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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 v.

15 ARMANDO RIOS, MARIO DISALVO,
President, D & R MARKETING, INC.,

16
17 Respondents.

1:15-cv-00417-LJO-GSA

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

Taxpayer: ARMANDO RIOS

Date: September 25, 2015
Time: 9:30 a.m.
Ctrm: 10. 6th Floor

18
19 Upon the petition of BENJAMIN B. WAGNER, United States Attorney for the Eastern
20 District of California, including the verification of Revenue Officer Evan D. Moses, and the
21 Exhibit attached thereto, it is hereby:

22 ORDERED that respondent ARMANDO RIOS appear before United States Magistrate
23 Judge Gary S. Austin, in that Magistrate Judge's courtroom in the United States Courthouse,
24 2500 Tulare Street, Fresno, California, on September 25, 2015, at 9:30 a.m., to show cause why
25 the respondent should not be compelled to obey the Internal Revenue Service summons issued
26 on June 26, 2013.

27 It is further ORDERED that:

28 ///

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), at least 30 days before the show cause hearing date including any
14 continued date, 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 request shall detail the efforts
20 made to serve the respondent.

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

27 7. If the respondent has any defense or opposition to the petition, such defense or
28 opposition shall be made in writing and filed with the Clerk and a copy served on the United

1 States Attorney at least 10 days before the show cause hearing date including any continued
2 date.

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

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

11
12 IT IS SO ORDERED.

13 Dated: June 16, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE