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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 TIMBERLY E. HUGHES,

17 Defendant.

Case No. 18-cv-5931

COMPLAINT

18
19 Plaintiff, the United States of America (“United States”), through its undersigned counsel,
20 alleges the following:

21 **Introduction**

22 1. This is a timely civil action brought by the United States with the authorization of the
23 Secretary of the Treasury (31 U.S.C. § 3711(g)(4)(C)) and at the direction of the Attorney General of the
24 United States. The United States brings this timely action to collect from defendant outstanding civil
25 penalty assessments (31 U.S.C. § 5321(a)(5)), commonly known as FBAR penalties, which were
26 assessed against Timberly E. Hughes, for her failure to timely report her financial interest in, and/or her
27 signatory authority over, foreign bank accounts for the 2010, 2011, 2012, and 2013 calendar years, as
28 required by 31 U.S.C. § 5314 and its implementing regulations, as well as all associated penalties and

1 interest, having a total balance due to the United States of America of \$721,344.14 as of August 22,
2 2017.

3 2. Additionally, the United States is entitled to proceed under the Federal Debt Collection
4 Practices Act (28 U.S.C. § 3001 et seq.) to collect any judgment it obtains in this case, including the use
5 of all appropriate pre-judgment remedies, post-judgment remedies, and the additional surcharge as
6 authorized by 28 U.S.C. § 3011.

7 **Defendant**

8 3. Defendant Timberly E. Hughes is a resident of San Francisco, California, and resided in
9 San Francisco at the time the events that gave rise to the civil penalties at issue in this action took place.
10 Defendant is a U.S. citizen, and has been a U.S. citizen at all times relevant to the assessment of the
11 outstanding liabilities at issue in this action.

12 **Jurisdiction and Venue**

13 4. Jurisdiction over this action is conferred upon this district court by 28 U.S.C. §§ 1331,
14 1345, and 1355.

15 5. Venue is proper under 28 U.S.C. §§ 1395(a) and 1391(c)(1), or alternatively under 28
16 U.S.C. §§ 1391(b)(1) or 1391(b)(2), because Defendant resides in this district and a substantial part of
17 the events or omissions giving rise to the civil penalties (i.e. claim) occurred in this judicial district.

18 **Legal Authority for FBAR Penalty**

19 6. 31 U.S.C. § 5314 authorizes the Secretary of the Treasury to require United States
20 citizens to report certain transactions with foreign financial agencies. Under the statute's implementing
21 regulations, "[e]ach United States person having a financial interest in, or signature authority over, a
22 bank, securities, or other financial account in a foreign country shall report such relationship" to the
23 Internal Revenue Service ("IRS") for each year in which such relationship exists. 31 C.F.R. §
24 1010.350(a).

25 7. To fulfill this requirement, a person must file a Form TD F 90-22.1, "Report of Foreign
26 Bank and Financial Accounts," commonly known as an "FBAR." For the calendar years at issue, an
27 FBAR was due by June 30 "of each calendar year with respect to foreign financial accounts exceeding
28 \$10,000 maintained during the previous calendar year." 31 C.F.R. § 1010.306(c).

Defendant’s Foreign Bank or Other Financial Accounts

8. Ms. Hughes is the sole owner of two businesses in New Zealand, Takamatua Valley Vineyards Limited (“TVV”), a vineyard, and Cuba Uncorked Limited (“CU”), a wine bar. She incorporated TVV in 2001 (under a different name), and CU in 2013. Ms. Hughes had signatory authority over all of TVV’s and CU’s financial accounts, including those held at ANZ Bank in New Zealand at all times relevant to this Complaint.

9. During the years identified in the following table, Ms. Hughes had signatory authority over each financial account of TVV and CU detailed below, all of which were held at ANZ Bank located in New Zealand:

Year	Account Name	Account numbers
2010	Takamatua Valley Vineyards	-1000, -1004, -0600, -0625
2011	Takamatua Valley Vineyards	-1005, -1000, -1004, -1006, -0600, -0625
2012	Takamatua Valley Vineyards	-1005, -1000, -1004, -1006, -0600, -0625
2013	Takamatua Valley Vineyards	-1005, -1000, -1004, -1006, -0600, -0625
	Cuba Uncorked	-4400

10. At all relevant times, the aggregate value of the financial accounts identified in paragraph 9 above exceeded \$10,000 in U.S. currency, and Ms. Hughes was required to timely file an FBAR for the years at issue in this action.

Defendant’s Tax and FBAR Filings

11. Ms. Hughes has a bachelor’s degree in business with a focus in accounting from Gonzaga University. She worked as an accounts manager at a development company until approximately 1990, when she started her own bookkeeping business.

12. Since at least 2010, Ms. Hughes has performed bookkeeping services for a family trust that administers approximately \$1 billion in assets. The family trust she provides bookkeeping services for has over 90 partnerships, and over 30 brokerage accounts which require bookkeeping.

13. Ms. Hughes has also provided bookkeeping services for other clients which has included basis tracking, and tax return preparation services. For the calendar years 2010, 2011, 2012 and 2013, Ms. Hughes prepared approximately ten federal income tax returns (Forms 1040) for her clients each year. Ms. Hughes received compensation for her tax return preparation work for clients.

1 14. Ms. Hughes's accounts for TVV and CU at ANZ Bank earned interest income in the total
2 amounts of \$3,822.88, \$5,090.61, \$1,418.55, and \$6,826.62 in taxable years 2010, 2011, 2012, and
3 2013, respectively.

4 15. Ms. Hughes failed to report any of the interest income for taxable years 2010 and 2011,
5 as she failed to attach a Schedule B, Interest and Ordinary Dividends, to her Forms 1040 for taxable
6 years 2010 and 2011.

7 16. Ms. Hughes reported the interest income from her ANZ Bank accounts for taxable year
8 2012 on Schedule B and the interest income for her ANZ Bank accounts for taxable year 2013 on
9 Schedule C as part of TVV's gross receipts.

10 17. On her 2012 Schedule B, Ms. Hughes reported interest income from "National Bank of
11 New Zealand" and answered "Yes" to the first question on line 7a of Part III, Foreign Accounts and
12 Trusts ("At any time during 2012, did you have a financial interest in or signature authority over a
13 financial account (such as a bank account, securities account, or brokerage account) located in a foreign
14 country? See instructions."), indicating that she had a foreign account.

15 18. On her 2012 Schedule B, Ms. Hughes also answered "Yes" to the second question on line
16 7a ("If "Yes," are you required to file Form TD F 90-22.1 to report that financial interest or signature
17 authority? See Form TD F 90-22.1 and its instructions for filing requirements and exceptions to those
18 requirements"), indicating that she was required to file an FBAR for the 2012 reporting period; and
19 wrote "NZ New Zealand" on line 7b ("If you are required to file Form TD F 90-22.1, enter the name of
20 the foreign country where the financial account is located").

21 19. Even though she answered affirmatively that she was required to file an FBAR for 2012,
22 and was referred to the FBAR filing requirements, Ms. Hughes did not timely file an FBAR for the 2012
23 calendar year.

24 20. On her 2013 Schedule B, Ms. Hughes answered "Yes" to the first question on line 7a
25 indicating that she had a foreign account, but answered "No" to the second question on line 7a indicating
26 that she was not required to file an FBAR for the 2013 reporting period, even though she had a
27 reportable interest in foreign bank accounts, and the aggregate balance in her foreign bank accounts
28 exceeded \$10,000. Ms. Hughes did not timely file an FBAR for the 2013 calendar year.

1 21. Ms. Hughes never filed an FBAR prior to the Internal Revenue Service's August 21,
2 2014 issuance of an informal document request for her delinquent FBARs for the 2011, 2012, and 2013
3 calendar years. In response, Ms. Hughes filed delinquent FBARs for the 2011, 2012, and 2013 calendar
4 years on September 11, 2014. On January 1, 2015, an informal document request was issued requesting
5 an FBAR for the 2010 calendar year. Ms. Hughes filed her delinquent FBAR for the 2010 reporting
6 period on February 1, 2015.

7 22. Ms. Hughes did not participate in any voluntary disclosure initiative, such as the 2009 or
8 2011 Offshore Voluntary Disclosure Programs.

9 **CLAIM FOR RELIEF: JUDGMENT FOR CIVIL PENALTIES (31 U.S.C. § 5321(a)(5))**

10 *Liability for the Civil Penalties*

11 23. During the 2010, 2011, 2012, and 2013 calendar years, Timberly E. Hughes was a United
12 States citizen, resided within the United States, or was otherwise subject to the jurisdiction of the United
13 States within the meaning of 31 C.F.R. § 1010.350(b).

14 24. During the 2010, 2011, 2012, and 2013 calendar years, Timberly E. Hughes had
15 signatory authority over the accounts described in paragraph 9, within the meaning of 31 C.F.R.
16 § 1010.350(f).

17 25. During the 2010, 2011, 2012, and 2013 calendar years, Timberly E. Hughes had a
18 financial interest in the accounts described in paragraph 9, within the meaning of 31 C.F.R.
19 § 1010.350(e).

20 26. The accounts described in paragraph 9 were bank accounts (31 C.F.R. § 1010.350(c)(1))
21 in a foreign country.

22 27. During the 2010, 2011, 2012, and 2013 calendar years, the aggregate balance of the
23 accounts described in paragraph 9 exceeded \$10,000 in U.S. currency at a point in time during each
24 respective calendar year.

25 28. Timberly E. Hughes failed to file an FBAR with regard to the 2010, 2011, 2012, and
26 2013 calendar years, by the applicable deadline, as required by 31 U.S.C. § 5314 and 31 C.F.R.
27 § 1010.306(c).

29. The failure of Timberly E. Hughes to timely file FBARs with regard to the 2010, 2011, 2012, and 2013 calendar years was willful within the meaning of 31 U.S.C. § 5321(a)(5).

Assessment and Collection of the Civil Penalties

30. On September 30, 2016, pursuant to 31 U.S.C. § 5321(a)(5), a duly authorized delegate of the Secretary of the Treasury of the United States of America timely assessed Ms. Hughes with the following civil penalties:

Year	Financial Institution	Corporate Entity	Account numbers	Total Amount of Penalties Assessed for the Year
2010	ANZ Bank	TVV	-1000, -1004, -0600, -0625	\$32,845
2011	ANZ Bank	TVV	-1005, -1000, -1004, -1006, -0600, -0625	\$205,545
2012	ANZ Bank	TVV	-1005, -1000, -1004, -1006, -0600, -0625	\$167,316
2013	ANZ Bank	TVV	-1005, -1000, -1004, -1006, -0600, -0625	\$273,193
		CU	-4400	
			Total:	\$ 678,899

31. The FBAR penalties described in paragraph 30 above were assessed pursuant to 31 U.S.C. § 5321(a)(5)(C), due to Defendant’s willful failure to timely disclose each of the ANZ Bank accounts described in paragraph 9 of the Complaint, which imposes a penalty not to exceed the greater of \$100,000 or 50 percent of the balance in the account at the time of the violation.

32. A delegate of the Secretary of Treasury sent Ms. Hughes a notice of the assessment of the FBAR penalties described in paragraph 30 above, which totaled \$678,899.00, and demand for payment.

33. The United States is entitled to recover and collect the \$678,899.00 in assessed but unpaid FBAR penalties from Ms. Hughes.

34. In addition, pursuant to 31 U.S.C. § 3717(a)(1), the United States is entitled to recover prejudgment interest accrued on Defendant’s unpaid penalties. The accrued, but unpaid, interest was \$6,063.59 as of August 22, 2017.

35. In addition, pursuant to 31 U.S.C. § 3717(e)(2), Ms. Hughes owes late-payment penalties for her failure to pay a lawful debt owed to the United States. The accrued, but unpaid, late-payment penalty was \$36,381.55 as of August 22, 2017.

1 36. In addition, pursuant to 31 U.S.C. § 3717(e)(1), the United States is entitled to recover
2 charges assessed against Ms. Hughes to cover collection-related costs of processing and handling her
3 outstanding FBAR liabilities.

4 37. Ms. Hughes is liable to the United States for the FBAR penalties, as well as associated
5 late-payment penalties and interest, in the total amount of \$721,344.14, as of August 22, 2017, plus
6 statutory accruals from that date, less any payments, until the liability is paid in full.

7 38. This is a timely Complaint to collect the assessed but yet unpaid FBAR penalties, and the
8 associated penalties and interest, and the United States is entitled to a judgment against Ms. Hughes for
9 the assessed but yet uncollected FBAR penalties of \$678,899.00, together with late-payment penalties,
10 interest, and any collection-related costs that have accrued since the September 30, 2016, assessment
11 date of the FBAR penalties.

12 WHEREFORE, the United States respectfully prays that this Court:

13 A. Enter Judgment in favor of the United States and against Defendant Timberly E. Hughes
14 in the amount of \$721,344.14, as of August 22, 2017, together with late-payment penalties,
15 interest, and any collection costs accruing from that date;

16 B. Award the United States its costs in this action, and any other further relief as the Court
17 may find necessary or appropriate.

18 Date: September 27, 2018.

19 Respectfully submitted,

20 RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

21 /s/ Nithya Senra
22 NITHYA SENRA (CABN 291803)
23 Trial Attorney, Tax Division
U. S. Department of Justice

24 BRIAN A. STRETCH
25 United States Attorney
26 *Of Counsel*
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CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Nithya Senra, U.S. Dept. of Justice, Tax Division P.O. Box 683, Washington, D.C. 20044, (202) 307-6570

DEFENDANTS

Timberly E. Hughes

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) San Francisco

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

Attorneys (If Known)

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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): 31 USC 5314, 5321

Brief description of cause: Suit to collect civil penalties for failure to file FBARs

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 721,344.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/27/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Nithya Senra