

1 BENJAMIN B. WAGNER
United States Attorney
2 YOSHINORI H. T. HIMEL #66194
Assistant United States Attorney
3 Eastern District of California
501 I Street, Suite 10-100
4 Sacramento, CA 95814-2322
Telephone: (916) 554-2760
5 Facsimile: (916) 554-2900
email: yoshinori.himel@usdoj.gov
6

7 Attorneys for Petitioner United States of America

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

10
11 UNITED STATES OF AMERICA,
12
13 Petitioner,
14
15 v.

14 MICHAEL A. GAMBOA,
15
16 Respondent.

1:14-cv-00261-AWI-MJS

**MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATIONS RE: I.R.S.
SUMMONS ENFORCEMENT; ORDER**

**Taxpayer:
MICHAEL A. GAMBOA**

17
18
19 This matter came before Magistrate Judge Michael J. Seng on May 9, 2014, under the
20 Order to Show Cause filed March 4, 2014. The order, with the verified petition filed February
21 25, 2014, and its supporting memorandum, was personally served upon the respondent, Michael
22 A. Gamboa, on March 21, 2014. Respondent did not file written opposition or non-opposition
23 to the verified petition as provided for in the Order to Show Cause. Yoshinori H. T. Himel,
24 Assistant United States Attorney, appeared on behalf of Petitioner, and investigating Revenue
25 Officer Michael J. Papasergia also was present. Respondent did not appear at the scheduled
26 hearing, even though it started approximately 17 minutes later than scheduled.

27 The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce
28 an administrative summons (Exhibit A to the petition) issued June 17, 2013. The summons is

1 part of an investigation of the respondent to secure information needed to collect assessed
2 federal income taxes for the year ending December 31, 2001.

3 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is found to
4 be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government to bring the
5 action. The Order to Show Cause shifted to respondent the burden of rebutting any of the four
6 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 verified petition by Revenue Officer Kathy Ruiz and the entire record, I make the following
9 findings:

10 (1) The summons issued by Revenue Officer Kathy Ruiz on June 17, 2013, and served
11 upon respondent, Michael A. Gamboa, on June 17, 2013, seeking testimony and production of
12 documents and records in respondent's possession, was issued in good faith and for a legitimate
13 purpose under I.R.C. § 7602, that is, to secure information needed to collect assessed federal
14 income taxes for the year ending December 31, 2001.

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

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

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

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

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

23 (7) The burden shifted to respondent, Michael A. Gamboa, to rebut that prima facie
24 showing.

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

26 (9) Petitioner shall be entitled to costs of personal service in this matter.

27 I therefore recommend that the IRS summons served upon Respondent, Michael A.
28 Gamboa, be enforced, and that Respondent be ordered to appear at the I.R.S. offices at 4825

1 Coffee Road, Bakersfield, California 93308, before Revenue Officer Papasergia or his
2 designated representative, on the twenty-first (21st) day after the filing date of the District
3 Judge's summons enforcement order, or at a later date to be set in writing by Revenue Officer
4 Papasergia, then and there to be sworn, to give testimony, and to produce for examining and
5 copying the books, checks, records, papers and other data demanded by the summons, the
6 examination to continue from day to day until completed. I further recommend that if it
7 enforces the summons, the Court allow costs of personal service and retain jurisdiction to
8 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 72-304 of the Local
11 Rules of the United States District Court for the Eastern District of California. Within ten (10)
12 days after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be titled
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
15 shall be served and filed within ten (10) days after service of the objections. The District Judge
16 will then review these findings and recommendations pursuant to 28 U.S.C. § 636(b)(1). The
17 parties are advised that failure to file objections within the specified time may waive the right to
18 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 THE CLERK SHALL SERVE this and further orders by mail to Michael A. Gamboa,
20 555 Acacia Avenue, Shafter, California 93263.

21
22 IT IS SO ORDERED.

23
24 Dated: May 20, 2014

/s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE
26
27
28