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11 **UNITED STATES DISTRICT COURT**
 12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 13 **WESTERN DIVISION**

14 UNITED STATES OF AMERICA,
 15
 16 Plaintiff,

17 vs.

18 JANE BOYD,
 19
 20 Defendant

Case No. 2:18-cv-00803-MWF-JEM

21 **STATEMENT OF**
 22 **UNCONTROVERTED FACTS AND**
 23 **CONCLUSIONS OF LAW IN**
 24 **SUPPORT OF DEFENDANT’S**
 25 **MOTION FOR SUMMARY**
 26 **JUDGMENT PURSUANT TO**
 27 **LOCAL RULE 56-1**

28 **Hearing Date:** March 11, 2019
Time: 10:00 a.m.
Judge: Hon. Michael W. Fitzgerald
Courtroom: 5A

29 Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule
 30 56-1, Defendant Jane Boyd (“Defendant” or “Ms. Boyd”) hereby submits her
 31 Separate Statement of Uncontroverted Facts and Conclusions of Law in support of
 32 her Motion for Summary Judgment.

Statement of Uncontroverted Facts

Uncontroverted Material Facts	Supporting Evidence
1. During tax year 2010 the Defendant had a financial interest in, signatory authority over, and otherwise controlled fourteen financial accounts in the United Kingdom.	Declaration of Jonathan T. Amitrano, ¶7, Exhibit E, Defendant's Response to Plaintiff's Request for Admissions, Request No. 3.
2. In 2010, Defendant's UK bank accounts had an aggregate balance that exceeded \$10,000.	Complaint to Reduce Federal Penalty Assessment to Judgment, ¶11; Defendant's Answer to Complaint, ¶11.
3. Defendant was required by law to file an FBAR disclosing her financial interest in her fourteen UK bank accounts for 2010, but failed to timely do so.	Complaint to Reduce Federal Penalty Assessment to Judgment, ¶12. Defendant's Answer to Complaint, ¶12; Declaration of Jonathan T. Amitrano, ¶7, Exhibit E, Defendant's Response to Plaintiff's Request for Admissions, Request No. 3 & 15.
4. In 2012 the Defendant applied to the IRS's Offshore Voluntary Disclosure Program and disclosed the U.K. accounts to the IRS.	Declaration of Jonathan T. Amitrano, ¶7, Exhibit E, Defendant's Response to Plaintiff's Request for Admissions, Request No. 16.
5. The IRS Offshore Voluntary Disclosure Program was for taxpayers to voluntarily report previously undisclosed foreign accounts and assets.	Declaration of Jonathan T. Amitrano, ¶7, Exhibit E, Defendant's Response to Plaintiff's Request for Admissions, Request No. 17.
6. On or around October 18, 2012, Defendant submitted to the IRS a delinquent FBAR for tax year 2010.	Declaration of Jonathan T. Amitrano, ¶7, Exhibit E, Defendant's Response to Plaintiff's Request for Admissions, Request No. 18.
7. Defendant's 2010 FBAR reported a total of fourteen foreign financial accounts.	Declaration of Jonathan T. Amitrano, ¶4, Exhibit B, Plaintiff's Response to Defendant's Request for Production of Documents, pages 0310 to 0313.

<p>1 8. On January 21, 2014, IRS Revenue 2 Agent Palladino sampled the 2010 3 FBAR provided by the Defendant and 4 found that the FBAR was substantially correct.</p>	<p>Declaration of Jonathan T. Amitrano, ¶6, Exhibit D, Plaintiff's Response to Defendant's Request for Production of Documents, pages 0247 to 0248.</p>
<p>5 9. During the examination of 6 Defendant's FBAR compliance the IRS 7 determined that Ms. Boyd's lack of FBAR compliance was eligible for level II NW (non-willful) mitigation.</p>	<p>Declaration of Jonathan T. Amitrano, ¶9, Exhibit G, Plaintiff's Response to Defendant's Requests for Admissions, Request No. 8 & 9.</p>
<p>8 10. With respect to Defendant's failure 9 to file a 2010 FBAR, the IRS was 10 authorized to assess civil penalties 11 against the Defendant no later than June 30, 2017.</p>	<p>Declaration of Jonathan T. Amitrano, ¶7, Exhibit E, Defendant's Response to Plaintiff's Request for Admissions, Request No. 24.</p>
<p>12 11. On February 3, 2015 the IRS sent a 13 letter to Ms. Boyd proposing a \$47,279 14 FBAR penalty against her for tax year 2010.</p>	<p>Declaration of Jonathan T. Amitrano, ¶3, Exhibit A, Plaintiff's Response to Defendant's Request for Production of Documents, pages 0279 to 0285.</p>
<p>15 12. Attached to the February 3, 2015 16 letter was Form 13348 which outlined the proposed penalty computation.</p>	<p>Declaration of Jonathan T. Amitrano, ¶3, Exhibit A, Plaintiff's Response to Defendant's Request for Production of Documents, pages 0279 to 0285.</p>
<p>17 13. The proposed \$47,279 FBAR 18 penalty for 2010 was computed by 19 taking 10% of the highest account 20 balance for each account for tax year 21 2010, up to a maximum penalty of \$5,000 per account.</p>	<p>Declaration of Jonathan T. Amitrano, ¶3, Exhibit A, Plaintiff's Response to Defendant's Request for Production of Documents, pages 0279 to 0285.</p>
<p>22 14. On June 9, 2016, a delegate of the 23 Secretary of Treasury made a federal 24 FBAR penalty assessment against Defendant for the 2010 calendar year in the amount of \$47,279.00.</p>	<p>Declaration of Jonathan T. Amitrano, ¶7, Exhibit E, Defendant's Response to Plaintiff's Request for Admissions, Request No. 25 & 26.</p>
<p>25 15. The 2010 FBAR penalty assessed 26 against the Defendant was a non- 27 willful FBAR penalty.</p>	<p>Declaration of Jonathan T. Amitrano, ¶9, Exhibit G, Plaintiff's Response to Defendant's Requests for Admissions, Request No. 6.</p>

<p>16. The \$47,279 penalty assessment consists of thirteen (13) separate FBAR penalties for tax year 2010.</p>	<p>Declaration of Jonathan T. Amitrano, ¶9, Exhibit G, Plaintiff’s Response to Defendant’s Requests for Admissions, Request No. 7.</p>
<p>17. Each of the thirteen penalties related to a foreign financial account held by the Defendant which was not timely disclosed on her 2010 FBAR.</p>	<p>Declaration of Jonathan T. Amitrano, ¶9, Exhibit G, Plaintiff’s Response to Defendant’s Requests for Admissions, Request No. 7.</p>
<p>18. In assessing the thirteen separate FBAR penalties against the defendant, the IRS treated each account that was not listed on a timely filed FBAR as a separate non-willful violation.</p>	<p>Declaration of Jonathan T. Amitrano, ¶9, Exhibit G, Plaintiff’s Response to Defendant’s Requests for Admissions, Request No. 8.</p>
<p>19. As of the date of the 2010 FBAR penalty assessment against the Defendant, the IRS Internal Revenue Manual provided that the maximum non-willful level II mitigation penalty was \$5,000 per violation.</p>	<p>Declaration of Jonathan T. Amitrano, ¶9, Exhibit G, Plaintiff’s Response to Defendant’s Requests for Admissions, Request No. 10.</p>
<p>20. While the Defendant held a total of fourteen (14) foreign financial accounts, the IRS only assessed penalties for thirteen (13) of the accounts.</p>	<p>Declaration of Jonathan T. Amitrano, ¶7, Exhibit E, Defendant’s Response to Plaintiff’s Request for Admissions to Plaintiff, Request No. 3 & 28.</p>
<p>21. On January 31, 2018, the Plaintiff filed the present suit against the Defendant.</p>	<p>Complaint to Reduce Federal Penalty Assessment to Judgment.</p>

Proposed Conclusions of Law

<p>1. The failure to file an FBAR for a specific year constitutes a single “violation” of 31 U.S.C. § 5321(a)(5).</p>	<p>31 U.S.C. § 5321(a)(5).</p>
<p>2. The non-willful penalty for failing to file an FBAR for a single year cannot exceed \$10,000, regardless of the number of foreign accounts held by the defendant.</p>	<p>31 U.S.C. § 5321(a)(5).</p>

1 3. The plaintiff is required to comply
2 with its own mitigation guidelines
3 pursuant to the *Accardi* Doctrine, and
4 as such, the penalty in the present
5 matter is limited to \$5,000, prior to any
6 credits for payments made.

Accardi Doctrine.

7 Respectfully submitted this 11th day of February, 2019.

8
9 /s/A. Lavar Taylor (with permission)
10 A. LAVAR TAYLOR

11 /s/Jonathan T. Amitrano
12 JONATHAN T. AMITRANO

13 Attorneys for Defendant,
14 Jane Boyd