

1 Jose Alejandro Hernandez personally appeared at the hearing.

2 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to
3 enforce an administrative summons issued July 22, 2016. See Exhibit A to the Petition,
4 (Doc. 1-2.) The summons is part of an investigation of the respondent to secure information
5 relating to the tax liability or the collection of the tax liability for federal income tax for the
6 years ending December 31, 2013, December 31, 2014, and December 31, 2015.

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

11 The Court has reviewed the petition and documents in support. Based on the
12 uncontroverted petition verified by Revenue Agent Naoemi Salinas and the entire record, the
13 Court makes the following findings:

14 (1) The summons issued by Revenue Agent Naoemi Salinas on July 22, 2016, and
15 served upon Respondent on July 22, 2016, seeking testimony and production of documents and
16 records in Respondent's possession, was issued in good faith and for a legitimate purpose under
17 I.R.C. § 7602, that is, to secure information relating to the tax liability or the collection of the
18 tax liability for federal income tax for the years ending December 31, 2013, December 31, 2014,
19 and December 31, 2015.

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

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

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

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

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

1 (7) The burden shifted to respondent, Jose Alejandro Hernandez, to rebut that *prima*
2 *facie* showing.

3 (8) Respondent presented no argument or evidence to rebut the *prima facie* showing.
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5 Based on the foregoing, it is therefore RECOMMENDED that the I.R.S. summons served
6 upon Respondent Jose Alejandro Hernandez be enforced and that Respondent be ordered to
7 appear at the I.R.S. offices at 2525 Capitol Street, Suite 203, Fresno, CA 93721, before Revenue
8 Agent Naoemi Salinas or her designated representative, on April 28, 2017, at 10:00 a.m., as
9 agreed to by Revenue Agent Naoemi Salinas and Respondent Jose Alejandro Hernandez at the
10 show cause hearing, then and there to be sworn, to give testimony, and to produce for examining
11 and copying the books, checks, records, papers and other data demanded by the summons, the
12 examination to continue from day to day until completed, unless compliance with the summons
13 is fully achieved prior to that date and time. Should the foregoing appointment date need to be
14 continued or rescheduled, the Respondent is to be notified in writing of a later date by Revenue
15 Agent Salinas. It is further recommended that if it enforces the summons, the court retain
16 jurisdiction to enforce its order by its contempt power.
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18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the Local Rules of
20 the United States District Court for the Eastern District of California. Within **fourteen (14)**
21 **days** after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be titled
23 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the
24 objections shall be served and filed within fourteen (14) days after service of the objections.
25 The District Judge will then review these findings and recommendations pursuant to 28 U.S.C.
26 § 636(b)(1). The parties are advised that failure to file objections within the specified time may
27 result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal.
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1 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d
2 1391, 1394 (9th Cir. 1991)).

3 THE CLERK SHALL SERVE this and further orders by mail to Jose Alejandro
4 Hernandez, 26128 Club Drive, Madera, CA 93638.

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6 IT IS SO ORDERED.

7 Dated: March 13, 2017

/s/ Barbara A. McAuliffe
8 UNITED STATES MAGISTRATE JUDGE

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