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7 Attorneys for Petitioner United States

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

11 UNITED STATES OF AMERICA,  
12 Petitioner,  
13 v.  
14 DIEGO A. RIVAS,  
15 Respondent.

**1:18-CV-00678-AWI-SKO**  
**ORDER TO SHOW CAUSE**  
**RE: TAX SUMMONS ENFORCEMENT**  
**Taxpayer: DIEGO A. RIVAS**  
**Date: Wednesday, July 25, 2018**  
**Time: 9:30 a.m.**  
**Crtm: 7, 6<sup>th</sup> Floor**  
**Judge: Honorable Sheila K. Oberto**  
**(Doc. 1)**

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19  
20 Upon the petition of KELLI L. TAYLOR, Assistant United States Attorney for the Eastern  
21 District of California (“Petitioner”), including the verification of Revenue Officer LISA R. LOPEZ, and  
22 the Exhibit attached thereto, it is hereby:

23 ORDERED that Respondent, DIEGO A. RIVAS (“Respondent”), appear before United States  
24 Magistrate Judge Sheila K. Oberto, in that Magistrate Judge's courtroom in the United States  
25 Courthouse, 2500 Tulare St., Fresno, California, on Wednesday, July 25, 2018, to show cause why  
26 Respondent should not be compelled to obey the IRS summons issued on November 8, 2017.

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1 It is further ORDERED that:

2 1. The United States Magistrate Judge will preside, under 28 U.S.C. Section 636(b)(1) and  
3 Local Rule 302(c)(9), at the hearing scheduled above. After hearing, the Magistrate Judge intends to  
4 submit proposed findings and recommendations under Local Rule 304(a), with the original thereof filed  
5 by the Clerk and a copy provided to all parties.

6 2. Under Fed. R. Civ. P. 4(c)(1), the Court hereby appoints the investigating IRS employee,  
7 and all federal employees designated by that employee, to serve process in this case.

8 3. To afford Respondent an opportunity to respond to the petition and Petitioner an  
9 opportunity to reply, a copy of this order, the Petition and its Exhibits, and the Points and Authorities,  
10 shall be served by delivering a copy to Respondent personally, or by leaving a copy at Respondent's  
11 dwelling house or usual place of abode with some person of suitable age and discretion then residing  
12 therein, or by any other means of service permitted by Fed. R. Civ. P. 4(e), at least 30 days before the  
13 show cause hearing date including any continued date, unless such service cannot be made despite  
14 reasonable efforts.

15 4. Proof of any service done under paragraph 3, above, shall be filed with the Clerk as soon  
16 as practicable.

17 5. If the federal employee assigned to serve these documents is not reasonably able to serve  
18 the papers as provided in paragraph 3, Petitioner may request a court order granting leave to serve by  
19 other means. *See* Fed. R. Civ. P. 81(a)(5). The request shall detail the efforts made to serve  
20 Respondent.

21 6. The file reflects a *prima facie* showing that the investigation is conducted pursuant to a  
22 legitimate purpose, that the inquiry may be relevant to that purpose, that the information sought is not  
23 already within the Commissioner's possession, and that the administrative steps required by the Code  
24 have been followed. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964). The burden of coming  
25 forward therefore has shifted to whoever might oppose enforcement.

26 7. If Respondent has any defense or opposition to the petition, such defense or opposition  
27 shall be made in writing and filed with the Clerk and a copy served on the United States Attorney at  
28 least 10 days before the show cause hearing date including any continued date.

1           8.       At the show cause hearing, the Magistrate Judge intends to consider the issues properly  
2 raised in opposition to enforcement. Only those issues brought into controversy by the responsive  
3 pleadings and supported by affidavit will be considered. Any uncontested allegation in the petition will  
4 be considered admitted.

5           9.       Respondent may notify the Court, in a writing filed with the Clerk and served on the  
6 United States Attorney at least 10 days before the date set for the show cause hearing, that Respondent  
7 has no objections to enforcement of the summons. Respondent's appearance at the hearing will then be  
8 excused.

9  
10 IT IS SO ORDERED.

11 Dated: May 22, 2018

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