

## CIVIL COVER SHEET

22CV682 AJB KSC

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

ALBERTO AROESTE and ESTELA AROESTE

(b) County of Residence of First Listed Plaintiff Mexico City, Mexico  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Procopio, Cory, Hargreaves & Savitch, LLP  
525 B Street, Suite 2200  
San Diego, CA 92101  
619-238-1900

**DEFENDANTS**

THE U.S.A., DEPT. OF THE TREASURY, IRS

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530-01

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation-Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1346(a)(2) and 28 U.S.C. § 1355(a)

Brief description of cause:

Suit for refund of amounts of Foreign Bank and Financial Accounts (FBAR) penalties illegally exacted

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**  
6,000.00

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE May 13, 2022

SIGNATURE OF ATTORNEY OF RECORD s/ Edward C. Walton

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

American LegalNet, Inc.  
www.FormsWorkFlow.com



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

1 Edward C. Walton (Bar No. 78490)  
E-mail: ed.walton@procopio.com  
2 Patrick W. Martin (Bar No. 163932)  
E-mail: patrick.martin@procopio.com  
3 Laurence R. Wrathall (Bar No. 279770)  
E-mail: reza.wrathall@procopio.com  
4 Jose Anuar Estefan Davila (Bar No. 330350)  
E-mail: anuar.estefan@procopio.com  
5 PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP  
6 525 B Street, Suite 2200  
San Diego, CA 92101  
7 Telephone: 619.238.1900  
Facsimile: 619.235.0398

8 Attorneys for Plaintiffs Alberto Aroeste and  
9 Estela Aroeste

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

13 ALBERTO AROESTE and  
ESTELA AROESTE,

14 Plaintiffs,

15 v.

16 THE UNITED STATES OF AMERICA,  
17 DEPARTMENT OF THE TREASURY,  
18 INTERNAL REVENUE SERVICE,

19 Defendant.

Case No. **'22CV682 AJB KSC**

**COMPLAINT FOR ILLEGAL  
EXACTION**

20  
21 **CIVIL ACTION COMPLAINT**

22 Plaintiffs, Alberto Aroeste and Estela Aroeste, by and through Plaintiffs'  
23 attorneys, hereby bring this civil action complaint against the United States of  
24 America, Department of the Treasury, Internal Revenue Service, for the return of  
25 funds paid by, but illegally exacted or taken from the Plaintiff in contravention of a  
26 statute of the United States.

**PARTIES**

1. Plaintiff Alberto Aroeste (“**Alberto**”) is 86 years old, a Mexican citizen, and full-time resident of Mexico during his lifetime.

2. Plaintiff Estela Aroeste (“**Estela**”) is 81 years old, a U.S. citizen since 2011, and a full-time resident of Mexico during her lifetime.

3. Plaintiffs Alberto and Estela (together “**Plaintiffs** or “**Aroestes**”) have been married as husband and wife since 1959.

4. Plaintiffs’ full-time address and principal domicile is Fuente de Neptuno #27, Colonia Lomas de Tecamachalco, Naucalpan, Estado de Mexico, C.P. 53950, Mexico.

5. Defendant is the United States of America, Department of the Treasury, Internal Revenue Service (“**IRS**”).

**VENUE AND JURISDICTION**

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1346(a)(2) and 28 U.S.C. § 1355(a).

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(a) and (b).

8. Notwithstanding the Aroestes’ permanent home in Mexico, venue is proper in this district by reason of the U.S. tax and information reporting compliance considerations underlying Defendant’s illegal exaction, as well as the Aroestes’ closest connections to the United States, were at all relevant times – and continue to be – centered in Southern California. Specifically:

- a. the Aroestes’ original U.S. income tax returns for the two years at issue (*i.e.*, 2012 and 2013) were prepared by a tax professional in Los Angeles, California;
- b. the Aroestes received and acted on the advice of a former U.S. tax attorney whose practice is located in San Diego, California, to enter the IRS’s 2014 Offshore Voluntary Disclosure Program (“**OVDP**”), the

1           Aroestes' opt out from which program (subsequent to the advice of new  
2           U.S. tax counsel also located in San Diego, California) initiated the IRS  
3           Examination that eventually led to the illegal exaction at issue;

4           c. the main office of the Aroestes' current counsel for U.S. tax advice and  
5           estate planning since 2016 is located in San Diego, California, which  
6           office the Aroestes have travelled to and continue to visit in-person for  
7           consultations related to the illegal exaction at issue in this case,  
8           sometimes with difficulty given Alberto and Estela's current health  
9           conditions;

10          d. the IRS agreed and traveled to, then obtained all-day, in-person testimony  
11          from the Aroestes on November 20, 2019, at the same main office of the  
12          Aroestes' current U.S. counsel in San Diego, California;

13          e. San Diego, California is where the Aroestes have requested trial before  
14          the United States Tax Court for each of Alberto's and Estela's separate  
15          petitions for redetermination of deficiency noticed by the IRS for the tax  
16          years 2012, 2013 and 2014, United States Tax Court Docket Nos. 13024-  
17          20 and 15372-20;

18          f. the IRS's local counsel assigned to respond to the Aroestes' United States  
19          Tax Court cases, Docket Nos. 13024-20 and 15372-20, is located in San  
20          Diego, California;

21          g. the Aroestes' Penalty Payments (as defined below) to the IRS, which are  
22          the subject of the illegal exaction at issue, were issued in the form of two  
23          cashier's checks that the Aroestes obtained in person in San Diego,  
24          California, and remitted to the IRS from San Diego, California;

25          h. the Aroestes' Claim for Refund (as defined below) of the Penalty  
26          Payments was sent from San Diego, California;

- 1 i. not coincidental with all foregoing considerations, the San Diego,  
 2 California area is where the Aroestes currently travel and spend most of  
 3 their visits to the United States, because the couple's son and his family  
 4 reside in the San Diego, California area;
- 5 j. the Aroestes have a family network of support in San Diego, California,  
 6 which is highly important for them because of their advanced age and  
 7 health concerns; and finally,
- 8 k. venue is proper in this district because Estela is currently seeking periodic  
 9 maintenance treatments for lymphoma, a type of cancer of the lymphatic  
 10 system, and also suffers from high blood pressure and osteoporosis which  
 11 limits her mobility, so the Aroestes' familiarity with, and family  
 12 connections in, the San Diego, California area make this the most  
 13 convenient venue for the Aroestes to currently travel from Mexico City  
 14 in order to have the requisite family and physical support for purposes of  
 15 oral testimony.

#### 16 **PRELIMINARY STATEMENT**

17 9. This action concerns an illegal exaction in the sum of \$6,000 comprised  
 18 of both: (i) \$3,004 that Alberto has paid towards the \$100,000 that the IRS erroneously  
 19 and purportedly "assessed" against him individually for the non-filing of a Report of  
 20 Foreign Bank and Financial Accounts ("**FBAR**") for the years 2012 and 2013 pursuant  
 21 to 31 U.S.C. § 5321; and (ii) \$2,996 that Estela has paid towards the \$27,000 that the  
 22 IRS erroneously and purportedly "assessed" against her individually for the non-filing  
 23 of an FBAR for the years 2012 and 2013 pursuant to 31 U.S.C. § 5321. The \$100,000  
 24 that the IRS erroneously and purportedly "assessed" against Alberto individually for  
 25 the non-filing of an FBAR for the years 2012 and 2013 and the \$27,000 that the IRS  
 26 erroneously and purportedly "assessed" against Estela individually for the non-filing  
 27  
 28



1 of an FBAR for the years 2012 and 2013 are collectively referred to here as the “**FBAR**  
2 **Penalties.**”

3 10. The Aroestes are a retired couple, in increasingly frail health, who are and  
4 have been during the entirety of their lives, Mexican citizens and residents of Mexico  
5 for income tax purposes, with a permanent home in Mexico, center of vital interests in  
6 Mexico, and personal and savings accounts in Mexico, which accounts, from the  
7 couple’s perspective, are domestic accounts in Mexico.

8 11. Yet, incredibly, with regard to Alberto’s supposed individual FBAR  
9 filing requirement for the years 2012 and 2013, the IRS’s Examination Division (the  
10 “**Examination Division**”) and IRS Appeals Division (“**Appeals Division**”)  
11 determined after their respective 3-year audit (the “**Examination**”) and follow-on 18-  
12 month review and deliberation (“**Appeals Review**”) that Alberto was a “United States  
13 person” for income tax purposes, despite Alberto’s full-time residency in Mexico, and  
14 therefore responsible for filing FBARs in the first place.

15 12. Also, incredibly, with regard to Estela’s individual FBAR filing  
16 requirement for the years 2012 and 2013, the Examination Division and Appeals  
17 Division after the same protracted Examination and Appeals Review that Estela, even  
18 though she became a naturalized U.S. citizen in 2011 primarily for the purpose of  
19 facilitating travel to visit family in California, were unable to find reasonable cause  
20 for not filing FBARs for the years 2012 and 2013 for her personal and savings accounts  
21 in Mexico, which she jointly held with Alberto.

22 13. Further, based on the Aroestes’ current information and belief, the IRS’s  
23 notices of purported assessment of the FBAR Penalties neither afforded the Aroestes  
24 adequate procedural due notice, nor, as required by law, were such FBAR Penalties  
25 recorded by the IRS, before the limitations period to assess such FBAR Penalties had  
26 run.

14. Furthermore, assuming the FBAR Penalties purportedly assessed against the Aroestes were somehow valid (which they were not), the plain language of the applicable statutes and regulations, as well as prior precedent in the United States Circuit Court of Appeals for the Ninth Circuit, demonstrate that only one non-willful civil penalty may be imposed on each of the Aroestes for their failure to timely file an FBAR. Accordingly, under the Examination Division's own determination (and the Appeals Division's sustention of the same), Alberto and Estela should each only be subject to one \$10,000 FBAR penalty for the year 2012 and one \$10,000 FBAR penalty for the year 2013.

15. Upon receipt of the Appeals Division's sustention of the erroneous "assessment" of the FBAR Penalties, the Aroestes submitted two FBAR penalty payments totaling \$6,000 for the calendar years 2012 and 2013 (the "**Penalty Payments**"), and then claims for a full refund of the same Penalty Payments, which are pending this Court's adjudication of the IRS's erroneous determination against the Aroestes.

## **OPERATIVE FACTS**

### **Alberto's and Estela's Personal Background**

16. In 1936, Alberto was born in Mexico, where he was raised, went to school, started his professional career, and got married to Estela in 1959.

17. Alberto has always and only been a citizen and resident of Mexico.

18. In 1941, Estela was born in Mexico, where she was raised and went to school.

19. Estela has always been a citizen and resident of Mexico.

20. In 1959, Alberto and Estela got married in Mexico under the laws of Mexico.



1           21. Alberto and Estela and have three children, all of whom were born and  
2 raised in Mexico. Spanish is the family's native language; English is their second  
3 language.

4           22. From January 1965 to May 1992, Alberto worked in Mexico for  
5 Continental Can Company ("**Continental**"), an American producer of metal  
6 containers and packaging. Alberto's work at Continental required frequent travel to  
7 the United States, but Alberto was always based in Mexico.

8           23. Estela was a housewife during Alberto's professional career, and  
9 generally deferred to Alberto to manage the couple's financial and tax compliance  
10 matters.

11           24. Alberto has no formal training in U.S. tax law.

12           25. In January 1980, Alberto and Estela decided to buy a small condominium  
13 in St. Petersburg, Florida for \$110,000, as a vacation place to stay during short  
14 recreational trips to the United States for a few weeks at a time, but never for the  
15 purpose of residing permanently.

16           26. To further facilitate travel for work in the United States and Alberto's  
17 ability to make contributions to a tax-free retirement savings account in the United  
18 States, Continental encouraged Alberto to become a United States Lawful Permanent  
19 Resident (*i.e.*, a "green card" holder). Continental sponsored Mr. Aroeste so he could  
20 eventually apply for lawful permanent resident immigration status, and obtain in 1984,  
21 "green cards" on behalf of both Alberto and Estela.

22           27. Since Alberto obtained a green card, and in complete reliance on the  
23 advice of his former U.S. tax advisors, he began filing joint U.S. income tax returns  
24 with Estela using IRS Form 1040, *U.S. Individual Income Tax Return*, even though  
25 the couple never intended or has actually lived or added their domicile in the United  
26 States.

1           28. On November 8, 2011, Estela became a U.S. citizen through  
 2 naturalization, and therefore a dual citizen of Mexico and the United States since 2011.  
 3 Alberto remains solely a Mexican citizen with an invalid U.S. green card (*i.e.*, Alberto  
 4 is not a lawful permanent resident as a matter of law).

5           29. Since Alberto's retirement from Continental in 1992, Alberto and Estela  
 6 have only used the couple's small condominium in St. Petersburg, Florida for vacation  
 7 purposes for brief time periods no longer than two weeks per year.

8           30. Alberto and Estela, during the entirety of their lives, have raised and  
 9 hosted their family in Mexico, sent their children to school in Mexico, predominantly  
 10 banked in Mexico, maintained most of their social connection and friendships in  
 11 Mexico, shopped at grocery stores in Mexico, watched movies in theaters in Mexico,  
 12 and eaten at restaurants in Mexico. In sum, the Aroestes' permanent home, tax  
 13 residence, and center of vital interests are and always have been in Mexico.

#### 14                                   **The Mexican Accounts at Issue**

15           31. While working for Continental, Alberto established certain financial  
 16 accounts in Mexico in his sole name, then eventually in Estela's sole name, and in the  
 17 couple's joint names (the "**Mexican Accounts**"), which the Examination Division has  
 18 erroneously determined, more than three decades later, to be subject to FBAR  
 19 requirements, and for which the non-willful FBAR Penalties in this case were  
 20 purportedly assessed.

21           32. The Mexican Accounts consist of: (i) two financial accounts held jointly  
 22 by Alberto and Estela in Mexico; (ii) three accounts held solely by Alberto in Mexico;  
 23 and (iii) three accounts held solely by Estela in Mexico.

24           33. On the Aroestes' information and belief, the funds in the Mexican  
 25 Accounts were primarily derived from Alberto's wages and savings obtained from his  
 26 work for Continental while he lived in Mexico, and always have been exclusively for  
 27 Alberto's and Estela's own support.

34. The Mexican Accounts were not established for any reason relating to U.S. income tax reporting or to conceal assets. In fact, Alberto and Estela have generally used the Mexican Accounts as one might expect a retired couple who are Mexican residents to use their personal financial accounts in Mexico – to pay for personal and family living expenses and to manage savings for retirement.

35. The IRS purportedly assessed the FBAR Penalties based on the following high-balance calculations of the Mexican Accounts for the years 2012 and 2013:

Foreign Account	Account Holder(s)	Highest Account Balance (2012) (in USD)	Highest Account Balance (2013) (in USD)
Grupo Financiero BBVA Bancomer S.A. (XXXXX9326)	Alberto Aroeste & Estela Aroeste	\$2,484.55*	\$2,549.33*
Banco Santander Mexico S.A. (XXXXXXXX0803)	Alberto Aroeste & Estela Aroeste	\$62,572.80*	\$6,273.49*
Scotia Inverlat Casa de Bolsa S.A. (XXXX1378)	Alberto Aroeste	\$709,512.61	\$719,598.50
Casa de Bolsa Santander S.A. de C.V. (XX1106)	Alberto Aroeste	\$666,592.27	\$568,052.70
Grupo Financiero BBVA Bancomer S.A. (XXXXX9334)	Alberto Aroeste	\$70,377.00	\$5,949.96
Grupo Financiero BBVA Bancomer S.A. (XXXXXXXX9790)	Estela Aroeste	\$7,096.00	\$4,883.00
Grupo Financiero BBVA Bancomer S.A. (XXXXX9318)	Estela Aroeste	\$3,008.00	\$1,047.00
Banamex (XXXX1837)	Estela Aroeste	\$13,031.00	n/a**

\*These account balances represent half of the total highest account balances for the respective accounts to reflect each of Alberto's and Estela's 50% ownership interest in the accounts.

\*\*This account was closed in 2012 and thus had no highest balance in 2013.

### **OVDP Opt-Out**

36. In November 2014, upon the advice of their former U.S. tax attorney that they both needed to file FBARs for the Mexican Accounts, the Aroestes were erroneously told to enter the 2014 Offshore Voluntary Disclosure Program (“**OVDP**”).

37. In or around May 2016, the Aroestes were advised by a new law firm, Procopio, Cory, Hargreaves & Savitch, LLP (“**Procopio**”), that their decision to enter the 2014 OVDP was based upon an inaccurate interpretation of the tax laws regarding the definition of “United States person” as related to the definition of lawful permanent residents set forth in the Internal Revenue Code, as well as the residency tie-breaker rule set forth in the U.S.-Mexico Income Tax Treaty (the “**Treaty**”).

38. Procopio provided the Aroestes with different advice than their former legal advisor, taking into consideration the couple’s personal circumstances. Accordingly, once the Aroestes attained a better understanding of the OVDP, the type of people for whom the OVDP was designed, and the laws applicable under the Internal Revenue Code and the Treaty to determine Alberto’s country of residence for income tax purposes, they followed Procopio’s advice to “opt out” of the OVDP.

### **Correcting Previously Filed Joint Returns**

39. On October 13, 2016, following their opt-out of the 2014 OVDP, Alberto and Estela each filed corrected U.S. income tax returns for the tax years 2008-2014 (the “**Corrected Returns**”) to correct certain erroneous Joint Form 1040 filings by their U.S. tax return preparer. Specifically, the Corrected Returns were filed to allow: (i) Alberto to correctly file as a nonresident of the United States for tax purposes for the tax years 2008-2014 (*i.e.*, IRS Form 1040NR, including IRS Form 8833, *Treaty-Based Return Position Disclosure Under Section 7701(b)*);<sup>1</sup> (ii) Estela to correctly file as a nonresident of the United States for tax purposes for the tax years 2008-2010 (*i.e.*, IRS Form 1040NR, including IRS Form 8833, *Treaty-Based Return Position*

<sup>1</sup> Tax year 2008 became the first year the Aroestes took a position under the Treaty that they were tax residents of Mexico only.

1 *Disclosure Under Section 7701(b)*); and (iii) Estela to correctly file her tax returns for  
 2 the tax years 2011-2014 as married filing separately (*i.e.*, IRS Form 1040).<sup>2</sup> As per  
 3 statements included with each of the Aroestes' corrected returns (*i.e.*, IRS Forms  
 4 1040X), Alberto and Estela were permitted to file the Corrected Returns under the law,  
 5 and the IRS should have properly processed and allowed the same.

#### 6 **Protracted IRS Examination**

7 40. The Aroestes' OVDP opt-out triggered a nearly three-year income tax  
 8 and FBAR audit by the Examination Division for the tax years 2011-2015, as later  
 9 expanded, pursuant to which the Aroestes: (i) produced from their home in Mexico  
 10 City extensive copies of documents and responses to multiple Information Document  
 11 Requests; (ii) took a plane to travel to California and provided oral testimony in person  
 12 in San Diego, California to the IRS Examiner and representatives of the IRS Chief  
 13 Counsel's Office on November 20, 2019, despite the health challenges to the elderly  
 14 couple posed by international travel; and (iii) authorized in good faith no fewer than  
 15 four extensions to the limitations period to assess FBAR penalties, including three  
 16 extensions to the limitations period to assess the FBAR Penalties for the year 2012 at  
 17 issue, filed on July 12, 2018, December 11, 2018, and again on May 2, 2019, all in  
 18 order to reach what the retired couple hoped and anticipated would be an expedited  
 19 resolution with the IRS.

#### 20 **FBAR Penalty Determination and Purported Assessment**

21 41. Notwithstanding the Aroestes' good-faith cooperation throughout the  
 22 IRS's Examination, an incorrect FBAR determination was made in a manner that  
 23 appeared to have been ordered beyond the control of the Examination Division.

24 42. On the Aroestes' information and belief from documents the IRS  
 25 produced pursuant to a Freedom of Information Act request during Appeals Review,  
 26 the collective recommendation of the Examination Division (including the IRS  
 27

28 <sup>2</sup> As detailed above, Estela became a U.S. citizen in 2011.

1 Examiner, the Examiner's Group Manager, and the Examiner's Territory Manager)  
2 was to limit any FBAR penalties for the years 2012 and 2013 to just one \$10,000  
3 FBAR penalty to each of Alberto and Estela per year (*i.e.*, per FBAR form not timely  
4 filed). Such collective recommendation by the Examination Division, however, was  
5 overruled. The IRS ultimately decided to assess separate \$10,000 FBAR penalties  
6 against Alberto for each of Alberto's Mexican Accounts for each of the years 2012  
7 and 2013 (*i.e.*, per each of Alberto's Mexican Accounts for each year) and \$5,000 and  
8 \$500 FBAR penalties against Estela's Mexican Accounts for each of the years 2012  
9 and 2013, respectively (*i.e.*, per each of the Mexican Accounts), which final IRS  
10 decision appears to have been predicated, in significant part, on the "aggregate  
11 balance" of the Mexican Accounts for the years 2012 and 2013.

12 43. The IRS's final decision to assess separate **non-willful** FBAR penalties  
13 to each of Alberto and Estela for each of the Mexican Accounts for each of the years  
14 2012 and 2013 (*i.e.*, per account) was approved within the IRS despite concerns  
15 communicated by and within the Examination Division that the IRS Examiner had not  
16 accounted for direct-transfers between the Mexican Accounts during the years 2012  
17 and 2013, which likely caused the Examination Division to overstate the high-balance  
18 in the Mexican Accounts for the years 2012 and 2013, and thus inflate the "aggregate  
19 balance" concerns that apparently drove the IRS's final decision to assess FBAR  
20 penalties on a per-account basis in the first place.

21 44. With regard to Estela, the IRS eventually decided and purportedly  
22 assessed mitigated FBAR penalties of \$5,000 for each of the five Mexican Accounts  
23 she held jointly with Alberto and individually in 2012, and \$500 for each of the four  
24 Mexican Accounts she held jointly with Alberto and individually in 2013, for a total  
25 purported FBAR assessment of \$27,000. The IRS, however, did not determine any  
26 mitigation adjustment for Alberto for any of the Mexican Accounts he held jointly  
27 with Estela or individually in 2012 and 2013.



1           45. Moreover, the IRS's determination of the FBAR Penalties against the  
2 Aroestes and decision to assess separate \$10,000 FBAR penalties against Alberto and  
3 \$5,000 (or \$500) FBAR Penalties against Estela for each of the Mexican Accounts for  
4 each of the years 2012 and 2013 (*i.e.*, per account) was approved, notwithstanding the  
5 IRS's own inflated calculations that:

- 6           a. the highest account balance of each of Alberto's and Estela's 50%  
7 ownership interest in one of the two Mexican Accounts that the couple  
8 held jointly in 2012 and 2013 was just \$2,484 and \$2,549, respectively,  
9 well less than the \$10,000 FBAR penalty purportedly assessed against  
10 Alberto for this same account for each of the years 2012 and 2013, and  
11 even less than the \$5,000 mitigated FBAR penalty purportedly assessed  
12 against Estela for this same account for the year 2012;
- 13           b. the highest account balance of each of Alberto's and Estela's 50%  
14 ownership interest in the second of two Mexican Account that the couple  
15 held jointly was just \$6,273 for the year 2013, again well less than the  
16 \$10,000 FBAR penalty purportedly assessed against Alberto for this  
17 same account for the year 2013;
- 18           c. the highest account balance of Estela's 50% ownership interest in one of  
19 the Mexican Accounts that Estela held solely in 2012 was just \$3,008 for  
20 the year 2012, again well less than the \$5,000 mitigated FBAR penalty  
21 purportedly assessed against Estela for this same account for the year  
22 2012; and
- 23           d. the highest account balance of Alberto's 50% ownership interest in one  
24 of the Mexican Accounts that Alberto held solely in 2013 was just \$5,949  
25 for the year 2013, again well less than the \$10,000 FBAR penalty  
26 purportedly assessed against Alberto for this same account for the year  
27 2013.
- 28

1           46. On or around March 24, 2020, the Examination Division issued IRS  
2 Letter 3709 (Rev. 9-2015) of same date (the “**30-Day FBAR Letter**”). Although not  
3 entirely clear, the Examination Division apparently determined both: (i) a **non-willful**  
4 FBAR penalty against Alberto totaling \$50,000 for each of the tax years 2012 and  
5 2013 (*i.e.*, \$100,000 total FBAR penalty), based on a \$10,000 penalty for each of the  
6 five Mexican Accounts that Alberto was purportedly required to report on an FBAR  
7 for each of the tax years 2012 and 2013; and (ii) a total, mitigated **non-willful** FBAR  
8 penalty against Estela of \$27,000 for the tax years 2012 and 2013, based on a \$5,000  
9 mitigated FBAR penalty for each of the five Mexican Accounts that Estela was  
10 purportedly required to report on an FBAR for the tax year 2012, plus a \$500 mitigated  
11 FBAR penalty for each of the four Mexican Accounts that Estela was purportedly  
12 required to report on an FBAR for the tax year 2013.

13           47. On or around July 23, 2020, by means of IRS Letter 3708 (Rev. 10-2018)  
14 of same date (the “**FBAR Assessment Letter to Alberto**”), the Examination Division  
15 noticed Alberto of the IRS’s purported assessment (*i.e.*, recording) more than *two*  
16 *months* earlier, on May 12, 2020, of a total **non-willful** FBAR penalty as to Alberto’s  
17 Mexican Accounts in the amount of \$100,000 for the tax years 2012 and 2013.

18           48. On or around July 23, 2020, by means of another IRS Letter 3708 (Rev.  
19 10-2018) of same date (the “**FBAR Assessment Letter to Estela**”), the Examination  
20 Division noticed Estela of the IRS’s purported assessment (*i.e.*, recording) more than  
21 *two months* earlier, on May 12, 2020, of a total **non-willful** FBAR penalty as to  
22 Estela’s Mexican Accounts in the amount of \$27,000 for the tax years 2012 and 2013.

23           49. On the Aroestes’ information and belief, both the determination of the  
24 FBAR Penalties against the Aroestes and the subsequent, purported assessments of  
25 both a \$100,000 FBAR penalty against Alberto and a separate \$27,000 FBAR penalty  
26 against Estela were in error.

**Appeals Review, Penalty Payment, and Claim for Refund**

50. On or around February 2, 2022, by means of IRS Letter 5143 (Rev. 10-2021) of same date and after an 18-month Appeals Review, the Appeals Division sustained the Examination Division's determination and the IRS's purported assessment on May 12, 2020 of the entire amount of the FBAR Penalties against the Aroestes (*i.e.*, a total **non-willful** FBAR penalty as to Alberto's Mexican Accounts in the amount of \$100,000 for the tax years 2012 and 2013, and a total **non-willful** FBAR penalty as to Estela's Mexican Accounts in the amount of \$27,000 for the tax years 2012 and 2013).

51. On May 2, 2022, after the Appeals Division sustained the entire amount of the FBAR Penalties against the Aroestes for the tax years 2012 and 2013, Alberto paid \$3,004 of the Penalty Payment and Estela paid \$2,996 of the Penalty Payment.

52. On May 6, 2022, Alberto and Estela each filed a separate claim for refund of their respective portions of the Penalty Payment.

**COUNT I – ILLEGAL EXACTION**

53. Plaintiffs repeat the allegations in paragraphs 1 through 52 as though set forth at length herein.

54. Contrary to the IRS's contentions, during the tax years 2012 and 2013 Alberto was not a U.S. resident for U.S. income tax purposes, and therefore did not have a FBAR filing requirement in his individual capacity.

55. In the first instance, Alberto, a Mexican citizen and Mexican resident for income tax purposes, did not come under the definition of a "United States person" (as defined in Title 31 regulations with reference to Title 8 and Title 26 definitions) as a lawful permanent resident accorded the privilege to permanently reside in the United States.

1           56. Pursuant to 31 C.F.R. Section 1010.350(b), a “United States person”  
 2 includes a U.S. citizen or “an individual who is a [U.S.] resident alien under 26 U.S.C.  
 3 7701(b) and the regulations thereunder.”

4           57. Pursuant to 8 U.S.C. Section 1101(a)(20), “the term ‘lawfully admitted  
 5 for permanent residence’ means the status of having been accorded the privilege of  
 6 residing permanently in the United States as an immigrant in accordance with the  
 7 immigration laws, such status not having changed.”

8           58. Pursuant to 26 U.S.C. 7701(b)(1)(A), a “U.S. resident alien” is defined to  
 9 include two categories of foreign individuals: (i) foreign individuals who at any time  
 10 during a calendar year are “lawful permanent residents of the United States”; and (ii)  
 11 foreign individuals that meet the so-called “substantial presence test.”

12           59. Pursuant to 26 U.S.C. 7701(b)(6), an individual is a “lawful permanent  
 13 resident” at any time if “such individual has the status of having been lawfully  
 14 accorded the privilege of residing permanently in the United States as an immigrant in  
 15 accordance with immigration laws.”

16           60. During the tax years 2012, and 2013, Alberto was not lawfully accorded  
 17 the privilege of residing permanently in the United States as an immigrant in  
 18 accordance with immigration laws.

19           61. To the contrary, Alberto’s immigration status as a lawful permanent  
 20 resident of the United States was abandoned as a matter of law by application of Title  
 21 8 prior to 2012, on the very moment in which Alberto established his permanent  
 22 residence outside of the United States,<sup>3</sup> and certainly no later than the year 2008 based  
 23 on Alberto’s Corrected Returns that included IRS Form 8833, *Treaty-Based Return*  
 24 *Position Disclosure Under Section 7701(b)*).  
 25 \_\_\_\_\_

26 <sup>3</sup> See *Shyiak v. Bureau of Citizenship & Immigration Servs.*, 579 F. Supp 2d 900  
 27 (W.D. Mich. 2008); *Matter of Kane* (PDF), 15 I&N Dec. 258 (BIA 1975);  
 28 *Khodagholian v. Ashcroft*, 335 F.3d 1003 (9th Cir. 2003); and *Matter of Huang*  
 (PDF), 19 I&N Dec. 749 (BIA 1988).

62. The fact that Alberto had a “green card” during the tax years 2012 and 2013 is, therefore, irrelevant because Alberto’s permanent home and residence was solely in Mexico City, Mexico and not in the United States.

63. By establishing a permanent home outside of the United States during tax years 2012 and 2013, Alberto’s “green card” was, therefore invalid, and his lawful permanent resident status abandoned as a matter of law.

64. In the second instance, pursuant to the flush language in 26 U.S.C. 7701(b)(6), Alberto is by law a resident for income tax purposes only of Mexico and not the United States by application of the “dual residency” and residency tie-breaker rules under Article 4 of the Treaty.<sup>4</sup>

65. Since obtaining his U.S. green card in 1984, Alberto has been a “a dual resident” for U.S. income tax purposes as defined by Treasury Regulation Section 301.7701(b)-7. Nevertheless, by virtue of the tie-breaker rules under Article 4 of the Treaty, as expressed on IRS Form 8833, *Treaty-Based Return Position Disclosure Under Section 7701(b)*), which Alberto included with the Corrected Returns, Alberto cannot be treated as a U.S. lawful permanent resident, and therefore a U.S. tax resident.

66. Alberto maintains his principal residence and a great majority of his economic relationships (center of vital interests) in Mexico. Further, Alberto’s permanent home is located and available to him in Mexico, where he has lived and worked all of his life, and where he maintains a majority of his assets, including the Mexican Accounts.

67. As a matter of law, by application of Article 4 of the Treaty, Alberto is not – and has never been, including during the years 2012 and 2013 – a “United States

<sup>4</sup> 26 U.S.C. 7701(b)(6) provides in relevant part as follows:

An individual shall cease to be treated as a lawful permanent resident of the United States if such individual commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country, and notifies the Secretary of the commencement of such treatment.

1 person” for income tax purposes, and is therefore not subject to FBAR requirements.  
 2 Accordingly, as a matter of law, no amount of the FBAR Penalties should apply to  
 3 Alberto.

4 68. Estela, meanwhile, by virtue of following the advice and  
 5 recommendations of Alberto and the Aroestes’ former tax advisors on what U.S.  
 6 income tax returns and U.S. information reports to file, had reasonable cause for  
 7 missed FBAR filings for the years 2012 and 2013.

8 69. Contrary to the IRS’s contentions, Estela’s failure to timely file an FBAR  
 9 for the years 2012 and 2013 in her individual capacity was unintentional, inadvertent,  
 10 a good faith misunderstanding, the result of reasonable cause and mitigating  
 11 circumstances, in that, among other things:

- 12 a. Estela reasonably relied on the advice of Alberto as well as competent  
 13 and experienced tax return preparer; and
- 14 b. Estela meets all four of the criteria justifying abatement of her FBAR  
 15 Penalties of \$27,000 – (i) she has no history of past FBAR penalty  
 16 assessments or criminal tax or Bank Secrecy Act convictions, (ii) no  
 17 money in the Aroestes’ foreign accounts was from an illegal source or  
 18 used for criminal purpose, (iii) Estela has fully cooperated with the IRS  
 19 and even self-reported the failure to report an FBAR for the year 2012  
 20 and 2013 by virtue of entering the OVDP, and (iv) the IRS did not sustain  
 21 a civil fraud penalty against Estela for any tax underpayment for the tax  
 22 years 2012 and 2013 in question.<sup>5</sup>

23 70. Apart from the erroneous determination of the FBAR Penalties against  
 24 Alberto and Estela in the first place, the purported assessments of the FBAR Penalties  
 25 were deficient on at least three grounds:

26  
 27 \_\_\_\_\_  
 28 <sup>5</sup> See “Mitigation Threshold Conditions,” Internal Revenue Manual 4.26.16.6.6.1  
 (11-06-2015).



- a. The FBAR Assessment Letter to Alberto and the FBAR Assessment Letter to Estela did not constitute adequate procedural due notice to either Alberto and Estela, as both the FBAR Assessment Letter to Alberto and FBAR Assessment Letter to Estela were issued more than three weeks after the limitation period to assess the FBAR Penalties against the Aroestes for the years 2012 and 2013 had expired on June 30, 2020.
- b. The FBAR Assessment Letter to Alberto and the FBAR Assessment Letter to Estela each reflect that the IRS's assessments of Alberto's and Estela's respective shares of the FBAR Penalties were purportedly made on May 12, 2020. Nevertheless, on the Aroestes' information and belief, there was no official recordation of any civil penalties before the expiration of the IRS's final extension to the limitations period to assess FBAR penalties for the years 2012 and 2013 on June 30, 2020.
- c. The amount of the FBAR Penalties purportedly assessed against Alberto (*i.e.*, \$100,000) does not match the "TOTAL AMOUNT DUE" noticed on the FBAR Assessment Letter to Alberto (*i.e.*, \$27,000), further denying Alberto timely notice of the amount of FBAR Penalties purportedly assessed against him on May 12, 2020.

71. Moreover, apart from the erroneous FBAR penalty determination against each of Alberto and Estela *and* the purported assessments of the FBAR Penalties against each of Alberto and Estela individually, the IRS further erred after its Appeals Review by failing to follow established law that only one civil penalty up to \$10,000 per year (*i.e.*, per FBAR form) should apply if Alberto and Estela supposedly failed to timely file an accurate FBAR for each of the years 2012 and 2013 due to non-willful conduct.

72. First, on the Aroestes' information and belief, contrary to the collective recommendation of the Examination Division (subsequently overruled on review

1 within the IRS) to assess only one civil penalty up to \$10,000 per year for each year  
 2 2012 and 2013 against Alberto and Estela (*i.e.*, per FBAR form), the Examination  
 3 Division made and noticed its ultimate determination of the FBAR Penalties against  
 4 the Aroestes while this very same issue (*i.e.*, whether only *one* civil penalty of up to  
 5 \$10,000 per year per FBAR form should apply to a “United States person” with an  
 6 FBAR filing requirement who non-willfully failed to timely file an accurate FBAR)  
 7 was pending review by the United States Court of Appeals for the Ninth Circuit after  
 8 appeal from the district court decision in *United States v. Boyd*, case no. 18-cv-803,  
 9 2019 WL 1976472 (C.D. Cal. Apr 23, 2019).

10 73. Second, after Appeals Review, the Appeals Division sustained the  
 11 Examination Division’s FBAR Penalties determination against the Aroestes,  
 12 notwithstanding the fact that the Appeals Division was aware of the Ninth Circuit’s  
 13 decision in *United States v. Boyd*, 991 F. 3d 1077 (9th Cir. 2021), which was released  
 14 almost one year prior to the conclusion of Appeals Review, stating in relevant part:

15 *The non-willful penalty provision allows the IRS to assess one penalty*  
 16 *not to exceed \$10,000 per violation, and nothing in the statute or*  
 17 *regulations suggests that the penalty may be calculated on a per-*  
 18 *account basis for a single failure to file a timely FBAR that is otherwise*  
 19 *accurate. Thus, the IRS may impose only one penalty not to exceed*  
 20 *\$10,000 for [a] single failure to file a timely FBAR.*

21 74. The FBAR Penalties that the IRS assessed in this matter are therefore an  
 22 unreasonable and illegal penalty.

23 75. The IRS’s actions have a direct and substantial impact on Alberto and  
 24 Estela in their individual and joint capacities.

25 76. The IRS’s imposition of the FBAR Penalties has resulted in \$6,000 being  
 26 improperly paid, extracted, or taken from the Aroestes in contravention of the United  
 27  
 28

1 States Constitution, a statute, or regulation, including but not limited to 31 U.S.C. §  
2 5321 and the Fifth and Eighth Amendments to the Constitution.

3 77. The IRS has received the Aroestes' Penalty Payment and should be  
4 ordered to return those funds.

5 78. The Aroestes are entitled to recovery of the Penalty Payment because it  
6 is an illegal exaction by the IRS.

7 79. Accordingly, the Aroestes hereby seeks the return of the money illegally  
8 exacted by the IRS.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE, Plaintiffs pray judgment in their favor and against**  
11 **Defendant as follows:**

- 12 1. For judgment in the amount of \$6,000 as the amount having been  
13 illegally exacted from Plaintiffs;  
14 2. For pre and post-judgment interest as allowed by law;  
15 3. For attorneys' fees and all costs of suit herein occurred; and  
16 4. For such other further relief as the Court may deem just and proper.

17  
18 DATED: May 13, 2022

PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP

19  
20  
21 By: s/ Edward C. Walton

22 Edward C. Walton  
23 Patrick W. Martin  
24 Laurence R. Wrathall  
25 Jose Anuar Estefan Davila  
26 Attorneys for Plaintiffs Alberto  
27 Aroeste and Estela Aroeste  
28