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7 Attorneys for Petitioner United States of America

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

10
11 UNITED STATES OF AMERICA,
12
13 Petitioner,
14 v.
15 ROBERT E. O'NEAL,
16
17 Respondent.

2:15-MC-00088-MCE-KJN

**FINDINGS AND RECOMMENDATIONS
AND ORDER RE: I.R.S. SUMMONS
ENFORCEMENT**

Taxpayer:
ROBERT E. O'NEAL

18 This matter came on for hearing before U.S. Magistrate Kendall J. Newman on December
19 3, 2015, under the Order to Show Cause (OSC) dated August 18, 2015.¹ (ECF No. 3). Alternate
20 service of process was approved by the Court on September 29, 2015. (ECF No. 7.) Petitioner
21 sent the OSC, with the verified petition filed August 12, 2015, and its supporting memorandum,
22 to Respondent Robert E. O'Neal by U.S. Mail on September 30, 2015, Certified Mail on
23 September 30, 2015, and taped to the Respondent's residence at 313 Peach Place in Winters, CA
24 on October 1, 2015, in accordance with the order approving alternate service. (See ECF Nos. 8-
25 10.) The package sent by certified mail was returned "unclaimed" by the Respondent. (See
26 ECF No. 12.) The Postal markings on the package show the Postal Service's attempts to deliver
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28 ¹ The October 22, 2015 hearing date provided in the OSC was continued to
December 3, 2015, by order filed September 24, 2015. Doc. #5.

1 to Respondent on October 7, 20 and 24, 2015. (See id.) Respondent did not file opposition or
2 non-opposition to the verified petition as provided for in the OSC. At the hearing, Bobbie J.
3 Montoya, Assistant United States Attorney, appeared on behalf of Petitioner, and investigating
4 Revenue Officer Jose Arteaga also was present in the courtroom. Respondent, Robert E.
5 O’Neal, did not appear at the hearing nor call the Revenue Officer or Counsel.

6 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to
7 enforce an administrative summons (Exhibit A to the petition) issued February 13, 2015. The
8 summons is part of an investigation of the respondent to secure information needed to collect
9 assessed federal income taxes (Form 1040) for the tax years ending December 31, 2004,
10 December 31, 2005, December 31, 2006, December 31, 2007, and December 31, 2008.

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

15 The court has reviewed the petition and documents in support. Based on the
16 uncontroverted verified petition by Revenue Officer Jose Arteaga and the entire record, the
17 undersigned makes the following findings:

18 (1) The summons issued by Revenue Officer Jose Arteaga on February 13, 2015, and
19 served upon the respondent on February 13, 2015, seeking testimony and production of
20 documents and records in respondent’s possession, was issued in good faith and for a legitimate
21 purpose under I.R.C. § 7602, that is, to secure information needed to collect Form 1040 federal
22 income taxes for tax years ending December 31, 2004, December 31, 2005, December 31, 2006,
23 December 31, 2007, and December 31, 2008.

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

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

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

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

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

5 (7) The burden shifted to respondent, Robert E. O'Neal, to rebut that prima facie
6 showing.

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

8 The undersigned therefore recommends that the I.R.S. summons served upon Respondent
9 be enforced; and that Respondent be ordered to appear at the I.R.S. offices at 4830 Business
10 Center Drive, Suite 250, Fairfield, California, before Revenue Officer Jose Arteaga or his
11 designated representative, on the twenty-eighth (28th) day after the filing date of the District
12 Judge's summons enforcement order, or at a later date to be set in writing by Revenue Officer
13 Jose Arteaga, then and there to be sworn, to give testimony, and to produce for examining and
14 copying the books, checks, records, papers and other data demanded by the summons, the
15 examination to continue from day to day until completed. It is further recommended that if it
16 enforces the summons, the Court retain jurisdiction to enforce its order by its contempt power.

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


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1 THE CLERK SHALL SERVE this and further orders by mail to Robert E. O'Neal, 313
2 Peach Place, Winters, California 95694.

3 IT IS SO ORDERED.

4 Dated: December 8, 2015

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE
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