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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 Petitioner,

13 v.

14 ELDO M. KLINGENBERG, JR.,  
15 Respondent.

**1:14-cv-01263-LJO-BAM**

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

**Taxpayer:  
ELDO M. KLINGENBERG, JR.**

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19 This matter came on before Magistrate Judge Barbara A. McAuliffe on October 10, 2014,  
20 under the Order to Show Cause filed September 5, 2014. The order, with the verified petition  
21 filed August 11, 2014, and its supporting memorandum, was personally served upon the  
22 Respondent, Eldo M. Klingenberg, Jr., on September 24, 2014. On October 1, 2014,  
23 Respondent served a Notice of No Objection to the verified petition as provided for in the Order  
24 to Show Cause. At the hearing, Yoshinori H. T. Himel, Assistant United States Attorney,  
25 appeared telephonically on behalf of Petitioner, and investigating Revenue Officer Brian R.  
26 Beedie was present in the courtroom. Respondent did not appear at the hearing; his attendance  
27 was excused under paragraph 9 of the Order to Show Cause.  
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1           The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce  
2 an administrative summons (Exhibit A to the petition) issued August 28, 2012. The summons is  
3 part of an investigation of respondent, ELDO M. KLINGENBERG, JR., to secure information  
4 needed to collect assessed Form 1040 income taxes for tax years ending December 31, 1998,  
5 December 31, 1999, December 31, 2000, December 31, 2001, December 31, 2002, December  
6 31, 2003, December 31, 2007, and December 31, 2008.

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

11           I have reviewed the petition and documents in support and considered Respondent's "No  
12 Objection." Based on the uncontroverted verified petition by Revenue Officer Brian R. Beedie  
13 and the entire record, I make the following findings:

14           (1) The summons issued by Revenue Officer Brian R. Beedie on August 28, 2012, and  
15 served upon Respondent, Eldo M. Klingenberg, Jr., on August 28, 2012, seeking testimony and  
16 production of documents and records in respondent's possession, was issued in good faith and  
17 for a legitimate purpose under I.R.C. § 7602, that is, to secure information needed to collect  
18 Form 1040 assessed income taxes for tax years ending December 31, 1998, December 31, 1999,  
19 December 31, 2000, December 31, 2001, December 31, 2002, December 31, 2003, December  
20 31, 2007, and December 31, 2008.

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

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

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

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

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

1 (7) The burden shifted to Respondent, Eldo M. Klingenberg. Jr., to rebut that prima facie  
2 showing.

3 (8) Respondent presented no argument or evidence to rebut the prima facie showing, and  
4 he consented to enforcement by the abovementioned filing.

5 I therefore recommend that the IRS summons served upon Respondent, Eldo M.  
6 Klingenberg, Jr., be enforced; that Respondent be ordered to file with Revenue Officer Beedie in  
7 Bakersfield, California, an IRS Form 433-A ("Collection Information Statement for Wage  
8 Earners and Self-Employed Individuals"), completed and signed under penalty of perjury, by the  
9 twenty-first (21st) day after the filing date of the District Judge's summons enforcement order;  
10 and that Respondent be ordered to appear at the United States Attorney's Offices at 123 North  
11 San Francisco Street, Suite 410, Flagstaff, Arizona 86001, or at 4825 Coffee Road, Bakersfield,  
12 California 93308, before Revenue Officer Beedie or his designated representative, on the thirty-  
13 fifth (35th) day after the filing date of the District Judge's summons enforcement order, or on a  
14 later date to be set in writing by Revenue Officer Beedie, then and there to be sworn, to give  
15 testimony, and to produce for examining and copying the books, checks, records, papers and  
16 other data demanded by the summons, the examination to continue from day to day until  
17 completed. Additionally, if it enforces the summons, the Court should retain jurisdiction to  
18 enforce its order by its contempt power.

19 These findings and recommendations are submitted to the United States District Judge  
20 assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72-304 of the Local  
21 Rules of the United States District Court for the Eastern District of California. Within ten (10)  
22 days after being served with these findings and recommendations, any party may file written  
23 objections with the court and serve a copy on all parties. Such a document should be titled  
24 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections

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1 shall be served and filed within ten (10) days after service of the objections. The District Judge  
2 will then review these findings and recommendations pursuant to 28 U.S.C. § 636(b)(1). The  
3 parties are advised that failure to file objections within the specified time may waive the right to  
4 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 THE CLERK SHALL SERVE this and further orders by mail to Eldo M. Klingenberg,  
6 Jr., P.O. Box 50695, Parks, AZ 86018.

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8 IT IS SO ORDERED.

9 Dated: October 16, 2014

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

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