

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
SHAWN URBANSKI,
Defendant.

Case No. 17-CV-02424-LHK

ORDER GRANTING PETITION TO ENFORCE IRS SUMMONS

Re: Dkt. No. 1

This matter is before the Court on an order to show cause why Respondent Shawn Urbanski (“Respondent”) should not be required to comply with an Internal Revenue Service (“IRS”) summons. Having considered Petitioner United States of America’s (“Petitioner’s”) verified Petition to Enforce IRS Summons, ECF No. 1 (“Pet.”), and the discussions at the hearing on July 20, 2017, the Court GRANTS Petitioner’s Petition to Enforce IRS Summons.

I. Background

According to the Petition, the IRS is investigating the collection of Eugenia Reyes’ tax liabilities for 2011–2015. Pet. at 5 & ¶ 3. The IRS “is informed and believes that [Respondent] has knowledge or information concerning records, paper and other data regarding income and other matters covered by [the IRS] inquiry and to which [the IRS] does not otherwise have access,

1 possession or control.” *Id.* ¶ 5. As part of its investigation, the IRS served a summons on
2 Respondent on December 14, 2016 that required Respondent to appear on January 9, 2017. The
3 record before the Court shows that service was properly made pursuant to 26 U.S.C. § 7603, which
4 requires service “by an attested copy delivered in hand to the person to whom it is directed, or left
5 at his last and usual place of abode.” The IRS left the summons at one of Respondent’s “last and
6 usual places of abode.” Pet. ¶ 6.

7 However, Respondent did not appear on January 9, 2017 or produce testimony or records
8 as requested by the summons. *See id.* ¶ 8. By letter dated January 19, 2017, Respondent was
9 given another opportunity to comply with the summons by appearing for an appointment with
10 Revenue Agent Elisa Dang on February 16, 2017. *Id.* ¶ 9, Ex. C. According to the Petition,
11 Respondent has still not complied. *Id.* ¶ 10.

12 On April 27, 2017, Petitioner filed the instant action to enforce the summons. *See* Pet. On
13 May 26, 2017, the Court issued an order to show cause and set a briefing schedule and a hearing
14 for July 20, 2017. ECF No. 8. The record shows that Respondent was served with the verified
15 Petition and the order to show cause on June 1, 2017. ECF No. 9. However, the Court received no
16 written response to the order to show cause, and Respondent did not appear at the show cause
17 hearing.

18 **II. Discussion**

19 Under 26 U.S.C. § 7602(a), the IRS is authorized to issue a summons relevant to the
20 investigation of any taxpayer’s liability. Summons may be issued for the purposes of “ascertaining
21 the correctness of any return, making a return where none has been made, determining the liability
22 of any person for any internal revenue tax or . . . collecting any such liability . . .” 26 U.S.C.
23 § 7602(a); *see also Crystal v. United States*, 172 F.3d 1141, 1143 (9th Cir. 1999) (quoting 26
24 U.S.C. § 7602(a)). To enforce a summons, the IRS must first establish “good faith” by showing
25 that the summons (1) is issued for a legitimate purpose; (2) seeks information relevant to that
26 purpose; (3) seeks information that is not already in the IRS’s possession; and (4) satisfies all of
27 the administrative steps set forth in the Internal Revenue Code. *United States v. Powell*, 379 U.S.

1 48, 57-58 (1964). “The government’s burden is a slight one, and may be satisfied by a declaration
2 from the investigating agent that the *Powell* requirements have been met.” *Crystal*, 172 F.3d at
3 1144 (quoting *United States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993)). “The burden is
4 minimal ‘because the statute must be read broadly in order to ensure that the enforcement powers
5 of the IRS are not unduly restricted.’” *Id.* (quoting *Liberty Fin. Servs. v. United States*, 778 F.2d
6 1390, 1392 (9th Cir. 1985)).

7 Once the government has met its burden in establishing the *Powell* elements, if the
8 taxpayer chooses to challenge the enforcement, he or she bears a “heavy” burden to show an abuse
9 of process or lack of good faith on the part of the IRS. *United States v. LaSalle Nat’l Bank*, 437
10 U.S. 298, 316 (1978). “Enforcement of a summons is generally a summary proceeding to which a
11 taxpayer has few defenses.” *Crystal*, 172 F.3d at 1144 (quoting *United States v. Derr*, 968 F.2d
12 943, 945 (9th Cir. 1992)). “The taxpayer must allege specific facts and evidence to support his
13 allegations of bad faith or improper purpose.” *Id.* (quoting *United States v. Jose*, 131 F.3d 1325,
14 1328 (9th Cir. 1997)). As explained by the Ninth Circuit:

15 The taxpayer may challenge the summons on any appropriate grounds, including
16 failure to satisfy the *Powell* requirements or abuse of the court’s process. Such an
17 abuse would take place if the summons had been issued for an improper purpose,
18 such as to harass the taxpayer or to put pressure on him to settle a collateral
19 dispute, or for any other purpose reflecting on the good faith of the particular
20 investigation. In addition, it has become clear since *Powell* that gathering
21 evidence after having decided to make a recommendation for prosecution would
22 be an improper purpose, and that the IRS would be acting in bad faith if it were to
23 pursue a summons enforcement under these circumstances. While neither the
24 *Powell* elements nor the *LaSalle* requirements is an exhaustive elaboration of
25 what good faith means, still the dispositive question in each case is whether the
26 Service is pursuing the authorized purposes in good faith.

27 *Id.* at 1144–45 (internal quotes and citations omitted). Once a summons is challenged by a
28 respondent, it must be “scrutinized by the court” to determine whether it seeks information
relevant to a legitimate investigative purpose, and the court may choose either to refuse
enforcement or narrow the scope of the summons. *United States v. Goldman*, 637 F.2d 664, 668
(9th Cir. 1980).

 In the instant case, Petitioner has met its burden of showing that the *Powell* elements have

1 been satisfied, largely through the verification of the Petition by Revenue Agent Elisa Dang. *See*
2 *Crystal*, 172 F.3d at 1144 (stating that it was undisputed that the special agent’s declaration
3 satisfied the *Powell* requirements and that the government therefore “established a prima facie case
4 to enforce the summonses”); *Dynavac, Inc.*, 6 F.3d at 1414 (stating that the government’s burden
5 “may be satisfied by a declaration from the investigating agent that the *Powell* requirements have
6 been met.”); *United States v. Bell*, 57 F. Supp. 2d 898, 906 (N.D. Cal. 1999) (“The government
7 usually makes the requisite prima facie showing by affidavit of the agent.”).

8 As to the first *Powell* element, the verified Petition indicates that the IRS’s investigation is
9 being conducted for a legitimate purpose of ascertaining Eugenia Reyes’ assets and liabilities as
10 part of an effort to investigate federal tax liabilities for certain periods of time. Pet. ¶ 3; 26 U.S.C.
11 § 7602(a) (allowing issuance of summons for the purpose of “determining the [tax] liability of any
12 person”). As to the second *Powell* element, the summons is relevant to the purpose of ascertaining
13 Eugenia Reyes’ assets and liabilities. The summons asks Respondent to appear and bring “books,
14 records, papers, and other data relating to the tax liability” of Eugenia Reyes. *See id.* Exs. A & B.
15 As to the third *Powell* element, the Petition further indicates that the information is not already in
16 the IRS’s possession. As to the fourth *Powell* element, the Petition certifies that all administrative
17 steps required by the Internal Revenue Code for the issuance of the summons have been taken. *Id.*
18 ¶¶ 5, 7, 11–12.

19 Because Petitioner has met its burden in establishing the *Powell* elements, the burden shifts
20 to Respondent to show an abuse of process or lack of good faith. *LaSalle*, 437 U.S. at 316 (placing
21 the “heavy” burden on the respondent). As discussed above, Respondent did not file any response
22 to the order to show cause and did not appear at the show cause hearing held on July 20, 2017.
23 This Court therefore finds that Respondent has not met Respondent’s burden of showing an abuse
24 of process or lack of good faith on the part of the IRS.

25 Based on the foregoing, the Court GRANTS Petitioner’s Petition to Enforce IRS
26 Summons. Respondent is directed to obey the summons issued; to appear before Revenue Agent
27 Elisa Dang, or any other proper officer of the IRS, on Friday, August 18, 2017, at 1:00 p.m. at 55

1 South Market Street, Suite 7000A, San Jose, California 95113, to give testimony as demanded in
2 the summons.

3 **IT IS SO ORDERED.**

4
5 Dated: July 20, 2017

Lucy H. Koh

LUCY H. KOH
United States District Judge

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28