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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

ASHVIN DESAI,)

Defendant.)

Case No.

COMPLAINT

1 The plaintiff, United States of America, through its undersigned counsel, complains and
2 alleges the following:

3 **Introduction**

4 1. This civil action is brought by the United States to recover unpaid civil penalties
5 assessed against defendant, Ashvin Desai (“Desai”), for his willful failure to report his interest in
6 certain foreign bank accounts, as required by 31 U.S.C. § 5314 and its implementing regulations
7 (“FBAR penalty”), plus interest, failure to pay penalties and other additional amounts, such as
8 administrative costs, that have accrued and continue to accrue, as provided by law, from the date
9 of assessment until paid.

10 **Authorization for Suit**

11 2. The United States brings this suit under 31 U.S.C. § 3711(g)(4)(C), and in
12 accordance with 31 U.S.C. § 5321(b)(2), at the direction of the Attorney General of the United
13 States and at the request of, and with the authorization of, the Internal Revenue Service (“IRS”),
14 Office of Division Counsel, a delegate of the Secretary of the Treasury of the United States.

15 **Jurisdiction and Venue**

16 3. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1345, and
17 1355(a) because it arises under a federal statute, the United States is the plaintiff, and the action
18 seeks to recover civil penalties assessed under 31 U.S.C. § 5321(a)(5).

19 4. Venue is proper in this judicial district under 28 U.S.C. § 1395(a) because this
20 district is where Desai may be found. Desai resides in San Jose, California.

21 **Intradistrict Assignment**

22 5. Pursuant to Civil L.R. 3-5(b) and 3-2(e), assignment to the San Jose Division is
23 appropriate because Desai is domiciled in Santa Clara County.

**Desai Willfully Failed To Report
His Interest in Certain Foreign Bank Accounts**

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6. Section 5314 of Title 31 of the United States Code (U.S.C.) authorizes the Secretary of the Treasury to require United States citizens or residents (“U.S. persons”) to file reports when they make a transaction or maintain a relationship for any person with a foreign financial agency. See 31 U.S.C. § 5314(a).

7. Under the implementing regulations of the statute, 31 U.S.C. § 5314, “[e]ach United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship” to the IRS “for each year in which such relationship exists . . . [on] a reporting form prescribed under 31 U.S.C. § 5314.” See 31 C.F.R. § 1010.350(a) (formerly, 31 C.F.R. § 103.24(a) (2010)).

8. To fulfill the reporting requirement imposed under 31 U.S.C. § 5314 for the calendar years 2007, 2008 and 2009, a U.S. person who had a financial interest in, or signature or other authority over, a foreign bank, securities, or other financial account was required to report that interest to the IRS by filing a Form TD F 90-22.1, “Report of Foreign Bank and Financial Accounts,” commonly known as an “FBAR,” by June 30 of the year following any calendar year in which the aggregate balance of such account(s) exceeded, at any time during that calendar year, \$10,000. See 31 C.F.R. §§ 1010.306(c) and 1010.350(a) (formerly, 31 C.F.R. §§ 103.24(a) and 103.27(c) (2010)).

9. Desai is a United States citizen.

10. The Hongkong and Shanghai Banking Corporation Limited (“HSBC”) is one of the largest international banks, and maintains offices throughout the world, including India.

1 **11.** During 2007 through 2009, Desai, a manufacturer of medical devices, had a
2 financial interest in, and signature or other authority over, several bank accounts maintained at
3 HSBC India.

4 **12.** During the relevant periods, Desai arranged for the deposit and transfer of funds,
5 in the millions of dollars, to the following accounts that were maintained at HSBC India in his
6 name and/or the names of his family members, and he actively managed and controlled the
7 funds, including, *inter alia*, directing their investment in numerous certificates of deposit that
8 were maintained at HSBC India in his name and/or the names of his family members
9 (collectively, the “HSBC India accounts”):

Accountholder(s)	Account Number
Ashvin Desai Neal Desai	xxx-xx3679
Nila Desai Ami Desai	xxx-xx6895
Neal Desai	xxx-xx9689
Ami Desai	xxx-xx5163

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16 **13.** The aggregate balance of the HSBC India accounts exceeded \$10,000 in each of
17 the calendar years 2007, 2008 and 2009.

18 **14.** On or before June 30, 2008, 2009 and 2010, Desai was required to file an FBAR,
19 reporting his financial interest in, and signature or other authority over, the HSBC India accounts
20 during 2007, 2008 and 2009, respectively.

21 **15.** Desai did not file an FBAR for 2007, 2008 or 2009.
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1 the following amounts for the following calendar years:

<u>Calendar Year</u>	<u>FBAR Penalty Assessments (Excluding Accruals)</u>
2007	\$ 3,881,920.00
2008	7,047,824.00
2009	<u>3,300,000.00</u>
Total FBAR Penalty Assessments (<i>Excluding Accruals</i>)	<u>\$ 14,229,744.00</u>

8 **28.** On June 25, 2014, a delegate of the Secretary of the Treasury gave notice of the
9 FBAR penalty assessments described in paragraph 27, above, to Desai and made demand for
10 their payment.

11 **29.** Although notice of the assessments has been given and demand for their payment
12 has been made, Desai has failed and refused to pay the FBAR penalties assessed against him for
13 2007, 2008 and 2009. As a result, interest and failure to pay penalties have accrued since June
14 25, 2014.

15 **30.** As of May 24, 2016, Desai is indebted to the United States in the amount of
16 \$16,055,439.64 for the civil penalties assessed against him under 31 U.S.C. § 5321(a)(5),
17 including the accrual of interest and failure to pay penalties under 31 U.S.C. § 3717, for the
18 calendar years 2007, 2008 and 2009, plus interest, failure to pay penalties, and other additional
19 amounts, such as administrative costs, that have accrued and continue to accrue, as provided by
20 law, from May 24, 2016 to the date of payment.

21 **31.** The United States is entitled to entry of a judgment against Desai in the amount of
22 \$16,055,439.64, plus interest, failure to pay penalties, and other additional amounts, such as
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1 administrative costs, that have accrued and continue to accrue, as provided by law, from May 24,
2 2016 until paid.

3 **WHEREFORE**, the plaintiff, United States of America, requests the following relief:

- 4 **a.** That this Court enter judgment against the defendant, Ashvin Desai, and in favor
5 of the plaintiff, United States of America, in the amount of \$16,055,439.64 for
6 the civil penalties assessed against him under 31 U.S.C. § 5321(a)(5), including
7 the accrual of interest and failure to pay penalties under 31 U.S.C. § 3717, for
8 the calendar years 2007, 2008 and 2009, plus interest, failure to pay penalties
9 and other additional amounts, such as administrative costs, that have accrued
10 and continue to accrue, as provided by law, from May 24, 2016 until the
11 judgment is paid.
- 12 **b.** That this Court award the United States its costs in this action, and such other
13 and further relief as justice requires.

14 Respectfully submitted this 20th day of June, 2016.

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18 /s/ Lynne M. Murphy
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