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

10  
11 UNITED STATES OF AMERICA,

12                                   Petitioner,

13                                   v.

14 TINA BARELA,

15                                   Respondent.

**1:16-CV-01805-LJO-EPG**

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

**Taxpayer:  
TINA BARELA**

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19                   This matter came on before Magistrate Judge Erica P. Grosjean on February 24, 2017,  
20 under the Order to Show Cause filed December 5, 2016, ECF No. 4. The order, with the  
21 verified petition filed November 30, 2016, ECF No. 1, and its supporting memorandum, ECF  
22 No. 3-1, was personally served on Respondent, on December 15, 2016, at her place of residence,  
23 1136 Maya Street, Parlier, California. ECF No. 5. Respondent did not file opposition or non-  
24 opposition to the verified petition as provided for in the Order to Show Cause. At the hearing,  
25 Bobbie J. Montoya, Assistant United States Attorney, personally appeared for Petitioner, and  
26 investigating Revenue Officer Lisa R. Lopez (formerly known as Lisa R. Cumiford) also was  
27 present in the courtroom. Respondent personally 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 December 16, 2015. *See* Exhibit A to the Petition,  
3 ECF No. 1-2. The summons is part of an investigation of the respondent to secure information  
4 needed to collect the tax liability for Form 1040 for the calendar periods ending December 31,  
5 2008, December 31, 2009, December 31, 2010, and December 31, 2012.

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 respondent the burden of rebutting any of the four  
9 requirements of *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

10 The Court has reviewed the petition and documents in support. Based on the  
11 uncontroverted petition verified by Revenue Officer Lisa R. Lopez and the entire record, the  
12 Court makes the following findings:

13 (1) The summons (Exhibit A to the Petition, ECF No. 1-2) issued by Revenue Officer  
14 Lisa R. Lopez on December 16, 2015 and served upon Respondent on December 17, 2015,  
15 seeking testimony and production of documents and records in Respondent's possession, was  
16 issued in good faith and for a legitimate purpose under I.R.C. § 7602, that is, to secure  
17 information needed collect the tax liability for Form 1040 for the calendar periods ending  
18 December 31, 2008, December 31, 2009, December 31, 2010, and December 31, 2012.

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

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

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

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

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

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1 (7) The burden shifted to respondent, Tina Barela, to rebut that *prima facie* showing.

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

3 The Court thus RECOMMENDS that the I.R.S. summons served upon Respondent, Tina  
4 Barela, be enforced and that Respondent be ordered to appear at the I.R.S. offices at 2525  
5 Capitol Street, Suite 206, Fresno, CA 93721-2227, before Revenue Officer Lisa R. Lopez or her  
6 designated representative, on or before March 31, 2017, at 10:00 a.m., as agreed to by Revenue  
7 Officer Lopez and Respondent Tina Barela at the show cause hearing, then and there to be  
8 sworn, to give testimony, and to produce for examining and copying the books, checks, records,  
9 papers and other data demanded by the summons, the examination to continue from day to day  
10 until completed, unless compliance with the summons is fully achieved prior to that date and  
11 time. Should the foregoing appointment date need to be continued or rescheduled, the  
12 Respondent is to be notified in writing of a later date by Revenue Officer Lopez. The Court  
13 further recommends that if the District Judge enforces the summons, the Court retain jurisdiction  
14 to enforce its order by its contempt power.

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

26 Finally, in the event that the Respondent complies with this order to the satisfaction of the  
27 United States prior to the District Judge adopting these Findings and Recommendations, the  
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1 United States of America shall notify the Court and file a withdrawal of the Petition if  
2 appropriate.

3 THE CLERK SHALL SERVE this and further orders by mail to Tina Barela, 1136 Maya  
4 Street, Parlier, CA 93648.

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6 IT IS SO ORDERED.

7 Dated: March 6, 2017

8 /s/ Eric P. Groj  
9 UNITED STATES MAGISTRATE JUDGE

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