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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
13 Petitioner,
14
15 v.

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

1:14-cv-01263-LJO-BAM

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

Taxpayer:
ELDO M. KLINGENBERG, JR.

Date: October 10, 2014
Time: 9:00 a.m.
Ctrm: 8, 6th Floor

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19 Upon the petition of BENJAMIN B. WAGNER, United States Attorney for the Eastern
20 District of California, including the verification of Revenue Officer BRIAN R. BEEDIE, and the
21 Exhibits attached thereto, it is hereby:

22 ORDERED that the Respondent, ELDO M. KLINGENBERG, JR., appear before United
23 States Magistrate Judge Barbara A. McAuliffe, in that Magistrate Judge's courtroom in the
24 United States Courthouse, 2500 Tulare Street, Fresno, California, on October 10, 2014, at 9:00
25 a.m., to show cause why the respondent should not be compelled to obey the first Internal
26 Revenue Service summons issued on August 28, 2012.

27 It is further ORDERED that:

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

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

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

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

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

22 6. The file reflects a prima facie showing that the investigation is conducted pursuant
23 to a legitimate purpose, that the inquiry may be relevant to that purpose, that the information
24 sought is not already within the Commissioner's possession, and that the administrative steps
25 required by the Code have been followed. See United States v. Powell, 379 U.S. 48, 57-58
26 (1964). The burden of coming forward therefore has shifted to whoever might oppose
27 enforcement.

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

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

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

12
13 IT IS SO ORDERED.

14 Dated: September 5, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE