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8 IN THE UNITED STATES DISTRICT COURT FOR THE  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA, and  
ALEX ALARCON, JR., Revenue  
12 Officer, Internal Revenue Service,

13 Petitioners,

14 v.

15 MARTIN FLORES,

16 Respondent.  
17

2:09-mc-00075-MCE-EFB

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

Taxpayer: MR. MARTIN FLORES  
and MRS. EDUVIJES A. FLORES

18 This matter came before me on December 2, 2009, under the Order to Show Cause  
19 filed August 21, 2009. That order, with the verified petition and exhibits, was served on  
20 respondent in conformity with Fed. R. Civ. P. 4(e) on October 15, 2009. Yoshinori H. T.  
21 Himel appeared for petitioners, and petitioning Revenue Officer Alex Alarcon was  
22 present. Respondent did not file an opposition and did not appear at the hearing.

23 The Verified Petition to Enforce Internal Revenue Service Summons initiating this  
24 proceeding seeks to enforce an administrative summons (Exhibit A to the petition) in aid  
25 of Revenue Officer Alarcon's investigation of Martin Flores, to determine the taxpayer's  
26 ability to collect assessed amounts of U. S. Individual income tax for the taxable years  
27 ending December 31, 2005, and December 31, 2007. Subject matter jurisdiction is  
28 invoked under 28 U.S.C. §§ 1340 and 1345, and is found to be proper. Authorization for

1 the action is under I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.). The Order to Show Cause  
2 shifted to respondent the burden of rebutting any of the four requirements of *United*  
3 *States v. Powell*, 379 U.S. 48, 57-58 (1964).

4 I have reviewed the petition and documents in support. Based on the  
5 uncontroverted verification of Revenue Officer Alarcon and the entire record, I make the  
6 following findings:

7 (1) The summons issued by Revenue Officer Alex Alarcon to respondent, Martin  
8 Flores, on May 6, 2009, seeking testimony and production of documents and records in  
9 respondent's possession, was issued in good faith and for a legitimate purpose under  
10 I.R.C. § 7602, that is, to determine the taxpayer's ability to collect assessed amounts of  
11 U.S. individual income tax for the taxable years ending December 31, 2005 and  
12 December 31, 2007.

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

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

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

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

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

22 (7) The burden shifted to respondent, Martin Flores, to rebut that prima facie  
23 showing.

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

26 Accordingly, it is hereby RECOMMENDED that the IRS summons issued to  
27 respondent, Martin Flores, be enforced, and that respondent be ordered to appear at the  
28 I.R.S. offices at 4330 Watt Avenue, Sacramento, California, 95821, before Revenue

1 Officer Alex Alarcon, or his designated representative, on the twenty-first day after the  
2 filing date of the summons enforcement order, or at a later date and time to be set in  
3 writing by the Revenue Officer, then and there to be sworn, to give testimony, and to  
4 produce for examining and copying the books, checks, records, papers and other data  
5 demanded by the summons, the examination to continue from day to day until completed.

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

17 The Clerk shall serve these findings and recommendations and any future orders to  
18 Mr. Martin Flores, 7133 Lawnwood Drive, Sacramento, CA 95828.

19 DATED: December 18, 2009.

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21 EDMUND F. BRENNAN  
22 UNITED STATES MAGISTRATE JUDGE  
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