UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES, Plaintiff, v. COINBASE, INC., Defendant.	Case No.17-cv-01431-JSC **ORDER RE: MOTIONS TO INTERVENE** Re: Dkt. Nos. 10, 17, 19, 39

The United States of America has petitioned to enforce an Internal Revenue Service ("IRS") summons served on respondent Coinbase, Inc. ("Coinbase") pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). (Dkt. No. 1) Does 1, 2, and 3 moved to intervene and quash the summons, or alternatively for a protective order or evidentiary hearing permitting limited discovery. (Dkt. Nos. 10, 17.) Does 1 and 2 also moved to proceed under fictitious names. (Dkt. Nos. 12, 14.) The parties stipulated to a scheduling order, requesting that the Court first determine whether to grant the motions to intervene, which the Court granted. (Dkt. Nos. 20, 22.) Now pending before the Court are the motions to intervene. After the Court heard oral argument, however, the IRS narrowed its subpoena such that it no longer seeks records belonging to Doe 1, 2 and maybe 3. (Dkt. No. 39.) Accordingly, the parties stipulated to substitute Doe 4, whose records are covered by the narrowed summons, for Doe 1 and 2 and asked the Court to decide the motion to intervene as if it had been brought by Doe 4 in the first instance. (*Id.*)

After carefully considering the parties' arguments, including those made orally, the Court GRANTS Doe 4 intervention to challenge enforcement of the subpoena. Doe 3's motion is denied as there is no evidence that his records are covered by the narrowed summons and thus that he has any interest in this action.

BACKGROUND

In March 2014, the IRS issued Notice 2014-21, which describes how the IRS applies U.S. tax principles to transactions involving virtual currency. (Case No. 3:16-cv-06658-JSC, Dkt. No. 2-4 at 3 ¶6.) In Notice 2014-21, the IRS stated its position: virtual currencies that can be converted into traditional currency are property for tax purposes, and a taxpayer can have a gain or loss on the sale or exchange of a virtual currency, depending on the taxpayer's cost to purchase the virtual currency. (*Id.*)

On November 17, 2016, the United States filed an ex parte petition pursuant to 26 U.S.C. § 7609(h)(2) ("Petition to Serve") for an order permitting the United States to serve a "John Doe" administrative summons ("IRS Summons") on Coinbase, Inc. ("Coinbase"). (*Id*. Dkt. No. 1.) Coinbase is an exchange that deals in convertible virtual currency, operating a bitcoin wallet and exchange business headquartered in San Francisco. (*Id*. Dkt. No. 2-4 at 11 ¶39.) The company currently offers buy/sell trading functionality in 32 countries, maintains over 4.9 million wallets with wallet services available in 190 countries with 3.2 million customers served, and $2.5 billion exchanged in bitcoin. (*Id.*) In 2014, Coinbase grew to one million users. (*Id*. at ¶40.) The IRS Summons "seeks information regarding United States persons who, at any time during the period January 1, 2013, through December 31, 2015, conducted transactions in a convertible virtual currency as defined in IRS Notice 2014-21." (*Id*. at 13 ¶48.) The requested information included:

1. Account/wallet/vault registration records for each account/wallet/vault owned or controlled by the user during the period stated above including, but not limited to, complete user profile, history of changes to user profile from account inception, complete user preferences, complete user security settings and history (including confirmed devices and account activity), complete user payment methods, and any other information related to the funding sources for the account/wallet/vault, regardless of date.
2. Any other records of Know-Your-Customer due diligence performed with respect to the user not included in paragraph 1, above.
3. For any account/wallet/vault with respect to which the registered user gave any third-party access, control, or transaction approval authority, all powers of attorney, letters of wishes,

corporate minutes, or other agreements or instructions granting the third party such access, control, or approval authority.

4. All records of account/wallet/vault activity including transaction logs or other records identifying the date, amount, and type of transaction (purchase/sale/exchange), the post transaction balance, the names or other identifiers of counterparties to the transaction; requests or instructions to send or receive bitcoin; and, where counterparties transact through their own Coinbase accounts/wallets/vaults, all available information identifying the users of such accounts and their contact information.
5. For each merchant user for which you act as Payment Service Provider, records of all payments processed, including records identifying the user of the wallet charged, if a Coinbase user, or the address of the wallet charged, if not, the date and amount of the transaction, and any other information that will enable the merchant to identify the transaction.
6. All correspondence between Coinbase and the user or any third party with access to the account/wallet/vault pertaining to the account/wallet/vault, including but not limited to letters, memoranda, telegrams, telexes, facsimiles, e-mail, letters of instruction, and memoranda of telephone or oral instructions received.
7. All periodic statements of account or invoices (or the equivalent).
8. All records of payments to or from the user by checks, wire or other electronic transfer, ACH transaction, PayPal transfer, credit or debit card transaction, money order, transfer to or from other digital currency wallet address, or any other method, including records reflecting the form, manner, nature, and purpose of such payment including, but not limited to, ABA routing numbers and other routing information, payment instructions, and any and all invoices, billing statements, receipts, or other documents memorializing and describing such transaction.
9. All exception reports produced by your AML system, and all records of investigation of such exception.

(*Id*. Dkt. No. 2-6 at 13-14.) On November 30, 2016, this Court granted the petition to serve the

Summons. (*Id*. Dkt. No. 7.)

The following month, a Coinbase Customer, Jeffrey K. Berns, filed a motion to intervene and quash the summons, or alternatively for a protective order or evidentiary hearing. (*Id*. Dkt. No. 9). The United States responded by withdrawing its request that Coinbase provide records that pertain to Berns' account and arguing that Berns' motion was therefore moot. (*Id*. Dkt. No. 16). The IRS explained that because it now knew Berns' name, it no longer needed his records. (Dkt. No. 16-2.)

In early January, Coinbase moved to intervene and quash the summons, or for a protective order limiting its scope. (*Id*. Dkt. No. 19). The United States subsequently initiated this current action to enforce the IRS Summons. (Dkt. No. 1.) Shortly thereafter, Berns and Coinbase withdrew their motions to quash. (Case No. 3:16-cv-06658-JSC, Dkt. Nos. 31, 34). The Court then related the Petition to Serve action (No. 3:16-cv-06658-JSC) to this Petition to Enforce action. (Dkt. No. 6). Rather than issue an Order to Show Cause to Coinbase to show cause why the Summons should not be enforced, the Court directed the United States and Coinbase to submit a proposed briefing schedule on enforcement of the Summons. (Dkt. No. 9.)

On May 15, 2017, John Doe 1 and 2 moved to intervene and quash the IRS Summons and to proceed in this action anonymously. (Dkt. No. 10). On May 24, Doe 3 filed a motion seeking the same relief as Doe 1 and 2. (Dkt. No. 17.) The Coinbase account information of Doe1, 2, and 3 was subject to the original IRS Summons because they are (1) U.S. Citizens, (2) registered users of Coinbase and (3) conducted transactions in a convertible virtual currency using Coinbase during the period January 1, 2013, through December 31, 2015. Thereafter all parties, including the proposed intervenors, stipulated to a briefing schedule regarding enforcement of the IRS subpoena. The schedule includes the proposed intervenors, should the Court grant their motions to intervene.

Following oral argument on the intervention motions, the IRS filed a Notice that it had narrowed the documents it seeks to obtain via the Summons. In particular, it now seeks information for users with at least the equivalent of $20,000 in any one transaction type (buy, sell, send or receive) in any one year during the 2013-2015 period. Further, the IRS does not seek

records for users for which Coinbase filed Forms 1099-K during this period or for users whose identity is known to the IRS. (Dkt. No. 37.)

Proposed intervenors responded by advising that the records of Doe 1 and 2 are not covered by the narrowed Summons. (Dkt. No. 39.) John Doe 3 is unable to determine if his records are covered by the narrowed Summons. (*Id.*) The parties thereafter stipulated that John Doe 4 be substituted for Doe 1 and 2 and that the Court rule on the motion to intervene as if it had been filed by John Doe 4 without further briefing or argument. (*Id.*) John Doe 4 has submitted a declaration which shows that his Coinbase records are covered by the narrowed summons. (Dkt. No. 39-1.)

DISCUSSION

I. The Procedure for Service and Enforcement of an IRS Summons

"The rules regarding the service of a summons are divided into three categories." *United States v. Samuels, Kramer and Co.*, 712 F.2d 1342, 1345 (9th Cir. 1983). First, the IRS may serve without prior judicial approval a summons on any person "if the summons is necessary to facilitate the investigation of that person's tax liability." *Id.* (citing 26 U.S.C. § 7602). Second, for a summons to be served on a third-party record keeper, such as a bank, the IRS must provide prior notice to all known parties whose records are covered by the subpoena. *Id.* (citing 26 U.S.C. § 7602(a)). Third, if the IRS does not know the identity of the parties whose records are covered by the summons, the IRS may issue the "John Doe" summons only after it "in an ex parte hearing, has satisfied the three criteria in [26 U.S.C. § 7609(f)]." *Id.* (citing 26 U.S.C. § 7609(h)(1) & (2). Those three criteria are that:

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

26 U.S.C. § 7609(f). "Section 7609's criteria thus constitute a procedural safeguard which

Congress created to provide extra protection to unknown target taxpayers to whom the IRS cannot give notice." *Samuels, Kramer and Co.*, 712 F.2d at 1346. The Summons here is a John Doe summons and thus, before it was issued, the Court concluded that the IRS had established the above three factors and thus authorized its issuance. (Dkt. No. 10-4 at 12-13.)

An IRS summons, however, is not self-enforcing. Instead, the IRS must "seek enforcement from a federal district court if the person on whom a summons has been served refuses to comply." *Id.* at 1345. To obtain an order of enforcement, the IRS "must establish that its use of the summons is 'in good-faith pursuit of the purposes authorized by Congress." *Id.* "A prima facie case for the Government's need for judicial enforcement is established by a 'minimal' showing that the good-faith requirement has been met." *Id.* Once that prima facie showing has been made, the party challenging compliance must refute the government's good faith showing to successfully oppose enforcement of the summons. *Id.*

II. The Stipulation to Substitute John Doe 4

The Court grants the parties' stipulation to substitute John Doe 4 for John Doe 1 and 2, and to allow John Doe 4 to proceed anonymously. Therefore, there are two motions to intervene pending: John Doe 4 and John Doe 3. However, John Doe 3 has not offered any evidence that his records are covered by the narrowed subpoena; accordingly, his motion to intervene is denied without prejudice.

III. John Doe 4 Motion to Intervene

Federal Rules of Civil Procedure 24 provides for two types of intervention: intervention as of right and permissive intervention.

A. Intervention as of Right

A putative intervenor must satisfy four elements to qualify for as-of-right intervention: (1) the applicant's motion must be timely; (2) the applicant must assert an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that without intervention the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; and (4) the applicant's interest must be inadequately represented by other parties. *United States v. Oregon*, 839 F.2d 635, 637 (9th Cir. 1988). "Although the party

seeking to intervene bears the burden of showing those four elements are met, 'the requirements of intervention are broadly interpreted in favor of intervention.'" *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (internal quotation marks omitted).

The IRS does not dispute that John Doe 4 has timely applied to intervene in this enforcement proceeding. Accordingly, the Court turns to the remaining three factors.

1. *John Doe 4 has a Property or Transaction Interest That is the Subject of the Action*

"An applicant has a 'significant protectable interest' in an action if (1) it asserts an interest protected under some law, and (2) there is a 'relationship' between its legally protected interest and the plaintiff's claims." *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998) (citation omitted). "An applicant generally satisfies the 'relationship' requirement only if the resolution of the plaintiff's claims actually will affect the applicant." *Id.* at 410 (citations omitted). Two legally protectable interests may provide a basis for a taxpayer to intervene as of right in an IRS summons enforcement proceeding: a privilege or a claim of abuse of process. *Donaldson v. United States*, 400 U.S. 517, 531 (1971) (superseded by statute on other grounds by *Tiffany Fine Arts, Inc. v. U.S.*, 469 U.S. 310 (1985)).

John Doe 4 cannot and does not claim privilege in his Coinbase records; instead, he argues that the scope of the Summons suggests an abuse of process sufficient to support intervention as of right. An abuse of process "would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation." *King v. U.S*, 2006 WL 2032579, *1, (N.D. Cal. July 18, 2006) (citing *United States v. Powell*, 379 U.S. 48, 58 (1964)). "[T]he purpose of the good-faith inquiry is to determine whether the agency is honestly pursuing the goals of § 7602 by issuing the summons." *United States v. LaSalle Nat. Bank*, 437 U.S. 298, 316 (1978). Those goals include ascertaining the correctness of any return and determining the liability of any person for any internal revenue tax. 26 U.S.C. § 7602(a).

John Doe 4 has made a sufficient showing of abuse of process to support intervention as of right. The original IRS Summons seeks documentation regarding all of the transactions of any

United States user who created a Coinbase account during the calendar years 2013, 2014, and 2015. As of 2014, Coinbase had one million users; thus, the IRS seeks broad data on likely hundreds of thousands of users. These records include complete user profiles including user payment methods, records of Coinbase's due diligence on their customers, powers of attorney, complete user security settings and history (including confirmed devices and account activity), among other documents. The IRS offers no explanation as to how the IRS can legitimately use most of these millions of records on hundreds of thousands of users; instead, it claims that as long as it has submitted a declaration from an IRS agent that the IRS "is conducting an investigation to determine the identity and correct federal income tax liabilities of United States persons who conducted transactions in a virtual currency during 2013-2015" the Court must find that the Summons does not involve an abuse of process. It contends that "there seems to be a substantial gap between the number of people transacting in virtual currency (for which tax consequences might attach) and those that are reporting such transactions." (Dkt. No. 28 at 13.) But that argument proves too much. Under that reasoning the IRS could request bank records for every United States customer from every bank branch in the United States because it is well known that tax liabilities in general are under reported and such records might turn up tax liabilities. It is thus no surprise that the IRS cannot cite a single case that supports such broad discretion to obtain the records of every bank-account holding American. While the narrowed Summons may seek many fewer records, the parties agreed to have the Court decide the motion on the original record, and so it has.

The IRS also argues that because this Court issued the Summons pursuant to 15 U.S.C. § 7609(f), John Doe 4 does not have a protectable interest. It contends that Congress has somehow decided that only the direct subject of the summons may challenge the government's good faith, even though it is the proposed intervenor's bank records that are also at issue.

The IRS is correct as to any motion to intervene to challenge the *issuance* of the John Doe Summons in the first instance. *See United States v. Samuels, Kramer and Co.*, 712 F.2d 1342, 1346 (9th Cir. 1983). But the Court is not persuaded that John Doe 4 does not have a protectable interest in the *enforcement* proceeding. There is nothing in the John Doe summons procedure

adopted by Congress to provide protections to those to whom the IRS could not give notice that suggests that when the John Doe nonetheless learns of a summons from other means the John Doe has no interest in challenging the enforcement of that summons. The government's assertion that to do so would place an undue burden on the IRS's legitimate use of John Doe summons makes no sense. All that is being addressed here is the proposed intervenor's right to intervene in a proceeding that is already taking place. Moreover, as the IRS concedes, if it knew of the applicant's identity, it would have to give the applicant notice and the applicant would have the opportunity to challenge enforcement. It is thus unsurprising that the one case to have discussed the issue, at least that the parties have cited, assumed that a subject of a John Doe summons could challenge its enforcement. *See United States v. Ritchie*, 15 F.3d 592, 596–97 (6th Cir. 1994).

The IRS's lament that John Doe 4 is merely trying to shield its identity is likewise unavailing. First, the IRS has consented to its proceeding as a John Doe. Second, John Doe 4 has offered to reveal its identity provided the government agrees not to then withdraw the summons as to its records and thus moot its interest in this proceeding. (Dkt. No. 10-3 at 4.) But the government has apparently refused that offer and instead wishes the Court to resolve enforcement of the Summons without ever hearing from the very people whose records the IRS seeks. The Court declines to proceed in that manner. John Doe 4 has a protectable interest in this enforcement proceeding.

2. *John Doe 4's Interests will be Impaired by the Disposition of This Action*

"[A] party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006); *see also Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) ("We follow the guidance of Rule 24 advisory committee notes that state that '[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.'"). Here, the practical impairment to John Doe 4 is clear: the IRS will possess its personal information and other transaction history on the Coinbase platform.

3. *John Doe 4's Interests are not Adequately Represented by Other Parties*

"[T]he requirement of inadequacy of representation is satisfied if the applicant shows that representation of its interests 'may be' inadequate and that the burden of making this showing is minimal." *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538, n.10 (1972)). Courts consider three factors: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary input to the proceedings that other parties would neglect." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). "The court also may find that a proposed intervenor's interests are not adequately represented where the intervenor would bring a perspective none of the other parties to the litigation have." *Defs. of Wildlife v. Johanns*, 2005 WL 3260986, at *8 (N.D. Cal. Dec. 1, 2005).

Here, Coinbase has a financial interest as a company to insure that the IRS investigation does not negatively impact its financial profits or its valuation. John Doe 4, on the other hand, has a personal interest in the very documents the IRS seeks. Because of their different interests, Coinbase and John Doe 4 may have a different approach as to a proper resolution of this enforcement action.

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For the reasons discussed above, John Doe 4 has a right to intervene.

B. Permissive Intervention

An applicant who requests permissive intervention must prove that it meets three threshold requirements: "(1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant's claims." *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998) (citation omitted). For both as-of-right and permissive intervention, courts generally construe Rule 24 liberally in favor of intervention. *See Cohorst*, 2011 WL 3475274, at *4 (citing *Wash. State Bldg. & Constr. Trades Council v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982)). As discussed earlier, the parties agree the motion is timely. The Court now turns to the two remaining factors: whether there is a common question of law or fact, and whether the Court has an independent basis for jurisdiction

over Joe Doe 4's claims.

1. *Jurisdiction Over the Claims*

Permissive intervention first requires independent grounds for jurisdiction. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011) (citing *Beckman Indus., Inc. v. In'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992)). Permissive intervention's jurisdictional requirement is primarily concerned with avoiding the inappropriate expansion of the district courts' jurisdiction. *Id.* For instance, in a diversity case, a proposed intervenor may not use permissive intervention "to gain a federal forum for state-law claims over which the district court would not, otherwise, have jurisdiction." *Id.* In federal question cases, however, "the district court's jurisdiction is grounded in the federal question(s) raised by the plaintiff," and the requirement does not apply when the proposed intervenor is not raising new claims. *Id.* at 844.

Here, the Court has federal question jurisdiction as the federal government's petition was filed pursuant to 26 U.S.C. Sections 7402(a), 7609, and 7609(a). John Doe 4 has not asserted any state law claims. And the Court disagrees that 26 U.S.C. § 7609(f) somehow divests this Court of jurisdiction to hear John Doe 4's challenge to enforcement for the reasons explained above. Accordingly, jurisdiction is proper.

2. *Common Question of Law or Fact*

The final factor "requires only that [the proposed intervenor's] claim or defense and the main action have a question of law or fact in common." *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011). Whether the IRS summons is enforced, and, if so, the extent of enforcement, is a question of law that Coinbase and John Doe 4 have in common.

3. *No Undue Delay or Prejudice*

If the proposed intervenor meets the required elements, then the court has broad discretion to grant or deny the motion but "must consider whether intervention will unduly delay the main action or will unfairly prejudice the existing parties." *Donnelly*, 159 F3.d at 412; *see also* Fed. R. Civ. P. 24(b)(3). The IRS argues that the proceedings will be delayed due to future discovery. Future discovery will be granted only if it is appropriate; if it is appropriate, it will not *unduly*

delay this enforcement action.

CONCLUSION

The Court GRANTS the stipulation to substitute Doe 4 for Doe 1 and 2 and to permit John Doe 4 to proceed anonymously.

The Court GRANTS Doe 4's motions to intervene as of right and permissively.

The Court DENIES without prejudice Doe 3's motion to intervene.

This Order disposes of Docket Nos. 10, 12, 14, 17, 19 and 39.

IT IS SO ORDERED.

Dated: July 18, 2017

JACQUELINE SCOTT CORLEY
United States Magistrate Judge