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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

 Petitioner,

 v.

JAMES W INGRAM,

 Respondent.

Case No. 1:16-cv-01663-AWI-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PETITION TO
ENFORCE IRS SUMMONS BE GRANTED

(ECF No. 1)

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Currently before the Court is Petitioner United States of America’s petition to enforce an Internal Revenue Service (“IRS”) summons on November 2, 2016. (ECF No. 1.) For the reasons set forth below, the Court recommends that Petitioner’s petition to enforce the IRS summons be granted.

I.
BACKGROUND

The petition alleges that Internal Revenue Service (“IRS”) Revenue Officer Danielle Moser is conducting an investigation of Respondent James W. Ingram concerning individual federal income taxes for years ending December 31, 2009, December 31, 2013, and December 31, 2014. On January 27, 2016, Ms. Moser issued two IRS summonses directing Respondent to testify and produce certain documents related to the investigation on February 24, 2016 at the

1 IRS's office in Fresno, California. On January 27, 2016, Ms. Moser left a copy of the
2 summonses at the last and usual place of abode for Respondent, 1744 E. Caldwell Ave., Visalia,
3 CA 93292. Respondent did not appear on February 24, 2016, or otherwise respond to the
4 summonses.

5 On November 2, 2016, the instant petition was filed to enforce the IRS summonses. On
6 November 7, 2016, an order issued requiring Respondent to show cause why he should not be
7 compelled to obey the IRS summonses issued on January 27, 2016. On January 12, 2017, a
8 certificate of service was filed showing that Respondent was personally served on January 11,
9 2017. Respondent has not responded to the November 7, 2016 order.

10 II.

11 LEGAL STANDARDS

12 Pursuant to 26 U.S.C. § 7602, the IRS has authority to issue summonses to investigate tax
13 returns and tax liabilities. Enforcement of IRS summonses is governed by 26 U.S.C. § 7604,
14 which states, in pertinent part:

15 Whenever any person summoned under section 6420(e)(2), 6421(g)(2),
16 6427(j)(2), or 7602 neglects or refuses to obey such summons, or to produce
17 books, papers, records, or other data, or to give testimony, as required, the
18 Secretary may apply to the judge of the district court or to a United States
19 commissioner for the district within which the person so summoned resides or is
20 found for an attachment against him as for a contempt. It shall be the duty of the
21 judge or commissioner to hear the application, and, if satisfactory proof is made,
to issue an attachment, directed to some proper officer, for the arrest of such
person, and upon his being brought before him to proceed to a hearing of the case;
and upon such hearing the judge or the United States commissioner shall have
power to make such order as he shall deem proper, not inconsistent with the law
for the punishment of contempts, to enforce obedience to the requirements of the
summons and to punish such person for his default or disobedience.

22 26 U.S.C. 7604(b). Jurisdiction of this Court to enforce summonses is expressly provided under
23 26 U.S.C. § 7402(b) and 7602(a). In issuing an IRS summons:

24 ...the [government] need not meet any standard of probable cause to obtain
25 enforcement of his summons, either before or after the three-year statute of
26 limitations on ordinary tax liabilities has expired. He must show that the
27 investigation will be conducted pursuant to a legitimate purpose, that the inquiry
may be relevant to the purpose, that the information sought is not already within
the Commissioner's possession, and that the administrative steps required by the
Code have been followed....

1 U.S. v. Powell, 379 U.S. 48, 57-58 (1964). “The government’s burden is a slight one, and may
2 be satisfied by a declaration from the investigating agent that the Powell requirements have been
3 met.” U.S. v. Dynavac, Inc., 6 F.3d 1407, 1414 (9th Cir. 1993) (citing U.S. v. Abrahams, 905
4 F.2d 1276, 1280 (9th Cir. 1990); Liberty Financial Servs. v. U.S., 778 F.2d 1390, 1392 (9th Cir.
5 1985)). “Once the prima facie case is made, a ‘heavy’ burden falls upon the taxpayer to show an
6 abuse of process ... or lack of institutional good faith.” Id. (citations omitted). “The burden [on
7 the government] is minimal ‘because the statute must be read broadly in order to ensure that the
8 enforcement powers of the IRS are not unduly restricted.’” Crystal v. U.S., 172 F.3d 1141, 1144
9 (9th Cir. 1999) (quoting Liberty Fin. Servs. v. U.S., 778 F.2d 1390, 1392 (9th Cir. 1985)).

10 **III.**

11 **DISCUSSION**

12 “A prima facie case of good faith typically is made through the introduction of the sworn
13 declaration of the revenue agent who issued the summons.” United States v. Gilleran, 992 F.2d
14 232, 233 (9th Cir. 1993). In this instance, Ms. Moser has submitted a declaration stating that the
15 purpose of the investigation is to investigate Respondent’s tax liabilities for the taxable years
16 ending in December 2009, December 2013, and December 2014. The material sought is not
17 already in the possession of the IRS and is necessary to determine the existence and amounts of
18 tax liabilities for the taxable years ending in December 2009, December 2013, and December
19 2014.

20 Ms. Moser stated that she was authorized to issue the summonses and all the requisite
21 administrative steps required by the Internal Revenue Code for issuance of the summonses has
22 been taken. Petitioner has met its burden of meeting the Powell requirements and the Court finds
23 that the IRS summonses were issued for the legitimate purpose of investigating Respondent’s tax
24 liabilities.

25 As Respondent has not challenged the issuance of the summonses, he has not met his
26 burden to show an abuse of process or a lack of institutional good faith. Dynavac, Inc., 6 F.3d at
27 1414. Accordingly, the Court recommends that the petition to enforce the IRS summonses be
28 granted.

1 IV.

2 CONCLUSION AND ORDER

3 Based upon the foregoing, it is HEREBY RECOMMENDED that:

- 4 1. Petitioner's petition to enforce the IRS summons be GRANTED; and
5 2. The United States is directed to promptly serve a copy of this findings and
6 recommendations on Respondent and to file a proof of service with the Court.

7 These findings and recommendations are submitted to the district judge assigned to this
8 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within fourteen
9 (14) days of service of this recommendation, any party may file written objections to these
10 findings and recommendations with the Court and serve a copy on all parties. Such a document
11 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The
12 district judge will review the magistrate judge's findings and recommendations pursuant to 28
13 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
14 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th
15 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

16 IT IS SO ORDERED.

17 Dated: February 16, 2017

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19 _____
20 UNITED STATES MAGISTRATE JUDGE