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

UNITED STATES OF AMERICA,

 Petitioner,

 v.

CYNTHIA BRISENO,

 Respondent.

**1:17-CV-01288-DAD-SKO
MAGISTRATE JUDGE’S FINDINGS
AND RECOMMENDATIONS AND ORDER
RE: I.R.S. SUMMONS ENFORCEMENT**

This matter came on before Magistrate Judge Sheila K. Oberto on November 29, 2017, under the Order to Show Cause filed October 2, 2017. (Doc. 4.) The order, with the verified petition filed September 28, 2017, (Doc. 1), and its supporting memorandum, (Doc. 3), was personally served on Respondent Cynthia Briseno (“Respondent”) on October 19, 2017, (Doc. 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 Lorena Ramos was also present in the courtroom. Respondent appeared at the hearing.

The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce an administrative summons issued January 24, 2017. (See Doc. 1, Ex. A.) The summons is part of an

1 investigation of Respondent to secure information needed to collect the tax liability for individual form
2 1040 for the calendar periods ending December 31, 2009, December 31, 2010, and December 31, 2014.

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

7 The Court has reviewed the Petition and supporting documents. Based on the uncontroverted
8 petition by Revenue Officer Lorena Ramos and the entire record, the Court makes the following
9 findings:

10 (1) The summons (Doc. 1, Ex. A) issued by Revenue Officer Lorena Ramos on January 24,
11 2017, and served upon Respondent on January 25, 2017, seeking testimony and production of
12 documents and records in Respondent's possession, was issued in good faith and for a legitimate
13 purpose under I.R.C. § 7602, that is, to secure information needed to collect the tax liability for
14 individual form 1040 for the calendar periods ending December 31, 2009, December 31, 2010, and
15 December 31, 2014.

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

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

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

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

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

23 (7) The burden shifted to Respondent to rebut that *prima facie* showing.

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

25 The Court therefore recommends that the IRS summons served upon Respondent be enforced,
26 and that Respondent be ordered to appear at the IRS offices at 2525 Capitol Street, Fresno, CA 93721-
27 2227, before Revenue Officer Ramos or her designated representative, on or before
28 December 20, 2017, at 9:30 a.m., as agreed to by Revenue Officer Ramos and Respondent at the show

1 cause hearing, then and there to be sworn, to give testimony, and to produce for examining and copying
2 the books, checks, records, papers and other data demanded by the summons, the examination to
3 continue from day to day until completed, unless compliance with the summons is fully achieved prior
4 to that date and time. Should the foregoing deadline need to be extended or rescheduled, Respondent is
5 to be notified in writing of a later date by Revenue Officer Ramos. The Court further recommends that
6 if the Court enforces the summons, that the Court retain jurisdiction to enforce its order by its contempt
7 power.

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

18 THE CLERK SHALL SERVE this and further orders by mail to Cynthia Briseno, 234 W.
19 Robinson Ave., Fresno, CA 93705-2944.

20
21 IT IS SO ORDERED.

22 Dated: December 8, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE