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4 IN THE UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
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7 UNITED STATES OF AMERICA,
8
9 Petitioner,
10 v.
11 MICHAEL A. JERKOVICH, dba SUPER
12 SUDS LAUNDRY,
13 Respondent.

CASE NO. 1:17-CV-01144-DAD-SKO
MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATIONS AND ORDER RE:
IRS SUMMONS ENFORCEMENT

14 Currently before the Court is Petitioner United States of America's petition filed on August 24,
15 2017, to enforce two Internal Revenue Service ("IRS") summonses.¹ (Doc. 1.) The Court issued an Order
16 to Show Cause on August 29, 2017. (Doc. 4). On September 20, 2017, the Court granted a continuance
17 of the show cause hearing. (Doc. 6.) On November 8, 2017, the Court issued an order regarding alternate
18 process service, and reset the show cause hearing to January 10, 2018. (Doc. 10.) The verified petition
19 (Doc. 1), supporting memorandum (Doc. 3-1), Order to Show Cause (Doc. 4), order regarding alternate
20 service (Doc. 10), and notice of the January 10, 2018 hearing date (Doc. 11) were all served on Respondent
21 on November 9, 2017, by mailing a copy to Respondent's last and usual place of abode, 5090 N. Forkner
22 Avenue, Fresno, California. (Doc. 12.) Respondent did not file an opposition or a non-opposition to the
23 verified petition as provided for in the Order to Show Cause.

24 The Court held a show cause hearing before Magistrate Judge Sheila K. Oberto on January 10,
25 2018. At the hearing, Respondent appeared pro se and agreed to comply with the summonses by March
26 11, 2018. (Doc. 17.) A status hearing was scheduled for April 25, 2018. (*Id.*) However, Respondent
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28 ¹ The two administrative summonses were issued December 6, 2017.

1 failed to fully comply by this date. (Doc. 22.) At the April 25, 2018 hearing, Respondent was given one
2 more chance to comply and agreed to provide the requested information on or before June 30, 2018. (*Id.*)
3 A further status hearing was scheduled for July 25, 2018. (*Id.*) Respondent again failed to fully comply
4 by this date. At the July 25, 2018 hearing, the parties agreed to one last extension of time to comply until
5 October 1, 2018, and Petitioner requested an order from the Court enforcing the summonses and requiring
6 compliance by October 1, 2018.

7 The Verified Petition to Enforce IRS Summonses initiating this proceeding seeks to enforce two
8 administrative summonses² issued December 6, 2017. (*See* Doc. 1.) The summonses are part of an
9 investigation of the respondent to secure information needed to collect the tax liability for:

10 (a) Form 1040 for the calendar periods ending December 31, 2012, December 31,
11 2013, December 31, 2014 and December 31, 2015 (*see* Doc. 1, Ex. A); and

12 (b) Form 1065 for the calendar periods ending December 31, 2014 and December 31,
13 2015 (*see* Doc. 1, Ex. B).

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

18 The Court has reviewed the petition and documents in support. Based on the uncontroverted
19 petition verified by Revenue Officer Lopez and the entire record, the Court makes the following findings:

20 (1) The summonses issued by Revenue Officer Lopez on December 6, 2017, and served upon
21 Respondent on December 7, 2017, seeking testimony and production of documents and records in
22 Respondent's possession, was issued in good faith and for a legitimate purpose under I.R.C. § 7602, that
23 is, to secure information needed collect the tax liability for:

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26 ² Petitioner originally requested enforcement of a third summons for information related to Form 940 for the calendar periods
27 ending December 31, 2014 and December 31, 2015, and Form 941 for the quarterly periods ending December 31, 2012,
28 September 30, 2013, September 30, 2014, December 31, 2014, March, 31 2015, June 30, 2015, and September 30, 2015 (*see*
Doc. No. 1, Ex. C). Because Respondent has now sufficiently complied with the third summons, Petitioner no longer seeks
enforcement of the third summons.

1 (a) Form 1040 for the calendar periods ending December 31, 2012, December 31,
2 2013, December 31, 2014, and December 31, 2015 (*see* Doc. 1, Ex. A); and

3 (b) Form 1065 for the calendar periods ending December 31, 2014 and December 31,
4 2015 (*see* Doc. 1, Ex. B).

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

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

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

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

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

12 (7) The burden shifted to respondent, Michael A. Jerkovich, to rebut that *prima facie* showing.

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

14 Based on the foregoing, it is therefore RECOMMENDED that the IRS summonses served upon
15 Respondent, Michael A. Jerkovich, be enforced and that Respondent be ordered to appear at the IRS
16 offices at 2525 Capitol Street, Suite 206, Fresno, CA 93721-2227, before Revenue Officer Lopez or his
17 designated representative, on or before October 1, 2018, as agreed upon at the status hearing on July 25,
18 2018, then and there to be sworn, to give testimony, and to produce for examining and copying the books,
19 checks, records, papers, and other data demanded by the summonses, the examination to continue from
20 day to day until completed, unless compliance with the summonses is fully achieved prior to the date and
21 time set by Revenue Officer Lopez for respondent's appearance. Should the appointment date need to be
22 continued or rescheduled, the Respondent is to be notified in writing of the later date for the appointment
23 by Revenue Officer Lopez. It is further recommended that if it enforces the summonses, the Court retain
24 jurisdiction to enforce its order by its contempt power.

25 These findings and recommendations are submitted to the United States District Judge assigned to
26 the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the Local Rules of the United States
27 District Court for the Eastern District of California. Within fourteen (14) days after being served with
28 these findings and recommendations, any party may file written objections with the court and serve a copy

1 on all parties. Such a document should be titled "Objections to Magistrate Judge's Findings and
2 Recommendations." Any reply to the objections shall be served and filed within fourteen (14) days after
3 service of the objections. The District Judge will then review these findings and recommendations
4 pursuant to 28 U.S.C. § 636(b)(1). The parties are advised that failure to file objections within the
5 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153
6 (9th Cir. 1991).

7 The Clerk of Court is DIRECTED to serve this and further orders by mail to Michael A. Jerkovich,
8 5090 N. Forkner Ave., Fresno, CA 93711-2812.

9
10 IT IS SO ORDERED.

11 Dated: July 27, 2018

/s/ Sheila K. Oberto
12 UNITED STATES MAGISTRATE JUDGE