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9 Attorneys for the United States of America

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

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 MONEY SHINDAY and NILA
 SHINDAY,

18 Defendants.
 19

Civil No. 2:18-cv-6891

COMPLAINT TO REDUCE PENALTY
 ASSESSMENTS TO JUDGMENT

20
 21 **COMPLAINT**

22 The United States brings this action to collect unpaid federal penalty assessments
 23 and interest as provided by law and to reduce those assessments to judgment. The
 24 United States complains and alleges on information and belief as follows.

25 **Authorization for Suit**

26 1. This action is brought pursuant to 31 U.S.C. § 3711(g)(4)(C) and in
 27 accordance with 31 U.S.C. § 5321 at the direction of the Attorney General of the United
 28 States and at the request of--and with the authorization of--the Chief Counsel of the

1 Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury of the United
2 States.

3 **Jurisdiction and Venue**

4 2. The district court has jurisdiction over this action under 28 U.S.C. §§ 1331
5 and 1340 because the action arises under the laws of the United States and the United
6 States is the plaintiff.

7 3. Venue properly lies in the Central District of California under 28 U.S.C. §
8 1391(b)(1) because defendants Money Shinday (Mr. Shinday) and Nila Shinday (Mrs.
9 Shinday), husband and wife, reside within the judicial district in Santa Barbara County,
10 California. Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial
11 part of the events giving rise to the United States' claims in this action occurred within
12 the judicial district.

13 **Defendants Failed to Report Foreign Financial Accounts**

14 4. Section 5314 of Title 31 of the United States Code requires United States
15 citizens to report certain transactions and relationships with foreign financial agencies.

16 5. Under Section 5314's implementing regulations, "[e]ach United States
17 person having a foreign interest in, or signature or authority over, a bank, securities, or
18 other financial account in a foreign country shall report such relationship" to the IRS for
19 each year in which that relationship exists. 31 C.F.R. § 1010.350.

20 6. The relationship must be reported to the IRS on Treasury Form TD F 90-
21 22.1, Report of Foreign Bank and Financial Accounts. That form is commonly called an
22 "FBAR." An FBAR is due no later than June 30 "of each calendar year with respect to
23 foreign financial accounts exceeding \$10,000 maintained during the previous calendar
24 year." 31 C.F.R. § 1010.306(c).

25 7. Defendants were naturalized citizens of the United States at all relevant
26 times.

27 8. During 2005 through 2011, and other years, defendants had financial
28 interests in, signature authority over, and/or otherwise controlled financial accounts

1 outside of the United States.

2 9. Defendants had an investment account at UBS AG (UBS), a bank in
3 Switzerland, from 2005 through 2008, among other years. Defendants' UBS account
4 had year-end balances of \$350,019, \$361,819, \$420,893, and \$15,003 in 2005, 2006,
5 2007, and 2008, respectively.

6 10. From 2005 through 2011, defendants had as many as twenty-nine and as
7 few as seven fixed deposit accounts at the State Bank of India (SBI), a bank in India.
8 Defendants' SBI accounts had aggregate year-end balances of \$444,035, \$669,729,
9 \$258,079, \$306,647, \$411,502, \$216,530, and \$362,506 in 2005, 2006, 2007, 2008,
10 2009, 2010, and 2011, respectively.

11 11. During the years 2005 through 2011, defendants' foreign accounts, either
12 individually or collectively, had balances in excess of \$10,000.

13 12. Defendants were required by law to file FBARs reporting their financial
14 interest in their foreign accounts for the years 2005 through 2011, as well as for any
15 other year implicating the FBAR reporting requirements.

16 13. Defendants did not file timely FBARs disclosing their foreign accounts for
17 the years 2005 through 2011.

18 **Willful Failure to File FBARs**

19 14. The United States alleges that defendant Money Shinday's failure to file
20 FBARs was willful.

21 15. The United States alleges that defendant Nila Shinday's failure to file
22 FBARs was non-willful.

23 16. Mr. Shinday opened the UBS account in 1988 with an initial deposit of
24 \$5,000.

25 17. In the 1990s Mr. Shinday transferred the UBS account to Mrs. Shinday. In
26 turn, Mrs. Shinday granted Mr. Shinday power of attorney pursuant to which Mr.
27 Shinday retained control of the account.

28 18. Renzo M. Gadola was a Director of Private Banking, North America, at

1 UBS's Zurich, Switzerland, branch during the years in which defendants held the UBS
2 account. Mr. Shinday provided instructions to Mr. Gadola regarding defendants'
3 investments in the UBS account and asked him to arrange transfers into or out of the
4 account. It was Mr. Gadola's practice to prepare memoranda that memorialized Mr.
5 Shinday's instructions regarding defendants' UBS account.

6 19. Before 2002 Mr. Shinday used the UBS account to purchase and sell
7 securities and currencies and provided UBS detailed instructions for these trades. In
8 May of 2000, for instance, Mr. Shinday called Mr. Gadola and instructed him to
9 withdraw half of defendants' U.S. positions; to invest a portion of the proceeds in British
10 stocks; and to facilitate a \$50,000 cash withdrawal by a relative in London.

11 20. During most years in which they held the UBS account, defendants visited
12 UBS's Zurich branch while traveling through Switzerland. During these visits,
13 defendants frequently withdrew cash--often \$50,000 or so--from their UBS account.

14 21. On many occasions, defendants directed UBS to transfer money from the
15 UBS account to their relatives. Frequently, defendants directed UBS to deliver cash--
16 usually \$50,000 or \$100,000--to T.J.P., a relative in London. On at least one occasion,
17 defendants expressed concern to UBS that these transactions would be reported to taxing
18 authorities. In 2002, for instance, a memorandum prepared by Mr. Gadola indicates that
19 defendants asked whether Mrs. Shinday's brother, a citizen of the United Kingdom,
20 would be able to withdraw \$50,000 of defendant's funds from UBS's London branch
21 without the transaction being reported.

22 22. In early 2002 UBS informed defendants of changes in U.S. tax law that
23 would require UBS to report defendants' securities transactions to U.S. tax authorities,
24 or, in the absence of reporting, withhold and pay over to the IRS taxes on the proceeds
25 from the transactions. In light of the changes, UBS suggested--and defendants agreed--
26 that UBS would no longer accept defendants' instructions for the purchase and sale of
27 securities. Instead, UBS would provide only "discretionary asset management" services
28 pursuant to which it would manage defendants' holdings according to an investment

1 profile selected by defendants. Additionally, UBS would retain all mail relating to
2 defendants' account at its Zurich branch. Defendants retrieved the mail during their trips
3 through Zurich. On at least two occasions, in 2004 and 2008, Mrs. Shinday authorized
4 UBS to destroy whatever mail defendants did not take with them when they departed
5 Switzerland.

6 23. In 2008 UBS advised defendants of new laws that would apply to U.S.
7 citizens with foreign accounts and recommended that defendants close their UBS
8 account. Soon after, defendants began withdrawing the funds in their UBS account.
9 They transferred most of the funds in the UBS account to their SBI accounts in 2008 and
10 transferred the remaining balance to SBI in 2009. Defendants requested that UBS send
11 all documentation relating to the closure of their account to T.J.P.

12 24. Defendants filed joint federal income tax returns (Forms 1040) for the 2005
13 through 2011 tax years. They hired J.B., a certified public accountant, to file those
14 returns.

15 25. Defendants prepared their 2005 through 2010 returns as follows. Mr.
16 Shinday prepared an initial draft of each return, including attached schedules. He then
17 sent the draft to J.B., who finalized the returns for filing and, if necessary, asked
18 defendants for additional information.

19 26. The draft returns prepared by Mr. Shinday for 2005 through 2010 included
20 a Schedule B, Interest and Dividends. Schedule B required defendants to report any
21 interest or dividends, whether domestic or foreign, that they received during the tax year.
22 Defendants did not report any of the interest or dividends associated with defendants'
23 UBS or SBI accounts on the Schedule Bs for 2005 through 2010. They did, however,
24 report on the Schedule Bs domestic and foreign interest and dividends that they received
25 during those years.

26 27. The Schedule Bs also asked defendants to state whether they had a financial
27 interest in or signature authority over a financial account located in a foreign country.
28 Defendants checked a box on Schedule B of their 2005, 2006, 2007, 2008, 2009, and

1 2010 tax returns indicating that they did not have ownership or signature authority over
2 foreign accounts for those years. Those returns were signed by defendants under penalty
3 of perjury.

4 28. When preparing defendants' 2005 through 2010 tax returns, J.B. asked
5 defendants whether they engaged in any foreign activities. Defendants reported certain
6 investments they had in Canada but did not disclose to J.B. their UBS or SBI accounts.

7 29. Defendants disclosed the existence of the SBI accounts on their 2011 tax
8 return. They did not, however, file a timely FBAR relating to that year.

9 30. The IRS conducted an examination of defendants' 2005 through 2011
10 income tax returns. During the audit, when the IRS asked defendants whether they had
11 any foreign activities or accounts, they disclosed only two Canadian investment
12 accounts. Defendants later admitted during the audit that they owned the UBS and SBI
13 accounts.

14 **Reduction of Assessment to Judgment**

15 31. On or around August 23, 2016, the IRS assessed non-willful FBAR
16 penalties against defendant Nila Shinday for each of the 2007, 2008, 2009, 2010, and
17 2011 tax years. Each penalty was in the amount of \$10,000. Together, the penalties
18 totaled \$50,000. The penalties were assessed with respect to defendants' interests in the
19 UBS and SBI accounts. True copies of the official records of assessment, Forms 13448,
20 Penalty Assessment Certification, relating to Mrs. Shinday's FBAR penalties are
21 attached as Exhibit 1.

22 32. On or around August 23, 2016, the IRS assessed willful FBAR penalties
23 against defendant Money Shinday in the aggregate amount of \$257,888 for the 2007,
24 2008, 2009, 2010, and 2011 years. The penalties were assessed with respect to
25 defendants' interests in the UBS and SBI accounts. The penalty assessments represent
26 25% of \$1,031,548, the combined 2006 year-end balance of in defendants' UBS and SBI
27 accounts. The penalties were divided equally between the 2007 through 2011 years.
28 True copies of the Forms 13448 relating to Mr. Shinday's FBAR penalties are attached

1 as Exhibit 2.

2 33. Under 31 U.S.C. § 5321(b)(1), the IRS is required to assess FBAR penalties
3 no later than six years after the date of the violation. The last day the IRS could assess
4 defendants' 2011 FBAR penalties was June 30, 2018. The last day the IRS could assess
5 defendants' 2010 FBAR penalties was June 30, 2017. And defendants signed
6 agreements extending the date for the IRS to assess their FBAR penalties for 2005, 2006,
7 2007, 2008, and 2009 until June 30, 2017. Accordingly, each assessment underlying this
8 case was timely.

9 34. On or around August 23, 2016, notice and demand for payment of the
10 FBAR penalties was sent to defendants at their last known address.

11 35. Interest, as provided by law, has accrued on the penalties assessed against
12 each defendant and remains unpaid. Late payment penalties have also accrued. As of
13 June 29, 2017, the unpaid balance owed to the United States by defendant Money
14 Shinday for the FBAR penalties, including late payment penalties and interest, was
15 \$269,839. As of June 29, 2017, the unpaid balance owed to the United States by
16 defendant Nila Shinday for the FBAR penalties, including late payment penalties and
17 interest, was \$52,973.

18 36. The United States is entitled to a judgment against defendant Money
19 Shinday in the amount of \$269,839 plus additional accrued penalties, interest, and fees
20 as provided by law.

21 37. The United States is entitled to a judgment against defendant Nila Shinday
22 in the amount of \$52,973 plus additional accrued penalties, interest, and fees as provided
23 by law.

24 WHEREFORE, the United States requests that the Court:

25 A. Enter judgment against defendant Money Shinday and in favor of the
26 United States in the amount of \$269,839, plus additional accrued penalties, interest, and
27 fees as provided by law.

28 B. Enter judgment against defendant Nila Shinday and in favor of the United

1 States in the amount of \$52,973, plus additional accrued penalties, interest, and fees as
2 provided by law.

3 C. Award the United States such other relief as justice requires.
4

5 Dated: August 10, 2018

Respectfully submitted,

6 NICOLA T. HANNA
7 United States Attorney
8 THOMAS D. COKER
9 Assistant United States Attorney
10 Chief, Tax Division

11 /s/ John D. Ellis

JOHN D. ELLIS
Assistant United States Attorney

12 /s/ Robert F. Conte

13 ROBERT F. CONTE
14 Assistant United States Attorney

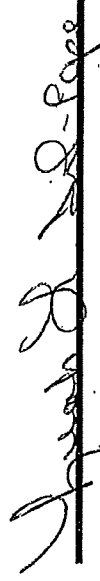
15 Attorneys for the United States of America
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Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: NILA SHINDAY SSN/EIN: [REDACTED] Calendar Year: 12/31/2007
Proposed Penalty: Foreign Account Number(s): [REDACTED] Foreign Bank: UBS; STATE BANK OF INDIA

2. Non-Willful Failure to meet recordkeeping requirements - 31	\$10,000.00	\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.


CTR OPERATIONS DEPARTMENT MANAGER Tuesday, August 23, 2016

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: NILA SHINDAY
 Proposed Penalty: SSN/EIN: [REDACTED] Calendar Year: 12/31/2008
 Foreign Account Number(s): [REDACTED] Foreign Bank: UBS; STATE BANK OF INDIA
 2. Non-Willful Failure to meet recordkeeping requirements - 31 [REDACTED] 1 726; MULTIPL

\$10,000.00
 \$0.00
 \$0.00
 \$0.00
 \$0.00

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.



CTR OPERATIONS DEPARTMENT MANAGER

Tuesday, August 23, 2016

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: NILA SHINDAY
Proposed Penalty: SSN/EIN: [REDACTED] Calendar Year: 12/31/2009
Foreign Account Number(s): Foreign Bank: STATE BANK OF INDIA

Foreign Account Number(s)	Foreign Bank	Penalty
MULTIPLE ACCOUNTS	STATE BANK OF INDIA	\$10,000.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00

2. Non-Willful Failure to meet recordkeeping requirements - 31

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.


CTR OPERATIONS DEPARTMENT MANAGER

Tuesday, August 23, 2016

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: NILA SHINDAY
Proposed Penalty: SSN/EIN: [REDACTED] Calendar Year: 12/31/2010
Foreign Account Number(s): Foreign Bank: STATE BANK OF INDIA

2. Non-Willful Failure to meet recordkeeping requirements - 31	\$10,000.00	MULTIPLE ACCOUNTS
	\$0.00	
	\$0.00	
	\$0.00	
	\$0.00	
	\$0.00	

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.



 Tuesday, August 23, 2016
 CTR OPERATIONS DEPARTMENT MANAGER

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: NILA SHINDAY
Proposed Penalty: SSN/EIN: [REDACTED] Calendar Year: 12/31/2011
Foreign Account Number(s): Foreign Bank: STATE BANK OF INDIA

Foreign Account Number(s)	Penalty Amount
MULTIPLE ACCOUNTS	\$10,000.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

2. Non-Willful Failure to meet recordkeeping requirements - 31

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.


CTR OPERATIONS DEPARTMENT MANAGER
Tuesday, August 23, 2016

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: MONEY S SHINDAY SSN/EIN: [REDACTED] Calendar Year: 12/31/2007
 Proposed Penalty: Foreign Account Number(s): [REDACTED] Foreign Bank: UBS; STATE BANK OF INDIA

I. Willful Failure to Report - 31 USC 5321 (a)(5) \$51,578.00

\$0.00

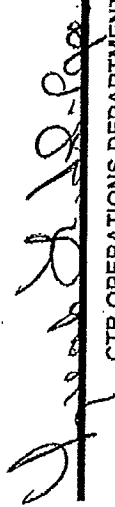
\$0.00

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\$0.00

\$0.00

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.



CTR OPERATIONS DEPARTMENT MANAGER

Tuesday, August 23, 2016

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: MONEY S SHINDAY SSN/EIN: [REDACTED] Calendar Year: 12/31/2008
Proposed Penalty: Foreign Account Number(s): [REDACTED] Foreign Bank: UBS; STATE BANK OF INDIA

1. Willful Failure to Report - 31 USC 5321 (a)(5) \$51,578.00

\$0.00

\$0.00

\$0.00

\$0.00

\$0.00

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.



CTR OPERATIONS DEPARTMENT MANAGER


Tuesday, August 23, 2016

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: MONEY S SHINDAY SSN/EIN: [REDACTED] Calendar Year: 12/31/2009
Proposed Penalty: Foreign Account Number(s): STATE BANK OF INDIA

I. Willful Failure to Report - 31 USC 5321 (a)(5)	Amount
MULTIPLE ACCOUNTS	\$51,578.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.



CTR OPERATIONS DEPARTMENT MANAGER
Tuesday, August 23, 2016

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: MONEY S SHINDAY SSN/EIN: [REDACTED] Calendar Year: 12/31/2010
Proposed Penalty: Foreign Account Number(s): Foreign Bank: STATE BANK OF INDIA

1. Willful Failure to Report - 31 USC 5321 (a)(5)	Amount
\$51,577.00	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.



 CTR OPERATIONS DEPARTMENT MANAGER

Tuesday, August 23, 2016

Form 13448 Penalty Assessment Certification (Title 31 "FBAR")

Case Name: MONEY S SHINDAY · SSN/EIN: [REDACTED] Calendar Year: 12/31/2011
Proposed Penalty: Foreign Account Number(s): MULTIPLE ACCOUNTS Foreign Bank: STATE BANK OF INDIA

1. Willful Failure to Report - 31 USC 5321 (a)(5)	Amount
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

I certify that the penalty of the above classes and amounts, hereby assessed, are specified in supporting records, subject to such correction as subsequent inquiries and determinations in respect hereto may indicate to be proper.


CTR OPERATIONS DEPARTMENT, MANAGER

Tuesday, August 23, 2016