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

11 UNITED STATES OF AMERICA,)	Case No. 1:11-CV-01255 AWI MJS
)	
12 Petitioner,)	MAGISTRATE JUDGE’S FINDINGS
)	AND RECOMMENDATIONS RE: I.R.S.
13 v.)	SUMMONS ENFORCEMENT
)	
14 HETENDRA M. PATEL, Agent for)	TAXPAYER: RED ZONE, INC.
Service for Red Zone, Inc.,)	
)	
15 Respondent.)	
16 _____)	

17 This matter came before me on September 23, 2011, under the Order to Show
 18 Cause filed August 1, 2011, which, with the verified petition and memorandum, was
 19 adequately served upon respondent, Mr. Hetendra M. Patel, under Fed. R. Civ. P. 4(e), on
 20 August 9, 2011. Respondent did not file written opposition.

21 At the hearing, Yoshinori H. T. Himel appeared for petitioner, and investigating
 22 Revenue Officer Lisa Cumiford was present. Respondent appeared in person. The
 23 parties, in open court, expressed their agreement to meet on Wednesday, November 2,
 24 2011, at 9:00 a.m., at the Fresno IRS office, for respondent to comply with the IRS
 25 summons.

26 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks
 27 to enforce an administrative summons (Exhibit A to the petition) in aid of Revenue
 28 Officer Cumiford’s investigation of Hetendra M. Patel, as Agent for Service of Red Zone,

1 Inc., to obtain financial information relevant to the IRS's efforts to collect Employer's
2 Federal Quarterly Tax (Form 941) for the tax periods ending June 30, 2009, and
3 September 30, 2009.

4 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is
5 found to be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government
6 to bring the action. The Order to Show Cause shifted to respondent the burden of
7 rebutting any of the four requirements of United States v. Powell, 379 U.S. 48, 57-58
8 (1964).

9 I have reviewed the petition and documents in support. Based on the
10 uncontroverted verification of Revenue Officer Cumiford and the entire record, I make
11 the following findings:

12 (1) The summons issued by Revenue Officer John Costa to respondent, Hetendra
13 M. Patel, agent for service for Red Zone, Inc., on December 14, 2010, seeking testimony
14 and production of documents and records in respondent's possession, was issued in good
15 faith and for a legitimate purpose under I.R.C. § 7602, that is, to obtain information for
16 the collection of assessed Employer's Federal Quarterly Tax (Form 941) for the tax
17 periods ending June 30, 2009, and September 30, 2009.

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

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

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

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

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

27 (7) The burden shifted to respondent, Hetendra M. Patel, to rebut that prima facie
28 showing.

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

3 I therefore recommend that the IRS summons issued to respondent, Hetendra M.
4 Patel, be enforced, and that respondent be ordered to appear at the I.R.S. offices at 2525
5 Capitol Street, Suite 205, Fresno, California 93721, before Revenue Officer Lisa
6 Cumiford, or her designated representative, on Wednesday, November 2, 2011, at 9:00
7 a.m., then and there to be sworn, to give testimony, and to produce for examining and
8 copying the books, checks, records, papers and other data demanded by the summons, the
9 examination to continue from day to day until completed. I further recommend that if it
10 enforces the summons, the Court retain jurisdiction to enforce its order by its contempt
11 power.

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

23
24 IT IS SO ORDERED.

25 Dated: October 7, 2011

/s/ Michael J. Seng
26 UNITED STATES MAGISTRATE JUDGE