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7 Attorneys for Petitioner United States of America

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

11 UNITED STATES OF AMERICA,
12 Petitioner,
13 v.

14 PHILIP CHARLES MALONE,
15 Respondent.

2:14-cv-01221-TLN-CKD

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

Taxpayer:
PHILIP CHARLES MALONE

Date: July 16, 2014
Time: 10:00 a.m.
Ctrm: 24. 8th Floor

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19 Upon the petition of BENJAMIN B. WAGNER, United States Attorney for the Eastern
20 District of California, including the verification of Revenue Officer JOSE ARTEAGA, and the
21 Exhibit attached thereto, it is hereby:

22 ORDERED that the Respondent, PHILIP CHARLES MALONE, appear before United
23 States Magistrate Judge Carolyn K. Delaney, in that Magistrate Judge's courtroom in the United
24 States Courthouse, 501 I Street, Sacramento, California, on July 16, 2014, at 10:00 a.m., to show
25 cause why the respondent should not be compelled to obey the Internal Revenue Service
26 summons issued on April 5, 2013.

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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
3 636(b)(1) and Local Rule 72-302(c)(9), at the hearing scheduled above. After hearing, the
4 Magistrate Judge intends to submit proposed findings and recommendations under Local Rule
5 304(a), with the original thereof filed 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 Internal
7 Revenue Service employee, and all federal employees designated by that employee, to serve
8 process in this case.

9 3. To afford the respondent an opportunity to respond to the petition and the
10 petitioner an opportunity to reply, a copy of this order, the Verified Petition and its Exhibit, and
11 the Points and Authorities, shall be served by delivering a copy to the respondent personally, or
12 by leaving a copy at the respondent's dwelling house or usual place of abode with some person
13 of suitable age and discretion then residing therein, or by any other means of service permitted
14 by Fed. R. Civ. P. 4(e), within 21 days of the date this order is served upon the United States
15 Attorney, unless such service cannot be made despite reasonable efforts.

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

18 5. If the federal employee assigned to serve these documents is not reasonably able
19 to serve the papers as provided in paragraph 3, petitioner may request a court order granting
20 leave to serve by other means. See Fed. R. Civ. P. 81(a)(5). The federal employee assigned to
21 serve the documents shall make a certificate detailing the efforts made within the 21-day period
22 to serve the respondent as provided in paragraph 3.

23 6. The file reflects a prima facie showing that the investigation is conducted pursuant
24 to a legitimate purpose, that the inquiry may be relevant to that purpose, that the information
25 sought is not already within the Commissioner's possession, and that the administrative steps
26 required by the Code have been followed. See United States v. Powell, 379 U.S. 48, 57-58

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1 (1964). The burden of coming forward therefore has shifted to whoever might oppose
2 enforcement.

3 7. If the respondent has any defense or opposition to the petition, such defense or
4 opposition shall be made in writing and filed with the Clerk and a copy served on the United
5 States Attorney at least 14 days before the date set for the show cause hearing.

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

10 9. The respondent may notify the Court, in a writing filed with the Clerk and served
11 on the United States Attorney at least 14 days before the date set for the show cause hearing,
12 that the respondent has no objections to enforcement of the summons. The respondent's
13 appearance at the hearing will then be excused.

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15 Dated: May 21, 2014



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE