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

|                           |   |                                     |
|---------------------------|---|-------------------------------------|
| UNITED STATES OF AMERICA, | ) | Case No. 1:11-cv-00443-LJO-SKO      |
|                           | ) |                                     |
| Petitioner,               | ) | <b>FINDINGS AND RECOMMENDATIONS</b> |
|                           | ) | <b>REGARDING I.R.S. SUMMONS</b>     |
| v.                        | ) | <b>ENFORCEMENT</b>                  |
|                           | ) |                                     |
| ROCIO STINER,             | ) |                                     |
|                           | ) |                                     |
| Respondent.               | ) |                                     |
| _____                     | ) |                                     |

This matter came before the Court on May 11, 2011, pursuant to the Order to Show Cause issued on March 23, 2011, which, with the verified petition and memorandum, was personally served upon Respondent on March 25, 2011. Yoshinori H. T. Himel appeared for Petitioner, and petitioning Revenue Officer Michael Papasergia was present. Respondent did not file an opposition. She was present at the hearing and she stated that she was willing to comply with the summons at issue in this case.

The Verified Petition to Enforce Internal Revenue Service (IRS) Summons initiating this proceeding seeks to enforce an administrative summons (Doc. 1) in aid of Revenue Officer Papasergia’s investigation of Rocio Stiner, sole member of First Source Staffing, LLC, to obtain financial information for the collection of assessed Employer's Federal Quarterly Tax (Form 941) for the tax periods ending June 30, 2009, and December 31, 2009.

1 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345 and is found  
2 to be proper. Sections 7402(b) and 7604(a) of the Internal Revenue Code authorize the  
3 United States to bring the action. The Order to Show Cause shifted to Respondent the  
4 burden of rebutting any of the four requirements of *United States v. Powell*, 379 U.S. 48, 57-  
5 58 (1964).

6 The Court has reviewed the petition and documents in support of the Petition. Based  
7 on the uncontroverted verification of Revenue Officer Papasergia and the entire record, the  
8 Court makes the following findings:

9 (1) The summons issued by Revenue Officer Michael Papasergia to Respondent,  
10 Rocio Stiner, on March 16, 2010, seeking testimony and production of documents and  
11 records in Respondent's possession, was issued in good faith and for a legitimate purpose  
12 under I.R.C. § 7602, that is, to obtain financial information for the collection of assessed  
13 Employer's Federal Quarterly Tax (Form 941) for the tax periods ending June 30, 2009, and  
14 December 31, 2009.

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

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

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

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

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

24 (7) The burden shifted to Respondent, Rocio Stiner, to rebut that prima facie showing.

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

27 The Court therefore RECOMMENDS that:  
28

1           1.     The IRS summons issued to Respondent, Rocio Stiner, sole member of First  
2           Source Staffing, LLC, be ENFORCED as follows:

3           a.     That Respondent be ordered to appear at the IRS offices at 4825 Coffee  
4           Road, Bakersfield, California 93308, before Revenue Officer Michael  
5           Papasergia, or his designated representative, on June 22, 2011, at 11:00  
6           a.m., or at a later date to be set in writing by Revenue Officer  
7           Papasergia;

8           b.     That at her appearance, Respondent be sworn to give testimony, and to  
9           produce for examining and copying the books, checks, records, papers  
10          and other data demanded by the summons; and

11          c.     That the examination of Respondent shall continue from day to day  
12          until completed.

13          2.     Jurisdiction be RETAINED to enforce its order by its contempt power; and

14          The Clerk shall serve this and future orders by mail to Ms. Rocio Stiner, First Source  
15          Staffing, LLC, Sole Member, 630 N. Irwin, Hanford, CA 93230.

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

25          ///

26          ///

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1 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951  
2 F.2d 1153 (9th Cir. 1991).

3  
4 IT IS SO ORDERED.

5 **Dated: May 18, 2011**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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