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

11 UNITED STATES OF AMERICA, KIM)	Case No. 2:11-mc-00068-MCE-DAD
12 ULRING, Revenue Officer, Internal)	
13 Revenue Service)	MAGISTRATE JUDGE'S FINDINGS
14)	AND RECOMMENDATIONS RE: I.R.S.
15)	SUMMONS ENFORCEMENT
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18 This matter came before me on September 30, 2011, under the Order to Show
19 Cause filed August 2, 2011, which, with the verified petition and memorandum, was
20 sufficiently served upon respondent, Mr. Everett D. Calhoun, under Fed. R. Civ. P. 4(e),
21 on August 18, 2011. Respondent did not file written opposition.

22 At the hearing, Yoshinori H. T. Himel appeared for petitioner, and petitioning
23 Revenue Officer Kim Ulring was present. Respondent appeared in person and brought
24 with him what the Revenue Officer accepted as partial compliance with the IRS
25 summons. The parties, in open court, expressed their agreement to meet on Wednesday,
26 October 5, 2011, at 3:00 p.m., at the Sacramento IRS office, for respondent to continue
27 complying with the IRS summons.

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1 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks
2 to enforce an administrative summons (Exhibit A to the petition) in aid of Revenue
3 Officer Ullring's investigation of Everett D. Calhoun, to determine the existence and
4 amounts of U.S. individual income tax liabilities for the taxable years ending December
5 31, 2000, December 31, 2001, December 31, 2003, and December 31, 2004.

6 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is
7 found to be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government
8 to bring the action. The Order to Show Cause shifted to respondent the burden of
9 rebutting any of the four requirements of United States v. Powell, 379 U.S. 48, 57-58
10 (1964).

11 I have reviewed the petition and documents in support. Based on the
12 uncontroverted verification of Revenue Officer Ullring and the entire record, I make the
13 following findings:

14 (1) The summons issued by Revenue Officer Kim Ullring to respondent, Everett D.
15 Calhoun, on April 20, 2010, seeking testimony and production of documents and records
16 in respondent's possession, was issued in good faith and for a legitimate purpose under
17 I.R.C. § 7602, that is, to obtain information to determine the existence and amounts of
18 U.S. individual income tax liabilities for the taxable years ending December 31, 2000,
19 December 31, 2001, December 31, 2003, and December 31, 2004.

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

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

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

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

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

1 (7) The burden therefore shifted to respondent, Everett D. Calhoun, to rebut that
2 prima facie showing.

3 (8) Respondent has presented no argument or evidence to rebut the prima facie
4 showing.

5 I therefore recommend that the IRS summons issued to respondent, Everett D.
6 Calhoun, be enforced, and that respondent be ordered to appear at the I.R.S. offices at
7 4330 Watt Avenue, Sacramento, California 95821, before Revenue Officer Kim Uling,
8 or her designated representative, within 10 days of this issuance of the summons
9 enforcement order, then and there to be sworn, to give testimony, and to produce for
10 examining and copying the books, checks, records, papers and other data demanded by
11 the summons, the examination to continue from day to day until completed. I further
12 recommend that if it enforces the summons, the Court retain jurisdiction to enforce its
13 order by its contempt power.

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

25 DATED: October 13, 2011.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE