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

11	UNITED STATES OF AMERICA,	)	Case No. 1:11-cv-00431-LJO-SMS
12	Petitioner,	)	<b>MAGISTRATE JUDGE’S FINDINGS AND RECOMMENDATIONS RE: I.R.S. SUMMONS ENFORCEMENT</b>
13	v.	)	
14		)	
15	VANESSA LARA-DAVILA,	)	
16	Respondent.	)	

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 18 This matter came before me on May 13, 2011, under the Order to Show Cause  
 19 filed March 23, 2011, which, with the verified petition and memorandum, was personally  
 20 served upon respondent on March 29, 2011. Yoshinori H. T. Himel appeared for  
 21 petitioners, and petitioning Revenue Officer Lorena Ramos was present.

22 Respondent did not file an opposition, but appeared along with her accountant,  
 23 Olga Hernandez. Partial compliance of the summons was completed just prior to the  
 24 hearing and respondent agreed to fully comply with the summons.

25 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks  
 26 to enforce an administrative summons (Exhibit A to the petition) in aid of Revenue  
 27 Officer Ramos’ investigation of Vanessa Lara-Davila, as sole proprietor of Si Se Puede  
 28 Auto Sales, to determine financial information relevant to the IRS’s efforts to collect

1 Employer's Annual Federal Unemployment Tax (Form 940) for the tax year ending  
2 December 31, 2008; as well as to collect Employer's Federal Quarterly Tax (Form 941)  
3 for the tax periods ending March 31, 2008, June 30, 2008, September 30, 2008, December  
4 31, 2008, and March 31, 2009.

5 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is  
6 found to be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government  
7 to bring the action. The Order to Show Cause shifted to respondent the burden of  
8 rebutting any of the four requirements of United States v. Powell, 379 U.S. 48, 57-58  
9 (1964).

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

13 (1) The summons issued by Revenue Officer Lorena Ramos to respondent,  
14 Vanessa Lara-Davila, as sole proprietor of Si Se Puede Auto Sales, on February 11, 2010,  
15 seeking testimony and production of documents and records in respondent's possession,  
16 was issued in good faith and for a legitimate purpose under I.R.C. § 7602, that is, to  
17 determine financial information relevant to the IRS's efforts to collect Employer's  
18 Annual Federal Unemployment Tax (Form 940) for the tax year ending December 31,  
19 2008; as well as to collect Employer's Federal Quarterly Tax (Form 941) for the tax  
20 periods ending March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008,  
21 and March 31, 2009.

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

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

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

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

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

3 (7) The burden shifted to respondent, Vanessa Lara-Davila, to rebut that prima  
4 facie showing.

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

7 I therefore recommend that the IRS summons issued to respondent, Vanessa Lara-  
8 Davila, be enforced, and that respondent be ordered to appear at the I.R.S. offices at 2525  
9 Capitol Street, Suite 206, Fresno, California 93721, before Revenue Officer Lorena  
10 Ramos, or her designated representative, twenty-one (21) days after the issuance of the  
11 order, or at a later date to be set in writing by Revenue Officer Ramos, then and there to  
12 be sworn, to give testimony, and to produce for examining and copying the books, checks,  
13 records, papers and other data demanded by the summonses, the examination to continue  
14 from day to day until completed. I further recommend that if it enforces the summons,  
15 the Court retain jurisdiction to enforce its order by its contempt power.

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

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1           The Clerk shall serve this and future orders by mail to Ms. Vanessa Lara-Davila,  
2 12461 N. Russell Ave., House A, Firebaugh, CA 93622.

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5 IT IS SO ORDERED.

6 **Dated: May 26, 2011**

7   /s/ Sandra M. Snyder  
8   UNITED STATES MAGISTRATE JUDGE

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