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7 Attorneys for Petitioner United States of America

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

11 UNITED STATES OF AMERICA,  
 12  
 Petitioner,  
 13  
 v.  
 14 BERTONI BARRERA, as sole proprietor of  
 EL REALITO DE ORO,  
 15  
 Respondent.  
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**1:13-cv-01076-LJO-SMS**

**FINDINGS AND RECOMMENDATIONS  
RE: I.R.S. SUMMONS ENFORCEMENT**

**Taxpayer:  
BERTONI BARRERA**

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 19 This matter came before Magistrate Judge Sandra M. Snyder on September 4, 2013,  
 20 under the Order to Show Cause filed July 18, 2013. The order, with the verified petition filed  
 21 July 15, 2013, and its supporting memorandum, was personally served upon the respondent,  
 22 Bertoni Barrera, as sole proprietor of El Realito De Oro, on July 26, 2013. Respondent did not  
 23 file written opposition or non-opposition to the verified petition as provided for in the Order to  
 24 Show Cause. Yoshinori H. T. Himel, Assistant United States Attorney, appeared by telephone  
 25 on behalf of Petitioner, and investigating Revenue Officer Evan D. Moses was present.  
 26 Respondent did not appear at the scheduled hearing; however, the Court later recalled the matter  
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1 when Respondent made a late appearance. The Court advised Respondent as to what had  
2 transpired at the hearing and provided him with AUSA Himel's contact information.

3 The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce  
4 an administrative summons (Exhibit A to the petition) issued March 8, 2013. The summons is  
5 part of an investigation of the respondent to secure information for collection of assessed Form  
6 941 Employer's Federal Quarterly Tax for tax periods December 31, 2010, March 31, 2011, June 30,  
7 2011, December 31, 2011, March 31, 2012, and June 30, 2012, and assessed Form 940 Employer  
8 Annual Federal Unemployment Tax for tax periods December 31, 2010 and December 31, 2011, all  
9 relating to the food service business of which Respondent Barrera is the sole proprietor.

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

14 I have reviewed the petition and documents in support. Based on the uncontroverted  
15 verified petition by Revenue Officer Moses and the entire record, I make the following findings:

16 (1) The summons issued by Revenue Officer Evan D. Moses on March 8, 2013, and  
17 served upon respondent, Bertoni Barrera, on March 8, 2013, seeking testimony and production  
18 of documents and records in respondent's possession, was issued in good faith and for a  
19 legitimate purpose under I.R.C. § 7602, that is, to secure information for collection of assessed  
20 Form 941 Employer's Federal Quarterly Tax for tax periods December 31, 2010, March 31, 2011, June  
21 30, 2011, December 31, 2011, March 31, 2012, and June 30, 2012, and assessed Form 940 Employer  
22 Annual Federal Unemployment Tax for tax periods December 31, 2010 and December 31, 2011, all for  
23 Respondent's sole proprietorship.

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

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

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

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

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

6 (7) The burden shifted to respondent, Bertoni Barrera, to rebut that prima facie showing.

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

8 I therefore recommend that the IRS summons served upon Respondent, Bertoni Barrera,  
9 be enforced, and that Respondent be ordered to appear at the I.R.S. offices at 2525 Capitol  
10 Street, Suite 205, Fresno, California 93721, before Revenue Officer Moses or his designated  
11 representative, on the twenty-first (21st) day after the filing date of the District Judge's  
12 summons enforcement order, or at a later date to be set in writing by Revenue Officer Moses,  
13 then and there to be sworn, to give testimony, and to produce for examining and copying the  
14 books, checks, records, papers and other data demanded by the summons, the examination to  
15 continue from day to day until completed. I further recommend that if it enforces the summons,  
16 the Court retain jurisdiction to enforce its order by its contempt power.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72-304 of the Local  
19 Rules of the United States District Court for the Eastern District of California. Within ten (10)  
20 days after being served with these findings and recommendations, any party may file written  
21 objections with the court and serve a copy on all parties. Such a document should be titled  
22 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
23 shall be served and filed within ten (10) days after service of the objections. The District Judge  
24 will then review these findings and recommendations pursuant to 28 U.S.C. § 636(b)(1). The  
25 parties are advised that failure to file objections within the specified time may waive the right to  
26 appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

1 THE CLERK SHALL SERVE this and further orders by mail to Bertoni Barrera, 422 S.  
2 Gateway Drive, Suite 100, Madera, California 93637.

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10 IT IS SO ORDERED.

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12 Dated: September 23, 2013

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE