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

11 UNITED STATES OF AMERICA,)	1:12-cv-00701-LJO-SMS
)	
12 Petitioner,)	FINDINGS AND RECOMMENDATIONS
)	RE: I.R.S. SUMMONS ENFORCEMENT
13 v.)	(Doc. 7)
)	
14 KENDALL O. BATES,)	ORDER DIRECTING CLERK TO
)	SERVE RESPONDENT BY MAIL
15 Respondent.)	
_____)	TAXPAYER: KENDALL O. BATES
)	P.O. Box 25335
)	Fresno, CA 93729-5335

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 18 This matter came on regularly for hearing on July 18, 2012 at 10:00 a.m. in
 19 Courtroom No. 1 before the Honorable Sandra M. Snyder, United States Magistrate
 20 Judge, pursuant to an Order to Show Cause filed May 4, 2012 (Doc. 4). Respondent,
 21 Kendall O. Bates, did not appear nor file written opposition to the verified petition filed
 22 May 1, 2012 (Doc. 1). Assistant United States Attorney Benjamin E. Hall appeared, in
 23 the place and instead of Assistant United States Attorney Yoshinori T. Himel, on behalf
 24 of Petitioner. Internal Revenue Service Investigating Revenue Officer Lorena Ramos
 25 also appeared.

26 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks
 27 to enforce an administrative summons (Exhibit A to the petition) issued August 5, 2011,
 28 to secure payment of assessed income tax liabilities for Respondent, Kendall O. Bates, for

1 the tax years ending December 31, 2000, December 31, 2001, December 31, 2003,
2 December 31, 2004, December 31, 2005, and December 31, 2006.

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

8 This Court has reviewed the verified petition and the documents filed in support
9 thereof. On the summons enforcement merits, based on the uncontroverted verification of
10 the petition by Revenue Officer Ramos and the entire record, the Court finds as follows:

11 (1) The summons issued to Respondent, Kendall O. Bates, by Revenue Officer
12 Lorena Ramos on August 5, 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 secure payment of assessed income tax liabilities for
15 Respondent, Kendall O. Bates, for the tax years ending December 31, 2000,
16 December 31, 2001, December 31, 2003, December 31, 2004, December 31, 2005, and
17 December 31, 2006.

18 (2) The information sought is relevant for that purpose.

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

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

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

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

27 (7) The burden shifted to Respondent, Kendall O. Bates, to rebut the prima
28 facie showing.

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

3 Therefore, it is HEREBY RECOMMENDED that:

4 (1) The IRS summons issued to Respondent, Kendall O. Bates, be enforced;

5 (2) Respondent, Kendall O. Bates, be ordered to appear at the I.R.S. offices at
6 2525 Capitol Street, Suite 206, Fresno, CA, 93721-2227, before Revenue Officer Lorena
7 Ramos, or her designated representative, on the twenty-first (21st) day after the filing date
8 of the District Judge's summons enforcement order, or at a later date to be set, in writing,
9 by Revenue Officer Ramos, then and there to be sworn, to give testimony, and to produce
10 for examining and copying the books, checks, records, papers, and other data demanded
11 by the summons, the examination to continue from day to day until completed; and,

12 (3) If the Court enforces the summons, the Court shall retain jurisdiction to
13 enforce its order by its contempt power.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the
16 Local Rules of the United States District Court for the Eastern District of California.

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

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1 The Clerk is DIRECTED to serve Respondent, Kendall O. Bates, P.O. Box 25335,
2 Fresno, CA, 93729-5335.

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4 IT IS SO ORDERED.

5 **Dated:** July 24, 2012

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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