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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,

14 v.

14 CHARLES FREITAS,
15
16 Respondent.

1:17-CV-0538-DAD-EPG

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

**Taxpayer:
CHARLES FREITAS**

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19 This matter came on before Magistrate Judge Erica P. Grosjean on June 16, 2017, under
20 the Order to Show Cause filed April 20, 2017, ECF 4. The order, with the verified petition filed
21 April 17, 2017, ECF 1, and its supporting memorandum, ECF 3-1, was personally served on
22 Respondent, on May 12, 2017, at his place of residence, 4332 S. Fruit Avenue, Fresno,
23 California 93706. ECF 5. Respondent did not file opposition or non-opposition to the verified
24 petition as provided for in the Order to Show Cause. At the hearing, Bobbie J. Montoya,
25 Assistant United States Attorney, personally appeared for Petitioner, and investigating Revenue
26 Officer Lisa R. Lopez (formerly known as Lisa R. Cumiford) also was present in the courtroom.
27 Respondent did not appear 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 June 8, 2016. *See* Exhibit A to the Petition, ECF 1-2.
3 The summons is part of an investigation of the respondent to secure information needed to
4 collect the tax liability for Form 940 for the calendar periods ending December 31, 2009,
5 December 31, 2010, December 31, 2011, and December 31, 2013, and Form 941 for the
6 quarterly periods ending September 30, 2009, December 31, 2009, December 31, 2010,
7 March 31, 2011, June 30, 2011, September 30, 2011, December 31, 2011, March 31, 2013,
8 June 30, 2013, September 30, 2013, December 31, 2013.

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

13 I have reviewed the petition and documents in support. Based on the uncontroverted
14 petition verified by Revenue Officer Lisa R. Lopez and the entire record, I make the following
15 findings:

16 (1) The summons (Exhibit A to the Petition, ECF 1-2) issued by Revenue Officer
17 Lisa R. Lopez on June 8, 2016 and served upon Respondent on June 9, 2016, seeking testimony
18 and production of documents and records in Respondent's possession, was issued in good faith
19 and for a legitimate purpose under I.R.C. § 7602, that is, to secure information needed collect
20 the tax liability for Form 940 for the calendar periods ending December 31, 2009, December 31,
21 2010, December 31, 2011, and December 31, 2013, and Form 941 for the quarterly periods
22 ending September 30, 2009, December 31, 2009, December 31, 2010, March 31, 2011,
23 June 30, 2011, September 30, 2011, December 31, 2011, March 31, 2013, June 30, 2013,
24 September 30, 2013, December 31, 2013.

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.

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

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

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

7 (7) The burden shifted to respondent, Charles Freitas, to rebut that *prima facie*
8 showing.

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

10 I therefore recommend that the I.R.S. summons served upon Respondent, Charles Freitas, be
11 enforced and that Respondent be ordered to appear at the I.R.S. offices at 2525 Capitol Street,
12 Suite 206, Fresno, CA 93721-2227, before Revenue Officer Lisa R. Lopez or her designated
13 representative, on the twenty-first (21st) day after the filing date of the District Judge's
14 summons enforcement order, or at a later date to be set in writing by Revenue Officer Lopez,
15 then and there to be sworn, to give testimony, and to produce for examining and copying the
16 books, checks, records, papers and other data demanded by the summons, the examination to
17 continue from day to day until completed. I further recommend that if it enforces the summons,
18 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 fourteen (14) days
22 after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be titled
24 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
25 objections shall be served and filed within fourteen (14) days after service of the objections.
26 The District Judge will then review these findings and recommendations pursuant to 28 U.S.C.
27 § 636(b)(1). The parties are advised that failure to file objections within the specified time may
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1 waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
2 1991).

3 THE CLERK SHALL SERVE this and further orders by mail to Charles Freitas, 4332 S.
4 Fruit Ave., Fresno, California 93706.

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6 IT IS SO ORDERED.

7 Dated: June 26, 2017

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