IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Mark Crawford, **Senator Rand Paul**, in his official capacity as a member of the United States Senate, **Roger Johnson**, **Daniel Kuettel**, **Stephen J. Kish**, **Donna-Lane Nelson**, and **L. Marc Zell**, *Plaintiffs*, **v.** **United States Department of the Treasury**, **United States Internal Revenue Service**, and **United States Financial Crimes Enforcement Network**, *Defendants*.	**Civil Case No.** 15-250 **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs complain as follows:

Introduction

1. This is a challenge to the Foreign Account Tax Compliance Act ("FATCA"), the intergovernmental agreements ("IGAs") unilaterally negotiated by the United States Department of the Treasury ("Treasury Department") to supplant FATCA in the signatory countries, and the Report of Foreign Bank and Financial Accounts ("FBAR") administered by the United States Financial Crimes Enforcement Network ("FinCEN"). These laws and agreements impose unique and discriminatory burdens on U.S. citizens living and working abroad.

2. FATCA was intended to address tax evasion by U.S. taxpayers who fail to report foreign assets located outside of the United States. But in practice it is a sweeping financial surveillance program of unprecedented scope that allows the Internal Revenue Service ("IRS") to peer into the financial affairs of any U.S. citizen with a foreign bank account. At its core, FATCA is a bulk data collection program requiring foreign financial institutions to report to the

IRS detailed information about the accounts of U.S. citizens living abroad, including their account balances and account transactions. 26 U.S.C. § 1471(c)(1). FATCA eschews the privacy rights enshrined in the Bill of Rights in favor of efficiency and compliance by requiring institutions to report citizens' account information to the IRS even when the IRS has no reason to suspect that a particular taxpayer is violating the tax laws.

3. FATCA imposes enormous economic costs on individuals and financial institutions. The cost of implementing FATCA has been estimated to cost large banks approximately $100 million each to become fully compliant and around $8 billion total systemwide.[1] Four years after it was first passed, financial institutions are still working to make themselves compliant, but are finding that it is costing more than they originally anticipated. According to a survey conducted in late 2014, 55% of financial institutions surveyed said that they expected to exceed their original budget for FATCA compliance while only 35% said they expected to remain within budget.[2] More than a quarter (27%) of surveyed financial institutions estimated their annual compliance cost for 2015 to be between $100,000 and $1 million.[3] And as the IRS continues to move toward full implementation of FATCA, costs for year-over-year compliance are expected to increase as the number of surveyed financial institutions that reported FATCA compliance

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[1] Robert W. Wood, *FATCA Carries Fat Price Tag*, Forbes, Nov. 30, 2011, http://www.forbes.com/sites/robertwood/2011/11/30/fatca-carries-fat-price-tag/; Deloitte Regulatory Review, FATCA: Determined to Pierce the Corporate Veil (Apr. 2011), p. 3, available at http://www.deloitte.com/assets/Dcom-Australia/Local%20Assets/Documents/Industries/Financial%20services/Regulatory%20Review%20April%202011/Deloitte_Regulatory_Review_April_2011_FATCA.pdf.

[2] Thomson Reuters, *Thomson Reuters survey indicates FATCA compliance to cost more than anticipated*, Nov. 6, 2014, http://fatca.thomsonreuters.com/wp-content/uploads/2014/11/Final-FATCA-webinar-release-.pdf.

[3] Thomson Reuters, *supra* note 2.

costs between $100,000 and $1 million increased by 69% from 2014 to 2015.[4]

4. What's most striking about these costs is that they are expected to equal or exceed the amount of additional revenue that FATCA is projected to raise.[5] At the time of its passage, the Joint Committee on Taxation estimated that FATCA would generate approximately $8.7 billion in additional tax revenue between 2010 and 2020.[6] With the numerous delays in implementing various features of the law,[7] the actual amount of additional revenue being collected as a result of FATCA is rapidly diminishing. The disjunction between FATCA's costs and benefits is perhaps best illustrated by the Australian experience where experts estimate that FATCA will extract an additional $20 million in revenue for the U.S. at an estimated implementation cost of around $1 billion.[8] This marked inefficiency has led many, including the U.S. Taxpayer Advocate, to question whether FATCA's costs and difficulties are worth the

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[4] Thomson Reuters, *supra* note 2.

[5] Taxpayer Advocate Service, 2013 Annual Report to Congress, MSP #23 Reporting Requirements: The Foreign Account Tax Compliance Act Has the Potential to be Burdensome, Overly Broad, and Detrimental to Taxpayer Rights, p.6 (2013), http://www.taxpayeradvocate.irs.gov/2013-Annual-Report/downloads/REPORTING-REQUIREMENTS-The-Foreign-Account-Tax-Compliance-Act-Has-the.pdf.

[6] Joint Committee on Taxation, JCX-6-10, Estimated Revenue Effects of HIRE Act, p.1 (Mar. 4, 2010), https://www.jct.gov/publications.html?func=startdown&id=3650.

[7] David Kinkade, *IRS Delays FATCA Enforcement for Banks as Start Date Looms*, U.S. Chamber of Commerce, May 23, 2014, https://www.uschamber.com/blog/irs-delays-fatca-enforcement-banks-start-date-looms; Joe Harpaz, *Financial Firms Get FATCA Reprieve*, Forbes, May 9, 2014, http://www.forbes.com/sites/joeharpaz/2014/05/09/financial-firms-get-fatca-reprieve/; Sullivan & Cromwell LLP, FATCA: Delayed Start Dates (July 15, 2013), http://www.sullcrom.com/siteFiles/Publications/SC_Publication_FATCA_Delayed_Start_Dates.pdf.

[8] Deloitte, *supra* note 1.

marginal increase in revenues.[9]

5. FATCA's burdens, however, are not limited to financial institutions and fall most heavily on individual U.S. citizens. On the most fundamental level, FATCA deprives individuals of the right to the privacy of their financial affairs. FATCA authorizes the IRS to collect information on the financial assets of U.S. citizens living abroad that it cannot collect on U.S. citizens domestically. On a practical level, FATCA is severely impinging on the ability of U.S. citizens to live and work abroad. It is affecting all facets of individuals' lives from day-to-day finances and employment to family relations and citizenship.

6. FATCA is causing many foreign financial institutions to curtail their business dealings with U.S. citizens living abroad because the costs associated with compliance are simply not worth the trouble. According to a study conducted by the group Democrats Abroad, almost one-quarter (22.5%) of Americans living abroad who attempted to open a savings or retirement account and 10% of those who attempted to open a checking account were unable to due so.[10] The study also revealed that some Mexican financial institutions are even refusing to cash checks for Americans living in that country, many of whom are retirees.[11] But banks are not only refusing to open new accounts or cash checks for U.S. citizen, they are also closing existing

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[9] William Hoffman, *FATCA 'Tormenting' Taxpayers, Olson Says*, Tax Analysts, Oct. 8, 2014, http://www.taxanalysts.com/www/features.nsf/Articles/FD2860D17810639485257D6B0052AC9C?OpenDocument; Taxpayer Advocate Service, *supra* note 5, at 1–2 and n.7.

[10] Democrats Abroad, FATCA: Affecting Everyday Americans Every Day 6 (2014), https://www.democratsabroad.org/sites/default/files/Democrats%20Abroad%202014%20FATCA%20Research%20Report_0.pdf.

[11] Democrats Abroad, *supra* note 10, at 7.

customer accounts.[12] Approximately one million Americans living abroad (one-sixth of all such citizens) have had bank accounts closed because of FATCA.[13] Nearly two-thirds (60%) of those who reported having an account closed had lived abroad for twenty or more years, and most affected appear to be "overwhelmingly middle class Americans, not high income individuals."[14] More than two-thirds (68%) of checking accounts and nearly half (40.4%) of savings accounts closed had balances of less than $10,000.[15] And, over two-thirds (69.3%) of dedicated retirement accounts and more than half (58.9%) of other investment or brokerage accounts closed had a balance of less than $50,000.[16]

7. In addition to causing Americans overseas to lose access to basic financial services abroad, FATCA is also having a detrimental impact on U.S. citizens living abroad at work and at home. Many have reported that they are being denied consideration for promotions at their jobs,

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[12] Martin Hughes, *FATCA Fall Out Closes A Million US Bank Accounts*, Money International, Oct. 7, 2014, http://www.moneyinternational.com/tax/fatca-fall-closes-million-us-bank-accounts/; Eyk Henning, *Deutsche Bank Asks U.S. Clients in Belgium to Close Accounts*, The Wall Street Journal, May 2, 2014, http://www.wsj.com/articles/SB10001424052702303678404579537610638716116; Nat Rudarakanchana, *Americans Abroad Can't Bank Smoothly As FATCA Tax Evasion Reform Comes Into Play*, International Business Times, Dec. 20, 2013, http://www.ibtimes.com/americans-abroad-cant-bank-smoothly-fatca-tax-evasion-reform-comes-play-1517032; Jeff Berwick, *Breaking News: US Expats in Mexico Left Stranded in Latest FATCA Escalation*, The Dollar Vigilante, undated, http://dollarvigilante.com/blog/2014/6/4/breaking-news-us-expats-in-mexico-left-stranded-in-latest-fa.html.

[13] Hughes, *supra* note 12.

[14] Democrats Abroad, *supra* note 10, at 4, 6.

[15] Democrats Abroad, *supra* note 10, at 6.

[16] Democrats Abroad, *supra* note 10, at 6.

particularly with respect to high level positions,[17] because of the concomitant compliance burdens foisted on employers by FATCA.[18] Indeed, in the study by Americans Abroad, 5.6% of respondents reported that they had been denied a position because of FATCA.[19] Others reported difficulty opening a business or partnering with others in joint ventures because of obstacles created by FATCA.[20] Such trends will undoubtedly affect the ability of U.S. citizens to remain economically competitive in an increasingly globalized world.

8. At home, FATCA is forcing Americans abroad to rearrange not only their financial affairs but also reconsider their personal relationships.[21] More than one-fifth (20.8%) of Americans abroad surveyed by Democrats Abroad have already or are considering separating their accounts from their non-American spouse.[22] And 2.4% have or are considering separating or divorcing as a result of FATCA's expansive reporting requirements,[23] further destabilizing American families by adding to the already increasing divorce rate.[24] This instability is likely

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[17] Democrats Abroad, Data From the Democrats Abroad 2014 FATCA Research Project 21 at Table VII.3 (2014), https://www.democratsabroad.org/sites/default/files/Democrats%20Abroad%202014%20FATCA%20Research%20Datapack_0.pdf.

[18] Barbara Stcherbatcheff, *Why Americans Abroad Are Giving Up Their Citizenship*, July 1, 2014, http://www.newsweek.com/2014/07/04/why-americans-abroad-are-giving-their-citizenship-261603.html.

[19] Democrats Abroad, *supra* note 10, at 9.

[20] Democrats Abroad, *supra* note 10, at 10.

[21] *See generally* Democrats Abroad, *supra* note 10, at 7–9 (noting several instances where FATCA was negatively affecting familial relationships).

[22] Democrats Abroad, *supra* note 10, at 7.

[23] Democrats Abroad, *supra* note 10, at 7.

[24] Christophen Ingraham, *Divorce is actually on the rise, and it's the baby boomers' fault*, The Washington Post, March 27, 2014, http://www.washingtonpost.com/blogs/wonkblog/wp/

having the harshest impact on Americans living abroad whose spouses are the primary breadwinners and themselves not American citizens. For these individuals, such as stay-at-home mothers, FATCA is undermining their financial security and placing them in "highly vulnerable" positions because of the need to separate American spouses from a family's non-American earned financial assets.[25] It can leave them without property and without access to their families' bank accounts and credit.[26]

9. For some Americans living abroad, FATCA's burdens have become so heavy that they are choosing to relinquish their US citizenship just so they can avoid the crushing weight of this unprecedented law. Indeed, record numbers of Americans have relinquished their U.S. citizenship in the five years since FATCA's passage.[27] The five highest annual totals of citizenship renunciations have occurred in each of the five years from 2010 to 2015.[28] More than

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2014/03/27/divorce-is-actually-on-the-rise-and-its-the-baby-boomers-fault/.

[25] Democrats Abroad, *supra* note 10, at 8.

[26] Democrats Abroad, *supra* note 10, at 8 (reporting numerous situations where non-income earning spouses were removed from the families financial affairs).

[27] Catherine Bosley and Richard Rubin, *A Record Number of Americans Are Renouncing Their Citizenship*, Bloomberg Business, Feb. 10, 2015, http://www.bloomberg.com/news/articles/2015-02-10/americans-overseas-top-annual-record-for-turning-over-passports; Ali Weinberg, *Record Number of Americans Renouncing Citizenship Because of Overseas Tax Burdens*, ABC News, Oct. 28, 2014, http://abcnews.go.com/International/record-number-americans-renouncing-citizenship-overseas-tax-burdens/story?id=26496154; Laura Saunders, *More Americans Renounce Citizenship, With 2014 on Pace for a Record*, The Wall Street Journal, Oct. 24, 2014, http://blogs.wsj.com/totalreturn/2014/10/24/more-americans-renounce-citizenship-with-2014-on-pace-for-a-record/; Robert W. Wood, *Americans Renouncing Citizenship Up 221%, All Aboard The FATCA Express*, Forbes, Feb. 6, 2014, http://www.forbes.com/sites/robertwood/2014/02/06/americans-renouncing-citizenship-up-221-all-aboard-the-fatca-express/.

[28] Bosley and Rubin, *supra* note 27.

10,000 overseas individuals have given up their U.S. citizenship during that time.[29] And the trend shows no signs of slowing down with a record number of Americans (1,335) giving up their citizenship in the first quarter of 2015, exceeding the previous quarterly record by 18%.[30] In some cases, non-American spouses are pressuring their American spouses to relinquish their U.S. citizenship to avoid entangling the non-American spouses financial affairs in FATCA.[31] And, at the same time, as if to add insult to injury, the U.S. government has sought to make the price of citizenship for these persons even higher. For, just as FATCA's burdens are growing steadily more burdensome as the law moves toward full implementation, the U.S. government has simultaneously increased the cost of citizenship renunciation five-fold, from $450 to $2,350.[32]

10. But FATCA is not the only attack being leveled at Americans living abroad. The Bank Secrecy Act imposes an extra requirement on overseas Americans in the form of a special reporting requirement for foreign accounts. Under the FBAR, Americans living abroad must disclose detailed information about any foreign bank accounts with a balance in excess of $10,000. In practice, it is just a trap for the unprepared and the uninformed, pinching regular middle-class Americans residing outside the United States. The penalties for failing to file the report can be financially devastating and can wipe out a person's entire savings. The maximum penalty for failing to file an FBAR is $100,000 or 50% of the value of the account, *whichever is*

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[29] Bosley and Rubin, *supra* note 27.

[30] Richard Rubin, *Americans Living Abroad Set Record for Giving Up Citizenship*, Bloomberg, May 7, 2015, http://www.bloomberg.com/news/articles/2015-05-07/americans-abroad-top-quarterly-record-for-giving-up-citizenship.

[31] Democrats Abroad, *supra* note 10, at 9.

[32] Weinberg, *supra* note 27.

greater with each unfiled report begetting a separate penalty. 31 U.S.C. § 5321(a)(5)(C). As a result, a single unreported account with a static balance can be penalized multiple times for the same course of conduct continued over multiple years. Because the FBAR civil penalties are cumulative, ultimately the fine for failing to file the FBAR can far exceed the actual value of the unreported financial asset. A person who fails to report an account for only two years could be subject to a penalty *equal to the full balance of the account*. Each unfiled FBAR could subject the person to a fine of 50% of the balance of the account, resulting in an aggregate fine after two years of 100% of the value of the account. One person who failed to file the FBAR for four years was recently subjected to a fine of 150% of the balance of his account.[33]

Jurisdiction and Venue

11. This court has jurisdiction under 28 U.S.C. § 1331 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 because the case arises under the Treaty Clause of the Constitution, Article II, Section 2, Clause 2, and section 702 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 702.

12. Venue is proper under 28 U.S.C. § 1391(e) because Plaintiff Mark Crawford is a resident of Dayton, Ohio.

Parties

Plaintiff Mark Crawford

13. Mark Crawford is a citizen of the United States of America. He currently lives in Albania and also maintains a residence in Dayton, Ohio.

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[33] David Voreacos and Susannah Nesmith, *Florida Man Owes Record 150% IRS Penalty on Swiss Account*, Bloomberg Business, May 29, 2014, http://www.bloomberg.com/news/articles/2014-05-28/florida-man-87-owes-150-of-swiss-account-jury-says.

14. Mark was born in Pasadena, California in 1971, while his father was working for NASA's Jet Propulsion Laboratory. A job offer from NCR relocated the family to Wichita, Kansas for five years and eventually to Dayton, Ohio when Mark was in second grade. Mark graduated from Dayton Christian High School in 1989. He earned an undergraduate degree from Miami University of Ohio in 1993 and a masters degree with a focus in economics from University College London in England in 1995. During college, Mark spent time teaching English in China and, after graduation, spent one year in Albania as a missionary with Campus Crusade for Christ.

15. After finishing his masters degree, Mark returned to Dayton for a year to work for his father's financial planning business where he became a licensed stock broker, earning his Series 7. He was then recruited to join the Tirana, Albania office of the Albanian-American Enterprise Fund (AAEF), a New York based non-political, not-for-profit United States corporation established by Congress pursuant to the Support for East European Democracy Act of 1989 ("SEED Act"). The AAEF was established as part of a United States initiative to promote the private sector development in formerly Communist countries in Europe and Central Asia. It invests solely in Albania. While Mark was at the AAEF, the fund invested in banking, real estate, trade finance companies and a range of production initiatives. Since its inception the AAEF has invested in or lent to over 40 Albanian companies. As of September 30, 2008, net assets of the AAEF amounted to $178 million or 6 times the original capital. Companies financed by AAEF have contributed more than $1 billion to the country's GDP and created more than 5,000 jobs.

16. In 2001, Mark was recruited by a USAID funded group to found a bank in

Montenegro. As CEO he led the bank to become the most profitable in the country and help introduce SWIFT, MasterCard, VISA, and ATM services in the country. He also helped found a separate USAID related bank in Serbia and served on its board of directors.

17. After the split with Serbia, at the request of US Ambassador Rod Moore, Mark led the establishment of the American Chamber of Commerce in Montenegro and served as its founding Chairman.

18. Currently Mark is the owner of an international investment and advisory firm, the chairman of an international securities brokerage firm, a partner within a top-five global audit/advisory network, and a senior adviser to a publicly listed natural resources company. He has taught at the university level on two continents and volunteers to work alongside the United States Embassy in Albania as the president of the board of the American Chamber of Commerce. He also serves as the volunteer chairman of an international affiliate of Campus Crusade for Christ.

19. Mark is a native English speaker, is fluent in Albanian, and speaks basic Serbian/Montenegrin and basic Greek.

20. Mark's wife Irena is a naturalized American citizen, who also holds Albanian citizenship. She is from the Greek minority of southern Albania. They have three children, all of whom are American. Mark and his wife split their time between the United States and Europe in order that the children can learn Greek and Albanian.

21. Mark is the founder and sole owner of Aksioner International Securities Brokerage, sh.a., located in Tirana, Albania. It is the only licensed brokerage firm in Albania and is a partner of Saxo Bank in Copenhagen. The Saxo relationship will not allow Aksioner to accept clients

who are U.S. citizens in part because the bank does not wish to assume the burdens that would be foisted on it by FATCA if it were to accept U.S. citizens. This has impacted Mark financially, forcing him to turn away prospective American clients living in Albania who come to him for brokerage services. Ironically, in April of 2012, Mark applied for a brokerage account with his own company and was denied because he is a U.S. citizen.

22. Mark and his wife maintain three personal bank accounts at Intesa Sanpaolo bank in Albania. The accounts are used to support Mark and his family's day-to-day financial needs such as purchasing food, clothing, and fuel and paying for housing. Each of the three accounts is denominated in a different currency—one in U.S. dollars, one in Euros, and one in Albanian Lek.

23. Mark does not want the financial details of his accounts, including the account numbers, the account balances, and the gross receipts and withdrawals from the accounts, disclosed to the United States government, the IRS, or the Treasury. Mark would not disclose or permit others, including his bank, to disclose his private account information to the United States government, the IRS, or the Treasury but for the fact that FATCA and the FBAR require the disclosure.

24. Mark reasonably fears that he, his wife, or the funds in their joint bank accounts will be subject to the unconstitutionally excessive fines imposed by 31 U.S.C. § 5321 if he wilfully fails to file an FBAR for the accounts.

25. Mark has no adequate remedy at law and is suffering irreparable harm.

Plaintiff Senator Rand Paul

26. Rand Paul is a United States Senator from the Commonwealth of Kentucky. He is a United States citizen and was first elected to the Senate in 2010.

27. Senator Paul lives with his wife and children in Bowling Green, Kentucky, which is located in Warren County. Senator Paul owned his own ophthalmology practice and performed eye surgery for 18 years in Bowling Green prior to being elected to the Senate. He grew up in Lake Jackson, Texas and attended Baylor University. He graduated from Duke Medical School in 1988 and completed a general surgery internship at Georgia Baptist Medical Center in Atlanta, completing his residency in ophthalmology at Duke University Medical Center.

28. Senator Paul has been a vocal opponent of FATCA from the beginning. He has introduced legislation to repeal parts of FATCA in 2013 and 2015 and opposed international tax treaties in the Senate related to FATCA. However, because the Treasury Department and IRS have refused to abide by the constitutional framework for concluding international agreements, Senator Paul has been denied the opportunity to exercise his constitutional right as a member of the U.S. Senate to vote against the FATCA IGAs.

29. Senator Paul would vote against the FATCA IGAs if the Executive Branch submitted them to the Senate for advice and consent under Article II or to the Congress as a whole for approval as congressional-executive agreements.

30. Senator Paul has no adequate remedy at law and is suffering irreparable harm.

Plaintiff Roger Johnson

31. Roger G. Johnson is citizen of the United States of America. He currently resides in Brno, Czech Republic.

32. Roger was born on September 19, 1952 in Dinuba, California. He first grew up on a fruit ranch in Fresno County, California. Then, in 1963, he moved to Southern California with his family so that his father could accept a teaching position there. He completed his elementary,

high school, and college education in Orange County.

33. Roger is a veteran of the United States Army, having served twelve years on active duty and ten years in the U.S. Army Reserve. Roger joined the Army as a private in 1975. During his service, Roger attended Officer Candidate School, earned a Masters degree during his off-duty time, and attended the Defense Language Institute where he learned German. By the time he left active duty service in 1987, Roger had attained the rank of captain. Following active service, he continued his military service as a member of the U.S. Army Reserve, during which time he was recalled to active duty service for the first Iraq war in 1990 for six months and served in combat during Operation Desert Storm with the 3rd Armored Division. He retired from the U.S. Army Reserve as a major.

34. Roger remained in Germany after leaving active military service. He met his wife in Berlin where he was working as a project manager for a German grocery firm. He and his wife lived in Berlin, Germany until 1994, and later moved to Brno, his wife's hometown, so that his wife could resume her law practice. He and his wife have two adult children who are attending college. His wife is a citizen of the Czech Republic, and his children are dual citizens of the United States and the Czech Republic.

35. During the course of the twenty one years that Roger and his wife have made their home in the Czech Republic, they have founded two small advertising businesses, purchased a personal residence together, purchased several rental properties, invested their money, and maintained joint bank accounts. FATCA, however, forced Roger and his wife to significantly alter their financial affairs. Roger's wife strongly objected to having her financial affairs disclosed to the United States government under FATCA. After consulting with their tax advisor,

who strongly recommended that they separate their assets, Roger and his wife decided to legally separate all of their jointly owned assets to protect his wife's privacy. As a result of that separation, Roger no longer has any ownership interest in his home, rental properties, or his wife's company. Roger and his wife are now forced to maintain completely separate bank accounts to protect her privacy.

36. Roger has five bank accounts that he uses to conduct his affairs: two in the United States and three in the Czech Republic. He maintains the two U.S. accounts to pay bills associated with a home he owns in California and for certain transactions which are more conveniently completed using a U.S. account. The Czech accounts are all maintained at Citibank in the Czech Republic and are used to support Roger's day-to-day financial needs such as paying for housing and purchasing food, clothing, and fuel for his vehicle. Each of the three Czech accounts is denominated in a different currency—one in U.S. dollars, one in Euros, and one in Czech Crowns—to enable Roger to conduct his affairs when he travels in Europe and elsewhere.

37. Roger and his wife would reverse the legal separation of their assets and financial affairs if they were not required to be reported under FATCA and the Czech IGA.

38. Roger does not want the financial details of his accounts, including the account numbers, the account balances, and the gross receipts and withdrawals from the accounts, disclosed to the United States government, the IRS, or the Treasury. Roger would not disclose or permit others, including his bank, to disclose his private account information to the United States government, the IRS, or the Treasury but for the fact that the IGAs, FATCA, and the FBAR require the disclosure.

39. Roger reasonably fears that he or the funds in his bank accounts will be subject to

the unconstitutionally excessive fines imposed by 31 U.S.C. § 5321 if he wilfully fails to file an FBAR for the accounts.

40. Roger has no adequate remedy at law and is suffering irreparable harm.

Plaintiff Stephen J. Kish

41. Stephen J. Kish, Ph.D. is a citizen of the United States of America and a citizen of Canada. He currently resides in Toronto, Ontario, Canada.

42. Stephen is a professor of psychiatry and pharmacology at the University of Toronto and the head of the Human Brain Laboratory at the Centre for Addiction and Mental Health (CAMH) in Toronto, Ontario.

43. Stephen was born in Seattle, Washington on July 11, 1948. He lived in Seattle for the duration of his childhood, completing his primary and high school education there. After high school, Stephen enrolled at the University of Notre Dame in South Bend, Indiana where he graduated in 1970 with a bachelors degree in biology. He received a masters degree in biochemical pharmacology at the University of Southampton in England in 1973 and a Ph.D in pharmacology at the University of British Columbia in Vancouver in 1980. From 1980 to 1981, he undertook a post-doctoral fellowship training at the University of Vienna in Austria in Parkinson's disease studies.

44. In 1981, Stephen joined the Human Brain Laboratory at CAMH, which at that time was known as the Clarke Institute of Psychiatry. He has remained at CAMH since 1981, eventually becoming Head of the Human Brain Laboratory.

45. Eventually, in 1985, Stephen decided to become a Canadian citizen to ensure that he would be able to remain in Canada with his wife and remain able to pursue his research career

in Toronto.

46. Stephen met his wife in Toronto in April, 1981 shortly after joining CAMH. She is a Canadian citizen. Stephen and his wife have built a life together in Toronto and established deep roots in the community.

47. Stephen and his wife maintain a joint bank account at the Canadian Imperial Bank of Commerce ("CIBC") in Toronto that is used to support their day-to-day financial needs such as paying for housing and purchasing food, clothing, and fuel for their personal vehicle. And, while they have a good marriage, FATCA has at times caused some discord between the two because she, as a Canadian citizen, strongly opposes the disclosure of her personal financial information from her and Stephen's joint bank account to the U.S. government.

48. Stephen does not want the financial details of his accounts, including the account numbers, the account balances, and the gross receipts and withdrawals from the accounts, disclosed to the United States government, the IRS, or the Treasury. Stephen would not disclose or permit others, including his bank, to disclose his private account information to the United States government, the IRS, or the Treasury but for the fact that the IGAs, FATCA, and the FBAR require the disclosure.

49. Stephen reasonably fears that he, his wife, or the funds in their joint bank account will be subject to the unconstitutionally excessive fines imposed by 31 U.S.C. § 5321 if he wilfully fails to file an FBAR for the accounts.

50. Stephen has no adequate remedy at law and is suffering irreparable harm.

Plaintiff Daniel Kuettel

51. Daniel Kuettel is a citizen of Switzerland and a former citizen of the United States

of America. Daniel resides in Bremgarten, Switzerland.

52. Daniel's childhood was divided between Colorado and Switzerland. His mother was a citizen of the United States, and his father is a citizen of Switzerland and the United States. His parents met in the United States after his father emigrated to the United States after World War II. Daniel was born in Greeley, Colorado in a farmhouse in 1972. He lived in Greeley until he was ten years old, but, after his parents divorced in 1981, moved with his father to Switzerland. He spent the next five years in Switzerland and then returned to Greeley to live with his mother when he was fifteen years old. Two years later, Daniel moved back to Switzerland to live with his father again, and then returned to finish high school in the United States.

53. In 1992, after graduating from high school, Daniel enlisted in the United States Army, serving as a crane operator in a rapid deployment unit for three years. He was stationed primarily at Fort Stewart, Georgia during his service. Upon completing his enlistment in 1995, he returned to Greeley, Colorado and joined the U.S. Army Reserve. He spent the next several years advancing his education and working in various capacities in the computer and information technology fields. During this time, he lived in Greeley, Colorado as well as California, moving first to Silicon Valley and later to San Diego. After the dot-com bubble burst in 2000, Daniel eventually decided to move to Switzerland in search of employment in 2001.

54. Daniel met his wife, who is originally from the Philippines, in 2000. She is a citizen of Switzerland and the Philippines. She is a nurse and is currently working as a stay-at-home mother to their two young children. His daughter, born in 2005, is a citizen of Switzerland, the Philippines, and the United States. His son, born in 2013, is a citizen of Switzerland and the

Philippines.

55. Daniel relinquished his U.S. citizenship in 2012 because of difficulties caused by FATCA. He and his wife's home is located in Switzerland, and many Swiss banks have been unwilling to accept American clients because of FATCA. Daniel made several inquiries at Swiss banks attempting to find one that would refinance his mortgage. His efforts, however, were mostly unsuccessful with all of them citing policies related to his U.S. citizenship. He contacted both the U.S. Veterans Administration and the U.S. Department of Housing and Urban Development for assistance, but both agencies declined and stated that they do not provide assistance in obtaining mortgages to Americans living abroad. Left with few options, Daniel decided to renounce his citizenship so that he and his family could continue with the life they had built in Switzerland. After renouncing his U.S. citizenship, Daniel was able to refinance his home with a Swiss bank shortly thereafter. Daniel will always consider himself an American but felt that renunciation was the only real option for his family.

56. Daniel currently maintains a college savings account for his daughter in his own name at PostFinance bank in Switzerland but would like to transfer ownership of the account to her and place it in her name. Having the account in her name would offer several advantages such as better interest rates and discounts for local businesses. The account currently has a balance of approximately $8,400. If the account were in his daughter's name, Daniel would transfer the full balance plus an additional $2,500 from his own, separate funds into the account. He would also make monthly deposits of $200 ($1,400 annually) to the account for the foreseeable future.

57. However, Daniel will refrain from transferring ownership of the college savings

account to his daughter because he reasonably fears that he, his daughter, or the funds in the account will be subject to the unconstitutionally excessive fines of $100,000 or 50% of the balance of the account imposed by 31 U.S.C. § 5321 if the IRS determines that his daughter has "wilfully" failed to file an FBAR for the account. According to the instructions for filing the FBAR, published by FinCEN, a child who is a U.S. citizen is required to file an FBAR for their foreign accounts. FinCEN, BSA Electronic Filing Requirements For Report of Foreign Bank and Financial Accounts (FinCEN Form 114) 6 (2014), http://www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf. Where the child is incapable of filing, FinCEN requires the child's parent to file the FBAR on their behalf. *Id.* Daniel's daughter is not capable of complying with this reporting requirement because she is only ten years old and too young to shoulder such an obligation. Daniel objects to filing an FBAR as required by FinCEN because he is not a U.S. citizen and would not do so for his daughter's account. Daniel's wife has told him that she too objects to filing an FBAR for his daughter's account and would not do so. Daniel's daughter cannot avoid the FBAR reporting requirement by renouncing her U.S. citizenship because she is too young. Daniel inquired about this possibility on June 2, 2015 and received a response from the U.S. Embassy in Bern, Switzerland advising him that his daughter cannot renounce her citizenship until at least the age of 16. (Ex. 1.)

58. Daniel has no adequate remedy at law and is suffering irreparable harm.

Plaintiff Donna-Lane Nelson

59. Donna-Lane Nelson is a citizen of Switzerland and a former citizen of the United States of America. She lives in Geneva, Switzerland and Argelès-sur-mer, France.

60. Donna-Lane was born in the United States and grew up in the small New England

town of Reading, Massachusetts. As a teenager, she was member of the International Order of the Rainbow for Girls ("IORG") which is a youth service organization designed to encourage community service, honesty, and leadership. She served in the role of Patriotism for her group. The organization has counted among its members U.S. Senator Olympia Snowe and former Supreme Court Justice Sandra Day O'Conner.

61. Donna-Lane was married in 1962 to a member of the United States military. During the first years of their marriage, they lived in Stuttgart, Germany while her then-husband was stationed for service at the Army base in Möhringen. It was during this time that Donna-Lane became acquainted with Europe, its lifestyle, and its history. After a few years in Germany, she and her then-husband returned to the United States. She earned her bachelors degree at Lowell University in 1967 and later earned a masters degree at Glamorgan University in Wales. In 1969, her then-husband left her shortly after the birth of their daughter. After his departure, she worked various jobs in public relations and communications while raising her daughter as a single mother.

62. Donna-Lane moved back to Europe after her daughter began college. Her daughter has since earned a bachelors degree from Northeastern University and a masters degree from Napier University in Scotland. When she returned to Europe, Donna-Lane first moved to France but then moved to Switzerland in 1990 for a job, working first for Interskill and later for the International Electrical Commission.

63. Donna-Lane has written eleven novels, which are published in the United States by Five Star Publishing.

64. Donna-Lane became a Swiss citizen in 2006 because she believed it was her civic

duty as a resident of the Swiss community to participate in local affairs and politics through voting. She also wanted to ensure that she would be able to remain in Switzerland if she was unable to obtain a work permit. Nonetheless, Donna-Lane did not eschew her American heritage and remained an active citizen in the United States, monitoring legislation on a wide-array of subjects and urging her elected representatives to take appropriate action.

65. After FATCA was enacted, Donna-Lane's local bank in Switzerland, UBS, notified her that she would not be able to open a new account if she ever closed her existing one because she was an American. Fearing that she would eventually not be able to bank in the country where she lived, she decided to relinquish her U.S. citizenship. She did so on December 11, 2011 at the U.S. Consulate in Bern, Switzerland. The decision to relinquish her U.S. citizenship was not easy, but ultimately she felt that she had to choose between having the ability to access local financial services where she lived or be a U.S. citizen. Once she had completed the renunciation process, Donna-Lane approached a local Swiss bank and was offered investment opportunities that were not available to her as an American.

66. In 2011, Donna-Lane remet a professional colleague and an American. He moved to Europe. They married in May 2015. Prior to marrying, they started a business together and opened a joint business account at BNP Paribas. The two also have a joint personal account at BNP Paribas

67. Because her partner is a U.S. citizen, their joint accounts are subject to the requirements of the Swiss IGA, FATCA, and the FBAR. Donna-Lane has been required to prove to BNP Paribas that she is not a U.S. citizen and has had her private financial account information disclosed to the IRS and the Treasury Department despite the fact that she is not a

U.S. citizen.

68. In May 2015, she was contacted by UBS in Geneva, Switzerland and made to explain why she was sending $300 to the United States each month. She explained that the money was for her daughter so that she could build up an emergency fund. Donna-Lane was allowed to keep her account open because the bank accepted her explanation. Her other bank, Raiffeisen, has asked her to come to their office to explain her prior U.S. citizenship three years after having renounced her citizenship. She resents having to provide these explanations and the threats implied by these requests which appear to be prompted by FATCA.

69. Donna-Lane does not want the financial details of her business account, including the account number, the account balance, or the gross receipts and withdrawals from the account, disclosed to the United States government, the IRS, or the Treasury Department. Donna-Lane would not disclose or permit others, including her partner and her bank, to disclose her private business account information to the United States government, the IRS, or the Treasury but for the fact that the IGAs, FATCA, and the FBAR require the disclosure.

70. Donna-Lane reasonably fears that she and/or the funds in her joint business account will be subject to the unconstitutionally excessive fines imposed by 31 U.S.C. § 5321 if the IRS should determine that her business partner has "wilfully" failed to file an FBAR for the account.

71. Donna-Lane reasonably fears that she and/or the funds in her joint business account will be subject to the unconstitutionally excessive FATCA Passthrough Penalty imposed under 26 U.S.C. § 1471(b)(1)(D) if her business partner opts to become a recalcitrant account holder.

72. Donna-Lane has no adequate remedy at law and is suffering irreparable harm.

Plaintiff L. Marc Zell

73. L. Marc Zell is a dual citizen of the United States of America and the State of Israel. He currently resides in Israel.

74. Marc was born in Washington, D.C. on February 25, 1953. He attended public high school in Montgomery County, Maryland, graduating in 1970. Following high school, Marc earned a Bachelor of Arts degree in Germanic Languages and Literatures with a concentration in Theoretical Linguistics from Princeton University in 1974. He then continued his education at the University of Maryland School of Law, earning his Juris Doctor with honors in 1977.

75. Marc is a member of the bars of the State of Maryland (1977), the District of Columbia (1978), the Commonwealth of Virginia (1981), and the State of Israel (1987).

76. After law school, Marc served as a law clerk to the late Judge Irving A. Levine of the Maryland Court of Appeals. He then joined a large international law firm in Washington, D.C. as an associate attorney in 1978. Marc left that firm in 1981 and, over the course of the next thirty-four years co-founded three different law firms in the United States and Israel. He currently practices with the third firm he co-founded, Zell, Aron & Co., which is based in Jerusalem, Israel.

77. Marc and his family moved to Israel in 1986 and have resided there ever since that time.

78. As an Israeli-American attorney, Marc has been approached several times during the last year by other Israeli-Americans who want to renounce their citizenship. Many are concerned about the hardships imposed on them by FATCA. Many are American citizens because they were born to Americans but in all other respects call Israel home and have never lived in the United States and yet have found themselves trapped by FATCA by virtue of birth.

79. Marc and his firm, Zell, Aron & Co., are frequently asked by their clients to hold funds and foreign securities in trust. Because of FATCA, Marc and his firm have been required by their Israeli banking institutions to complete IRS withholding forms (either W-8BEN or W-8BEN-E) as a precondition for opening trust accounts for both U.S. and non-U.S. persons and entities. The Israeli banking officials have stated that they will require such submissions regardless of whether the beneficiary is a U.S. person (i.e. citizen or resident alien) because the trustee is or may be a U.S. person. As a result, the banks have required Marc and his firm to close the trust account in some cases, and in other instances the banks have refused to open the requested trust account.

80. In one case, Marc has been repeatedly requested by his firm's bank to transfer securities of a company registered on the Tel Aviv Stock Exchange to remove the securities (having a current fair market value in excess of $2.5 million) from the trust account. These securities which are required to be held in trust under Israeli financial regulations can only be held by a qualified Israeli financial institution. Yet, because of FATCA, the bank is demanding that Marc transfer the securities to another bank. This has trapped Marc in a "Catch 22" situation: he must hold the securities in an Israeli financial institution and is simultaneously being ordered to remove the securities because both he and the beneficiary in this instance are U. S. citizens.

81. There also have been instances recently where Israeli banks have required non-U.S. persons represented by Marc and his firm to fill out the IRS forms even though they have no connection with the United States. When questioned about this practice, the banking officials have stated that the mere fact a U.S. person trustee or his law firm is acting as a fiduciary is reason enough to require non-U.S. person beneficiaries to disclosure their identities and their

assets to the United States. In a few such instances, the non-U.S. person beneficiary has terminated the attorney-client relationship with Marc and his law firm resulting in palpable financial loss in the form of lost fees to the firm and Marc.

82. FATCA has also impinged on the sanctity of the attorney-client relationship between Marc, his firm, and his clients. In certain cases, the disclosure of the very existence of an attorney-client relationship between a foreign individual or an entity and Marc as an Israeli attorney may prove injurious to the foreign client. This is true, for example, in connection with enterprises and their principals doing business in parts of the world which do not have diplomatic relations with the State of Israel. The fact that such firms have a professional relationship with an Israeli law firm, even one owned by a U.S. citizen, may prove embarrassing and harmful to such enterprises. The compelled disclosure of the relationship through the filing of FATCA-based forms is in and of itself a violation of the attorney-client privilege and the principles of confidentiality that underlie the attorney-client relationship.

83. Numerous clients have indicated to Mr. Zell and his firm that they consider the disclosure mandated by FATCA a gross violation of their constitutionally and legally protected right of privacy and have instructed Marc and his firm not to comply with the FATCA requirements. For this reason and for the other reasons mentioned above, Marc has decided not to comply with the FATCA disclosure requirements whenever that alternative exists.

84. Marc holds funds in trust for one client at Israel Discount Bank. The bank has asked Marc to provide information necessary to identify him and the client as U.S. persons subject to FATCA. The client has instructed Marc not to complete the forms seeking this information, and Marc has complied. He reasonably fears that he and/or the client will be classified as a recalcitrant

account holder and subject to the unconstitutionally excessive FATCA Passthrough Penalty imposed under 26 U.S.C. § 1471(b)(1)(D).

85. Marc also has two personal checking accounts at Israel Discount Bank that he uses to support his day-to-day financial needs such as paying for housing and purchasing food, clothing, and fuel for his personal vehicle. His bank has asked him to provide additional information necessary to identify him as an American citizen subject to FATCA. Marc has refused to complete these forms and reasonably fears that he will be classified as a recalcitrant account holder and subject to the unconstitutionally excessive FATCA Passthrough Penalty imposed under 26 U.S.C. § 1471(b)(1)(D).

86. Marc does not want the financial details of his accounts, including the account numbers, the account balances, and the gross receipts and withdrawals from the accounts, disclosed to the United States government, the IRS, or the Treasury. Marc would not disclose or permit others, including his bank, to disclose his private account information to the United States government, the IRS, or the Treasury but for the fact that the IGAs, FATCA, and the FBAR require the disclosure.

87. Marc also reasonably fears that he or the funds in his accounts will be subject to the unconstitutionally excessive fines imposed by 31 U.S.C. § 5321 if the IRS should determine that he has "wilfully" failed to file an FBAR for his accounts.

88. Marc has no adequate remedy at law and is suffering irreparable harm.

Defendants

89. The U.S. Department of the Treasury is the administrative agency charged with administering FATCA and the FBAR. *See* 26 U.S.C. §§ 1474(f), 5314(a).

90. The Internal Revenue Service is an office of the Treasury Department and administers FATCA and the FBAR. 26 U.S.C. § 7803(a)(1)(A); 31 C.F.R. § 103.56(g); *see also e.g.*, Reporting by Foreign Financial Institutions, 78 Fed. Reg. 5874 (Jan. 28, 2013) (referring to joint rule-makings by IRS and Treasury Department regarding FATCA).

91. FinCEN is a bureau of the Treasury Department and has administrative authority over the FBAR.

FATCA

92. The Foreign Account Tax Compliance Act, Pub. L. No. 111-147, 124 Stat. 97 (2010) (codified at 26 U.S.C. §§ 1471–74, 6038D, and other scattered sections of Title 26) ("FATCA"), was enacted on March 18, 2010 as a fiscal offset provision to the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 11-147, 124 Stat. 71 ("HIRE Act").

93. FATCA was enacted for the ostensible purpose of reducing tax evasion by U.S. taxpayers on foreign financial holdings. U.S. Dept. of the Treasury, *Foreign Account Tax Compliance Act (FATCA)*, http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx (last visited July 6, 2015).

94. **FATCA Structure.** FATCA applies both to individuals and to foreign financial institutions and has two primary components:

(a) **Individual Reporting.** The first component operates on individuals and requires them to report foreign financial assets when the aggregate value of all such assets exceeds $50,000. 26 U.S.C. § 6038D(a). These assets must be reported to the IRS with the individual's annual tax return. *Id.* Individuals who fail to report such assets are subject to penalties of $10,000

for each failure to file a timely report and 40% of the amount of any underpaid tax related to the asset. *Id.* §§ 6038D(d), 6662(j)(3).

(b) **FFI Reporting.** The second component operates on all foreign financial institutions ("FFIs") worldwide. FATCA requires them to report detailed account information for any account held by a U.S. person to the U.S. government each year irrespective of whether the U.S. account-holder is suspected of tax evasion. *Id.* § 1471(b). FFIs that fail to comply with FATCA's reporting scheme are subject to a substantial penalty of 30% of the amount of any payment originating from sources within the United States. *Id.* § 1471(a).

95. **Implementation.** The Treasury Department and IRS have chosen to implement FATCA by adopting regulations and by entering into unconstitutional intergovernmental agreements ("IGAs") with foreign nations.

(a) **FATCA Regulations.** The regulations primarily elaborate on the the requirements of the statutory provisions and clarify the statutory requirements. *See* Reporting by Foreign Financial Institutions, 78 Fed. Reg. 5874 (Jan. 28, 2013); Reporting by Foreign Financial Institutions, 79 Fed. Reg. 12812 (Mar. 6, 2014); Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, 79 Fed. Reg. 12726 (Mar. 6, 2014); Reporting of Specified Foreign Financial Assets, 79 Fed. Reg. 73817 (Dec. 12, 2014).

(b) **FATCA IGAs.** The Treasury Department has entered into IGAs with

several foreign countries, including Canada, Czech Republic, Israel, and Switzerland. U.S. Dept. of the Treasury, List of Agreements in Effect, http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx (last visited July 6, 2015). The IGAs are styled as either Model 1 or Model 2 agreements. In a Model 1 IGA, the foreign government (called "FATCA Partner") agrees to collect the financial account information that FATCA requires FFIs to report on behalf of the U.S. government and report that information to the IRS itself. *See, e.g.*, U.S. Dept. of Treasury FATCA Resource Center, Model 1A IGA Reciprocal, Preexisting TIEA or DTC, Art. 2, § 1, (Nov. 30, 2014), http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Reciprocal-Model-1A-Agreement-Preexisting-TIEA-or-DTC-11-30-14.pdf. FFIs located in the FATCA Partner's jurisdiction that comply with the obligations imposed under the IGA are exempted from FATCA—such FFIs are "treated as complying with, and not subject to withholding under, section 1471." *Id.* Art. 4, § 1. In a Model 2 IGA, the FATCA Partner agrees to remove domestic legal impediments in the FATCA Partner jurisdiction that would otherwise prevent FFIs from complying with FATCA's reporting requirements and direct all FFIs to register with the IRS and comply with FATCA. U.S. Dept. of Treasury FATCA Resource Center, Model 2 IGA, Preexisting TIEA or DTC, Art. 2 (Nov. 30, 2014), http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FA

TCA-Model-2-Agreement-Preexisting-TIEA-or-DTC-11-30-14.pdf.

96. **Individual Reporting - Content of Reports.** Under section 6038D, individuals with reportable foreign financial assets must file Form 8938 with the IRS each year. *See* 26 C.F.R. § 1.6038D-4(a)(11). For each foreign account, the individual must report:

(a) the name and address of the financial institution at which the account is maintained;

(b) the account number;

(c) the maximum value of the account during the taxable year;

(d) whether the account was opened or closed during the taxable year;

(e) the amount of any income, gain, loss, deduction, or credit recognized for the taxable year and the schedule, form, or return filed with the IRS on which such amount is reported; and

(f) the foreign currency in which the account is maintained, the foreign currency exchange rate, and the source of the rate used to determine the asset's U.S. dollar value.

26 U.S.C. § 6038D(c); 26 C.F.R. § 1.6038D-4(a). Form 8938 additionally requires an individual to report the aggregate amount of interest, dividends, royalties, other income, gains, losses, deductions, and credits for all accounts. IRS, Form 8938, http://www.irs.gov/pub/irs-pdf/f8938.pdf.

97. **FFI Reporting - Content of Reports.** Foreign financial institutions must report U.S. accounts annually to the IRS on Form 8966. The report must include:

(a) the name, address, and TIN of each account holder;

(b) the account number

(c) the average calendar year or year-end balance or value of the account, depending on which information the FFI reports to the account holder; and

(d) the aggregate gross amount of interest paid or credited to the account during the year.

26 U.S.C. § 1471(c)(1); 26 C.F.R. § 1.1471-4(d)(3)(ii). Form 8966 additionally requires an FFI to report the aggregate gross amount of all income paid or credited to an account for the calendar year less any interest, dividends, and gross proceeds. IRS, Instructions for Form 8966 at 10, http://www.irs.gov/pub/irs-pdf/i8966.pdf.

98. **Canadian IGA.** The Canadian IGA was signed on February 5, 2014 and is a Model 1 IGA. Agreement Between the Government of the United States of America and the Government of Canada to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital, U.S.-Can., Feb. 5, 2014, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Canada-2-5-2014.pdf (hereinafter "Canadian IGA"). The Canadian IGA has not been submitted to the Senate for its advice and consent pursuant to Article II, section 2, clause 2 of the Constitution or approved by a majority vote in both houses of Congress. Nor is the Canadian IGA authorized by an existing Article II treaty. Under the agreement, the Canadian government has agreed to collect information similar to, but not coextensive with, the information required to be reported by an FFI to the U.S. government under FATCA. *Id.* art. 2, § 2. The information required to be collected regarding depository accounts includes:

(a) the name, address, and U.S. TIN of each U.S. account holder;

(b) the account number of each U.S. account holder;

(c) the name and identifying number of the Canadian FFI maintaining the account;

(d) the calendar year-end balance or value of the account; and

(e) the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

Id., art. 2, § 2(a). The Canadian government has agreed to transmit that information directly to the U.S. government. *Id.*, art. 2, § 1.) The U.S. government has agreed to treat each reporting Canadian FFI as complying with FATCA and as not subject to withholding under section 1471(a). *Id.*, art. 4, § 1.

99. **Czech IGA.** The Czech IGA was signed on August 4, 2014 and is a Model 1 IGA. Agreement between the United States of America and the Czech Republic to Improve International Tax Compliance and with Respect to the United States Information and Reporting Provisions Commonly Known as the Foreign Account Tax Compliance Act, U.S.-Czech Rep., Aug. 4, 2014, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Czech-Republic-8-4-2-14.pdf (hereinafter "Czech IGA"). The Czech IGA has not been submitted to the Senate for its advice and consent pursuant to Article II, section 2, clause 2 of the Constitution or approved by a majority vote in both houses of Congress. Nor is the Czech IGA authorized by an existing Article II treaty. Under the agreement, the Czech government has agreed to collect information similar to, but not coextensive with, the information required to be reported by an FFI to the U.S. government under FATCA. *Id.* art. 2, § 2. The information required to be collected regarding depository accounts includes:

(a) the name, address, and U.S. TIN of each U.S. account holder;

(b) the account number of each U.S. account holder;

(c) the name and identifying number of the Czech FFI maintaining the account;

(d) the calendar year-end balance or value of the account; and

(e) the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

Id., art. 2, § 2(a). The Czech government has agreed to transmit that information to the U.S. government. *Id.*, art. 2, § 1. The U.S. government has agreed to treat each reporting Czech FFI as complying with FATCA and as not subject to withholding under section 1471(a). *Id.*, art. 4, § 1.

100. **Israeli IGA.** The Israeli IGA was signed on June 30, 2014 and is a Model 1 IGA. Agreement between the Government of the United States of America and the Government of the State of Israel to Improve International Tax Compliance and to Implement FATCA, U.S.-Isr., Jun. 30, 2014, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Israel-6-30-2014.pdf (hereinafter "Israeli IGA"). The Israeli IGA has not been submitted to the Senate for its advice and consent pursuant to Article II, section 2, clause 2 of the Constitution or approved by a majority vote in both houses of Congress. Nor is the Israeli IGA authorized by an existing Article II treaty. Under the agreement, the Israeli government has agreed to collect information similar to, but not coextensive with, the information required to be reported by an FFI to the U.S. government under FATCA. *Id.* art. 2, § 2. The information required to be collected regarding depository accounts includes:

(a) the name, address, and U.S. TIN of each U.S. account holder;

(b) the account number of each U.S. account holder;

(c) the name and identifying number of the Israeli FFI maintaining the account;

(d) the calendar year-end balance or value of the account; and

(e) the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

Id., art. 2, § 2(a). The Israeli government has agreed to transmit that information to the U.S.

government. *Id.*, art. 2, § 1. The U.S. government has agreed to treat each reporting Israeli FFI as complying with FATCA and as not subject to withholding under section 1471(a). *Id.*, art. 4, § 1.

101. **Swiss IGA.** The Swiss IGA was signed on February 14, 2013 and is a Model 2 IGA. Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, U.S.-Switz., Feb. 14, 2013, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Switzerland-2-14-2013.pdf (hereinafter "Swiss IGA"). The Swiss IGA has not been submitted to the Senate for its advice and consent pursuant to Article II, section 2, clause 2 of the Constitution or approved by a majority vote in both houses of Congress. Nor is the Swiss IGA authorized by an existing Article II treaty. Under the agreement, the Swiss government has agreed (1) to direct all covered Swiss FFIs to register with the IRS and comply with all obligations under FATCA and (2) to exempt such FFIs from any Swiss laws that would prohibit or otherwise criminalize such conduct. *Id.* art. 3, § 1, art. 4. The U.S. government has agreed to treat each Swiss FFI that complies with the Swiss IGA as complying with FATCA and not subject to withholding under section 1471(a). *Id.* art. 6.

FBAR

102. The Report of Foreign Bank and Financial Accounts ("FBAR") must be filed annually with the IRS by persons who have a financial interest or signatory authority over a bank, securities, or other financial account in a foreign country with an aggregate value of more than $10,000. 31 U.S.C. § 5314; 31 C.F.R. §§ 1010.306(c), 1010.350(a).

103. Persons required to file include citizens and residents of the United States as well as other entities such as corporations, partnerships, trusts, etc. 31 C.F.R. § 1010.350(b).

Reportable accounts include bank accounts like savings, depository, and checking accounts as well as securities accounts and "other financial accounts." *Id.* § 1010.350(c). A person can have a financial interest in a reportable account in several circumstances, including when a person owns or holds legal title to a reportable account, when they are the agent or attorney with respect to the account, and when they own more than 50% of the voting power, total value of equity, interest, or assets, or interest in profits. *Id.* § 1010.350(e). A person has signature authority over a reportable account when the person has "authority . . . (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained." *Id.* § 1010.350(f)(1).

104. The FBAR must be filed separately from an individual's regular federal income tax return by June 30 of each year. FinCEN, BSA Electronic Filing Requirements For Report of Foreign Bank and Financial Accounts (FinCEN Form 114) 8 (2014), http://www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf. The filing deadline cannot be extended. *Id.*

105. Failure to file the FBAR can bring both civil and criminal penalties. 31 U.S.C. § 5321(d). Civil penalties vary depending on whether the failure to file was willful. *Id.* § 5321(b)(5). For non-willful violations, the maximum penalty is $10,000 for each unfiled report. *Id.* § 5321(b)(5)(B)(i). The penalty may not imposed for non-willful violations if the violation was due to "reasonable cause" and the account balance was "properly reported." *Id.* § 5321(b)(5)(B)(ii). For willful violations, the maximum penalty is $100,000 or 50% of the balance of the account at the time of the violation. *Id.* § 5321(b)(5)(C)(i). The "reasonable cause"

defense is unavailable for willful violations. *Id.* § 5321(b)(5)(C)(ii). The maximum criminal penalty for FBAR violations is a $250,000 fine and five years imprisonment. *Id.* § 5322(a).

Count 1
The IGAs are Unconstitutional Sole Executive Agreements Because they Exceed the Scope of the President's Independent Constitutional Powers

106. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

107. Under section 706 of the Administrative Procedure Act ("APA"), a court must "hold unlawful and set aside agency action . . . found to be – . . . (B) contrary to constitutional right, power, privilege, or immunity [and] . . . (D) without observance of procedure required by law." 5 U.S.C. § 706.

108. There are four recognized sources of authority for the Executive Branch to make international agreements: (1) the Treaty Clause, (2) an act of Congress, (3) an existing treaty, and (4) the President's independent constitutional powers. Restatement (Third) of Foreign Relations Law § 303 (1987). These four sources give rise to four types of international agreements: (1) Article II treaties, (2) congressional-executive agreements, (3) treaty-based agreements, and (4) sole executive agreements. John E. Nowak & Ronald D. Rotunda, Treatise on Const. L. § 6.8(a).

109. The Executive Branch has long accepted this framework. *See* 11 Foreign Affairs Manual ("FAM") §§ 723.2-1, 723.2-2, 723.2-2(A), 723.2-2(B), 723.2-2(C) (2006), available at http://www.state.gov/documents/organization/88317.pdf.

110. Each of the first three types of agreements require action by at least one chamber of Congress. Treaties must be ratified by two-thirds of the Senators present. U.S. Const. art. II, § 2, cl. 2. Congressional-executive agreements must be authorized or approved by a majority vote in

both Houses like ordinary legislation. Restatement (Third) of Foreign Relations Law § 303. Treaty-based agreements must be made pursuant to authorization contained in an existing Article II treaty. Nowak & Rotunda, *supra* § 6.8(a).

111. Only the fourth type of agreement—sole executive agreements—can be brought into force, if at all, without congressional action. *Id.*; 11 FAM § 723.2-2(C). They are "reserved for agreements made solely on the basis of the constitutional authority of the President." 11 FAM § 723.2-2; *accord United States v. Guy W. Capps, Inc.*, 204 F.2d 655, 658–59 (4th Cir. 1953), *aff'd*, 348 U.S. 296, 75 S. Ct. 326, 99 L. Ed. 329 (1955).

112. The Executive Branch has identified possible sources of the President's independent power to make international agreements as including "(1) The President's authority as Chief Executive to represent the nation in foreign affairs; (2) The President's authority to receive ambassadors and other public ministers, and to recognize foreign governments; (3) The President's authority as 'Commander-in-Chief'; and (4) The President's authority to "take care that the laws be faithfully executed." *See id.* § 723.2-2(C).

113. The President, however, lacks an independent power to impose taxes or specify the manner of their collection or any other power which would grant him the power to enter the IGAs unilaterally. *See generally* U.S. Const. art. II (reserving taxing power exclusively to Congress).

114. The Canadian, Czech, Israeli, and Swiss IGAs (collectively "the IGAs") are fundamentally international agreements concerning taxation and the collection of taxes.

115. None of the IGAs have received Senate or congressional approval nor are they pursuant to any authorization contained in any Article II treaty. The IGAs have not been submitted to the Senate for advice and consent. U.S. Dep't of State, Treaties Pending in the Senate (updated

as of April 27, 2015), http://www.state.gov/s/l/treaty/pending/index.htm (last visited July 6, 2015). Furthermore, while FATCA authorizes the Treasury Department to adopt regulations and "other guidance," it does not authorize the making of international agreements like the IGAs. *See* 26 U.S.C. § 1474(f). Finally, there is no valid treaty that otherwise authorizes the IGAs. Allison Christians, *The Dubious Legal Pedigree of IGAs (and Why it Matters)*, 69 Tax Notes Int'l 565, 567 (2013) (The "IGAs are not treaty-based agreements.").

116. The President, therefore, lacks the power to conclude the IGAs as sole executive agreements because their subject matter lies outside his constitutional powers.

117. Accordingly, the IGAs must be held unlawful and set aside under section 706 of the APA. The Treasury and the IRS have acted contrary to the President's constitutional power to make international agreements and without observance of the procedure for adopting international agreements required by the Constitution. Defendants should be enjoined from enforcing them.

Count 2
The IGAs are Unconstitutional Sole Executive Agreements Because They Override FATCA

118. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

119. Under section 706 of the Administrative Procedure Act ("APA"), a court must "hold unlawful and set aside agency action . . . found to be – . . . (B) contrary to constitutional right, power, privilege, or immunity [and] . . . (D) without observance of procedure required by law." 5 U.S.C. § 706.

120. Sole executive agreements may not be "inconsistent with legislation enacted by the Congress in the exercise of its constitutional authority." 11 FAM § 732.2-2(C); *accord Guy W.*

Capps, 204 F.2d at 658–600; *Swearingen v. United States*, 565 F. Supp. 1019 (D. Colo. 1983).

121. The IGAs establish a different regulatory scheme than the one mandated by FATCA. The Model 1 IGAs, for example, exempt covered FFIs from the statutory requirement that FFIs report account information directly to the Treasury Department, 26 U.S.C. § 1471(b)(1)(C), and instead allow such FFIs to report the account information to their national governments, *see e.g.*, Canadian IGA, Art. 2, § 2. The Model 2 IGAs, for example, exempt covered FFIs from the obligation "to obtain a valid and effective waiver" of any foreign law that would prevent the reporting of information required by FATCA, 26 U.S.C. § 1471(b)(1)(F)(i), and instead obligates the foreign government to suspend such laws with respect to FATCA reporting by covered FFIs, *see e.g.*, Canadian IGA, *supra*, Art. 2, § 2. This deprives account holders of their right under the statute to refuse a waiver.

122. The President, therefore, lacks the power to conclude the IGAs as sole executive agreements because they override a duly enacted statute.

123. Accordingly, the IGAs must be held unlawful and set aside under section 706 of the APA. The Treasury and the IRS have acted contrary to the President's constitutional power to make international agreements and without observance of the procedure for adopting treaties required by the Constitution. Defendants should be enjoined from enforcing them.

Count 3
The Heightened Reporting Requirements for Foreign Financial Accounts Deny U.S. Citizens Living Abroad the Equal Protection of the Laws

124. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

125. Under section 706 of the Administrative Procedure Act ("APA"), a court must

"hold unlawful and set aside agency action . . . found to be – . . . (B) contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706.

126. The Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." U.S. Const. amend. V. The Due Process Clause of the Fifth Amendment includes a guarantee of equal protection equivalent to that expressly provided for under the Equal Protection Clause of the Fourteenth Amendment. "An equal protection claim against the federal government is analyzed under the Due Process Clause of the Fifth Amendment." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 217 (1995); *United States v. Ovalle*, 136 F.3d 1092, 1095 (6th Cir. 1998). Thus, the federal government may not "deny to any person within its jurisdiction the equal protection of the laws," U.S. Const. amend. XIV, § 1.

127. The only financial information reported to the IRS about domestic accounts is the amount of interest paid to the accounts during a calendar year, 26 U.S.C. §§ 6049(a), (b); 26 C.F.R. §§ 1.6049-4(a)(1), 1.6049-4T(b)(1). For a foreign account, the information reported to the IRS includes not only the interest paid to the account, 26 USC § 1471(c)(1)(C); 26 C.F.R. §§ 1.1471-4(d)(3)(ii), -4(d)(4)(iv); Canadian IGA, art. 2, § 2(a)(4); Czech IGA, art. 2, § 2(a)(4); Israeli IGA, art. 2, § 2(a)(4); Swiss IGA, arts. 3, 5, but also the amount of any income, gain, loss, deduction, or credit recognized on the account, 26 C.F.R. § 1.6038D-4(a)(8), whether the account was opened or closed during the year, *id.* § 1.6038D-4(a)(6), and the balance of the account, 26 USC §§ 1471(c)(1)(C), 6038D(c)(4); 26 CFR §§ 1.1471-4(d)(3)(ii), 1.6038D-4(a)(5); Canadian IGA, art. 2, § 2(a)(6); Czech IGA, art. 2, § 2(a)(6); Israeli IGA, art. 2, § 2(a)(6); Swiss IGA, arts. 3, 5; FinCEN, BSA Electronic Filing Requirements For Report of Foreign Bank and Financial

Accounts (FinCEN Form 114) 15 (June 2014), http://www.fincen.gov/forms/files/ FBAR%20Line%20Item%20Filing%20Instructions.pdf. Comparable information is not required to be disclosed regarding domestic accounts of U.S. citizens.

128. The result is that U.S. citizens living in a foreign country are treated differently than U.S. citizens living in the United States.

129. The federal government has no legitimate interest in knowing the amount of any income, gain, loss, deduction, or credit recognized on a foreign account, whether a foreign account was opened or closed during the year, or the balance of a foreign account. The fact that the local bank accounts of citizens living abroad are not held in the United States bears no rational relationship to any legitimate state interest the federal government might have in prying into the private affairs of citizens living abroad.

130. Accordingly, 26 U.S.C. §§ 1471(c)(1)(C), 6038D(c)(4), 26 C.F.R. §§ 1.1471-4(d)(3)(ii), 1.6038D-4(a)(5), 1.6038D-4(a)(6), 1.6038D-4(a)(8), Canadian IGA, art. 2, § 2(a)(6); Czech IGA, art. 2, § 2(a)(6); Israeli IGA, art. 2, § 2(a)(6); Swiss IGA, arts. 3, 5; and the FBAR account-balance reporting requirement, FinCEN, BSA Electronic Filing Requirements For Report of Foreign Bank and Financial Accounts (FinCEN Form 114) 15 (June 2014), http://www.fincen.gov/forms/files/ FBAR%20Line%20Item%20Filing%20Instructions.pdf, are unconstitutional, and Defendants should be enjoined from enforcing them.

Count 4
The FATCA FFI Penalty is Unconstitutional under the Excessive Fines Clause

131. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

132. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

133. The Excessive Fines Clause is not limited only to fines that are criminal in nature but extends to civil fines as well. *Austin v. United States*, 509 U.S. 602, 610 (1993). A fine is subject to the Excessive Fines Clause if one of the purposes of the fine is punishment. *Id.*; *United States v. Bajakajian*, 524 U.S. 321, 328 (1998). Fines calibrated for retributive or deterrent purposes are considered to be for the purpose of punishment. *Austin*, 509 U.S. at 610.

134. To withstand constitutionality, fines governed by the Excessive Fines Clause must not be "excessive." U.S. Const. amend. VIII. The "touchstone" of the excessiveness analysis is "principle of proportionality," requiring a comparison of the amount of the fine and the gravity of offense. *Bajakajian*, 524 U.S. at 334. A fine violates the Eighth Amendment when the fine is grossly disproportional to the gravity of the offense. *Id.*.

135. The Supreme Court has identified three "general criteria" to guide the determination of whether a fine is grossly disproportionate: (1) "the degree the defendant's reprehensibility or culpability"; (2) "the relationship between the penalty and the harm to the victim caused by the defendant's actions"; and (3) "the sanctions imposed in other cases for comparable misconduct." *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 434–35 (2001).

136. Under FATCA, payments from U.S. sources to foreign financial institutions not compliant with FATCA are subject to a 30% "tax" (hereinafter the FATCA "FFI Penalty"). 26 U.S.C. § 1471(a); 26 C.F.R. § 1.1471-2T(a)(1). This penalty can be applied to any financial institution anywhere in the world if an institution fails to comply with FATCA.

137. Without the FFI Penalty, foreign financial institutions likely would not comply with FATCA and Plaintiffs' private financial information would not be disclosed to the United States government. The penalty leaves foreign financial institutions no meaningful alternative but to implement costly compliance systems and comply with FATCA.

138. The FFI Penalty is intended as punishment and is therefore subject to the Excessive Fines Clause. *Austin*, 509 U.S. at 610. The penalty is used as a hammer to coerce compliance by foreign financial institutions everywhere in the world, whether or not they fall within the regulatory jurisdiction of the United States.

139. The FFI Penalty is grossly disproportional to the gravity of the offense it seeks to punish and is therefore unconstitutional. *Bajakajian*, 524 U.S. at 334.

140. Accordingly, 26 U.S.C. § 1471(a) and 26 C.F.R. § 1.1471-2T(a)(1) should be declared unconstitutional, and Defendants should be enjoined from enforcing them.

Count 5
The FATCA Passthrough Penalty is Unconstitutional under the Excessive Fines Clause

141. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

142. FATCA and the IGAs require foreign financial institutions to "deduct and withhold a tax equal to 30 percent of" any payments made to recalcitrant account holders (hereinafter the FATCA "Passthrough Penalty"). 26 U.S.C. § 1471(b)(1)(D); 26 C.F.R. §§ 1.1471-4(a)(1), 1.1471-4T(b)(1); Canadian IGA, art. 4, § 2; Czech IGA, art. 4, § 2; Israeli IGA, art. 4, § 2; Swiss IGA, art. 3. Recalcitrant account holders are persons who fail to provide (a) information sufficient to determine whether the account is a United States account to the foreign financial institution

holding their account, (b) their name, address, or TIN to the foreign financial institution holding the account, or (c) who fails to provide waiver of a foreign law that would prevent the foreign financial institution from reporting the information to the IRS under FATCA. *Id.* § 1471(d)(6).

143. The Passthrough Penalty is designed to punish and is therefore subject to the Excessive Fines Clause. *Austin*, 509 U.S. at 610.

144. The Passthrough Penalty is grossly disproportionate to the gravity of the offense and is therefore unconstitutional. *Bajakajian*, 524 U.S. at 334.

145. Accordingly, 26 U.S.C. § 1471(b)(1)(D); 26 C.F.R. §§ 1.1471-4(a)(1), 1.1471-4T(b)(1); and Canadian IGA, art. 4, § 2; Czech IGA, art. 4, § 2; Israeli IGA, art. 4, § 2; Swiss IGA, art. 3. should be declared unconstitutional, and Defendants should be enjoined from enforcing them.

Count 6
The FBAR Willfullness Penalty is Unconstitutional under the Excessive Fines Clause

146. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

147. Section 5321 of the United States Code imposes a maximum penalty of $100,000 or 50% of the balance of the account at the time of the violation, whichever is greater, for failures to file an FBAR as required by section 5314 (hereinafter the FBAR "Willfulness Penalty"). 31 U.S.C. § 5321(b)(5)(C)(i).

148. The Willfulness Penalty is designed to punish and is therefore subject to the Excessive Fines Clause. *Austin*, 509 U.S. at 610.

149. The Willfulness Penalty is grossly disproportionate to the gravity of the offense

and is therefore unconstitutional. *Bajakajian*, 524 U.S. at 334.

150. Accordingly, 31 U.S.C. § 5321(a)(5)(C) should be declared unconstitutional, and Defendants should be enjoined from enforcing them.

Count 7
FATCA's Information Reporting Requirements are Unconstitutional under the Fourth Amendment

151. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

152. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

153. The Amendment is violated in where "the Government, through 'unreviewed executive discretion,' [is permitted to make] a wide-ranging inquiry that unnecessarily 'touch(es) upon intimate areas of an individual's personal affairs.'" *U.S. v. Miller*, 425 U.S. 435, 444 n.6 (1976) (quoting *California Bankers Assn. v. Shultz*, 416 U.S. 21, at 78-79 (1974) (Powell, J., concurring)). Such indiscriminate searches may only may only be conducted, at a minimum, after some "invocation of the judicial process" because "the potential for abuse is particularly acute." *California Bankers Assn.*, 416 U.S. at 79 (Powell, J., concurring); *see also*, *Miller* 425 U.S. at 444 n.6 (distinguishing situation where "the Government has exercised its powers through narrowly directed subpoenas Duces tecum subject to the legal restraints attendant to such process"); *Los Angeles v. Patel*, No. 13-1175, 576 U.S. ___, slip op. at 9–10 (2015) (holding that, for administrative searches, "the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker.").

154. FATCA requires foreign financial institutions to report a broad range of information about the accounts of United States account holders to the United States government, including:

(a) the name, address, and TIN of the account holder;

(b) the account number;

C. the average calendar year or year-end balance or value of the account;

D. the aggregate gross amount of interest paid or credited to the account during the year; and

E. the aggregate gross amount of all income paid or credited to an account for the calendar year less any interest, dividends, and gross proceeds.

26 U.S.C. § 1471(c)(1); 26 C.F.R. § 1.1471-4(d)(3)(ii); IRS, Instructions for Form 8966 at 10, http://www.irs.gov/pub/irs-pdf/i8966.pdf.

155. FATCA makes no provision for judicial oversight of the searches of the private financial records of American citizens held by foreign financial institutions in violation of the Fourth Amendment.

156. Accordingly, FATCA's information reporting provisions—26 U.S.C. § 1471(c)(1); 26 C.F.R. § 1.1471-4(d); and the FATCA aggregate gross income reporting requirement of Form 8966, IRS, Instructions for Form 8966 at 10, http://www.irs.gov/pub/ irs-pdf/i8966.pdf—should be declared unconstitutional, and Defendants should be enjoined from enforcing them.

Count 8
The IGAs' Information Reporting Requirements are Unconstitutional under the Fourth Amendment

157. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

158. Under section 706 of the Administrative Procedure Act ("APA"), a court must "hold unlawful and set aside agency action . . . found to be – . . . (B) contrary to constitutional right, power, privilege, or immunity [and] . . . (D) without observance of procedure required by law." 5 U.S.C. § 706.

159. The IGAs require foreign financial institutions and their governments to report a broad range of information about the accounts of United States account holders to the United States government, including:

(a) the name, address, and U.S. TIN of each U.S. account holder;

(b) the account number of each U.S. account holder;

(c) the name and identifying number of the foreign financial institution maintaining the account;

(d) the calendar year-end balance or value of the account; and

(e) the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

Canadian IGA, art. 2, § 2; Czech IGA, art. 2, § 2; Israeli IGA, art. 2, § 2; Swiss IGA, arts. 3, 5.

160. The IGAs make no provision for judicial oversight of the searches of the private financial records of American citizens held by foreign financial institutions in violation of the Fourth Amendment.

161. Accordingly, the information reporting provisions of the IGAs—Canadian IGA, art. 2; Czech IGA, art. 2; Israeli IGA, art. 2; Swiss IGA, arts. 3, 5—should be declared unconstitutional, and Defendants should be enjoined from enforcing them.

Prayer for Relief

162. Plaintiffs ask this Court to declare unconstitutional and enjoin Defendants from

enforcing the following:

A. Agreement Between the Government of the United States of America and the Government of Canada to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital, U.S.-Can., Feb. 5, 2014, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Canada-2-5-2014.pdf (hereinafter "Canadian IGA");

B. Canadian IGA, art. 2;

C. Canadian IGA, art. 2, § 2(a)(6);

D. Canadian IGA, art. 4, § 2;

E. Agreement between the United States of America and the Czech Republic to Improve International Tax Compliance and with Respect to the United States Information and Reporting Provisions Commonly Known as the Foreign Account Tax Compliance Act, U.S.-Czech Rep., Aug. 4, 2014, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Czech-Republic-8-4-2-14.pdf (hereinafter "Czech IGA");

F. Czech IGA, art. 2;

G. Czech IGA, art. 2, § 2(a)(6);

H. Czech IGA, art. 4, § 2;

I. Agreement between the Government of the United States of America and the Government of the State of Israel to Improve International Tax Compliance and to Implement FATCA, U.S.-Isr., Jun. 30, 2014, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Israel-6-30-2014.pdf (hereinafter "Israeli IGA");

J. Israeli IGA, art. 2;

K. Israeli IGA, art. 2, § 2(a)(6);

L. Israeli IGA, art. 4, § 2;

M. Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, U.S.-Switz., Feb. 14, 2013, available at http://www.treasury.gov/resource-center/tax-policy/treaties/

Documents/FATCA-Agreement-Switzerland-2-14-2013.pdf (hereinafter "Swiss IGA");

N. Swiss IGA, arts. 3, 5;

O. 26 U.S.C. §§ 1471(a), 1471(b)(1)(D), 1471(c)(1), 1471(c)(1)(C);

P. 26 U.S.C. § 6038D(c)(4);

Q. 31 U.S.C. § 5321(a)(5)(C);

R. 26 C.F.R. §§ 1.1471-2T(a)(1);

S. 26 C.F.R. §§ 1.1471-4(a)(1), 1.1471-4(d), 1.1471-4(d)(3)(ii);

T. 26 C.F.R. §§ 1.1471-4T(b)(1);

U. 26 C.F.R. §§ 1.6038D-4(a)(5), 1.6038D-4(a)(6), 1.6038D-4(a)(8);

V. the FATCA aggregate gross income reporting requirement of Form 8966, IRS, Instructions for Form 8966 at 10, http://www.irs.gov/pub/irs-pdf/i8966.pdf; and

W. the FBAR account-balance reporting requirement articulated at FinCEN, BSA Electronic Filing Requirements For Report of Foreign Bank and Financial Accounts (FinCEN Form 114) 15 (June 2014), http://www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf.

163. Grant any and all other relief this Court deems just and equitable.

Dated: July 14, 2015

Respectfully Submitted,

s/ Joseph C. Krella

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Attorney for Plaintiffs

Verification

I, Stephen Kish, declare as follows:

1. I am a Plaintiff in the present case.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Injunctive Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on June 11, 2015

Stephen Kish

Verification

I, Roger Johnson, declare as follows:

1. I am a Plaintiff in the present case.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Injunctive Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on 12 June 2015.

Roger Johnson

Verification

I, Rand Paul, declare as follows:

1. I am a Plaintiff in the present case.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Injunctive Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on 7-9-2015.

Rand Paul

Rand Paul

Verification

I, Mark Crawford, declare as follows:

1. I am a Plaintiff in the present case.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Injunctive Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on JUNE-12-2015.

Mark Crawford

Verification

I, Marc Zell, declare as follows:

1. I am a Plaintiff in the present case.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Injunctive Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on 2 July 2015.

Marc Zell

Verification

I, Donna-Lane Nelson, declare as follows:

1. I am a Plaintiff in the present case.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Injunctive Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on 12 June 2015.

Donna-Lane Nelson

Verification

I, Daniel Kuettel, declare as follows:

1. I am a Plaintiff in the present case.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Injunctive Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on 6/13/2015.

Daniel Kuettel

Certificate of Service

I hereby certify that the foregoing document will be served as soon as the summons is available on the following persons by certified mail, return receipt requested:

Loretta Lynch
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s/ Joseph C. Krella