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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

 Petitioner,

 v.
SONIA GOMEZ,

 Respondent.

) 1:11-cv-00213 AWI GSA
)
) **ORDER DISCHARGING ORDER TO**
) **SHOW CAUSE**
)
) **FINDINGS AND RECOMMENDATIONS**
) **REGARDING PETITION TO ENFORCE**
) **IRS SUMMONS**
)
) (Documents 1 & 4)

Petitioners are proceeding with a civil action in this Court. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 302(9) and 303. Pending before the Court is a petition to enforce a summons issued by the Internal Revenue Service (IRS) to Respondent.

The petition came on regularly for hearing on May 27, 2011, in Courtroom 10 before the Honorable Gary S. Austin, United States Magistrate Judge. Glen F. Dorgan appeared on behalf of Petitioners, and Janice Polglase, specially appearing for Henry D. Nunez, appeared on behalf of Respondent Sonia Gomez, whom was also personally present.

1 The Court has reviewed the petition, all supporting papers, and all papers submitted by
2 Respondent. The matter was submitted to the Court for preparation of findings and
3 recommendations.

4 ***Discharging Order to Show Cause***

5 Respondent having appeared pursuant to the order to show cause, it IS ORDERED that
6 the order to show cause BE DISCHARGED.

7 ***Petition to Enforce IRS Summons***

8 **A. Background**

9 Agent Lorena Ramos is a duly commissioned revenue officer employed by the IRS, and
10 she is authorized to issue the IRS summons pursuant to Title 26 of the United States Code
11 section 7602; she did so in the course of conducting an investigation of the tax liabilities of
12 Respondent for the tax years 2002 through 2005. (Doc. 1 at ¶¶ 3 & 5.) Ramos believes
13 “Respondent is in possession and control of the testimony, books, records, papers, and other data
14 that may shed light on” these matters. (Doc. 1 at ¶ 6, *see also* ¶ 14.) Ramos issued an IRS
15 summons on January 6, 2010, directing Respondent to appear before her on February 10, 2010,
16 to provide testimony and documents relating to the investigation. (Doc. 1 at ¶ 7.) She left an
17 attested copy of the summons at Respondent’s last and usual place of abode on January 12, 2010,
18 at 3:30 p.m. (Doc. 1 at ¶ 8.) Respondent failed to appear. (Doc. 1 at ¶ 10.)

19 An order to show cause issued on March 1, 2011, and was served on Respondent on
20 March 9, 2011; it directed Respondent to appear and to file a written response. Following a
21 single continuance of the original hearing date, Respondent filed a Declaration on May 23, 2011.
22 (Doc. 7.)

23 ***B. The Merits of the Petition***

24 At the hearing, Petitioners stated that although Respondent’s Declaration indicates she
25 has no responsive documents as requested in the summons, Petitioners require Respondent’s
26 testimony; thus, Petitioners requested enforcement of the summons. Respondent did not argue
27

1 otherwise or object. The parties consulted with regard to dates upon which Respondent would
2 appear at the IRS office in order to provide testimony. In light of the foregoing, the Court
3 considers the merits of the petition.

4 The IRS is authorized to examine papers or data which may be relevant or material in
5 determining the correctness of a tax return, the liability of any person for any internal revenue
6 tax, or collecting any such liability. 26 U.S.C. § 7602(a)(1). It is also authorized to take such
7 testimony as may be relevant or material. 26 U.S.C. § 7602(a)(3). Moreover, it has the authority
8 to issue summonses for the purpose of ascertaining the correctness of any return, making a return
9 where none has been made, determining the liability of any person for any internal revenue tax,
10 or collecting any such liability. 26 U.S.C. § 7602(a); *Crystal v. United States*, 172 F.3d 1141,
11 1143 (9th Cir. 1999).

12 To defeat a motion to quash, or in order to enforce an IRS summons, the government has
13 the initial burden of proving that the summons: (1) is issued for a legitimate purpose; (2) seeks
14 information relevant to the purpose; (3) seeks information not already within the IRS's
15 possession; and (4) satisfies all of the administrative steps required by the Internal Revenue
16 Code. *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *Crystal v. United States*, 172 F.3d at
17 1143-44. The government's burden is a slight one that may be satisfied by a declaration from the
18 investigating agent that these requirements have been met. *United States v. Abrahams*, 905 F.2d
19 1276, 1280 (9th Cir. 1990); *Liberty Financial Servs. v. United States*, 778 F.2d 1390, 1392 (9th
20 Cir. 1985). Once the prima facie case is made, a heavy burden falls upon the taxpayer to show an
21 abuse of process (*Abrahams*, 905 F.2d at 1280; *Liberty Financial*, 778 F.2d at 1392), or the lack
22 of institutional good faith (*Anaya v. United States*, 815 F.2d 1373, 1377 (10th Cir. 1987)). *United*
23 *States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993).

24 The summons to Respondent Sonia Gomez summoned her to appear before Officer
25 Ramos, to give testimony, and to bring with her information related to the collection of a tax
26 liability. More particularly, Respondent was to provide:

1 All documents and records you possess or control regarding assets,
2 liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit
3 which the taxpayer wholly or partially owns, or in which the taxpayer has a
4 security interest. These records and documents include but are not limit to: all
5 bank statements, checkbooks, canceled checks, saving account passbooks, records
6 or certificates of deposit for the period:

From 01/01/2009 To CURRENT

Also include all current vehicle registration certificates, deeds or contracts
regarding real property, stocks and bonds, accounts, notes and judgments
receivable, and all life or health insurance policies.

7 (Doc. 1 at 6 [Ex. 1].)

8 Ramos verified that Respondent did not appear on February 10, 2010, and she failed to
9 provide testimony and documents as required by the summons. Respondent's failure to comply
10 continues, and the information sought by the summons is not already in the possession of the
11 IRS. (Doc. 1 at ¶¶ 10, 13, 15.) Further, all administrative steps required by the IRS had been
12 undertaken, and no criminal referral to the Department of Justice was in effect with respect to
13 Respondent's tax liability for the subject years. (Doc. 1 at ¶¶ 16-17.)

14 Petitioners have shown that Respondent has received the required notice. Petitioners
15 have established that the summons was issued for a legitimate purpose and seeks information
16 relevant to the purpose that is not already within the IRS's possession; further, it is demonstrated
17 that all of the administrative steps required by the Internal Revenue Code have been satisfied. A
18 prima facie case has been made. *United States v. Dynavac, Inc.*, 6 F.3d at 1414.

19 Respondent has not submitted any evidence of bad faith or improper purpose.

20 The Court finds that Respondent has not established any basis to deny enforcement of the
21 IRS summons.

22 The Court concludes that enforcement of the summons should be ordered.

23 **FINDINGS AND RECOMMENDATIONS**

24 Accordingly, it IS RECOMMENDED that:

- 25 1. Petitioners' petition to enforce the IRS summons BE GRANTED; and

