

1 PHILLIP A. TALBERT
United States Attorney
2 BOBBIE J. MONTOYA
Assistant United States Attorney
3 Eastern District of California
501 I Street, Suite 10-100
4 Sacramento, CA 95814-2322
Telephone: (916) 554-2775
5 Facsimile: (916) 554-2900
Email: Bobbie.Montoya@usdoj.gov
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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,

14 v.

14 KHAMPHOU SIRIPANE,
15
16 Respondent.

1:16-CV-01747-LJO-MJS

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

**Taxpayer:
KHAMPHOU SIRIPANE**

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19 This matter came on before Magistrate Judge Michael J. Seng on February 24, 2017,
20 under the Order to Show Cause filed November 21, 2016. ECF 4. The order, with the verified
21 petition filed November 17, 2016, ECF 1, and its supporting memorandum, ECF 3-1, was
22 personally served on Respondent, on December 28, 2016, at his residence, 3453 Dorothy Street,
23 Bakersfield, California. ECF 5. Respondent did not file opposition or non-opposition to the
24 verified petition as provided for in the Order to Show Cause. At the hearing, Bobbie J.
25 Montoya, Assistant United States Attorney, personally appeared on behalf of Petitioner, and
26 investigating Revenue Officer Michael J. Papasergia also was present in the courtroom.
27 Respondent appeared at the hearing.

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1 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to
2 enforce an administrative summons issued July 20, 2016. See Exhibit A to the Petition, ECF 1-
3 2. The summons is part of an investigation of the respondent to secure collection information
4 for federal income tax (Form 1040) for the calendar years ending December 31, 2000,
5 December 31, 2003, December 31, 2004, December 31, 2005, and December 31, 2006.

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

10 I have reviewed the petition and documents in support. Based on the uncontroverted
11 petition verified by Revenue Officer Michael J. Papasergia and the entire record, I make the
12 following findings:

13 (1) The summons (Exhibit A to the Petition, ECF 1-2) issued by Revenue Officer
14 Michael J. Papasergia on July 20, 2016, and served upon Respondent on July 20, 2016, seeking
15 testimony and production of documents and records in Respondent's possession, was issued in
16 good faith and for a legitimate purpose under I.R.C. § 7602, that is, to secure collection
17 information needed for federal income tax (Form 1040) for the calendar years ending
18 December 31, 2000, December 31, 2003, December 31, 2004, December 31, 2005, and
19 December 31, 2006.

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, Khamphou Siripane, to rebut that *prima facie*
2 showing.

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

4 I therefore recommend that the I.R.S. summons served upon Respondent, Khamphou
5 Siripane, be enforced and that Respondent be ordered to appear at the I.R.S. offices at 4825
6 Coffee Road, Bakersfield, CA 93308, before Revenue Officer Michael J. Papasergia or his
7 designated representative, on March 22, 2017, at 11:00 a.m., as agreed to by Revenue Officer
8 Papasergia and Respondent Khamphou Siripane, at the show cause hearing, then and there to be
9 sworn, to give testimony, and to produce for examining and copying the books, checks, records,
10 papers and other data demanded by the summons, the examination to continue from day to day
11 until completed, unless compliance with the summons is fully achieved prior to that date and
12 time. Should the foregoing appointment date need to be continued or rescheduled, the
13 Respondent is to be notified in writing of a later date by Revenue Officer Papasergia. I further
14 recommend that if it enforces the summons, the Court retain jurisdiction to enforce its order by
15 its contempt power.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the Local Rules of
18 the United States District Court for the Eastern District of California. Within fourteen (14) days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be titled
21 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the
22 objections shall be served and filed within fourteen (14) days after service of the objections.
23 The District Judge will then review these findings and recommendations pursuant to 28 U.S.C.
24 § 636(b)(1). The parties are advised that failure to file objections within the specified time may
25 waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
26 1991).

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1 THE CLERK SHALL SERVE this and further orders by mail to Khamphou Siripane,
2 3453 Dorothy Street, Bakersfield, CA 93307.

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4 IT IS SO ORDERED.

5 Dated: March 6, 2017

6 /s/ Michael J. Seng
7 UNITED STATES MAGISTRATE JUDGE
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