

1 BENJAMIN B. WAGNER
 United States Attorney
 2 YOSHINORI H. T. HIMEL #66194
 Assistant United States Attorney
 3 United States Courthouse
 2500 Tulare Street, Suite 4401
 4 Fresno, California 93721
 Telephone: (559) 497-4000
 5 Facsimile: (559) 497-4099

6 Attorneys for Petitioner United States of America

7
 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,)	Case No. 1:11-cv-00430-LJO-SMS
)	
12 Petitioner,)	MAGISTRATE JUDGE’S FINDINGS
)	AND RECOMMENDATIONS RE: I.R.S.
13 v.)	SUMMONS ENFORCEMENT
)	
14 JOHN A. ROLFF,)	
)	
15 Respondent.)	
16 _____)	

17
 18 This matter came before me on May 13, 2011, under the Order to Show Cause filed
 19 March 29, 2011, which, with the verified petition and memorandum, was personally served upon
 20 respondent on April 5, 2011. Yoshinori H. T. Himel appeared for petitioners, and petitioning
 21 Revenue Officer Lorena Ramos was present. Respondent did not file an opposition and did not
 22 appear.

23 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to
 24 enforce an administrative summons (Exhibit A to the petition) in aid of Revenue Officer Ramos’
 25 investigation of John A. Rolff, as sole proprietor of Sierra Automotive, to determine financial
 26 information to collect assessed Employer’s Annual Federal Unemployment Tax (Form 940) for
 27 the tax years ending December 31, 2006, December 31, 2007, and December 31, 2008; and
 28 Employer’s Federal Quarterly Tax (Form 941) for the tax periods ending June 30, 2007,

1 September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008,
2 December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009.

3 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is found to
4 be proper. Authorization for the action is under I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.). The
5 Order to Show Cause shifted to respondent the burden of rebutting any of the four requirements
6 of United States v. Powell, 379 U.S. 48, 57-58 (1964).

7 I have reviewed the petition and documents in support. Based on the uncontroverted
8 verification of Revenue Officer Ramos and the entire record, I make the following findings:

9 (1) The summons issued by Revenue Officer Lorena Ramos to respondent, John A. Rolff,
10 on April 13, 2010, seeking testimony and production of documents and records in respondent's
11 possession, was issued in good faith and for a legitimate purpose under I.R.C. § 7602, that is, to
12 determine financial information to collect assessed Employer's Annual Federal Unemployment
13 Tax (Form 940) for the tax years ending December 31, 2006, December 31, 2007, and December
14 31, 2008; and Employer's Federal Quarterly Tax (Form 941) for the tax periods ending June 30,
15 2007, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30,
16 2008, December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009.

17 (2) The information sought is relevant to that purpose.

18 (3) The information sought is not already in the possession of the Internal Revenue
19 Service.

20 (4) The administrative steps required by the Internal Revenue Code have been followed.

21 (5) There is no evidence of referral of this case by the Internal Revenue Service to the
22 Department of Justice for criminal prosecution.

23 (6) The verified petition and its exhibits made a prima facie showing of satisfaction of the
24 requirements of United States v. Powell, 379 U.S. 48, 57-58 (1964).

25 (7) The burden shifted to respondent, John A. Rolff, to rebut that prima facie showing.

26 (8) Respondent presented no argument or evidence to rebut the prima facie showing.

27 I therefore recommend that the IRS summons issued to respondent, John A. Rolff, as sole
28 proprietor of Sierra Automotive, be enforced, and that respondent be ordered to appear at the

1 I.R.S. offices at 2525 Capitol Street, Suite 206, Fresno, California 93721, before Revenue Officer
2 Lorena Ramos, or her designated representative, twenty-one (21) days after the filing of the
3 summons enforcement order, or at a later date to be set in writing by Revenue Officer Ramos,
4 then and there to be sworn, to give testimony, and to produce for examining and copying the
5 books, checks, records, papers and other data demanded by the summons, the examination to
6 continue from day to day until completed. I further recommend that if it enforces the summons,
7 the Court retain jurisdiction to enforce its order by its contempt power.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72-
10 304 of the Local Rules of the United States District Court for the Eastern District of California.
11 Within ten (10) days after being served with these findings and recommendations, any party may
12 file written objections with the court and serve a copy on all parties. Such a document should be
13 titled "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
14 objections shall be served and filed within ten (10) days after service of the objections. The
15 District Judge will then review these findings and recommendations pursuant to 28 U.S.C.
16 § 636(b)(1). The parties are advised that failure to file objections within the specified time may
17 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
18 1991).

19 The Clerk shall serve this and future orders by mail to Mr. John A. Rolff, 40110 Highway
20 49, Oakhurst, California 93644.

21
22
23 IT IS SO ORDERED.

24 **Dated: May 26, 2011**

25 **/s/ Sandra M. Snyder**
26 UNITED STATES MAGISTRATE JUDGE