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8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA, and
12 CHARLES DUFF, Revenue Officer,
Internal Revenue Service,

13 Petitioners,

14 v.

15 DARRELL S. AINGER,

16 Respondent.
17

2:09-mc-00077-JAM-KJM

**ORDER TO SHOW CAUSE RE:
TAX SUMMONS ENFORCEMENT**

Taxpayer: DARRELL S. AINGER

Date: Wednesday, October 14, 2009

Time: 10:00 a.m.

Ctrm: Honorable Kimberly J. Mueller
(Crtrm. # 26, 8th Floor)

18 Upon the petition of LAWRENCE G. BROWN, United States Attorney for the
19 Eastern District of California, and the Exhibit attached thereto, including the verification
20 of Revenue Officer CHARLES DUFF, it is hereby:

21 ORDERED that the Respondent, DARRELL S. AINGER, appear before United
22 States Magistrate Judge Kimberly J. Mueller, in that Magistrate Judge's courtroom in the
23 United States Courthouse, 501 I Street, Sacramento, California, on Wednesday, October
24 14, 2009, at 10:00 a.m., to show cause why the respondent should not be compelled to
25 obey the Internal Revenue Service summons issued on January 26, 2009.

26 It is further ORDERED that:

27 1. The United States Magistrate Judge will preside, under 28 U.S.C.
28 Section 636(b)(1) and Local Rule 72-302(c)(9), at the hearing scheduled above. After

1 hearing, the Magistrate Judge intends to submit proposed findings and recommendations
2 under Local Rule 304(a), with the original thereof filed by the Clerk and a copy provided
3 to all parties.

4 2. The Court hereby appoints the group manager of the petitioning Internal
5 Revenue Service employee, and all federal employees designated by that group manager,
6 under Fed. R. Civ. P. 4(c)(1), to serve process in this case.

7 3. A copy of this order, the Verified Petition and its Exhibit, and the Points and
8 Authorities, shall be served by delivering a copy to the respondent personally or by
9 leaving a copy at the respondent's dwelling house or usual place of abode with some
10 person of suitable age and discretion then residing therein, within 21 days of the date this
11 order is served upon the United States Attorney, unless such service cannot be made
12 despite reasonable efforts.

13 4. If the federal employee assigned to serve these documents is unable to serve
14 them as provided in paragraph 3, despite making reasonable efforts to do so, the
15 documents may be served by any other means of service permitted by Fed. R. Civ. P. 4(e)
16 or petitioners may request a court order granting leave to serve by other means. See Fed.
17 R. Civ. P. 81(a)(5). The federal employee assigned to serve the documents shall make a
18 certificate detailing the efforts made within the 21-day period to serve the respondent as
19 provided in paragraph 3.

20 5. Proof of any service done pursuant to paragraph 3 or 4, above, shall be filed
21 with the Clerk as soon as practicable.

22 6. The file reflects a prima facie showing that the investigation is conducted
23 pursuant to a legitimate purpose, that the inquiry may be relevant to that purpose, that the
24 information sought is not already within the Commissioner's possession, and that the
25 administrative steps required by the Code have been followed. United States v. Powell,
26 379 U.S. 48, 57-58 (1964). The burden of coming forward therefore has shifted to
27 whoever might oppose enforcement.

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1 7. If the respondent has any defense or opposition to the petition, such defense or
2 opposition shall be made in writing and filed with the Clerk and a copy served on the
3 United States Attorney at least 10 days prior to the date set for the show cause hearing.

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

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

12 DATED: August 24, 2009.

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14 U.S. MAGISTRATE JUDGE