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7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 NORA BRAYSHAW (individually), and

14 NORA BRAYSHAW as surviving spouse  
15 and fiduciary for the deceased DAVID  
16 BRAYSHAW, who died intestate on August  
11, 2015,

17 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT TO REDUCE CIVIL  
PENALTY ASSESSMENTS TO  
JUDGMENT**

18  
19 Plaintiff, the United States of America, seeks to collect unpaid federal civil penalty  
20 assessments, with statutory accruals, and to reduce those assessments to judgment. Plaintiff  
21 intends to use some or all appropriate remedies authorized by the Federal Debt Collection  
22 Practices Act (28 U.S.C. § 3001 *et seq.*) to collect any judgment it obtains in this case. In  
23 support of this action, Plaintiff alleges as follows:  
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INTRODUCTION

1  
2 1. This is a civil action brought by Plaintiff to collect outstanding unpaid civil  
3 penalty assessments made against Defendants for the willful failure to timely file a foreign bank  
4 account report (“FBAR”) with the IRS, pursuant to 31 U.S.C. § 5321(a)(5)) and 31  
5 C.F.R. §1010.350(a).

6 2. The penalty assessments, commonly known as FBAR penalties, were made  
7 against Defendants for failing to timely report two foreign accounts that the Defendants  
8 maintained with Switzerland-based UBS (or its Switzerland-based affiliates) during 2008.  
9 Defendants’ deadline for reporting their interests in these accounts was June 30, 2009.

10 3. On October 21, 2020, Plaintiff assessed FBAR penalties totaling \$820,454 against  
11 Nora Brayshaw for calendar year 2008.

12 4. On October 21, 2020, Plaintiff assessed FBAR penalties totaling \$410,227 against  
13 David Brayshaw for calendar year 2008.

14 5. Plaintiff timely brings this action to reduce the FBAR penalty assessments to  
15 judgment within the two-year period set forth in 31 U.S.C. § 5321(b)(2)(A).

16 6. The United States brings this action with the authorization of the Secretary of the  
17 Treasury (*see* 31 U.S.C. § 3711(g)(4)(C)) and at the direction of the Attorney General of the  
18 United States.

DEFENDANTS

19  
20 7. On information and belief, Nora and David Brayshaw resided in a mountain home  
21 in Lake Almanor, California from approximately 2005 through at least 2013, when Mr.  
22 Brayshaw became ill.

23 8. On information and belief, David Brayshaw died intestate in Shasta County,  
24 California on August 11, 2015.

25 9. On information and belief, no probate proceeding was opened on behalf of Mr.  
26 Brayshaw’s estate. On information and belief, Nora Brayshaw, his surviving spouse, has  
27 authority to serve as a fiduciary on behalf of the deceased Mr. Brayshaw.

28 10. Nora Brayshaw has used non-residential addresses, including mailbox or drop box

1 addresses located in Reno, Nevada and Redding, California in dealing with governmental  
2 authorities, including the IRS.

3 11. On information and belief, Nora Brayshaw is presently, and was during the  
4 relevant times at issue, a citizen or resident of the United States, residing in the area of Redding,  
5 California, within the geographical boundaries of the Court.

6 12. David Brayshaw was a citizen or resident of the United States during the relevant  
7 times at issue.

8 JURISDICTION AND VENUE

9 13. Jurisdiction over this action is conferred upon this district court by 28  
10 U.S.C. §§ 1331, 1345 and 1355.

11 14. Venue properly lies in the Eastern District of California under 28 U.S.C.  
12 § 1391(b)(1) because, on information and belief, Nora resides within this judicial district. Mr.  
13 Brayshaw resided in this judicial district at the time of his death.

14 15. Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of  
15 the events or omissions giving rise to the claims occurred in this judicial district, given that the  
16 Brayshaws resided within the district during the times relevant to assessment of the FBAR  
17 penalties at issue.

18 16. Venue is also proper under 28 U.S.C. § 1395(a) because this is a civil proceeding  
19 for recovery of a penalty and this district is where the penalty accrued and where Ms. Brayshaw  
20 may be found.

21 REQUIREMENT TO FILE FBARS

22 17. The Secretary of the Treasury is authorized by statute to require a citizen or  
23 resident of the United States to report certain transactions with foreign financial agencies,  
24 including foreign banks. *See* 31 U.S.C. § 5314.

25 18. Under the statute's implementing regulations, "[e]ach United States person having  
26 a financial interest in, or signature authority over, a bank, securities, or other financial account in  
27 a foreign country shall report such relationship to the Commissioner of Internal Revenue for each  
28 year in which such relationship exists . . . ." 31 C.F.R. § 1010.350(a).

1           19. To fulfill this requirement for calendar year 2008, a person was required to file a  
2 Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," commonly known as an  
3 "FBAR." For that calendar year, the FBAR report was due by June 30 following the calendar  
4 year reported for all foreign financial accounts exceeding \$10,000. 31 C.F.R. § 1010.306(c).

5           20. Congress has provided for the imposition of civil penalties for failure to comply  
6 with the reporting requirement. 31 U.S.C. §§ 5314 & 5321.

7           21. Defendants jointly held financial interests in the following two foreign bank  
8 accounts during 2008:

9               -- UBS AG (Switzerland) account ending in "9459" ("AG Account")

10              -- UBS Swiss Financial Advisors AG account ending in "295\_0," with customer  
11 number ending in "6606" ("SFA Account")

12           22. During 2008, the balances in the AG Account and SFA Account both exceeded  
13 \$10,000, either in the form of currency or financial assets.

14           23. Defendants were required by law to timely file FBARs reporting their financial  
15 interests in the AG Account and SFA Account for 2008, as well as any other years that satisfied  
16 FBAR reporting requirements. The deadline for Defendants to report their interests for 2008 was  
17 June 30, 2009. *See* 31 C.F.R. § 1010.306(c).

18           24. Defendants failed to timely report their interests in the AG Account and the SFA  
19 Account for 2008.

20           25. In fact, no FBARs were filed by Defendants until after Plaintiff pursued obtaining  
21 information regarding Defendants' foreign bank account holdings through a summons  
22 enforcement proceeding initiated in 2014.

23           26. Belatedly, in 2016, Nora Brayshaw filed FBARs for years 2008-2015 (but only  
24 for the SFA Account with respect to the 2008 year at issue).

25                               WILLFUL FAILURE TO FILE FBARs

26           27. Defendant David Brayshaw was a highly-educated United States citizen who  
27 acquired extensive business experience throughout his life. He was also an attorney.

28           28. Mr. Brayshaw had "a background in mathematics and physics as well as corporate

1 law.” *See Brayshaw v. Comm’r.*, 2002 WL 1825350, at \*1 (Tax Court, Mar. 22, 2002).

2 29. Mr. Brayshaw was involved in various business activities, including “the  
3 development of computer software which would predict water currents in the San Francisco Bay  
4 area.” *See id.* “In connection with this activity, he periodically took measurements on the bay  
5 throughout the year using a yacht [the Brayshaws] had owned since approximately 1984.” *Id.*

6 30. Prior to 1996, Mr. Brayshaw “had formed a corporation named First Draft Legal  
7 System, Inc.” *Id.* That company “was engaged in the sale of a computer software program which  
8 automated the creation of legal documents.”

9 31. Mr. Brayshaw was also “engaged in ‘database work’ which was unrelated to  
10 either of his other business activities.” *See id.*

11 32. Nora Brayshaw was also a highly-educated United States citizen with business  
12 experience who, in the past, practiced as a psychiatrist, licensed by the New Jersey Board of  
13 Medical Examiners. *See Brayshaw v. Gelber*, 232 N.J. Super. 99, 556 A.2d 788, 789 (Super. Ct.,  
14 Appellate Div., April 6, 1989).

15 33. Indeed, in her capacity as a medical practitioner, Ms. Brayshaw “conducted a  
16 medical consultation business.” *See Brayshaw v. Comm’r.*, 2002 WL 1825350 at \*1.

17 ***Defendants’ Foreign Bank Accounts with UBS***

18 34. On information and belief, funds held in the AG Account and SFA Account  
19 originated, at least in part, through a gift from the parents of Nora Brayshaw, one of whom was  
20 employed in the New York loan department for Swiss Bank Corporation, a predecessor to UBS.

21 35. On information and belief, prior to 1994, the Brayshaws had established a joint  
22 account with Swiss Bank Corporation in Uster, Switzerland.

23 36. On information and belief, by mid-1997, the Brayshaws had transferred their  
24 Swiss Bank Corporation relationship to the Zurich, Switzerland office for that bank.

25 37. Swiss Bank Corporation merged with Union Bank of Switzerland to form UBS in  
26 1998.

27 38. On or about June 30, 2000, the Brayshaws signed forms for the AG Account  
28 indicating that they “would like to avoid disclosure of [their] identity to the US Internal Revenue

1 Service” under new U.S. tax withholding regulations. The forms elected not to invest in U.S.  
2 securities beginning November 1, 2000.

3 39. On information and belief, during or before 2005, the Brayshaws opened the SFA  
4 Account with UBS.

5 40. During the years prior to the FBAR reporting deadline of June 30, 2009 for  
6 calendar year 2008, the Brayshaws were actively involved in monitoring their foreign bank  
7 accounts, and they communicated with UBS personnel through in-person meetings, telephone  
8 calls, and/or emails.

9 41. For example, Nora Brayshaw provided UBS with a handwritten note dated April  
10 26, 2005 saying,

11 Sorry we missed you in San Francisco. Wish we knew ahead that you were  
12 coming. When you come again, please let us know, so we can meet. Please feel  
13 free to use e-mail to make an appointment.

14 42. In March 2008, the Brayshaws met with a representative of UBS at the Westin  
15 Hotel, presumably in California, to review their portfolio and investment strategies. Over the  
16 course of the year, the Brayshaws had numerous communications with UBS regarding their  
17 accounts, including adjusting their investments and making withdrawals.

18 43. As of December 31, 2008, the value of the AG Account was about \$1,004,638.

19 44. As of December 31, 2008, the value of the SFA Account was about \$463,684.

20 45. In December 2008, just a few months after the U.S. investigation into UBS’s  
21 secretive banking practices was publicized, the Brayshaws instructed UBS to move all assets in  
22 the AG Account to the SFA Account.

23 46. Following asset transfers into the SFA Account, and as of December 31, 2009, the  
24 value of the SFA Account was about \$1,440,947.

25 47. On information and belief, the Defendants continued to communicate with UBS  
26 after 2008, periodically requesting withdrawals from the SFA Account, and, on occasion,  
27 meeting with UBS representatives by telephone or in person.

28 48. During the time leading up to the Brayshaws’ deadline of June 30, 2009 for filing

1 an FBAR for 2008, the Brayshaws filed a federal income tax return for 2007; however, that tax  
2 return did not report gains or losses from their UBS account portfolios on Schedule D, nor did  
3 the tax return report interest or dividend income that may have been earned from their UBS  
4 account on Schedule B.

5 49. The Brayshaws did not file a federal income tax return for 2006, nor had they  
6 filed a federal income tax return for 2008 prior to June 30, 2009.

7 50. The Brayshaws were evasive over the course of an IRS investigation into their tax  
8 liabilities and foreign accounts, eventually resulting in contempt proceedings. *See, United States*  
9 *v. Nora Brayshaw*, Case No. 2:14-mc-00088-MCE-KJN (E.D. Cal.)

10 CLAIM FOR RELIEF: JUDGMENT FOR CIVIL PENALTIES

11 UNDER 31 U.S.C. § 5321(a)(5)

12 ***Liability for Civil Penalties***

13 51. During the calendar year 2008, Defendants were United States persons within the  
14 meaning of 31 C.F.R. § 1010.350(b).

15 52. During the calendar year 2008, Defendants had a financial interest, within the  
16 meaning of 31 C.F.R. § 1010.350(e), in both the AG Account and SFA Account in Switzerland.

17 53. The AG Account and SFA Account were bank accounts in a foreign country.

18 54. During the calendar year 2008, the balances in both the AG Account and SFA  
19 Account exceeded \$10,000.

20 55. Defendants failed to timely report their interests in either the AG Account or SFA  
21 Account by timely filing an FBAR with respect to the 2008 calendar year, as required by 31  
22 U.S.C. § 5314 and 31 C.F.R. § 1010.306(c).

23 56. Defendants' failure to timely file an FBAR with respect to the 2008 calendar year  
24 was willful within the meaning of 31 U.S.C. § 5321(a)(5)(C).

25 ***Assessment of Civil Penalties***

26 ***Nora Brayshaw***

27 57. On or about October 21, 2020, a delegate of the Secretary of the Treasury timely  
28 assessed civil penalties against Nora Brayshaw in the total amount of \$820,454 due to her willful

1 failure to timely file an FBAR and disclose the AG Account and SFA Account to the IRS for  
2 calendar year 2008. The penalties were broken out by account as follows:

3 AG Account: \$ 50,000

4 SFA Account: \$770,454

5 58. On or about November 4, 2020, a delegate of the Secretary of the Treasury sent a  
6 notice of the assessments and demand for payment to Nora Brayshaw for the above FBAR  
7 penalties at her Reno, Nevada address utilized for purposes of communicating with the IRS. A  
8 copy of the notice was also provided to the attorney representing her with respect to the FBAR  
9 penalties.

10 59. The manner and methodology the IRS employed in calculating the amount of the  
11 \$770,454 willful FBAR penalty for the SFA Account included a \$50,000 amount attributable to  
12 another type of penalty that was not assessed, and for which the United States does not seek  
13 judgment.

14 60. Instead, the United States alleges that the amount of the willful FBAR penalties  
15 Nora Brayshaw owes should be recalculated in further proceedings after this Court determines  
16 that Ms. Brayshaw is liable for willful FBAR penalties for the calendar year 2008.

17 61. The United States is entitled to judgment against Ms. Brayshaw finding that she is  
18 liable for willful FBAR penalties for her failure to timely report the AG Account and SFA  
19 Account on a FBAR for calendar year 2008 in an amount to be determined after further  
20 proceedings. That amount shall include pre-judgment and post-judgment statutory accruals as  
21 provided by 31 U.S.C. § 3717(a) and § 3717(e), from the date of the judgment until paid in full.

22 ***David Brayshaw***

23 62. On or about October 21, 2020, a delegate of the Secretary of the Treasury timely  
24 assessed civil penalties against David Brayshaw in the total amount of \$410,227 due to his  
25 willful failure to timely file an FBAR and disclose the AG Account and SFA Account to the IRS  
26 for calendar year 2008. The penalties were broken out by account as follows:

27 AG Account: \$ 25,000

28 SFA Account: \$385,227



63. On or about November 4, 2020, a delegate of the Secretary of the Treasury sent a notice of the assessments and demand for payment to David Brayshaw for the above FBAR penalties to the address utilized for communications with the fiduciary of record for the deceased Mr. Brayshaw (namely, Nora Brayshaw). A copy of the notice was also provided to the attorney representing Ms. Brayshaw with respect to the FBAR penalties.

64. In addition to the FBAR penalties, David Brayshaw owes late-payment penalties pursuant to 31 U.S.C. § 3717(e)(2), and interest pursuant to 31 U.S.C. § 3717(a), and applicable collection related fees pursuant to 31 U.S.C. § 3717(e)(1).

65. As of October 18, 2022, the unpaid balance owed to the United States by David Brayshaw for the FBAR penalties, the late payment penalty, applicable fees and interest, less any payments, is \$474,334.80.

66. The Plaintiff is entitled to judgments against Nora Brayshaw, individually, and as fiduciary and surviving spouse of the deceased David Brayshaw in the amounts identified above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

A. Enter judgment in favor of the United States of America and against Nora Brayshaw, that Ms. Brayshaw willfully failed to file a FBAR to report her interest in the AG Account and the SFA Account for calendar year 2008, and in an amount that will be determined after further proceedings. That amount shall include pre-judgment and post-judgment statutory accruals as provided by law from the date of the judgment until paid in full; and

B. Enter judgment in favor of the United States of America and against Nora Brayshaw, as fiduciary and surviving spouse of the deceased David Brayshaw in the amount of \$474,334.80 as of October 18, 2022, plus statutory accruals from that date until fully paid.

C. Award the United States of America its costs, and such further relief as the Court deems just and proper.

Dated: October 19, 2022

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