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

10
11 UNITED STATES OF AMERICA,
12
13 Petitioner,
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15 v.
16 EARTH, WIND, AND SOLAR, INC.,
DEAN ANTONIS PRESIDENT,
17
18 Respondent.

1:17-CV-00466-LJO-MJS

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

**Taxpayer:
EARTH, WIND, SOLAR, INC.,
DEAN ANTONIS, PRESIDENT**

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20 This matter came on before Magistrate Judge Erica P. Grosjean on June 16, 2017, under
21 the Order to Show Cause issued by Magistrate Judge Michael J. Seng on April 5, 2017, ECF 4.¹
22 The order, with the verified petition filed March 31, 2017, ECF 1, and its supporting
23 memorandum, ECF 3-1, was personally served on Respondent on April 11, 2017. ECF 5.
24 Respondent did not file opposition or non-opposition to the verified petition as provided for in
25 the Order to Show Cause. At the hearing, Bobbie J. Montoya, Assistant United States Attorney,
26 personally appeared for Petitioner, and investigating Revenue Officer Tony Garza was present

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28 ¹ Pursuant to a June 13, 2017 minute order, the hearing was re-set from Magistrate Judge Seng
to Magistrate Judge Grosjean. ECF 7.

1 in the courtroom. Respondent appeared at the hearing. Minutes of the proceeding were filed
2 after the hearing. ECF 8.

3 The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce
4 an administrative summons issued May 17, 2016. See Exhibit A to the Petition, ECF 1-2. The
5 summons is part of an investigation of the respondent to secure information needed to collect the
6 tax liability for Form 940 for the calendar periods ending December 31, 2013, and December 31,
7 2014, and Form 941 for the quarterly periods ending June 30, 2013, September 30, 2013,
8 December 31, 2013, March 31, 2014, June 30, 2014, September 30, 2014, and December 31,
9 2014.

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

14 I have reviewed the petition and documents in support, along with the minutes of the
15 order to show cause hearing. Based on the uncontroverted petition verified by Revenue Officer
16 Tony Garza and the entire record, I make the following findings:

17 (1) The summons (Exhibit A to the Petition, ECF 1-2) issued by Revenue Officer Tony
18 Garza on May 17, 2016 and served upon Respondent on May 17, 2016, seeking testimony and
19 production of documents and records in Respondent's possession, was issued in good faith and
20 for a legitimate purpose under I.R.C. § 7602, that is, to secure information needed collect the tax
21 liability for Form 940 for the calendar periods ending December 31, 2013, and December 31,
22 2014, and Form 941 for the quarterly periods ending June 30, 2013, September 30, 2013,
23 December 31, 2013, March 31, 2014, June 30, 2014, September 30, 2014, and December 31,
24 2014.

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

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

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

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

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

5 (7) The burden shifted to respondent, Earth, Wind, and Solar, Inc., Dean Antonis,
6 President, to rebut that *prima facie* showing.

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

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

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

1 THE CLERK SHALL SERVE this and further orders by mail to Earth, Wind, and Solar,
2 Inc., Dean Antonis, President, 35788 Highway 41, Coarsegold, California 93614-9786.

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4 IT IS SO ORDERED.

5 Dated: June 23, 2017

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