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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,

13 v.

14 HERLIN TORRES, JR.,  
15  
16 Respondent.

**1:15-cv-00427-LJO-MJS**

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

Taxpayer:  
**HERLIN TORRES, JR.**

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18  
19 This matter came on before Magistrate Judge Michael J. Seng on June 12, 2015, under  
20 the Order to Show Cause filed March 24, 2015. Dkt. 6. The order, with the verified petition  
21 filed March 18, 2015 (Dkt. 1), and its supporting memorandum (Dkt. 5-1), was personally  
22 served on Olma Torres, Respondent's wife, at their place of residence, 4326 North Emerson  
23 Avenue, Apartment 101, Fresno, California. Dkt. 7. Respondent did not file opposition or non-  
24 opposition to the verified petition as provided for in the Order to Show Cause. At the hearing,  
25 Bobbie J. Montoya, Assistant United States Attorney, appeared on behalf of Petitioner, and  
26 investigating Revenue Officer Dennis Stiffler also was present in the courtroom. Respondent  
27 appeared at the show cause hearing.

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1           The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce  
2 administrative summonses (Exhibits A and B to the Petition) issued July 17, 2014. The  
3 summonses are part of an investigation of the respondent to secure information needed to collect  
4 assessed federal income taxes (Form 1040) for tax years ending December 31, 2000,  
5 December 31, 2001, December 31, 2002, December 31, 2005, and December 31, 2010, and  
6 seeking information needed to determine the correct federal income taxes and statutory additions  
7 for the tax years ending December 31, 2006, December 31, 2007, December 31, 2008,  
8 December 31, 2011, and December 31, 2013.

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

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

16           (1) The summonses (Exhibits A and B to the Petition) issued by Revenue Officer Dennis  
17 Stiffler on July 17, 2014, and served upon Respondent, on July 17, 2014, seeking testimony and  
18 production of documents and records in respondent's possession, were issued in good faith and  
19 for a legitimate purpose under I.R.C. § 7602, that is, to secure information needed to collect  
20 assessed federal income taxes (Form 1040) for tax years ending December 31, 2000, December 31,  
21 2001, December 31, 2002, December 31, 2005, and December 31, 2010, and seeking information  
22 needed to determine the correct federal income taxes and statutory additions for the tax years ending  
23 December 31, 2006, December 31, 2007, December 31, 2008, December 31, 2011, and December 31,  
24 2013.

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

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

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

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

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

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

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

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

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

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

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

6  
7 IT IS SO ORDERED.

8  
9 Dated: July 1, 2015

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