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

11 UNITED STATES OF AMERICA and
 12 RENITA SANDERSON, Revenue
 Officer, Internal Revenue Service,

13 Petitioners,

14 v.

15 DONAVAN R. URSUA, SR.,

16 Respondent.

Case No. 2:11-mc-00001-MCE-DAD

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

Taxpayer:
 DONAVAN R. URSUA, SR. and
 DONAVAN R. URSUA, SR. d/b/a
 "Maui Tan"

18 This matter came before me on February 25, 2011, under the Order to Show Cause
 19 filed January 6, 2011, which, with the verified petition and memorandum, was served on
 20 respondent’s agent for service of process, Mr. Bernard Dooley, EA, on January 22, 2011.
 21 Yoshinori H. T. Himel appeared for petitioners, and petitioning Revenue Officer Renita
 22 Sanderson was present.

23 Respondent did not file an opposition; but Mr. Bernard Dooley, EA, appeared on
 24 behalf of respondent at the hearing and requested a continuance to comply with the
 25 summonses. The petitioners requested enforcement of the petition.

26 The Verified Petition to Enforce Internal Revenue Service Summons initiating this
 27 proceeding seeks to enforce two administrative summonses (Exhibit A to the petition) in
 28 aid of Revenue Officer Sanderson’s investigation of Donavan R. Ursua, Sr.’s tax

1 liabilities. First, an investigation was initiated to determine respondent's correct liability
2 for personal income tax for the tax years ending December 31, 2005, December 31, 2006,
3 December 31, 2007, and December 31, 2008. Donovan R. Ursua, Sr., subsequently
4 supplied returns for the tax years ending December 31, 2005, December 31, 2006, and
5 December 31, 2007. This investigation needs further tax determination information from
6 Donovan R. Ursua, Sr., only for the tax year ending December 31, 2008. Second, an
7 investigation was initiated to obtain financial information for the collection of assessed
8 Employer's Federal Quarterly Tax (Form 941) for the tax period ending March 31, 2008,
9 and for the collection of assessed U.S. income taxes for the tax years ending December
10 31, 2002, and December 31, 2003.

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

16 I have reviewed the petition and documents in support. Based on the
17 uncontroverted verification of Revenue Officer Sanderson and the entire record, I make
18 the following findings:

19 (1) The summonses issued by Revenue Officer Renita Sanderson to respondent,
20 Donovan R. Ursua, Sr., on April 15, 2010, seeking testimony and production of
21 documents and records in respondent's possession, were issued in good faith and for a
22 legitimate purpose under I.R.C. § 7602, that is, to determine his correct liabilities for
23 personal income tax for the tax year ending December 31, 2008, and to obtain financial
24 information for the collection of assessed Employer's Federal Quarterly Tax (Form 941)
25 for the tax period ending March 31, 2008 and for the collection of assessed U.S. income
26 taxes for the tax years ending December 31, 2002, and December 31, 2003.

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

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

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

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

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

9 (7) The burden shifted to respondent, Donovan R. Ursua, Sr., to rebut that prima
10 facie showing.

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

13 I therefore recommend that the IRS summonses issued to respondent Donovan R.
14 Ursua, Sr., be enforced and that respondent be ordered to appear at the I.R.S. offices at
15 4330 Watt Avenue, Sacramento, California 95821, before Revenue Officer Renita
16 Sanderson, or her designated representative, twenty-one (21) days after the filing date of
17 the summons enforcement order, or at a later date to be set in writing by Revenue Officer
18 Sanderson, then and there to be sworn, to give testimony, and to produce for examining
19 and copying the books, checks, records, papers and other data demanded by the
20 summonses, the examination to continue from day to day until completed. I further
21 recommend that if it enforces the summonses, the Court retain jurisdiction to enforce its
22 order by its contempt power.

23 These findings and recommendations are submitted to the United States District
24 Judge assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the
25 Local Rules of the United States District Court for the Eastern District of California.
26 Within twenty-one (21) days after being served with these findings and recommendations,
27 any party may file written objections with the court and serve a copy on all parties. Such
28 a document should be titled "Objections to Magistrate Judge's Findings and

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

6 The Clerk is directed to serve these findings and recommendations and future court
7 orders by mail to Mr. Donovan R. Ursua, Sr., 7914 McGann Court, Sacramento, CA
8 95829; with a courtesy copy to Mr. Bernard Dooley, EA, Dooley Tax & Financial
9 Services, Inc., 9845 Horn Road, Suite 290, Sacramento, CA 95827.

10 DATED: March 8, 2011.

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14 DALE A. DROZD
15 UNITED STATES MAGISTRATE JUDGE

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