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

UNITED STATES OF AMERICA,)	Case No. 1:11-cv-01968-AWI-MJS
)	
Petitioner,)	MAGISTRATE JUDGE’S FINDINGS
)	AND RECOMMENDATIONS RE: I.R.S.
v.)	SUMMONS ENFORCEMENT AND
)	ORDER
MARK CAPPS, Corporate Vice President,)	
Mustang Ranch II, Inc.,)	OBJECTIONS DUE: 10 DAYS
)	
Respondent.)	TAXPAYER:
_____)	MUSTANG RANCH II, INC.

This matter came before Magistrate Judge Sheila K. Oberto on January 13, 2012, under the Order to Show Cause filed December 1, 2011, which, with the verified petition and memorandum, was personally served upon the respondent, Mark Capps, as Corporate Vice President, Mustang Ranch II, Inc., on December 6, 2011. Respondent did not file a written opposition. Yoshinori H. T. Himel, Assistant United States Attorney, appeared for petitioners; investigating Revenue Officer David M. Lopez was present. Respondent appeared for himself. He did not oppose the enforcement of the I.R.S. summons, and he agreed to comply.

The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to enforce an administrative summons, Exhibit A to the petition. The summons seeks information to aid Revenue Officer Lopez’ investigation to determine the correct liabilities

1 of Mustang Ranch II, Inc. for corporate income tax (Form 1120) for the tax year ending
2 December 31, 2009.

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

7 I have reviewed the petition and documents in support. Based on the uncontroverted
8 verification of the petition by Revenue Officer Lopez and the entire record, I make the
9 following findings:

10 (1) The summons issued by Revenue Officer David M. Lopez on July 12, 2011, and
11 served upon respondent, Mark Capps, on July 13, 2011, seeking testimony and production
12 of documents and records in respondent's possession, was issued in good faith and for a
13 legitimate purpose under I.R.C. § 7602, that is, to determine the correct liabilities of Mustang
14 Ranch II, Inc. for corporate income tax (Form 1120) for the tax year ending December 31,
15 2009.

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

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

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

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

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

25 (7) The burden shifted to respondent, Mark Capps, to rebut that prima facie showing.

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

27 For the reasons set forth above, it is HEREBY RECOMMENDED that:

28 1. The IRS summons served upon respondent, Mark Capps, be enforced;

1 2. Respondent be ordered to appear on March 30, 2012, at 9:00 a.m., or another
 2 date to be set in writing by Revenue Officer Lopez, at the I.R.S. offices at
 3 2525 Capitol Street, Suite 206, Fresno, California 93721-2227, before
 4 Revenue Officer Lopez or his designated representative, then and there to be
 5 sworn, to give testimony, and to produce for examining and copying the books,
 6 checks, records, papers and other data demanded by the summons, the
 7 examination to continue from day to day until completed; and

8 3. The Court retain jurisdiction to enforce its order by its contempt power.

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

20
 21
 22 IT IS SO ORDERED.

23 **Dated: January 23, 2012**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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 27
 28 ¹ The Clerk shall serve this and further orders by mail to Mark Capps, at 1404 N. Abby, Fresno, CA 93703.