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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 PAUL STANCO, JOSE M. LINARES,
12 MARIA V. LINARES, HENRY M.
13 STRODKA, AND BOZENA M.
14 STRODKA

15 Plaintiffs,

16 vs.

17 INTERNAL REVENUE SERVICE,

18 Defendant.

19 Case No.

20 COMPLAINT

21 Plaintiffs, by their undersigned counsel, bring the following action and allege:

22 **JURISDICTION**

23 1. The Court has jurisdiction over this action under 5 U.S.C.
24 §552(a)(4)(B) and 28 U.S.C. §1331, in which the plaintiffs seek to compel the
25 Internal Revenue Service (IRS) to produce documents required to be produced in
26 response to valid requests made under the Freedom of Information Act, 5 U.S.C.
27 §552 (FOIA).

28 **PARTIES AND VENUE**

1. Plaintiff Paul Stanco is an individual who resides in Folsom,
California, within the jurisdiction of this court.

2. Plaintiffs Jose M. Linares and Maria V. Linares, husband and wife,
are individuals who reside in Sacramento, California, within the jurisdiction of this
court.

1 4. Plaintiffs Henry M. Strodka and Bozena M. Strodka, husband and
2 wife, are individuals who reside in El Dorado Hills, California within the
3 jurisdiction of this court.

4 5. The IRS is an agency of the United States government, within the
5 meaning of 5 U.S.C. §552(f)(1), with headquarters at 1111 Constitution Avenue,
6 NW, Washington, DC 20224. The IRS has possession and control over the records
7 that the plaintiffs seek under the FOIA.

8 6. Venue is proper in the Eastern District of California under 5 U.S.C.
9 §552(a)(4)(B) and 28 U.S.C. §1391(e).

10 **BASIC FOIA FRAMEWORK**

11 6. Except for records that an agency is required to make available for
12 public inspection, the FOIA generally requires federal agencies to “promptly make
13 available” agency records in response to any request that reasonably describes the
14 records, and is made in accordance with the agency’s published rules stating the
15 procedures to be followed. 5 U.S.C. §552(a)(3)(A).

16 7. Records are “agency records” governed by the FOIA if the agency
17 created or obtained them and had possession or control of them when the FOIA
18 request was made. *U.S. Department of Justice v. Tax Analysts*, 492 U.S. 136, 144-
19 145 (1989).

20 8. The FOIA requires an agency to determine within 20 business days
21 after receiving a FOIA request whether to comply with the request. The agency
22 must then immediately notify the requestor of its determination and the reasons for
23 the determination. In the case of an adverse determination, the agency must also
24 notify the requestor of the right to appeal or seek dispute resolution services. 5
25 U.S.C. §552(a)(6)(A)(i).

26 9. In “unusual circumstances” as specified in 5 U.S.C.
27 §552(a)(6)(B)(iii), the agency may extend the time to respond to a FOIA request
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1 for no more than 10 business days, by notifying the requestor in writing, and
2 providing the information listed in 5 U.S.C. §552(a)(6)(B)(i).

3 10. A requestor is deemed to have exhausted his administrative remedies
4 under the FOIA if the agency fails to provide a complete response within the
5 applicable time limits – *i.e.* 20 business days, extended by no more than 10
6 business days. 5 U.S.C. §552(a)(6)(C)(i).

7 **FACTS**

8 **The April 2017 FOIA Requests**

9 11. On April 18, 2017 the plaintiffs submitted, through their authorized
10 representative, the following ten FOIA requests to the IRS:

11 a. Plaintiff Paul Stanco (Stanco) submitted a request for agency
12 records concerning IRS correspondence claiming that he had failed to file
13 information returns allegedly required on Form 8938, as described in detail in the
14 request. (Stanco Form 8938 Request)

15 b. Plaintiff Stanco submitted a request for agency records
16 concerning IRS correspondence claiming (among other things) that he had failed
17 to file information returns allegedly required on Form 5471, as described in detail
18 in the request. (Stanco Form 5471 Request)

19 c. Plaintiff Jose M. Linares (J. Linares) submitted a request for
20 agency records concerning IRS correspondence claiming (among other things) that
21 he had failed to file information returns allegedly required on Form 8938, as
22 described in detail in the request. (J. Linares Form 8938 Request)

23 d. Plaintiff J. Linares submitted a request for agency records
24 concerning IRS correspondence claiming (among other things) that he had failed
25 to file information returns allegedly required on Form 5471, as described in detail
26 in the request. (J. Linares Form 5471 Request)

27 e. Plaintiff Maria V. Linares (M. Linares) submitted a request for
28 agency records concerning IRS correspondence claiming (among other things) that

1 she had failed to file information returns allegedly required on Form 8938, as
2 described in detail in the request. (M. Linares Form 8938 Request)

3 f. Plaintiff M. Linares submitted a request for agency records
4 concerning IRS correspondence claiming (among other things) that she had failed
5 to file information returns allegedly required on Form 5471, as described in detail
6 in the request. (M. Linares Form 5471 Request)

7 g. Plaintiff Henry M. Strodka (H. Strodka) submitted a request for
8 agency records concerning IRS correspondence claiming (among other things) that
9 he had failed to file information returns allegedly required on Form 8938, as
10 described in detail in the request. (H. Strodka Form 8938 Request)

11 h. Plaintiff H. Strodka submitted a request for agency records
12 concerning IRS correspondence claiming (among other things) that he had failed
13 to file information returns allegedly required on Form 5471, as described in detail
14 in the request. (H. Strodka Form 5471 Request)

15 i. Plaintiff Bozena M. Strodka (B. Strodka) submitted a request
16 for agency records concerning IRS correspondence claiming (among other things)
17 that she had failed to file information returns allegedly required on Form 8938, as
18 described in detail in the request. (B. Strodka Form 8938 Request)

19 j. Plaintiff B. Strodka submitted a request for agency records
20 concerning IRS correspondence claiming (among other things) that she had failed
21 to file information returns allegedly required on Form 5471, as described in detail
22 in the request. (B. Strodka Form 5471 Request)

23 12. During May 2017, the IRS sent letters to the plaintiffs, through their
24 representative, responding to each FOIA request as follows:

25 a. As to the Stanco Form 8938 Request, the IRS notified Stanco
26 that it had extended the response date by 10 business days, to May 31, 2017. The
27 IRS also advised him that it would not be able to locate and consider release of the
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1 requested records by May 31, 2017, and was further extending the response date to
2 July 13, 2017, which is beyond the time allowable by the FOIA.

3 b. As to the Stanco Form 5471 Request, the IRS notified Stanco
4 that it had extended the response date by 10 business days, to June 7, 2017. The
5 IRS also advised him that it would not be able to locate and consider release of the
6 requested records by May 31, 2017, and was further extending the response date to
7 July 13, 2017, which is beyond the time allowable by the FOIA.

8 c. As to the J. Linares Form 8938 Request, the IRS notified J.
9 Linares that it had extended the response date by 10 business days, to May 31,
10 2017. The IRS also advised him that it would not be able to locate and consider
11 release of the requested records by May 31, 2017, and was further extending the
12 response date to July 13, 2017, which is beyond the time allowable by the FOIA.

13 d. As to the J. Linares Form 5471 Request, the IRS notified J.
14 Linares that it had extended the response date by 10 business days, to June 7,
15 2017. The IRS also advised him that it would not be able to locate and consider
16 release of the requested records by June 7, 2017, and was further extending the
17 response date to July 13, 2017, which is beyond the time allowable by the FOIA.

18 e. As to the M. Linares Form 8938 Request, the IRS notified M.
19 Linares that it had extended the response date by 10 business days, to May 31,
20 2017. The IRS also advised her that it would not be able to locate and consider
21 release of the requested records by May 31, 2017, and was further extending the
22 response date to July 13, 2017, which is beyond the time allowable by the FOIA.

23 f. As to the M. Linares Form 5471 Request, the IRS notified M.
24 Linares that it had extended the response date by 10 business days, to May 31,
25 2017. The IRS also advised her that it would not be able to locate and consider
26 release of the requested records by May 31, 2017, and was further extending the
27 response date to July 13, 2017, which is beyond the time allowable by the FOIA.
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1 g. As to the H. Strodka Form 8938 Request, the IRS notified H.
2 Strodka that it had extended the response date by 10 business days, to May 31,
3 2017. The IRS also advised him that it would not be able to locate and consider
4 release of the requested records by May 31, 2017, and was further extending the
5 response date to July 13, 2017, which is beyond the time allowable by the FOIA.

6 h. As to the H. Strodka Form 5471 Request, the IRS notified H.
7 Strodka that it had extended the response date by 10 business days, to May 31,
8 2017. The IRS also advised him that it would not be able to locate and consider
9 release of the requested records by May 31, 2017, and was further extending the
10 response date to July 13, 2017, which is beyond the time allowable by the FOIA.

11 i. As to the B. Strodka Form 8938 Request, the IRS notified B.
12 Strodka that it had extended the response date by 10 business days, to May 31,
13 2017. The IRS also advised her that it would not be able to locate and consider
14 release of the requested records by May 31, 2017, and was further extending the
15 response date to July 13, 2017, which is beyond the time allowable by the FOIA.

16 j. As to the B. Strodka Form 5471 Request, the IRS notified B.
17 Strodka that it had extended the response date by 10 business days, to May 31,
18 2017. The IRS also advised her that it would not be able to locate and consider
19 release of the requested records by May 31, 2017, and was further extending the
20 response date to July 13, 2017, which is beyond the time allowable by the FOIA.

21 13. During July 2017, the IRS and the plaintiffs' representative agreed
22 that the IRS would consolidate its responses to the FOIA requests described in
23 paragraph 11, above, as well as to two other FOIA requests submitted by another
24 requester who is not before the court in this case.

25 14. By letter dated July 13, 2017, the IRS again wrote to the plaintiffs'
26 representative, indicating that the IRS still required additional time to obtain the
27 records sought in the Stanco FOIA requests identified in paragraphs 11.a. and b. In
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1 that letter the IRS indicated it would contact the plaintiffs' representative by
2 August 24, 2017, if more time was needed.

3 15. By letter dated August 24, 2017, the IRS again wrote to the plaintiffs'
4 representative, indicating that the IRS required additional time to "separate the
5 files and review the large volume of records" identified in response to the Stanco
6 FOIA requests. In that letter the IRS indicated it would contact the plaintiffs'
7 representative by October 19, if more time was needed.

8 16. By letter dated August 30, 2017, the IRS provided an "interim
9 response" to the Stanco FOIA requests identified in paragraphs 11.a. and b. The
10 letter indicated that the remainder of the Stanco FOIA requests "will be addressed
11 at a later date."

12 17. The IRS's August 30, 2017 interim response indicated that the IRS
13 had located 2,474 pages of records responsive to the requests, that it was
14 producing 1,627 pages, and withholding 91 pages in part and 795 pages in full,
15 citing six specific exemptions in support of its decision to withhold records. With
16 the interim response, the IRS produced a CD containing the records it had decided
17 to release.

18 18. By letters dated September 14 and October 23, 2017, the plaintiffs'
19 representative wrote to the IRS to inquire about the status of the April 2017 FOIA
20 requests submitted on behalf of plaintiffs J. Linares, M. Linares, H. Strodka, and
21 B. Strodka, to which the IRS had not provided any substantive response. The IRS
22 did not respond to those letters.

23 19. By letter dated October 19, 2017, the IRS again wrote to the
24 plaintiffs' representative, indicating that the IRS required additional time to
25 "review the large volume of records" identified in response to Stanco FOIA
26 requests. In that letter the IRS indicated it would contact the plaintiffs'
27 representative by December 13, 2017, if more time was needed.

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1 20. By letter dated November 16, 2017 the IRS provided a final response
2 to all of the April 2017 FOIA requests identified in paragraphs 11.a. through j., as
3 follows:

4 a.-b. Stanco FOIA requests: The IRS repeated what it had said in its
5 interim response dated August 30, 2017, and did not identify any additional
6 responsive records.

7 c.-d. J. Linares FOIA requests: The IRS stated that it had located
8 846 pages of records responsive to the requests, that it was producing 727 pages,
9 and withholding 31 pages in part and 119 pages in full.

10 e.-f. M. Linares FOIA requests: The IRS stated that it had located
11 134 pages of records responsive to the requests, that it was producing 78 pages,
12 and withholding 21 pages in part and 56 pages in full.

13 g.-h.. H. Strodka FOIA requests: The IRS stated that it had located
14 891 pages of records responsive to the requests, that it was producing 688 pages,
15 and withholding 25 pages in part and 203 pages in full.

16 i.-j. B. Strodka FOIA requests: The IRS stated that it had located
17 378 pages of records responsive to the requests, that it was producing 293 pages,
18 and withholding 9 pages in part and 85 pages in full.

19 21. In the letter of October 16, 2017, the IRS listed four exemptions
20 under the FOIA that it was relying on to withhold documents in whole or in part.

21 22. With the final response, the IRS produced a CD containing the
22 additional records it had decided to release.

23 23. In the records produced in part and withheld in part, the IRS indicated
24 the particular FOIA exemption or exemptions upon which it relied to withhold the
25 portions of the records it withheld.

26 24. The IRS has not identified the exemption or exemptions on which it
27 relied to withhold each of the records it withheld in full, nor has the IRS produced
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1 an index of the records withheld in full, listing each record and the FOIA
2 exemption(s) upon which it relied to withhold that record.

3 **The November 2017 FOIA Requests**

4 25. In November 2017, Stanco, J. Linares, and H. Strodka each
5 submitted, through their authorized representative, an additional FOIA request to
6 the IRS, seeking records in 22 identified categories.

7 26. By letters dated December 13, 2017, the IRS wrote to the plaintiffs'
8 representative and extended the time for responding to the November 2017 FOIA
9 requests by 10 business days.

10 27. By letters dated February 15, 2018, the IRS again wrote to the
11 plaintiffs' representative and indicated that the IRS would need more time to
12 obtain the records sought in the November 2017 FOIA requests. In those letters
13 the IRS said it would contact the plaintiffs' representative by March 29, 2018 if it
14 was still unable to complete its responses to those requests.

15 28. By letters dated March 29, 2018, the IRS again wrote to the
16 plaintiffs' representative and indicated that the IRS would need more time to
17 obtain the records sought in the November 2017 FOIA requests. In those letters
18 the IRS said it would contact the plaintiffs' representative by April 26, 2018 if it
19 was still unable to complete its responses to those requests.

20 **The IRS's Failure to Comply with the FOIA**

21 29. The IRS is an agency subject to the FOIA.

22 30. As of the date of this Complaint, the IRS has failed to disclose all of
23 the records requested in the April 2017 FOIA requests.

24 31. As of the date of this Complaint, the IRS has failed to disclose any of
25 the records requested in the November 2017 FOIA requests.

26 32 Because the IRS failed to meet FOIA's statutory deadlines, the
27 plaintiffs are deemed to have exhausted their administrative remedies as to all 13
28 of the FOIA requests at issue here. 5 U.S.C. §552(a)(6)(C)(i).

1 33. The plaintiffs are entitled to recover their reasonable attorney fees
2 and costs incurred to maintain this action. 5 U.S.C. §552(a)(4)(E).

3 **Claims for Relief**

4 **Counts 1 and 2 – Stanco April 2017 FOIA Requests**

5 34. By two letters dated in April 2017, Stanco properly requested agency
6 records from the IRS under the FOIA.

7 35. Under the FOIA Stanco is entitled to the records sought in his April
8 2017 FOIA requests.

9 36. The IRS did not conduct adequate searches for records responsive to
10 Stanco's April 2017 FOIA requests.

11 37. The IRS failed to comply with the statutory deadlines imposed by
12 FOIA for J. Stanco's April 2017 FOIA requests.

13 38. The IRS improperly withheld records sought in the Stanco April 2017
14 FOIA requests, in violation of the FOIA.

15 39. Stanco exhausted his administrative remedies as to the records sought
16 in his April 2017 FOIA requests.

17 **Counts 3 and 4 – J. Linares April 2017 FOIA Requests**

18 40. By two letters dated in April 2017, J. Linares properly requested
19 agency records from the IRS under the FOIA.

20 41. Under the FOIA J. Linares is entitled to the records sought in his
21 April 2017 FOIA requests.

22 42. The IRS did not conduct adequate searches for records responsive to
23 J. Linares' April 2017 FOIA requests.

24 43. The IRS failed to comply with the statutory deadlines imposed by
25 FOIA for J. Linares' April 2017 FOIA requests.

26 44. The IRS improperly withheld records sought in J. Linares' April 2017
27 FOIA requests, in violation of the FOIA.

1 45. J. Linares exhausted his administrative remedies as to the records
2 sought in his April 2017 FOIA requests.

3 **Counts 5 and 6 – M. Linares April 2017 FOIA Requests**

4 46. By two letters dated in April 2017, M. Linares properly requested
5 agency records from the IRS under the FOIA.

6 47. Under the FOIA M. Linares is entitled to the records sought in her
7 April 2017 FOIA requests.

8 48. The IRS did not conduct adequate searches for records responsive to
9 M. Linares' April 2017 FOIA requests.

10 49. The IRS failed to comply with the statutory deadlines imposed by
11 FOIA for M. Linares' April 2017 FOIA request.

12 50. The IRS improperly withheld records sought in M. Linares' April
13 2017 FOIA requests, in violation of the FOIA.

14 51. M. Linares exhausted her administrative remedies as to the records
15 sought in her April 2017 FOIA requests.

16 **Counts 7 and 8 – H. Strodka April 2017 FOIA Requests**

17 52. By two letters dated in April 2017, H. Strodka properly requested
18 agency records from the IRS under the FOIA.

19 53. Under the FOIA H. Strodka is entitled to the records sought in his
20 April 2017 FOIA requests.

21 54. The IRS did not conduct adequate searches for records responsive to
22 H. Strodka's April 2017 FOIA requests.

23 55. The IRS failed to comply with the statutory deadlines imposed by
24 FOIA for H. Strodka's April 2017 FOIA requests.

25 56. The IRS improperly withheld records sought in H. Strodka's April
26 2017 FOIA requests, in violation of the FOIA.

27 57. H. Strodka exhausted his administrative remedies as to the records
28 sought in his April 2017 FOIA requests.

1 **Counts 9 and 10 – B. Strodka April 2017 FOIA Requests**

2 58. By two letters dated in April 2017, B. Strodka properly requested
3 agency records from the IRS under the FOIA.

4 59. Under the FOIA B. Strodka is entitled to the records sought in her
5 April 2017 FOIA requests.

6 60. The IRS did not conduct adequate searches for records responsive to
7 B. Strodka’s April 2017 FOIA requests.

8 61. The IRS failed to comply with the statutory deadlines imposed by
9 FOIA for B. Strodka’s April 2017 FOIA requests.

10 62. The IRS improperly withheld records sought in B. Strodka’s April
11 2017 FOIA requests, in violation of the FOIA.

12 63. B. Strodka exhausted her administrative remedies as to the records
13 sought in her April 2017 FOIA requests.

14 **Count 11 – Stanco November 2017 FOIA Request**

15 64. By letter dated in November 2017, Stanco properly requested agency
16 records from the IRS under the FOIA.

17 65. Under the FOIA Stanco is entitled to the records sought in his
18 November 2017 FOIA request.

19 66. The IRS failed to comply with the statutory deadlines imposed by
20 FOIA for J. Stanco’s November 2017 FOIA request, in that it has failed to provide
21 any substantive response to that request.

22 67. The IRS improperly withheld records sought in the Stanco November
23 2017 FOIA request, in violation of the FOIA.

24 68. Stanco exhausted his administrative remedies as to the records sought
25 in his November 2017 FOIA request.

26 **Count 12 – J. Linares November 2017 FOIA Request**

27 69. By letter dated in November 2017, J. Linares properly requested
28 agency records from the IRS under the FOIA.

1 70. Under the FOIA J. Linares is entitled to the records sought in his
2 November 2017 FOIA request.

3 71. The IRS failed to comply with the statutory deadlines imposed by
4 FOIA for J. Linares' April 2017 FOIA request, in that it has failed to provide any
5 substantive response to that request.

6 72. The IRS improperly withheld records sought in the J. Linares
7 November 2017 FOIA request, in violation of the FOIA.

8 73. J. Linares exhausted his administrative remedies as to the records
9 sought in his November 2017 FOIA request.

10 **Count 13 – H. Strodka November 2017 FOIA Request**

11 74. By letter dated in November 2017, H. Strodka properly requested
12 agency records from the IRS under the FOIA.

13 75. Under the FOIA H. Strodka is entitled to the records sought in his
14 November 2017 FOIA request.

15 76. The IRS failed to comply with the statutory deadlines imposed by
16 FOIA for H. Strodka's November 2017 FOIA request, in that it has failed to
17 provide any substantive response to that request.

18 77. The IRS improperly withheld records sought in the H. Strodka
19 November 2017 FOIA request, in violation of the FOIA.

20 78. H. Strodka exhausted his administrative remedies as to the records
21 sought in his November 2017 FOIA request.

22 **Prayer for Relief**

23 For the reasons alleged in this Complaint, the plaintiffs pray that the Court:

- 24 1. Order the IRS to conduct a reasonable search for all records
25 responsive to the plaintiffs' April and November 2017 FOIA requests;
26 2. Enjoin the IRS from withholding, and order the IRS to produce to the
27 plaintiffs, the records they have sought in their April and November 2017 FOIA
28 requests, under 5 U.S.C. §552(a)(4)(B);

1 3. Award the plaintiffs the reasonable attorney fees and other litigation
2 costs they reasonably incurred to maintain this action, under 5 U.S.C.
3 §552(a)(4)(E); and

4 4. Grant such other relief as is just.

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6 Dated: April 10, 2018

Respectfully submitted,

WILLIAM A. COHAN, P.C.

7 By: /s/ William A. Cohan
8 William A. Cohan, Esq.
9 Attorneys for Plaintiff/Judgment
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