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7 Of Counsel:
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9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

Case No. 1:14-cv-1107---GSA

)

12)
Petitioner,

) **FINDINGS AND**
) **RECOMMENDATIONS**
) **REGARDING I.R.S. SUMMONS**
) **ENFORCEMENT**

13)
v.

14 JEFFREY D. BOHN,

) **Taxpayer: JEFFREY D. BOHN**

15)
Respondent.

16)
17 _____)

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19 This matter came before Magistrate Judge Gary S. Austin on October 10, 2014, pursuant
20 to the Order to Show Cause filed July 31, 2014. The Order to Show Cause, with the Petition to
21 Enforce IRS Summons filed July 15, 2014, and its supporting declaration and exhibit, were
22 served upon the respondent, Jeffrey D. Bohn (“Respondent”), on August 5, 2014. Docs. 5, 7.
23 Boris Kukso, Trial Attorney for the Department of Justice Tax Division, telephonically appeared

1 on behalf of the United States (“Petitioner); investigating Revenue Officer Evan Moses was
2 present in Court. Doc. 8. Respondent did not appear at the hearing. Doc. 8. Respondent also
3 did not file any written opposition or non-opposition to the petition as provided for in the Order
4 to Show Cause. Doc. 4.

5 The Petition to Enforce IRS Summons initiating this proceeding seeks to enforce an
6 administrative summons (Exhibit 1 to the Petition) issued on May 15, 2014. Doc. 1-2. The
7 summons was issued as part of an investigation into the Respondent’s ability to pay his
8 delinquent Form 1040 taxes for the tax years ending December 31, 2001, December 31, 2003,
9 and December 31, 2007. The Court has subject matter jurisdiction over this action pursuant to
10 28 U.S.C. §§ 1340 and 1345. Furthermore, the Internal Revenue Code specifically authorizes
11 the United States to bring an action in district court to enforce a summons commanding a person
12 to appear, to testify, or to produce books, papers, or other data, under the internal revenue laws.
13 *See* 26 U.S.C. §§ 7402(b) and 7604(a).

14 In order to obtain enforcement of a summons, the United States must establish that the
15 summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose;
16 (3) seeks information that is not already within the possession of the Internal Revenue Service
17 (“I.R.S.”); and (4) complies with all administrative steps required by the Internal Revenue Code.
18 United States v. Powell, 379 U.S. 48, 57-58 (1964). The Government's burden under Powell “is
19 ‘a slight one’ and typically is satisfied by the introduction of a sworn declaration of the revenue
20 agent who issued the summons that the Powell requirements have been met.” Fortney v. United
21 States, 59 F.3d 117, 120 (9th Cir. 1995) (citing United States v. Dynavac, Inc., 6 F.3d 1407,
22 1414 (9th Cir. 1993); United States v. Gilleran, 992 F.2d 232, 233 (9th Cir. 1993)). Finally, 26
23

1 U.S.C. § 7602(d)(1) specifies that a summons may not be enforced “with respect to any person if
2 a Justice Department referral is in effect with respect to such a person.”

3 The Court has reviewed the Petition to Enforce IRS Summons, Revenue Officer Moses’
4 declaration and the exhibit thereto. Revenue Officer Moses attests in his declaration that each of
5 the applicable Powell factors is satisfied in this case and that no Justice Department referral, as
6 defined by 26 U.S.C. § 7602(d)(2), is in effect with respect to the Respondent. Revenue Officer
7 Moses also attested to these facts at the hearing on the Order to Show Cause.

8 Based on the entire record, the Court makes the following findings:

- 9 1. The summons issued by Revenue Officer Moses on May 15, 2014, and served
10 upon respondent, Jeffrey D. Bohn, on that same date, seeking testimony and
11 production of documents and records in Respondent’s possession, was issued for
12 a legitimate purpose, that is, to collect delinquent Form 1040 taxes for the tax
13 years ending December 31, 2001, December 31, 2003, and December 31, 2007.
- 14 2. The information sought is relevant to that purpose.
- 15 3. The information sought is not already in the possession of the Internal Revenue
16 Service.
- 17 4. The administrative steps required by the Internal Revenue Code have been
18 followed.
- 19 5. This case has not been referred by the Internal Revenue Service to the Department
20 of Justice for criminal prosecution.
- 21 6. The Petition to Enforce, the declaration of Revenue Officer Moses, and the
22 accompanying exhibit made a prima facie showing that the requirements of
23 United States v. Powell, 379 U.S. 48, 57-58 (1964) are satisfied.

1 7. The burden shifted to Respondent to rebut that prima facie showing.

2 8. Respondent presented no argument or evidence to rebut the prima facie showing.

3 The undersigned therefore RECOMMENDS that the I.R.S. Summons served on
4 Respondent Jeffrey D. Bohn be enforced; and that the Respondent be ordered to appear before
5 I.R.S. Revenue Officer Evan Moses, or his designee, at the offices of the Internal Revenue
6 Service located at 2525 Capitol St., Suite 205, Fresno, CA, 93721, on the twenty-first (21st) day
7 after the filing of the District Judge's order enforcing the IRS Summons, or at a later date to be
8 set in writing by Revenue Office Moses (and served on Respondent), then and there to be sworn,
9 to give testimony, and to produce for examining and copying the books, checks, records, papers
10 and other data demanded by the summons, the examination to continue from day to day until
11 completed. The undersigned RECOMMENDS that if it enforces the summons, the District
12 Court retain jurisdiction to enforce its order pursuant to its contempt power.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the Local Rules of
15 this Court. Within fourteen (14) days after being served with these findings and
16 recommendations, any party may file written objections with the court and serve a copy on all
17 parties. Such a document shall be entitled "Objections to Magistrate Judge's Findings and
18 Recommendations." Any response to objections shall be served and filed within seven (7) days
19 after service of the objections. The District Judge will then review these findings and
20 recommendations pursuant to 28 U.S.C. § 636(b)(1). The parties are advised that failure to file
21 objections within the specified time may waive the right to appeal the District Court's
22 forthcoming order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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The Clerk of the Court is directed to serve this and all further orders by mail to Respondent Jeffrey D. Bohn at 957 N. Citadel Ave., Clovis, California, 93611.

IT IS SO ORDERED.

Dated: October 31, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE