

1 BENJAMIN B. WAGNER
 United States Attorney
 2 YOSHINORI H. T. HIMEL #66194
 United States Courthouse
 3 501 I Street, Suite 10-100
 Sacramento, California 95814
 4 Telephone: (916) 554-2760
 Facsimile: (916) 554-2900

5 Attorneys for Petitioner, United States of America

FILED

DEC 17 2012

CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 BY 
 DEPUTY CLERK

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

11 UNITED STATES OF AMERICA,


12 Petitioner,

13 v.

15 NATHAN D. BACON,

16 Respondent.

1:11-cv-01250-AWI-SMS

**[PROPOSED] ORDER FINDING
 RESPONDENT IN CIVIL CONTEMPT
 OF ORDER FILED NOVEMBER 15, 2012
 AND JANUARY 16, 2012 ORDER** 

19 This matter came before me on December 17, 2012, under the Contempt Order to Show
 20 Cause filed November 15, 2012. Assistant United States Attorney Glen F. Dorgan and
 21 investigating Revenue Officer Michael F. Nicholas were present. Respondent did not file
 22 opposition to contempt and did not appear at the show-cause hearing. Based upon the entire
 23 record and the oral proceedings, I make the following findings:

24 (1) On July 29, 2011, Petitioner filed a Petition to enforce an IRS summons issued
 25 January 7, 2011, directed to the respondent, Nathan D. Bacon, and seeking testimony, books,
 26 records, papers, and other data to aid RO Nicholas' investigation to determine financial
 27 information relevant to the IRS's efforts to determine personal income tax liabilities for the tax

1 years ending December 31, 2004, December 31, 2005, December 31, 2006, December 31, 2007,
2 and December 31, 2009.

3 (2) By Order filed January 18, 2012, I enforced the IRS summons and ordered
4 respondent to meet with the investigating Revenue Officer within 21 days after issuance
5 of the Order, or at a later date to be set by the Revenue Officer, and to produce all
6 testimony, books, records, and other data demanded by the IRS summons issued
7 January 7, 2011.

8 (3) On January 19, 2012, the Revenue Officer wrote the respondent setting the
9 compliance date for February 15, 2012, at 9:00 a.m., at the Modesto I.R.S.

10 (4) The respondent did not appear, and he failed to provide the testimony and
11 documents demanded in the enforced summons.

12 (5) On April 12, 2012, government counsel mailed a letter to respondent
13 reminding him of the need to provide the required documentation to comply with the
14 summons enforcement order. The letter set a compliance appointment for May 4, 2012,
15 and warned of a contempt petition if respondent did not comply.

16 (6) The respondent again did not appear, and he failed to provide the testimony
17 and documents demanded in the enforced summons.

18 (7) On November 5, 2012, Petitioner filed a Petition Re: Contempt of Order
19 Filed January 18, 2012. This Court's Order, filed November 15, 2012, required the
20 respondent to appear before this Court on December 17, 2012, at 1:30 p.m., and show
21 cause as to why he should not be held in contempt for failure to comply with the Order
22 filed January 18, 2012. This order further set a date certain for a written response by the
23 respondent. This order was duly served by mail upon the respondent.

24 (8) Respondent failed to file written response, and failed to appear at the
25 hearing.

26 (9) Respondent's failure to comply with the Order filed January 18, 2012,
27 continues to the present.

1 (10) "A court has the inherent power to punish for civil or criminal contempt any
2 obstruction of justice relating to any judicial proceeding." Lambert v. Montana, 545 F.2d
3 87, 88 (9th Cir. 1976). Petitioner has the burden of proving its prima facie case by clear
4 and convincing proof. Balla v. Idaho State Bd. Of Corrs., 869 F.2d 461, 466 (9th Cir.
5 1989).

6 (11) By the Petition for Contempt and supporting documents, including the
7 declaration of Michael F. Nicholas, Petitioner has met this burden.

8 Based upon the foregoing, I find as follows:

9 A. Respondent, NATHAN D. BACON, is in civil contempt of this Court for
10 his failure to comply with the Order filed on January 18, 2012, directing
11 Respondent to comply with the IRS Summons issued on January 7, 2011.

12 ~~B. A Bench Warrant for the arrest of Respondent, NATHAN D. BACON, will~~
13 ~~issue.~~ *No Bail*

14 C. After arrest, Respondent, NATHAN D. BACON, is to be incarcerated until
15 he complies with the Order filed January 18, 2012, *and shall be brought before*
16 *the undersigned for further proceedings according to law.* *AWI*
It is **SO ORDERED**.

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18 DATED: Dec 17, 2012.

19 
20 ANTHONY W. ISHII
21 CHIEF UNITED STATES DISTRICT JUDGE
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