

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

 Petitioner,

 v.
 ALMA D. SANDERS,

 Respondent.

1:14-cv-01443-AWI-SKO

MAGISTRATE JUDGE’S FINDINGS AND
RECOMMENDATIONS AND ORDER RE:
I.R.S. SUMMONS ENFORCEMENT

 Taxpayer:
ALMA SANDERS

This matter came on before Magistrate Judge Sheila K. Oberto on November 5, 2014, pursuant to the Order to Show Cause filed September 29, 2014. The Order, with the verified petition filed September 15, 2014, and its supporting memorandum, was personally served on Respondent by delivery to her adult son at their residence on October 3, 2014. Respondent did not file an opposition or a non-opposition to the verified petition as provided for in the Order to Show Cause. At the hearing, Bobbie Montoya, Assistant United States Attorney, appeared telephonically for Petitioner on behalf of Yoshinori H.T. Himel, Assistant United States Attorney, and investigating Revenue Officer Evan D. Moses was present in the courtroom. Respondent appeared at the hearing and was accompanied by Dwayne Sanders.

The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce an administrative summons (Exhibit A to the petition) issued November 26, 2013. The summons is part of an investigation of the respondent to secure information needed to collect Form 1040 federal income taxes for tax years ending December 31, 2001, December 31, 2002,

1 December 31, 2004, December 31, 2005, December 31, 2006, December 31, 2007, December
2 31, 2008, December 31, 2009, December 31, 2010, and December 31, 2011.

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 The Court has reviewed the petition and documents in support. Based on the
8 uncontroverted verified petition by Revenue Officer Evan D. Moses and the entire record, the
9 Court makes the following findings:

10 (1) The summons issued by Revenue Officer Evan D. Moses on March 13, 2014, and
11 served on March 14, 2014, seeking testimony and production of documents and records in
12 respondent's possession, was issued in good faith and for a legitimate purpose under
13 I.R.C. § 7602, that is, to secure information needed to collect assessed federal income taxes
14 (Form 1040) for tax years ending December 31, 2001, December 31, 2002, December 31, 2004,
15 December 31, 2005, December 31, 2006, December 31, 2007, December 31, 2008, December
16 31, 2009, December 31, 2010, and December 31, 2011.

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

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

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

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

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

25 (7) The burden shifted to respondent, Alma D. Sanders, to rebut that prima facie
26 showing.

27 (8) Respondent presented no argument or evidence to rebut the prima facie showing.
28

1 (9) Respondent agreed with the Revenue Officer, and stated her agreement in open court,
2 to produce the documentary information sought in the summons to RO Moses on or before
3 December 3, 2014, and to appear by telephone on December 10, 2014, at 11:00 a.m., by calling
4 the direct line of RO Moses (559-443-7636), or his designated representative. Respondent is
5 hereby ordered to make that document production and that telephonic appearance.

6 The Court therefore recommends that the IRS summons served upon Respondent be
7 enforced; and that Respondent be ordered to comply with the summons by producing the
8 documentary information sought in the summons to RO Moses on or before December 3, 2014,
9 and to appear by telephone on December 10, 2014, at 11:00 a.m., as agreed to by RO Moses and
10 Respondent Sanders at the show cause hearing, then and there to be sworn, to give testimony,
11 and to produce for examining and copying the books, checks, records, paper and other data
12 demanded by the summons, the examination to continue from day to day until completed.
13 Should the December 10th telephonic appearance need to be continued or rescheduled, the
14 appearance is to be set in writing for a later date by RO Moses. The Court further recommends
15 that if it enforces the summons, the Court retain jurisdiction to enforce its order by its contempt
16 power.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72-304 of the Local
19 Rules of the United States District Court for the Eastern District of California. Within ten (10)
20 days after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be titled
22 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
23 objections shall be served and filed within ten (10) days after service of the objections. The
24 District Judge will then review these findings and recommendations pursuant to 28 U.S.C. §
25 636(b)(1). The parties are advised that failure to file objections within the specified time may
26 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
27 1991).

1 THE CLERK SHALL SERVE this and further orders by mail to Alma D. Sanders, 6356
2 N. Palm Avenue, Fresno, CA 93704-1440.

3
4 IT IS SO ORDERED.

5 Dated: November 19, 2014

/s/ Sheila K. Oberto
6 UNITED STATES MAGISTRATE JUDGE