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7 Attorneys for Petitioner United States of America

8 **IN THE UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

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11 UNITED STATES OF AMERICA,
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13 Petitioner,
14 v.
15 STUART R. SCHOFIELD, D.M.D.,
16 Respondent.

1:16-CV-000392-AWI-EPG

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

Taxpayer: STUART R. SCHOFIELD, D.M.D.

Date: Friday, May 13, 2016

Time: 10:00 a.m.

Crtm: 10, 6th Floor

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

21 ORDERED that the Respondent, STUART R. SCHOFIELD, D.M.D., appear before
22 United States Magistrate Judge Erica P. Grosjean, in that Magistrate Judge's courtroom in the
23 United States Courthouse, 2500 Tulare Street, Fresno, California, on Friday, May 13, 2016, to
24 show cause why the respondent should not be compelled to obey the IRS summons issued on
25 September 3, 2015.

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1 It is further ORDERED that:

2 1. The United States Magistrate Judge will preside, under 28 U.S.C. Section
3 636(b)(1) and Local Rule 72-302(c)(9), at the hearing scheduled above. After hearing, the
4 Magistrate Judge intends to submit proposed findings and recommendations under Local Rule
5 304(a), with the original thereof filed by the Clerk and a copy provided to all parties.

6 2. Under Fed. R. Civ. P. 4(c)(1), the Court hereby appoints the investigating IRS
7 employee, and all federal employees designated by that employee, to serve 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 Petition and its Exhibit, and the
10 Points and Authorities, shall be served by delivering a copy to the respondent personally, or by
11 leaving a copy at the respondent's dwelling house or usual place of abode with some person of
12 suitable age and discretion then residing therein, or by any other means of service permitted by
13 Fed. R. Civ. P. 4(e), at least 30 days before the show cause hearing date including any continued
14 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 respondent has no objections to enforcement of the summons. The respondent's
10 appearance at the hearing will then be excused.

11 IT IS SO ORDERED.

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13 Dated: March 25, 2016

14 /s/ Eric P. Gray
15 UNITED STATES MAGISTRATE JUDGE
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