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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Petitioner, v. OLMA TORRES, Respondent.	**1:15-cv-00425-LJO-MJS** **MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS AND ORDER RE: I.R.S. SUMMONS ENFORCEMENT** Taxpayer: **OLMA TORRES**

This matter came on before Magistrate Judge Michael J. Seng on June 12, 2015, under the Order to Show Cause filed March 27, 2015. Dkt. 5. The order, with the verified petition filed March 18, 2015 (Dkt. 1), and its supporting memorandum (Dkt. 4-1), was personally served on Respondent at her place of residence, 4326 North Emerson Avenue, Apartment 101, Fresno, California. Dkt. 6. Respondent did not file opposition or non-opposition to the verified petition as provided for in the Order to Show Cause. At the hearing, Bobbie J. Montoya, Assistant United States Attorney, appeared on behalf of Petitioner, and investigating Revenue Officer Dennis Stiffler also was present in the courtroom. Respondent appeared at the show cause hearing.

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The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce administrative summonses (Exhibits A and B to the Petition) issued July 17, 2014. The summonses are part of an investigation of the respondent to secure information needed to collect assessed federal income taxes (Form 1040) for tax years ending December 31, 2000, December 31, 2001, and December 31, 2002, and seeking information needed to determine the correct federal income taxes and statutory additions for the tax years ending December 31, 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012, and December 31, 2013.

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

I have reviewed the petition and documents in support. Based on the uncontroverted verified petition by Revenue Officer Dennis Stiffler and the entire record, I make the following findings:

(1) The summonses (Exhibits A and B to the Petition) issued by Revenue Officer Dennis Stiffler on July 17, 2014, and served upon Respondent, on July 17, 2014, seeking testimony and production of documents and records in respondent's possession, were issued in good faith and for a legitimate purpose under I.R.C. § 7602, that is, to secure information needed to collect assessed federal income taxes (Form 1040) for tax years ending December 31, 2000, December 31, 2001, and December 31, 2002, and seeking information needed to determine the correct federal income taxes and statutory additions for the tax years ending December 31, 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012, and December 31, 2013.

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

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

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

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

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

(7) The burden shifted to respondent, Olma Torres, to rebut that prima facie showing.

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

I therefore recommend that the I.R.S. summons served upon Respondent, be enforced; and that Respondent be ordered to appear at the I.R.S. offices at 5300 West Tulare Avenue, Suite 106, Visalia, California, before Revenue Officer Stiffler or his designated representative, on or before July 22, 2015, at 10:00 a.m., as agreed to by Revenue Officer Stiffler and Respondent Olma Torres at the show cause hearing. Revenue Officer Stiffler is to mail IRS Form 433-A ("Collection Information Statement for Wage Earners and Self-Employed Individuals") immediately to Respondent. Respondent is to fill out the form and attach all documents requested therein, complete the form, sign it under penalty of perjury, and take it to the July 22 appearance at I.R.S. Should the July 22, 2015, appearance need to be continued or rescheduled, it should be set in writing for a later date by Revenue Officer Stiffler. Respondent is to appear before Revenue Officer Stiffler or his designated representative, then and there to be sworn, to give testimony, and to produce for examining and copying the books, checks, records, papers and other data demanded by the summons, the examination to continue from day to day until completed. I further recommend that if it enforces the summons, the Court retain jurisdiction to enforce its order by its contempt power.

These findings and recommendations are submitted to the United States District Judge assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the Local Rules of the United States District Court for the Eastern District of California. Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be titled "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within fourteen (14) days after service of the objections. The District

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

THE CLERK SHALL SERVE this and further orders by mail to Olma Torres, 4326 North Emerson Avenue, Apartment 101, Fresno, California 93705.

IT IS SO ORDERED.

Dated: July 1, 2015

/s/ *Michael J. Seng*
UNITED STATES MAGISTRATE JUDGE