope or generalized speculation is not enough.”).
 24 And, again, it fails to explain why that information is necessary to identify taxpayers at *this* stage.

25 3. The Broad Reach of the Term “User” Raises Foreign Privacy Concerns

26 Given Kraken’s worldwide operations, the overbreadth of the Summons’ definition of
 27 “User” also leads to the potential collection of data for users with no nexus to the U.S.—whom the
 28 IRS has no interest in auditing—and creates a significant concern about Kraken’s ability to comply

1 with foreign privacy laws. Here, a covered “User” is any user that Kraken’s “records show has
 2 “any United States-based address, telephone number, email domain,⁴ internet protocol address, or
 3 associated bank or financial account information.” Ex. A to Third Cincotta Decl. at 7. Given *how*
 4 “User” is defined, it is possible that certain non-U.S. citizens who at some point during the five-
 5 year timeframe either lived in the U.S., had a U.S. phone number, or simply used a computer in the
 6 U.S. would get swept up in the search. This would not be the “narrowly tailored” Summons that
 7 federal law requires. Further, that this request would likely require collection from EU users
 8 impairs Kraken’s ability to comply with the EU General Data Protection Regulation (“GDPR”).
 9 The GDPR generally prohibits the disclosure of personal data to non-EU countries unless formally
 10 recognized by the European Commission as having adequate levels of data protection, which the
 11 U.S. currently is not. Regulation (EU) 2016/679, Article 3 at 45-49.

12 **4. The Expansive Definition of “User” Imposes a Significant Burden on**
 13 **Kraken and Privacy Concerns for its Users**

14 “Whether or not a request is burdensome is a test of whether such a summons would be
 15 enforced and even though information sought by a summons is relevant and material, it may still
 16 be so burdensome to produce that enforcement could be denied.” *In re John Does*, No. CV-N-88-
 17 319-ECR, 1990 WL 264130, at *5 (D. Nev. Oct. 1, 1990). As currently defined, the term “User”
 18 captures ██████████—more than four times the users in *Coinbase*. Siemers Decl.
 19 ¶ 10. And, as explained above, the Summons seeks documents that were not sought in *Coinbase*.
 20 That means Kraken must account for both more users *and* more documents per user if the Summons
 21 were enforced in its entirety. Indeed, Kraken estimates that full compliance could take months or
 22 even years. *Id.* This burden is unjustified, particularly given that the IRS is unlikely to actually
 23 audit all of these “additional” Users or any significant portion of them.⁵

24 Further, given the sweeping reach of the term “User,” the IRS seeks wide swaths of
 25 information, which improperly invades the privacy of Kraken’s users. This presents significant
 26

27 ⁴ The request to identify U.S. Users by “email domain” also is vague; email domains are not readily
 28 distinguishable by country. The IRS does not explain how Kraken would do this.

⁵ If the transaction value threshold was increased to \$50,000 or \$100,000, the number of accounts
 would be reduced to ██████████ respectively—still double or triple *Coinbase*, but much
 more reasonable figures. Siemers Decl. ¶ 10.

1 risks to Kraken and its users. Transferring troves of sensitive personal and financial data (the vast
2 majority of which will be irrelevant) to the IRS increases the risk of loss or theft. Unfortunately,
3 this happens, even to the government.⁶ The slight value in additional users covered by this broad
4 definition is outweighed by the privacy risks here.

5 **B. The IRS’s Request No. 1 for User Identity Information Goes Beyond *Coinbase***
6 **And Is Irrelevant, Overbroad, and Burdensome**

7 Request No. 1 should be rejected insofar as it exceeds the scope of *Coinbase*, is irrelevant,
8 not narrowly tailored, and unduly burdensome. Under the guise of “necessity,” the request seeks
9 far more than permitted in *Coinbase*, including: user “pseudonym” or “user ID”; telephone number;
10 email address; “[h]istory of all changes to the personal information identified above since the
11 inception of the account”; “[c]omplete User history for internet protocol addresses used to access
12 the account”; and “[c]omplete User payment methods (e.g., linked bank or credit card accounts)
13 regardless of date.” Ex. A to Third Cincotta Decl. But the IRS needs only basic user information
14 to determine a taxpayer’s identity: name, birthdate, taxpayer ID, and address.⁷

15 **1. Request No. 1 Exceeds *Coinbase* and Is an Abuse of Process**

16 The IRS’s expansive request for user information disregards the unambiguous holding in
17 *Coinbase*: the IRS can obtain basic information needed to identify individuals with potentially
18 unreported gains, and then follow up on that with narrow requests covering that limited group.
19 Instead, the IRS renews its failed arguments from *Coinbase*.

20 In *Coinbase*, the summons at issue included a similarly broad request for:
21 “[a]ccount/wallet/vault registration records for each account/wallet/vault owned or controlled by
22 the user . . . limited to name, address, tax identification number, date of birth, account opening
23 records, copies of passport or driver’s license, all wallet addresses, and all public keys for all

24 _____
25 ⁶ A Treasury Inspector General report found that the IRS did not meet all of the security
26 requirements for its cloud-based systems and failed to timely implement mitigation and corrective
27 actions to mitigate security risks. See *The Enterprise Case Management System Did Not*
28 *Consistently Meet Cloud Security Requirements* TREASURY INSPECTOR GEN. FOR TAX ADMIN.
(Mar. 27, 2023), <https://www.oversight.gov/sites/default/files/oig-reports/TIGTA/202320018fr.pdf>
(attached as Ex. B to Fondo Decl.).

⁷ Should the Court deny its opposition to the Summons in its entirety (§ II, *infra*), Kraken does not
raise a burden argument as to the request for basic user information (name, address, birthdate, and,
where available, taxpayer ID), or for email addresses and, where available, phone numbers as
further data references, subject to the appropriate limiting of a “User” to conform to *Coinbase*.

1 accounts/wallets/vaults.” *Coinbase* at *2. The IRS, as it does here, claimed that it “need[ed] these
 2 records to verify an account holder’s identity” and to determine if the holder had others make
 3 transactions on their behalf. *Id.* at *6. The Court disagreed. It expressly identified limited personal
 4 identification measures that it deemed necessary to determine if a taxable gain was reported: “name,
 5 date of birth, taxpayer identification and address.” *Id.* The Court found this more than sufficient to
 6 assist in identifying taxpayers. It was not enough that the IRS asserted a need for additional records
 7 to “verify” a user’s identity. *Id.* Further identity information would only become necessary if the
 8 IRS determined there was a potential taxable gain and still has doubt as to a taxpayer’s identity. If
 9 not, “these additional records will not shed any light on a legitimate investigation.” *Id.*

10 Ignoring the Court’s admonition in *Coinbase*, the IRS nonetheless seeks to enforce its
 11 expansive Summons, requesting extraneous identity information. Specifically, it seeks any user
 12 pseudonym⁸ or user ID, historical personal information changes, IP addresses, and user payment
 13 methods. These categories exceed the basic user information *Coinbase* held was relevant for IRS’s
 14 initial investigative purposes. And the IRS provides no legitimate explanation for why its claimed
 15 need for this additional information would be any greater or different here than in *Coinbase*. If
 16 “more detailed records” are needed, the IRS can seek information directly from the taxpayer or
 17 from Kraken. Production of such information at this point would serve only to provide unfettered
 18 access to the private financial and personal information of thousands of otherwise law-abiding users
 19 that the IRS has no interest in auditing. Accordingly, Request No. 1 should be rejected insofar as
 20 it exceeds *Coinbase*.

21 **2. Requests for Historical User Information Changes, IP Addresses, and**
 22 **Payment Methods Are Overbroad and Irrelevant**

23 The IRS’s requests for historical user information in Request No. 1(b)-(d) are unreasonable
 24 and unenforceable as they are overbroad and disproportionate to the end sought here.

25 Here, the requests for historical user information changes, payment methods, and IP
 26 addresses are overbroad; each of these sub-requests is indefinite as to time and unbounded by the
 27 purported time and value limitations set forth in the definition of “User.” For instance, Request
 28

⁸ The request for “pseudonyms” is also vague, and it is unclear what is actually requested.

1 No. 1(b) seeks the history of all changes to personal information “since the inception of the
2 account.” Similarly, Request No. 1(c) seeks “[c]omplete User history” for IP addresses, and
3 Request No. 1(d) seeks User payment methods “regardless of date.” Other courts have held similar
4 requests that were unlimited in time and not directly related to the tax years in dispute to be
5 irrelevant and overbroad. *See, e.g., Zietzke v. U.S.*, No. 19-CV-03761-HSG(SK), 2020 WL 264394,
6 at *9 (N.D. Cal. Jan. 17, 2020), *report and recommendation adopted*, 2020 WL 6585882 (N.D.
7 Cal. Nov. 10, 2020) (request was overbroad and irrelevant to investigation purpose without date
8 range limitation); *see also Monumental Life Ins. Co.*, 440 F.3d at 736 (generally agreeing with
9 magistrate judge’s conclusion that request seeking information “during the period beginning July
10 1, 1991 through September 30, 1999 [was] particularly irrelevant because the IRS was only
11 investigating [defendant’s] tax liability between 1994 and 1997”) (internal quotations omitted). For
12 this reason alone, the requests are broader than necessary to achieve any IRS investigatory purpose.

13 Moreover, the requests for additional information beyond basic identity information simply
14 boil down to “nice to haves.” The IRS only suggests that it *may not* be able to verify the identity
15 of a taxpayer without identity information beyond name, date of birth, address, and taxpayer
16 identification. In doing so, it relies on two *speculative* and *conclusory assumptions* about why basic
17 information “does not always go far enough” in establishing taxpayer identity. *First*, Ms. Cincotta
18 asserts, without providing any factual basis, that “[i]t is not uncommon for taxpayers to use aliases,
19 false addresses or post office boxes, fictitious entity names, or other means to disguise their true
20 identities.” Third Cincotta Decl. ¶ 42; *see also* ¶¶ 92-95. Based on that unsupported assertion, she
21 concludes “[t]hat makes basic information such as name, address, date of birth, and taxpayer ID
22 number insufficient.” *Id.* But this puts the cart before the horse. The IRS provides no other
23 discussion or evidence on this point—much less any legitimate bases to suggest *Kraken’s* users
24 have supplied false information or how expanding the request solves that problem. The IRS appears
25 to simply ask the Court to take its conclusions at face value. In any event, for Intermediate and Pro
26 level accounts, users are required to provide verification information to confirm identity and
27 address. So, the fear that those users are somehow falsifying information to disguise account
28 ownership is baseless. Even if some small subset of users provided fictitious information, that does

1 missing. For example, assume the IRS had a user's name, address, and birthdate, but was missing
2 a taxpayer ID—being able to track an IP address to a general geographic area will not enhance its
3 ability to identify a user, and there is a particular privacy interest in information that is *not*
4 voluntarily disclosed and would provides one's location information. While perhaps convenient to
5 confirm identity, it is not needed to identify a user in the first place. *See generally U.S. v. Davey*,
6 543 F.2d 996, 1000 (2d Cir. 1976) (“[I]f the subject matter of requested records is not otherwise
7 relevant, convenience will not make it so.”). This is even more true with the suggestion of the use
8 of false identifying information—nothing suggests that users seeking to hide their identity are likely
9 to be identified through the IRS's additional information requests.

10 Its other suggestions as to why this information may be helpful are unavailing. First, the
11 IRS suggests that IP address information is a good way to search data from other exchanges and
12 link transactional records from foreign exchanges to determine compliance. *Id.* ¶¶ 108, 112, 118.
13 This is far beyond the basic identity information the Court in Coinbase determined was needed for
14 the sole purpose of identifying taxpayers. And it is unreasonable to insinuate that the IRS plans to
15 go through IP address histories for almost █████ users and cross compare those with IP addresses
16 used in transaction records from other exchanges. Second, the only asserted basis for changes to
17 user information is that Kraken's data may not match IRS's data for taxpayers. *Id.* ¶ 110. But this
18 only speculates there *may be* some discrepancy and does not account for the existence of multiple
19 user data points that could be used for identification. Third, the IRS asserts account funding sources
20 can provide insight into tax compliance, as it permits identification of cross-linked bank accounts.
21 *Id.* ¶ 121-22. But the IRS assumes without basis that a user with lots of linked accounts and no tax
22 reporting is somehow unlikely to be compliant. And this information too is unnecessary to
23 determine identity or a potentially taxable gain in the first instance. The IRS speculates this could
24 also point them to *alternative* taxpayers associated with the accounts. But that would exceed the
25 scope of IRS's investigative purpose here. And the IRS cannot legitimately claim to need this
26 information *now* due to statute of limitations concerns under 26 U.S.C. § 6501(a) (*Id.* ¶ 125), when
27 it waited over a year since its last discussion with Kraken to enforce its Summons.

28 The IRS fails to show why this request for additional user information is not premature and

1 broader than necessary, and simply suggests it would be convenient to have. That is insufficient:
2 “mere convenience does not make an item producible[.]” *Coopers & Lybrand*, 550 F.2d at 621.

3 **3. Request No. 1(b)-(d) Would Be Unduly Burdensome**

4 Request No. 1(b)-(d) also seeks irrelevant user data that would impose undue burden on
5 Kraken. [REDACTED]

6 [REDACTED]
7 More specifically, with respect to historical changes to user information, Kraken [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 Similarly, Kraken [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 The same is true of IP addresses, [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Moreover, Kraken further opposes these requests as they require Kraken to develop queries
4 or tools to generate the requested information—which does not otherwise exist in the format
5 requested. The IRS cannot compel the preparation or production of records that do not already
6 exist. *See Standing Akimbo, LLC v. U.S.*, 955 F.3d 1146, 1164 (10th Cir. 2020); *Davey*, 543 F.2d
7 at 1000 (“7602 does not require preparation or production of records not yet in existence”).

8 **C. The IRS’s Request No. 2 for KYC Data Goes Beyond *Coinbase*, Is Irrelevant to**
9 **Any IRS Purpose, and Is Unduly Burdensome**

10 **1. Request No. 2 Exceeds *Coinbase* and Is an Abuse of Process**

11 Request No. 2 for KYC Questionnaire information should be denied because it was already
12 expressly rejected in *Coinbase*. Specifically, this request seeks information from User-completed
13 KYC Questionnaires relating to “employment, net worth, and source of wealth for individual
14 Users” and “for business Users, . . . legal name, business address, country, website, contact
15 information, industry, goods and services, government-issued business registration or tax-
16 identification number, and source of funds[.]” Ex. A to Third Cincotta Decl. In considering a
17 similar request, *Coinbase* rejected the argument that this data is relevant at this stage. The Court
18 cautioned that “[e]specially where, as here, the Government seeks records for thousands of account
19 holders through a John Doe summons, the courts must ensure that the Government is not collecting
20 thousands and thousands of personal records unnecessarily.” *Coinbase* at *7. Accordingly, it held
21 that KYC records were “broader than necessary” to determine identity and unreported taxable
22 gains. The same is true here. “[F]or many or even most of the account holders [KYC diligence
23 and other records] may never be relevant.” *Id.* And, as discussed below, the IRS fails to establish
24 any need for this information *now*. Its attempt to revive this request is plainly an abuse of process.

25 Again, the IRS had little issue identifying 90% of taxpayers in *Coinbase* without this
26 information, and with less identifying data than Kraken maintains. If the IRS “later determines that
27 it needs more detailed records on a taxpayer,” it may issue a second summons to the taxpayer or
28 Kraken with *notice*—an approach *Coinbase* acknowledged was preferable to a John Doe Summons

1 in any event. *Id.* *7. While the IRS may not *prefer* to go through that additional effort for whatever
 2 relatively small number of users may require it, this is not about the IRS’s convenience (or laziness).
 3 As in *Coinbase*, the IRS’s desire to avoid returning to court does not justify overreaching requests
 4 and is concerning in the precedent it could set as to the IRS, and even other regulatory agencies.

5 **2. Request for KYC Information Is Irrelevant and Overbroad**

6 The IRS fails to show why its request for KYC Questionnaire information is relevant and
 7 not broader than necessary. The IRS must show it has a “realistic expectation rather than an idle
 8 hope that something may be discovered.” *U.S. v. Goldman*, 637 F.2d 664, 667 (9th Cir. 1980); *see*
 9 *also David H. Tedder & Assocs., Inc. v. U.S.*, 77 F.3d 1166, 1168–69 (9th Cir. 1996). It has not.

10 Contrary to the IRS’s assertion, KYC data beyond basic user profile information is not
 11 necessary to its purposes and is premature at this stage. While it claims that KYC data would be
 12 helpful in identifying certain “large[] movement” or high volume users, that argument is speculative
 13 and jumps the gun. As explained above, the IRS must first ask for only the information needed to
 14 identify potential taxable gains before asking for more. *Coinbase* at *6. The IRS has flunked step
 15 one. And it fails to establish what this extra information could do that the basic user information
 16 and transactional data could not. Administrative convenience, to which the IRS alludes as
 17 justification (Third Cincotta Decl. ¶¶ 129-30), is insufficient here. *See, e.g., Coopers & Lybrand*,
 18 550 F.2d at 621. This is a clear example of government overreach.

19 By requesting KYC information now, the IRS seeks to solve a problem that does not yet
 20 and may never exist. This highly personal information will not reveal potential tax liabilities for
 21 the IRS to go after. Take, for example, its request for “employment, net worth and source of
 22 wealth” data. Third Cincotta Decl. ¶ 127. This has no bearing on potential tax liabilities from
 23 cryptocurrency transactions. Nor would net worth and source of wealth shed light on any particular
 24 tax year in dispute. And the IRS makes no effort to explain how it would. Instead, the only potential
 25 use of this information would be to help *confirm* already known data or once there are doubts as to
 26 who exactly is responsible for a potential tax liability.¹⁰ At this juncture, there is no basis to seek
 27

28 ¹⁰ Any argument that this information is necessary to initially identify a taxpayer is undercut by the
 IRS’s own declaration. It acknowledges that only Pro accounts require a KYC Questionnaire, yet
 it does not claim to need this information to identify users at other account levels where it is absent.

1 this information for thousands of users, including those whose identities and tax liabilities may
 2 never be in question. The IRS merely *hopes* to discover details about these users that *may* help its
 3 investigation. This is not the “narrowly tailored” request 26 U.S.C. § 7609(f) requires.

4 **3. Request No. 2 Would Impose a Significant Burden**

5 Request No. 2 would impose a significant burden on Kraken. [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 [REDACTED] While the IRS indicates the request is limited to the users’ “responses to the
 12 employment, net worth and source of wealth questions” (Third Cincotta Decl. ¶ 127), that assertion
 13 fails to appreciate that [REDACTED]
 14 [REDACTED]
 15 [REDACTED]

16 [REDACTED] This burden far outweighs any claimed benefit to IRS—*particularly* since
 17 this data is of no relevance to taxpayer identification in the first instance.

18 **D. Request No. 3 for Exception Reports and Investigation Records Similarly Goes** 19 **Beyond Coinbase, Is Irrelevant to the IRS’s Purposes, and Unduly Burdensome**

20 **1. AML Records Go Farther Than What *Coinbase* Permitted**

21 Request No. 3 for AML “exception reports” and “investigation records” goes far beyond
 22 what was permitted in *Coinbase*. Tellingly, the IRS made the exact same request in its initial
 23 summons in *Coinbase*. *Id.* at *1. But its subsequently narrowed summons, which was ultimately
 24 considered in *Coinbase*, did not include that request. By voluntarily removing this request, the IRS
 25 tacitly acknowledged that AML records were not needed for its investigative purpose. *Coinbase*
 26 effectively confirmed that: only requests for basic user information and certain transactional data
 27 were relevant, particularly in light of the large number of users covered in the summons. *Id.* at *6.
 28 AML data falls within neither bucket. And, again, before the IRS can seek additional information

1 outside of those buckets, it must determine that a user has a potentially reportable taxable gain. The
 2 IRS again fails to satisfy this crucial first step. Yet, it seeks to try again—without explanation as
 3 to why it *now* needs this information. This effort to evade *Coinbase* should be denied.

4 **2. The IRS Fails to Show How AML Exception Reports and Investigation**
 5 **Records Are Relevant to Any Investigative Need and Overbroad**

6 The IRS fails to—and cannot—establish that its request for AML exception reports and
 7 investigation records is relevant and narrowly tailored to its investigation, particularly at this stage.

8 Ms. Cincotta first nebulously claims that exception reports would “allow[] the IRS to
 9 leverage the industry expertise” of Kraken as to what activities are “abnormal or suspicious”—
 10 which she asserts can be combined with (unspecified) “other information available to the IRS” to
 11 determine taxpayer compliance. Third Cincotta Decl. ¶¶ 132-35. This is nothing more than
 12 conclusory rhetoric. First, the purpose of a John Doe Summons is not to allow the IRS to use
 13 private business expertise and funds to expand its reach. Second, the IRS fails to explain how the
 14 existence of an “exception report” or investigation records would even indicate a purpose to escape
 15 any tax liability. The IRS appears to simply *assume*, without basis, that users associated with AML
 16 records may not be paying their taxes. [REDACTED]

17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED] The
 20 existence of AML records for a user does not *per se* suggest any actual or potential failure to comply
 21 with tax reporting obligations. And the Government’s conclusory and generalized statements do
 22 not make it so. *See Monumental Life Ins., Co.*, 440 F.3d. at 736 (“mere assertion of relevance” in
 23 close cases “will not necessarily satisfy the government’s burden” (quoting *Goldman*, 637 F.2d at
 24 667)). What the IRS really appears to do is ask Kraken to conduct its investigation for it. Not only
 25 is it engaged in a fishing expedition, but it wants Kraken to do the fishing. That is not what a John
 26 Doe summons is for; a third party should be required only to produce what is relevant and necessary
 27 to the IRS investigation, not to be conscripted into the IRS’s service. *See U.S. v. Matras*, 487 F.2d
 28 1271, 1275 (8th Cir. 1973) (“[T]he government should not, for the mere sake of its convenience,

1 impose unnecessary burdens on a taxpayer in conducting an audit or investigation for tax liability,
2 particularly where, as here, there is no indication of a purpose to escape any tax liability.”).

3 The only other claimed basis the IRS provides is the conclusory assertion that AML
4 investigative information typically “contains information provided by the user explaining the nature
5 of the questionable activity.” Third Cincotta Decl. at ¶ 134. Ms. Cincotta vaguely claims that user
6 explanations for certain transactions could hypothetically check out to be reasonable or consistent
7 with the user’s tax returns—in which case the IRS could “avoid unnecessarily examining” that user.
8 *Id.* ¶ 135. But this reasoning is speculative and premature. One must necessarily assume the IRS
9 has already identified a user and potentially taxable gains. Regardless, the purported need for user-
10 provided explanations effectively recasts a request for user correspondence that *Coinbase* expressly
11 rejected. *Id.* at *6 (user correspondence “is not even potentially relevant” without a taxable gain).

12 Moreover, the request for AML records is also manifestly overbroad and far reaching
13 because it is not confined to any relevant time period and is unbounded by any transaction type or
14 amount, like with the KYC data. Consequently, even assuming some minimal benefit is afforded
15 by the time and value limitations in the definition of User” to other requests—that is absent here.

16 Ultimately, this request for AML records—regardless of how immaterial, irrelevant or
17 inconsequential the information to its investigation—simply constitutes a “fishing expedition” and
18 an ill-advised expansion of the IRS’s investigative powers. The John Doe Summons should not be
19 used to simply rubberstamp its scorched-earth investigative tactics. *See Coopers & Lybrand*, 550
20 F.2d at 619 (“IRS does not, as it appears to assume on this appeal, have carte blanche discovery.”).

21 **3. Complying with Request No. 3 Would Be Unduly Burdensome**

22 The significant burden imposed by this request further counsels against enforcement. ■

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 **E. Request No. 4 for Account Activity Is Overbroad and Unduly Burdensome**

2 Request No. 4 for all records of user account activity cannot be enforced unless substantially
3 narrowed as it is overbroad and not narrowly tailored to IRS’s investigative purpose. Specifically,
4 it seeks all transactional activity in a user’s account *irrespective of time* and encompasses certain
5 information (such as transaction hash and blockchain addresses) that have no bearing on a taxable
6 gain. Not only is it broader than necessary, but it would be unduly burdensome given its breadth.¹¹

7 *First*, Request No. 4 is overbroad with respect to time as it seeks transactional data that falls
8 outside of the relevant timeframe of the Summons. As noted above, a “User” is limited to those
9 who conducted transactions through Kraken between January 1, 2016 and December 31, 2020.
10 Request No. 4 is not so confined. Instead, it effectively demands production of all transactional
11 records for covered “Users” that Kraken has *ever* had. This is far too broad. Here, the IRS’s alleged
12 purpose is to investigate the failure to pay taxes on cryptocurrency transactions by Kraken users
13 between 2016-2020. Transactional information before and after that time frame is necessarily
14 irrelevant unless it has some bearing on determining tax implications of relevant years. *See, e.g.,*
15 *Zietzke*, 2020 WL 264394, at *9; *Monumental Life Ins. Co.*, 440 F.3d at 736. The IRS fails to show
16 otherwise. Given the absence of a date range limitation, this request is overboard.

17 *Second*, Request No. 4(c) for records reflecting “transaction hash (ID)” and “blockchain
18 addresses” is irrelevant to and overbroad for the IRS’s purposes. The IRS did not ask for transaction
19 hashes in *Coinbase* and does not justify the need for that information here. As for blockchain
20 addresses, the IRS similarly sought “[a]ll wallet addresses” as part of its requested user identity
21 information in *Coinbase*, but this was rejected. *Id.* at *7. The Court expressly held it to be irrelevant
22 and broader than necessary for the IRS’s purposes. *Id.* at *6. The Court should hold similarly here.

23 *Third*, complying with the IRS’s fulsome request for transactional information would
24 impose a significant burden on Kraken if not substantially narrowed. As noted above, if left
25 unconstrained by date, Kraken would be forced to produce voluminous transaction records that are
26 irrelevant to any investigation into the relevant tax years. Indeed, because it is unlimited in time,

27 _____
28 ¹¹ Should the court reject Kraken’s opposition to the Summons in its entirety (§ II, *infra*), Kraken
does not raise a burden argument as to the production of its transactional ledgers for identified
users, reflecting deposit, withdrawal, and transfer activity, subject to the appropriate narrowing of
the scope of a “User,” the time frame, and transactional activities at issue (as discussed herein).

1 Kraken would be required to collect and produce records since an account’s inception all the way
2 through the present. Moreover, a number of sub-requests [REDACTED]

3 [REDACTED] With respect to 4(b) and 4(d),

4 [REDACTED]
5 [REDACTED] With respect to
6 4(c), “transaction hash (ID)” and “blockchain addresses” for transfers [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] Complying with these
16 requests would be unduly burdensome.

17 **F. The IRS’s Request No. 5 for Account Funding Records Is Irrelevant, Broader**
18 **Than Necessary for Its Purposes, and Burdensome**

19 The final request seeks “all records of account funding,” as well as “invoices, billing
20 statements, receipts, or other documents memorializing and describing such transactions.” To be
21 sure, [REDACTED]

22 [REDACTED] However, insofar as this request seeks
23 records [REDACTED] it as overbroad, irrelevant, and would impose an unnecessary burden.

24 *First*, the request is overbroad as it is unlimited in time and not confined by the time period
25 set forth in the “User” definition. As with the other indefinite requests, the lack of any date
26 limitations should preclude enforcement. Without being tied to information relevant to the tax
27 years in dispute, the request is broader than necessary for the IRS’s investigation. *See, e.g., Zietzke,*
28 *2020 WL 264394, at *9; Monumental Life Ins. Co., 440 F.3d at 736.*

1 *Second*, account funding records, associated invoices and the like are irrelevant and broader
2 than necessary. Basic transactional data should be enough to establish whether a potentially
3 reportable gain exists and who is responsible for that gain. *See Coinbase* at *7. The John Doe
4 Summons does not permit the IRS to seek broad swaths of records about all users simply because
5 it wants to make the “most informed” decision on compliance as to some. Regardless, the detailed
6 records sought here will only substantiate what is already reflected in Kraken’s transactional
7 ledgers. If anything, the IRS’s desire to reverse engineer transactions to determine gain and liability
8 will only make its job harder—while Kraken pays the price of that redundant exercise.

9 *Third*, the breadth of the request would impose an unnecessary burden on Kraken. Kraken

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED] This burden is unjustified.¹²

21 **II. THE PETITION SHOULD BE DENIED IN ITS ENTIRETY**

22 As shown above, the Summons requests are all riddled with the same problems: they
23 demand information the IRS is not authorized to obtain, are premature, violate user privacy, and
24 will saddle Kraken with an enormous burden, for very little benefit. Under *Coinbase* and well-
25 established principles governing § 7609(f), these far reaching requests should not be enforced.

26 While the Court could hack away at the IRS’s improper Summons and leave it bearing a
27 thousand cuts, this Court should exercise its discretion to deny the IRS’s Petition in its entirety. If
28

¹² See *supra* note 11.

1 *Coinbase* reaffirms any principle, it is that the IRS cannot issue a summons that goes a mile wide
 2 and a mile deep in the first instance. The Summons here plainly demonstrates the IRS's continued
 3 failure to recognize that principle.

4 Indeed, the IRS's purported need is far weaker than its asserted need in *Coinbase*, and
 5 certainly does not support the capacious requests made in the Summons. The IRS still relies on the
 6 same general premise that cryptocurrency transactions are underreported. But its basis for that
 7 assertion lies in articles and reports from more than a decade ago (2011 to 2013), and an informal,
 8 scientifically unreliable user survey conducted post-2016 from the Motley Fool. Third Cincotta
 9 Decl. ¶¶ 33, 37. To the contrary, the IRS's own data show that we are no longer in an era where
 10 only 800 to 900 returns are reporting cryptocurrency-related gains. *See id.* ¶¶ 37 (842,888 taxpayers
 11 reported Bitcoin on their returns). Undoubtedly, the IRS will assert in its reply that if the Summons
 12 is overbroad, the Court, at most, should simply narrow the scope of the Summons rather than reject
 13 it. But while the Court may narrow the Summons in its discretion, this approach should not be
 14 permitted. Given the stunning overbreadth of the Summons and the poor foundation to support it,
 15 and the IRS's apparent failure to respect the lessons taught by *Coinbase*, this Court should deny the
 16 Petition in its entirety, rather than trying to remedy the numerous faults with the Summons.

17 CONCLUSION

18 For the foregoing reasons, Kraken respectfully requests that the Court deny the IRS's
 19 Petition to Enforce its Summons.

20 Respectfully submitted,

21
 22 Dated: April 21, 2023

23 By: /s/ Grant P. Fondo

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