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

13 UNITED STATES OF AMERICA,
 14 Plaintiff,
 15 v.
 16 GERALDINE GARDNER,
 17 Defendant.

No. 2:18-cv-03536

COMPLAINT TO REDUCE FBAR
 PENALTY TO JUDGMENT

18
 19 Plaintiff, UNITED STATES OF AMERICA, hereby alleges as follows:

20 **I. JURISDICTION AND VENUE**

21 1. The United States of America (alternatively “United States” or
 22 “government”) brings this action to reduce FBAR penalties assessed against defendant
 23 Geraldine Gardner (“defendant”) to judgment.

24 2. This action is commenced under 31 U.S.C. § 3711(g)(4)(C) at the direction
 25 of the Attorney General of the United States and at the request and with the authorization
 26 of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the
 27 Treasury.

28 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331

1 and 1345.

2 4. Venue is proper in the Central District of California, pursuant to 28 U.S.C.
3 § 1391 because defendant's last known place of residence is within this judicial district.

4 **II. BACKGROUND**

5 **A. THE DEFENDANT**

6 5. Defendant is an individual believed to be residing within the Central
7 District of California. Defendant is made a party to this action because she is the
8 individual against whom the United States seeks to reduce assessed FBAR penalties to
9 judgment.

10 **B. STATUTORY AND REGULATORY PROVISIONS FOR THE FBAR**
11 **PENALTY**

12 6. Section 5314 of Title 31 of the United States Code authorizes the Secretary
13 of the Treasury to require United States citizens and residents to report certain
14 transactions with foreign financial agencies.

15 7. Under the implementing regulations of § 5314, “[e]ach United States person
16 having a financial interest in, or signature or other authority over, a bank, securities, or
17 other financial account in a foreign country shall report such relationship to the
18 commissioner of Internal Revenue for each year in which such relationship exists[.]” 31
19 C.F.R. § 1010.350(a).

20 8. The report must be filed with the IRS on a Report of Foreign Bank and
21 Financial Accounts which is also referred to as an FBAR. The report is due by June 30
22 “of each calendar year with respect to foreign financial accounts exceeding \$10,000
23 maintained during the previous calendar year.” 31 C.F.R. § 1010.306(c).

24 9. For non-willful violations of the reporting requirements mandated by 31
25 U.S.C. § 5314, Congress – through 31 U.S.C. § 5321(a)(5)(C)(i) – authorized a
26 maximum penalty of \$10,000 per violation.

27 10. Under 31 U.S.C. § 5321(b)(2)(A), the government may bring suit to recover
28 the penalty assessed under 31 U.S.C. § 5321(a) at any time before the end of the 2 year

1 period beginning on the date the penalty was assessed.

2 **C. DEFENDANT DID NOT COMPLY WITH THE STATUTORY**
3 **REQUIREMENTS FOR REPORTING HER INTERESTS IN**
4 **FOREIGN BANK ACCOUNTS**

5 11. Defendant is a United States citizen.

6 12. Following the death of her mother in 2007, defendant obtained ownership
7 and control over four foreign bank accounts previously held in her mother's name: 1) a
8 Swiss bank account held with UBS AG with the account number ending #7314 (the
9 "UBS Account"); 2) a Swiss bank account with Graubunder Kantonalbank with the
10 account number ending #8.100 (the "Graubunder Account"); 3) a German bank account
11 with Wiesbänder Volksbank AG with the account number ending #3023 (the
12 "Wiesbänder Account"); and 4) a Swiss bank account with Zurcher Kantonalbank with
13 the account number ending #1780 (the "Zurcher Account").

14 13. During the 2008 calendar year, defendant exercised ownership and control
15 over the abovementioned accounts, and treated the funds held in the accounts as her
16 personal assets.

17 14. On June 19, 2008, defendant closed the UBS account and transferred the
18 majority of the funds held in said account to the Zurcher account.

19 15. During the 2008 calendar year, the high balance of each of the foreign
20 accounts controlled by defendant was as follows: 1) UBS Account - \$655,523; 2)
21 Graubunder Account - \$158,505; 3) Wiesbänder Account - \$35,591; and 4) Zurcher
22 Account - \$529,076.

23 16. On August 14, 2009, defendant opened a bank account in Switzerland with
24 Bank Frey with the account number ending #7769 (the "Bank Frey Account").
25 Approximately two weeks later, defendant closed the Zurcher Account and transferred
26 the majority of the funds held in said account to the Bank Frey Account. On information
27 and belief, defendant subsequently consolidated funds from her remaining foreign
28 accounts into the Bank Frey Account.

1 17. During the 2009 calendar year defendant exercised ownership and control
2 over the Graubunder Account, the Wiesbänder Account, the Zurcher Account, and the
3 Bank Frey Account. Defendant treated the abovementioned accounts as her personal
4 assets.

5 18. During the 2009 calendar year, the high balance of each of the foreign
6 accounts controlled by defendant was as follows: 1) Graubunder Account - \$158,505; 2)
7 Wiesbänder Account - \$34,156; 3) Zurcher Account - \$529,076; and 4) Bank Frey
8 Account - \$741,080.

9 19. During the 2010 and 2011 calendar years, defendant maintained ownership
10 and control over the Bank Frey Account, and treated the funds held in the account as her
11 personal assets.

12 20. During the 2010 and 2011 calendar years, the high balances of the Bank
13 Frey Account were \$819,696 and \$765,532 respectively.

14 21. Defendant did not timely file FBAR forms reporting the existence of her
15 foreign bank accounts for the years 2008, 2009, 2010, or 2011. Additionally, defendant
16 did not disclose any income or loss from her foreign bank accounts, or otherwise
17 disclose the existence of said accounts, on any federal income tax returns filed with the
18 IRS for the years 2008, 2009, 2010, or 2011.

19 22. On January 7, 2013, defendant submitted an application to participate in
20 the IRS Offshore Voluntary Disclosure Program (OVDP) and was initially accepted into
21 the OVDP. As part of the OVDP, defendant was required to, and did file the delinquent
22 FBAR forms for the years 2008 through 2011 reporting her interests in the
23 abovementioned foreign bank accounts.

24 23. Defendant was ultimately removed from the IRS OVDP, and an
25 examination was commenced by the IRS.

26 **III. CLAIM TO REDUCE FBAR PENALTY ASSESSMENTS AGAINST**
27 **DEFENDANT TO JUDGMENT**

28 24. Plaintiff United States of America realleges the allegations contained in

1 paragraphs 1 through 23 above.

2 25. In 2008, defendant maintained at least four foreign financial accounts, the
3 UBS Account, the Graubunder Account, the Wiesbänder Account, and the Zurcher
4 Account, which each had a balance in excess of \$10,000.

5 26. In 2009, defendant similarly maintained at least four foreign financial
6 accounts, the Bank Frey Account, the Graubunder Account, the Wiesbänder Account,
7 and the Zurcher Account, which each had a balance in excess of \$10,000.

8 27. In 2010 and 2011, defendant maintained at least one foreign financial
9 account, the Bank Frey Account, which had a balance in excess of \$10,000.

10 28. Defendant was required by law to file FBAR forms disclosing her financial
11 interests in the UBS Account for the 2008 calendar year, the Graubunder Account,
12 Weisbänder Account, and Zurcher Account for the 2008 and 2009 calendar years, and
13 the Bank Frey Account for the 2009, 2010, and 2011 calendar years.

14 29. Defendant failed to timely disclose her financial interest in the
15 abovementioned foreign financial accounts for the relevant time periods as required by
16 31 U.S.C. § 5314.

17 30. On March 16, 2015, defendant and the Internal Revenue Service executed a
18 stipulation to extend the statute of limitations for assessing FBAR penalties against
19 defendant for the 2008 and 2009 calendar years until December 31, 2016.

20 31. On December 6, 2016, the Internal Revenue Service assessed FBAR
21 penalties against defendant based on her failure to report her interest in foreign financial
22 accounts as required by 31 U.S.C. § 5314 for the following taxable periods and amounts:

Time Period	Amount	Foreign Financial Account
2008	\$10,000	UBS Account
2008	\$10,000	Graubunder Account
2008	\$10,000	Weisbänder Account
2008	\$10,000	Zurcher Account

1	2009	\$10,000	Bank Frey Account
2	2009	\$10,000	Graubunder Account
3	2009	\$10,000	Weisbänder Account
4	2009	\$10,000	Zurcher Account
5	2010	\$10,000	Bank Frey Account
6	2011	\$10,000	Bank Frey Account

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8 32. On the same date the IRS assessed the penalties described in paragraph 31
9 above, the IRS sent defendant notice and demand for payment.

10 33. Despite being issued notice and demand for payment, defendant has made
11 no payments against her outstanding FBAR penalty liabilities for the calendar years
12 2008 through 2011.

13 34. Interest and penalties have accrued on the assessed FBAR penalties as
14 provided by law. As of October 27, 2017, the total outstanding balance, consisting of the
15 subject FBAR penalties, penalties for late payment under 31 U.S.C. § 3717(e)(2), and
16 statutory interest, totaled \$106,232.88.

17 35. This action is brought within the two year limitations period specified in 31
18 U.S.C. § 5321(b)(2)(A).

19 36. The United States is entitled to judgment against defendant in the amount of
20 \$106,232.88 plus all additional statutory accruals including interest and penalties plus
21 costs and expenses.

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1 **IV. PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff prays that the Court:

3 1. Enter a money judgment in favor of the United States and against defendant
4 Geraldine Gardner in the amount of \$106,232.88, plus additional statutory accruals
5 including interest and penalties, plus costs and expenses;

6 2. Grant such other and further relief as the court deems just and proper.

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8 Dated: 4/26/2018

Respectfully submitted,

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10 United States Attorney
11 THOMAS D. COKER
12 Assistant United States Attorney
13 Chief, Tax Division

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15 _____
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