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4 **IN THE UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
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7 UNITED STATES OF AMERICA,
8
9 Petitioner,
10 v.
11 STUART R. SCHOFIELD, DMD,
12 Respondent.

1:16-CV-00392-AWI-EPG

**MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATIONS AND ORDER RE:
IRS SUMMONS ENFORCEMENT**

**Taxpayer:
STUART R. SCHOFIELD, DMD**

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15 This matter came on before U.S. Magistrate Judge Erica P. Grosjean on May 19, 2016, under the
16 Order to Show Cause filed March 25, 2016, Doc. #4, and Minute Order filed April 20, 2016, Doc. #6.
17 The order, with the verified petition filed March 22, 2016, and its supporting memorandum, was
18 personally served on Respondent by personally handing the documents to him at 1402 California
19 Avenue, Dos Palos, California, see Doc. #5; the minute order was likewise served on Respondent, see
20 Doc. #7. Respondent did not file an opposition or non-opposition to the verified petition as provided for
21 in the Order to Show Cause. At the hearing on May 19, 2016, Bobbie J. Montoya, Assistant United
22 States Attorney, appeared for Petitioner, and investigating Revenue Officer (RO) Tony Garza was
23 present in the courtroom. Respondent also personally appeared.

24 The Verified Petition to Enforce IRS Summons initiating this proceeding, Doc. #1, seeks to
25 enforce an administrative summons (Exhibit A to the petition) issued September 3, 2015. The summons
26 is part of an investigation of the Respondent to secure information needed to collect the following
27 assessed federal income tax Form 940 for the calendar period ending December 31, 2014, and Form
28 941 for the quarterly periods ending March 31, 2010, December 31, 2010, March 31, 2011, June 30,

1 2011, September 30, 2011, December 31, 2011, September 30, 2012, December 31, 2012, March 31,
2 2013, June 30, 2013, September 30, 2013, December 31, 2013 and June 30, 2014.

3 The Court has reviewed the petition and the supporting documentation. Based on the
4 uncontroverted petition verified by RO Garza and the entire record, the Court makes the following
5 findings:

6 (1) The summons issued by RO Garza on September 3, 2015, and served on September 3, 2015,
7 seeking testimony and production of documents and records in respondent's possession, was issued in
8 good faith and for a legitimate purpose under I.R.C. § 7602, that is, to secure information needed to
9 collect the following assessed federal income tax Form 940 for the calendar period ending December 31,
10 2014, and Form 941 for the quarterly periods ending March 31, 2010, December 31, 2010, March 31,
11 2011, June 30, 2011, September 30, 2011, December 31, 2011, September 30, 2012, December 31,
12 2012, March 31, 2013, June 30, 2013, September 30, 2013, December 31, 2013 and June 30, 2014.

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

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

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

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

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

20 (7) The burden shifted to Respondent, Stuart R. Schofield, DMD, to rebut that prima facie
21 showing.

22 (8) Although the Respondent indicated that he thought he had complied with the summons and
23 also demonstrated a willingness to cooperate with RO Garza by bringing additional paperwork to the
24 hearing, he did not rebut the prima facie showing. Moreover, the documents he produced were
25 insufficient to be in compliance with the summons. See Declaration of Bobbie J. Montoya, Doc. #10, at
26 ¶ 4. After engaging in a meet and confer, Respondent agreed to produce the outstanding documentary
27 information sought in the summons to RO Garza by no later than June 9, 2016, at the Internal Revenue
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1 Service, 2525 Capitol Street, Suite 206, Fresno, California. See Declaration of Bobbie J. Montoya, Doc.
2 #10, at ¶ 6.¹ The documents Respondent shall produce are as follows:

3 1) Provide copies of bank statements for WestAmerica Bank, Merced School Employees;
4 Federal Credit Union and Universal Campus Credit Union. Dates: 01/01/2016 through
5 05/31/2016;

6 2) Provide copies of mortgage statement for primary residence, 41690 Valeria Ave, Dos
7 Palos, CA 93620. Dates: 01/01/2016 through 05/31/2016;

8 3) Provide copies of utilities bills. Dates: 01/01/2016 through 05/31/2016;

9 4) Provide copies of investments statements for New York Life & American Fund. Dates
10 01/01/2016 through 05/31/2016;

11 5) Provide copies of current lender statement & car registration for 2001 Honda Civic,
12 2013 Chevy Traverse and Toyota Tacoma;

13 6) Provide copies of wage verification/paystubs. Dates: 01/01/2016 through 05/31/2016;

14 7) Provide copies of health insurance coverage statement. Dates: 01/01/2016 through
15 05/31/2016;

16 8) Provide copies of out of pocket health care cost. Dates: 01/01/2016 through
17 05/31/2016; and

18 9) Provide copies of documentation on other secured debts listed on 433-A, Page 4, line
19 46. Dates: 01/01/2016 through 05/31/2016.

20 Accordingly, it is recommend that the IRS summons served upon Respondent be enforced; and
21 that Respondent be ordered to comply with the summons by producing the outstanding documentary
22 information listed above and testimony sought in the summons to RO Garza on or before **June 9, 2016**.
23 Should the June 9th date need to be continued or rescheduled, the date is to be set in writing for a later
24 date by RO Garza. The Court further recommends that the Court retain jurisdiction to enforce its order
25 by its contempt power if these findings and recommendations are adopted and the summons is enforced.

26 These findings and recommendations are submitted to the United States District Judge assigned
27 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

28 ¹ On May 20, 2016, RO Garza mailed to Respondent and faxed to his power of attorney,
Robert Emmett Burns, a list of the information/documents that Respondent is to produce to RO Garza
by no later than June 9, 2016. Montoya Decl. at ¶ 6.

1 District Court for the Eastern District of California. Within fourteen (14) days after being served with
2 these findings and recommendations, any party may file written objections with the court and serve a
3 copy on all parties. Such a document should be titled "Objections to Magistrate Judge's Findings and
4 Recommendations." Any reply to the objections shall be served and filed within fourteen (14) days after
5 service of the objections. The District Judge will then review these findings and recommendations
6 pursuant to 28 U.S.C. § 636(b)(1). The parties are advised that failure to file objections within the
7 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
8 (9th Cir. 1991).

9 Finally, in the event that the Respondent complies with this order to the satisfaction of the
10 United States prior to the District Court adopting these Findings and Recommendations, the United
11 States of America shall notify the Court and file a withdrawal of the Petition if appropriate. (Doc. #1).

12 THE CLERK SHALL SERVE this and further orders by mail to Stuart R. Schofield, DMD, 1402
13 California Avenue, Dos Palos, CA 93620.

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15 IT IS SO ORDERED.

16 Dated: June 1, 2016

17 /s/ Eric P. Groj
18 UNITED STATES MAGISTRATE JUDGE