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

11 UNITED STATES OF AMERICA,

12 Petitioner,

13 v.

14 WILLIAM C. CANEPA,

15 Respondent.

2:17-CV-01020-TLN-EFB

**[PROPOSED] MAGISTRATE JUDGE’S
 FINDINGS AND RECOMMENDATIONS
 AND ORDER RE: I.R.S. SUMMONS
 ENFORCEMENT**

**Taxpayer:
 WILLIAM C. CANEPA**

18
 19 This matter came on before Magistrate Judge Edmund F. Brennan on November 8, 2017,
 20 under the Order to Show Cause filed May 17, 2017, ECF 4, and the continuance of hearing order
 21 filed September 25, 2017, ECF 9. The order, with the verified petition filed May 11, 2017,
 22 ECF 1, and its supporting memorandum, ECF 2-1, were personally handed to the Respondent at
 23 his residence at 219 S. Fairmont, Lodi, California, by Revenue Officer Cynthia J. Kallich on
 24 June 8, 2017. ECF 5. Respondent did not file opposition or non-opposition to the verified
 25 petition as provided for in the Order to Show Cause. Respondent engaged a power of attorney
 26 to represent him before the I.R.S., who was working with Revenue Officer Kallich to get
 27 Respondent in compliance with the tax summons at issue in this proceeding before the hearing.
 28 The court continued the hearing twice in order to give Respondent additional time to fully

1 comply without the hearing, but Respondent has failed to produce to Revenue Office Kallich all
2 of the requested records. At the hearing, Bobbie J. Montoya, Assistant United States Attorney,
3 personally appeared on behalf of Petitioner, and investigating Revenue Officer Kallich also was
4 present in the courtroom. Respondent failed to appear at the hearing.

5 The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to
6 enforce an administrative summons issued March 18, 2016. See Exhibit A to the Petition,
7 ECF 1-2. The summons is part of an investigation of the Respondent to secure information
8 relating to the tax liability and the collection of the tax liability for Form 1040 for the calendar
9 periods ending December 31, 2004, December 31, 2005, December 31 2006, December 31,
10 2007, December 31, 2008, December 31, 2009, December 31, 2010, and December 31, 2011.¹

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 Order to Show Cause shifted to the respondent the burden of rebutting any of the
14 four requirements of *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 petition verified by Revenue Officer Cynthia J. Kallich and the entire record, the
17 court makes the following findings:

18 (1) The summons (Exhibit A to the Petition, ECF 1-2) issued by Revenue Officer
19 Cynthia J. Kallich on March 18, 2016, and served upon Respondent on March 18, 2016, seeking
20 testimony and production of documents and records in Respondent's possession, was issued in
21 good faith and for a legitimate purpose under I.R.C. § 7602, that is, to secure information
22 relating to the tax liability and the collection of tax liability, currently limited to Form 1040
23 calendar periods ending December 31, 2004, December 31, 2005, December 31 2006,
24

25 ¹ The summons specifies that it applies to the tax liability or the collection of the tax liability for
26 the calendar periods ending December 31, 2001, December 31, 2003, December 31, 2004, December 31,
27 2005, December 31, 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31,
28 2010, and December 31, 2011. See Summons, Exhibit A to Petition, ECF 1-2, at p. 3. However, the
investigation at this time is limited to the tax years ending December 31, 2004, December 31, 2005,
December 31, 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010,
and December 31, 2011; since issuance and service of the summons, investigation for tax years ending
December 31, 2001 and December 31, 2003 has become moot. See Petition, ECF 1, at ¶ 8.

1 December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010, and
2 December 31, 2011.²

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

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

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

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

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

12 (7) The burden shifted to respondent, William C. Canepa, to rebut that *prima facie*
13 showing.

14 (8) Respondent presented no argument or evidence to rebut the *prima facie* showing.
15 The court therefore recommend that the I.R.S. summons served upon Respondent, William C.
16 Canepa, be enforced and that Respondent be ordered to appear at the I.R.S. offices at 4643 Quail
17 Lakes Drive, Stockton, California, before Revenue Officer Cynthia J. Kallich or her designated
18 representative, on the twenty-eighth (28th) day after the filing date of the District Judge's
19 summons enforcement order, or at a later date to be set in writing by Revenue Officer Cynthia J.
20 Kallich, then and there to be sworn, to give testimony, and to produce for examining and
21 copying the books, checks, records, papers and other data demanded by the summons, the
22 examination to continue from day to day until completed. It is further recommended that if the
23 summons is enforced, the Court retain jurisdiction to enforce its order by its contempt power.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the Local Rules of
26 the United States District Court for the Eastern District of California. Within fourteen (14) days
27

28 ² See n.1, *infra*.

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be titled
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the
4 objections shall be served and filed within fourteen (14) days after service of the objections.
5 The District Judge will then review these findings and recommendations pursuant to 28 U.S.C.
6 § 636(b)(1). The parties are advised that failure to file objections within the specified time may
7 waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
8 1991).

9 THE CLERK SHALL SERVE this and further orders by mail to William C. Canepa, 219
10 S. Fairmont, Lodi, California 95240.

11 IT IS SO ORDERED.

12 DATED: November 20, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE