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

UNITED STATES OF AMERICA,
Petitioner,
v.
MICHAEL A. PAPPACE,
Respondent.

1:17-CV-00406-DAD-BAM
**FINDINGS AND RECOMMENDATIONS
AND ORDER RE: I.R.S. SUMMONS
ENFORCEMENT**
Taxpayer:
MICHAEL A. PAPPACE

This matter came on before Magistrate Judge Barbara A. McAuliffe on June 16, 2017, under the Order to Show Cause issued March 29, 2017. ECF 4. The order, with the verified petition filed March 21, 2017, ECF 1, and its supporting memorandum, ECF 3-1 were personally served on Respondent on May 16, 2017. ECF 5. Respondent did not file opposition or non-opposition to the verified petition as provided for in the Order to Show Cause. At the hearing, Bobbie J. Montoya, Assistant United States Attorney, personally appeared for Petitioner, and investigating Revenue Officer Lisa R. Lopez (formerly known as Lisa R. Cumiford) also was present in the courtroom. Respondent Michael A. Pappace personally appeared at the hearing.

1 The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce
2 an administrative summons issued July 21, 2016. *See* Exhibit A to the Petition, ECF 1-2. The
3 summons is part of an investigation of the respondent to secure information needed to collect the
4 tax liability for Form 1040 for the calendar periods ending December 31, 2005, December 31,
5 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010,
6 December 31, 2011, and December 31, 2012.

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 respondent the burden of
10 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 Officer Lisa R. Lopez and the entire record, the
13 Court makes the following findings:

14 (1) The summons (Exhibit A to the Petition, ECF 1-2) issued by Revenue Officer Lisa R.
15 Lopez on July 21, 2016 and served upon Respondent on July 21, 2016, seeking testimony and
16 production of documents and records in Respondent's possession, was issued in good faith and
17 for a legitimate purpose under I.R.C. § 7602, that is, to secure information needed collect the tax
18 liability for Form 1040 for the calendar periods ending December 31, 2005, December 31, 2006,
19 December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010,
20 December 31, 2011, and December 31, 2012.

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

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

24 (4) The administrative steps required by the Internal Revenue Code have been 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 the
28 requirements of *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

1 (7) The burden shifted to respondent, Michael A. Pappace, to rebut that *prima facie*
2 showing.

3 (8) Respondent presented no argument or evidence to rebut the *prima facie* showing.
4

5 Based on the foregoing, it is therefore RECOMMENDED that the IRS summons served
6 upon Respondent Michael A. Pappace be enforced, and that Respondent be ordered to appear at
7 the IRS offices at 2525 Capitol Street, Suite 206, Fresno, CA 93721-2227, before Revenue
8 Officer Lisa R. Lopez or her designated representative, on or before July 17, 2017, as agreed to
9 by Revenue Officer Lopez and Respondent Michael A. Pappace, at the show cause hearing, then
10 and there to be sworn, to give testimony, and to produce for examining and copying the books,
11 checks, records, papers and other data demanded by the summons, the examination to continue
12 from day to day until completed, unless compliance with the summons is fully achieved prior to
13 that date and time. Should the foregoing deadline need to be extended or rescheduled, the
14 Respondent is to be notified in writing of a later date by Revenue Officer Lopez. It is
15 FURTHER RECOMMENDED that if it enforces the summons, the Court retain jurisdiction to
16 enforce its order by its contempt power.
17

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 **ten (10) days** after service of the objections. The
25 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.
28

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 Michael A. Pappace,
4 2573 E. Plymouth Way, Fresno, California 93720.

5
6 IT IS SO ORDERED.

7 Dated: June 23, 2017

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

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