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7 Attorneys for Petitioner United States of America

8 IN THE UNITED STATES DISTRICT COURT FOR THE
 9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Petitioner,

12 v.

13 ALVARO NUNEZ, sole proprietor,
 14 dba BUTTONWILLOW TIRE,

15 Respondent.

1:12-cv-00729-AWI-MJS

**AMENDED ORDER TO SHOW
 CAUSE RE: TAX SUMMONS
 ENFORCEMENT**

**TAXPAYER:
 ALVARO NUNEZ, Sole Proprietor,
 dba BUTTONWILLOW TIRE**

Date: September 14, 2012
 Time: 9:30 a.m.
 Ctrm: 6, 7th Floor

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 19 Upon the petition of BENJAMIN B. WAGNER, United States Attorney for the
 20 Eastern District of California, including the verification of Revenue MICHAEL J.
 21 PAPASERGIA, and the Exhibit A attached thereto, it is hereby:

22 ORDERED that the Respondent, ALVARO NUNEZ, appear before United States
 23 Magistrate Judge Michael J. Seng, in that Magistrate Judge's courtroom in the United
 24 States Courthouse, 2500 Tulare Street, Fresno, California, on September 14, 2012, at 9:30
 25 a.m., to show cause why the respondent should not be compelled to obey the Internal
 26 Revenue Service summons issued on August 16, 2011.

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1 It is further ORDERED that:

2 1. The United States Magistrate Judge will preside, under 28 U.S.C. Section
3 636(b)(1) and Local Rule 72-302(c)(9), at the hearing scheduled above. After hearing,
4 the Magistrate Judge intends to submit proposed findings and recommendations under
5 Local Rule 304(a), with the original thereof filed by the Clerk and a copy provided to all
6 parties.

7 2. Under Fed. R. Civ. P. 4(c)(1), the Court hereby appoints the investigating
8 Internal Revenue Service employee, and all federal employees designated by that
9 employee, to serve process in this case.

10 3. To afford the respondent an opportunity to respond to the petition and the
11 petitioner an opportunity to reply, a copy of this order, the Verified Petition and its
12 Exhibit, and the Points and Authorities, shall be served by delivering a copy to the
13 respondent personally, or by leaving a copy at the respondent's dwelling house or usual
14 place of abode with some person of suitable age and discretion then residing therein, or
15 by any other means of service permitted by Fed. R. Civ. P. 4(e), within 21 days of the date
16 this order is served upon the United States Attorney, unless such service cannot be made
17 despite reasonable efforts.

18 4. Proof of any service done under paragraph 3, above, shall be filed with the
19 Clerk as soon as practicable.

20 5. If the federal employee assigned to serve these documents is not reasonably
21 able to serve the papers as provided in paragraph 3, petitioner may request a court order
22 granting leave to serve by other means. See Fed. R. Civ. P. 81(a)(5). The federal
23 employee assigned to serve the documents shall make a certificate detailing the efforts
24 made within the 21-day period to serve the respondent as provided in paragraph 3.

25 6. The file reflects a prima facie showing that the investigation is conducted
26 pursuant to a legitimate purpose, that the inquiry may be relevant to that purpose, that the
27 information sought is not already within the Commissioner's possession, and that the
28 administrative steps required by the Code have been followed. See United States v.

1 Powell, 379 U.S. 48, 57-58 (1964). The burden of coming forward therefore has shifted
2 to whoever might oppose enforcement.

3 7. If the respondent has any defense or opposition to the petition, such defense or
4 opposition shall be made in writing and filed with the Clerk and a copy served on the
5 United States Attorney at least 10 days before the date set for the show cause hearing.

6 8. At the show cause hearing, the Magistrate Judge intends to consider the issues
7 properly raised in opposition to enforcement. Only those issues brought into controversy
8 by the responsive pleadings and supported by affidavit will be considered. Any
9 uncontested allegation in the petition will be considered admitted.

10 9. The respondent may notify the Court, in a writing filed with the Clerk and
11 served on the United States Attorney at least 10 days before the date set for the show
12 cause hearing, that the respondent has no objections to enforcement of the summons. The
13 respondent's appearance at the hearing will then be excused.

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16 IT IS SO ORDERED.

17 Dated: May 24, 2012

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE