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

11 UNITED STATES OF AMERICA,)	Case No. 1:11-cv-01621-LJO-BAM
)	
12 Petitioner,)	MAGISTRATE JUDGE’S FINDINGS
)	AND RECOMMENDATIONS RE:
13 v.)	I.R.S. SUMMONS ENFORCEMENT
)	
14 FELIPE CARRANCO, General Partner,)	TAXPAYER: F&J CARRANCO FARM
)	LABOR
15 Respondent.)	
_____)	

17 This matter came before this Court on November 18, 2011, under the Order to
 18 Show Cause filed September 27, 2011, which, with the verified petition and
 19 memorandum, was properly served upon respondent under Fed. R. Civ. P. 4(e) on
 20 October 4, 2011. Yoshinori H. T. Himel appeared for petitioners, and investigating
 21 Revenue Officer Lisa Cumiford was present. Respondent did not file an opposition and
 22 did not appear.

23 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks
 24 to enforce an administrative summons (Exhibit A to the petition) in aid of Revenue
 25 Officer Cumiford's investigation of Felipe Carranco, as General Partner for F&J Carranco
 26 Farm Labor, to determine financial information relevant to the IRS’s efforts to collect
 27 Employer’s Annual Federal Unemployment Tax (Form 940) for the tax years ending
 28 December 31, 2001, and December 31, 2003; as well as Employer’s Annual Federal Tax

1 Return for Agricultural Employees (Form 943) for the tax years ending December 31,
2 2001, December 31, 2002, and December 31, 2003; plus a civil penalty for the tax year
3 ending December 31, 2001.

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

8 The Court has reviewed the petition and documents in support. Based on the
9 uncontroverted verification of Revenue Officer Cumiford and the entire record, the Court
10 makes the following findings:

11 (1) The summons issued by Revenue Officer Lisa Cumiford to respondent, Felipe
12 Carranco, on March 18, 2011, seeking testimony and production of documents and
13 records in respondent's possession, was issued in good faith and for a legitimate purpose
14 under I.R.C. § 7602, that is, to determine financial information relevant to the IRS's
15 efforts to collect Employer's Annual Federal Unemployment Tax (Form 940) for the tax
16 years ending December 31, 2001, and December 31, 2003; as well as Employer's Annual
17 Federal Tax Return for Agricultural Employees (Form 943) for the tax years ending
18 December 31, 2001, December 31, 2002, and December 31, 2003; plus a civil penalty for
19 the tax year ending December 31, 2001.

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

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

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

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

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

1 (7) The burden shifted to respondent, Felipe Carranco, to rebut that prima facie
2 showing.

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

5 The Court therefore recommends that the IRS summons issued to respondent,
6 Felipe Carranco, as General Partner for F&J Carranco Farm Labor, be enforced, and that
7 respondent be ordered to appear at the I.R.S. offices at 2525 Capitol Street, Suite 206,
8 Fresno, California 93721, before Revenue Officer Lisa Cumiford, or her designated
9 representative, twenty-one (21) days after the filing of the summons enforcement order,
10 or at a later date to be set in writing by Revenue Officer Cumiford, then and there to be
11 sworn, to give testimony, and to produce for examining and copying the books, checks,
12 records, papers and other data demanded by the summons, the examination to continue
13 from day to day until completed. The Court further recommends that if it enforces the
14 summons, the Court retain jurisdiction to enforce its order by its contempt power.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C)
17 and Rule 72-304 of the Local Rules of the United States District Court for the Eastern
18 District of California. Within ten (10) days after being served with these findings and
19 recommendations, any party may file written objections with the court and serve a copy
20 on all parties. Such a document should be titled "Objections to Magistrate Judge's
21 Findings and Recommendations." Any reply to the objections shall be served and filed
22 within ten (10) days after service of the objections. The District Judge will then review
23 these findings and recommendations pursuant to 28 U.S.C. § 636(b)(1). The parties are
24 advised that failure to file objections within the specified time may waive the right to
25 appeal the 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 Mr. Felipe Carranco, 2023
2 Olive Street, Selma, California 93662.

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4 IT IS SO ORDERED.

5 Dated: November 29, 2011

/s/ Barbara A. McAuliffe

6 UNITED STATES MAGISTRATE JUDGE
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