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

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11 UNITED STATES OF AMERICA,

12 Petitioner,

13 v.

14 JOSE OCHOA,

15 Respondent.

1:14-cv-01335-AWI-SKO

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

Taxpayer:
JOSE OCHOA

Date: October 22, 2014

Time: 9:30 a.m.

Ctrm: 7. 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 MICHAEL J.
21 PAPASERGIA, and the Exhibit attached thereto, it is hereby:

22 ORDERED that the Respondent, JOSE OCHOA, appear before United States Magistrate
23 Judge Sheila K. Oberto, in that Magistrate Judge's courtroom in the United States Courthouse,
24 2500 Tulare Street, Fresno, California, on October 22, 2014, at 9:30 a.m., to show cause why the
25 respondent should not be compelled to obey the Internal Revenue Service summons issued on
26 October 31, 2013.

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1 It is further ORDERED that:

2 1. The United States Magistrate Judge will preside, under 28 U.S.C. Section
3 636(b)(1) and Local Rule 72-302(c)(9), at the hearing scheduled above. After hearing, the
4 Magistrate Judge intends to submit proposed findings and recommendations under Local Rule
5 304(a), with the original thereof filed by the Clerk and a copy provided to all parties.

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

9 3. To afford the respondent an opportunity to respond to the petition and the
10 petitioner an opportunity to reply, a copy of this order, the Petition and its Exhibit, and the
11 Points and Authorities, shall be served by delivering a copy to the respondent personally, or by
12 leaving a copy at the respondent's dwelling house or usual place of abode with some person of
13 suitable age and discretion then residing therein, or by any other means of service permitted by
14 Fed. R. Civ. P. 4(e), at least 30 days before the show cause hearing date including any continued
15 date, unless such service cannot be made despite reasonable efforts.

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

18 5. If the federal employee assigned to serve these documents is not reasonably able
19 to serve the papers as provided in paragraph 3, petitioner may request a court order granting
20 leave to serve by other means. See Fed. R. Civ. P. 81(a)(5). The request shall detail the efforts
21 made to serve the respondent by the person having personal knowledge regarding the attempted
22 service.

23 6. The file reflects a prima facie showing that the investigation is conducted pursuant
24 to a legitimate purpose, that the inquiry may be relevant to that purpose, that the information
25 sought is not already within the Commissioner's possession, and that the administrative steps
26 required by the Code have been followed. See United States v. Powell, 379 U.S. 48, 57-58
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1 (1964). The burden of coming forward therefore has shifted to whoever might oppose
2 enforcement.

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

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

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

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17 IT IS SO ORDERED.

18 Dated: September 4, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE