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[REDACTED]  
[REDACTED] s Attorney  
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Attorney for Respondent

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

UNITED STATES OF AMERICA,  
Petitioner,  
v.  
[REDACTED]  
Respondent.

No. [REDACTED]  
Response to Petition to Enforce  
Internal Revenue Service Summons;  
and Declaration in Support Thereof  
Date: December 10, [REDACTED]  
Time: 9:00 a.m.  
Courtroom: 850  
Judge: Hon. Gary Klausner

**RESPONSE TO PETITION TO ENFORCE INTERNAL REVENUE**

**SERVICE SUMMONS**

1           **I.       STATEMENT OF RELEVANT FACTS AND PROCEDURAL**  
2                           **HISTORY**

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4           On February 8, [REDACTED], the Internal Revenue Service (IRS) served Respondent  
5 with a summons requesting that he appear, testify, and produce documents regarding  
6 his federal income tax liabilities for tax years [REDACTED] through [REDACTED]. Declaration of  
7 [REDACTED] Decl.) ¶¶ 8-9. The summons  
8 requested, in particular, records relating to foreign financial institutions. During the  
9 relevant tax years, [REDACTED] through [REDACTED], Respondent had two foreign bank accounts:  
10 one at Bank Leumi, Israel, and one at First International Bank of Israel (FIBI).  
11 Declaration of Respondent [REDACTED] (Respondent Decl.) ¶ 6.

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13           The IRS claims that Respondent has failed, and has continued to fail, to comply  
14 with the summons by failing to give testimony and providing books and records in  
15 response to the summons. [REDACTED] Decl. ¶ 13. Respondent, however, has (directly  
16 or through his attorney) used his best efforts to comply with the summons by  
17 repeatedly calling Bank Leumi and FIBI, sending written correspondences to Bank  
18 Leumi and FIBI on multiple occasions, participating in an interview with four  
19 Revenue Agents, including Revenue Agent [REDACTED], spanning several hours (10 am  
20 through 5 pm with breaks), and regularly communicating with Revenue Agent  
21 [REDACTED] regarding this matter. Respondent Decl. ¶¶ 7-11. Because the banks did not  
22 provide any documents or information relating to his accounts, Respondent traveled  
23 to Israel to demand such documents and information in person. Respondent Decl. ¶

1 12. As recently as October 24, [REDACTED], Respondent, through his attorney, sent Bank  
2 Leumi another letter requesting any and all documents and information relating to  
3 his account. Respondent Decl. ¶ 15. Furthermore, as requested by the summons,  
4 Respondent, through counsel, provided information regarding transfers of funds  
5 between his foreign bank accounts and domestic U.S. accounts to Revenue Agent  
6 [REDACTED]. Respondent Decl. ¶ 17. Respondent, through counsel, thereby established  
7 that all of the money in his foreign accounts was transferred into his domestic U.S.  
8 bank accounts. Id.

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12 Respondent was only able to obtain bank records after traveling to Israel and  
13 visiting the banks. Respondent Decl. ¶ 12. Upon returning from Israel, he sent  
14 (through counsel) the FIBI bank statements he received to Revenue Agent [REDACTED]  
15 on July 17, [REDACTED]. Respondent Decl. ¶ 13. Respondent also submitted Bank Leumi  
16 statements, through counsel, to Revenue Agent [REDACTED] in October [REDACTED].  
17 Respondent Decl. ¶ 14. The IRS, however, claims it is not in possession or control  
18 of the books and records sought by the summons. [REDACTED] Decl. ¶ 15.

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21 On September 12, [REDACTED], the United States filed a petition to enforce an IRS  
22 administrative summons pursuant to sections 7402(b) and 7604(a) of the Internal  
23 Revenue Code (26 U.S.C.).

## 24 **II. ARGUMENT**

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27 In order to obtain enforcement of a summons, “the IRS must make a *prima*  
28 *facie* showing that the summons was issued in good faith.” Stewart v. United States,

1 511 F.3d 1251, 1254 (9th Cir. 2008) (citing United States v. Powell, 379 U.S. 48, 57  
2 (1964)). “Specifically, the IRS must establish that the summons (1) was issued  
3 pursuant to a ‘legitimate purpose’; (2) seeks information ‘relevant’ to that purpose;  
4 (3) seeks information that is ‘not already within the Commissioner’s possession’; and  
5 (4) satisfies all ‘administrative steps required by the Code.’” Id. Once the IRS  
6 establishes its prima facie case, the burden shifts to the respondent to rebut the  
7 government’s claim by showing an improper purpose or bad faith. Stewart, 511 F.3d  
8 at 1254. “The [respondent] need only make a showing of facts that give rise to a  
9 plausible inference of improper motive.” United States v. Clarke, 134 S. Ct. 2361,  
10 2368.  
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14 **A. Respondent Has Complied with the Summons by Producing**  
15 **Substantial Documents to the IRS and Providing Several Hours of**  
16 **Testimony**  
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18 As requested by the summons, Respondent (through counsel) provided the IRS  
19 Bank Leumi and FIBI statements. Respondent provided (through counsel) FIBI  
20 statements on July 17, [REDACTED] and Bank Leumi statements in October [REDACTED].  
21 Respondent Decl. ¶¶ 13-14. Revenue Agent [REDACTED] also received documents  
22 establishing that all of Respondent’s money in his foreign accounts was transferred  
23 into his domestic bank accounts. Respondent Decl. ¶ 17. Despite submitting these  
24 documents, through his attorney, Revenue Agent [REDACTED] claims Respondent has not  
25 produced records sought by the summons. [REDACTED] Decl. ¶ 13.  
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1           Furthermore, Internal Revenue Code Section 7605(b) states “[n]o taxpayer  
2 shall be subjected to unnecessary examination or investigations,” which the Supreme  
3 Court in Powell explained “emphasize[s] the responsibility of agents to exercise  
4 prudent judgment in wielding the extensive powers granted to them by the Internal  
5 Revenue Code.” Powell, 379 U.S. at 56. At this point, the government has received  
6 documents and testimony as requested by the summons, and Respondent has  
7 substantially complied with the summons. Any further demands of production for  
8 documents or testimony would result in a fishing expedition, and therefore, an  
9 unnecessary examination prohibited by the Internal Revenue Code.  
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13           **B. Respondent Does Not Possess or Control the Additional Documents**  
14           **Sought by the Summons**  
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16           A respondent may contest the summons due to “lack of possession or control  
17 of records,” if the defense is raised in the initial enforcement proceeding. United  
18 States v. Rylander, 460 U.S. 752, 757 (1983). The defense is unavailable to  
19 respondents who caused the records to not be in their possession after the summons  
20 is served, because the “summons imposes a duty to retain possession of summoned  
21 documents[.]” United States v. Asay, 614 F.2d 655, 660 (9th Cir. 1980). In order to  
22 succeed on this defense, a respondent must provide credible evidence that he lacks  
23 possession or control of the records. See United States v. Lawn Builders of New  
24 England, Inc., 856 F.2d 388, 392 (1st Cir. 1988). It is uncertain “what a taxpayer  
25 must show to meet his or her burden . . . . However, the taxpayer’s ‘responsibilities  
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1 surely go further than a *pro forma* demand and cursory search for records,’ or a  
2 ‘conclusory, self-serving affidavit, lacking detailed facts and any supporting  
3 evidence.’” Larue v. United States, No. 3:15-cv-00705-HZ, 2015 WL 9809798, at  
4 \*3 (quoting United States v. Seetapun, 750 F.2d 601, 605; FTC v. Publ’g Clearing  
5 House, Inc., 104 F.3d 1168, 1171 (9th Cir. 1997)).  
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8         The defense of non-possession is available to Respondent because he is raising  
9 it in his initial response to the government’s petition to enforce the summons and  
10 because he has not caused the documents to not be in his possession after the  
11 summons was served. Furthermore, Respondent made significant efforts (directly or  
12 through his attorney) to obtain the documents requested in the summons. In order to  
13 comply with the summons, Respondent made numerous calls to Bank Leumi and  
14 FIBI to obtain any and all documents and information related to his accounts and sent  
15 several letters, through counsel, to Bank Leumi and FIBI requesting documents  
16 relating to his accounts. Respondent Decl. ¶¶ 8-11. When such attempts failed, he  
17 traveled to Israel to ask for any documents related to his foreign accounts in person.  
18 Respondent Decl. ¶ 12. Despite Respondent’s request for all documents and  
19 information relating to his bank accounts, the banks only provided him with bank  
20 statements. *Id.* He subsequently provided, through counsel, all FIBI statements in  
21 his possession to Revenue Agent [REDACTED] on July 17, [REDACTED]. Respondent Decl. ¶ 13.  
22 Respondent also provided, through counsel, all Bank Leumi statements in his  
23 possession to Revenue Agent [REDACTED] in October [REDACTED]. Respondent Decl. ¶ 14. Any  
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1 other documents and information regarding his Bank Leumi and FIBI accounts that  
2 the IRS seeks have not been produced because they are not in his control or  
3 possession. Respondent Decl. ¶ 16.

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5 **C. The Court Should Dismiss the Government’s Petition Pursuant to**  
6 **Federal Rules of Civil Procedure Rule 12(b)(6)**  
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8 Pursuant to Federal Rules of Civil Procedure Rule 12(b)(6), Respondent  
9 respectfully requests that the Court dismiss the government’s petition to enforce IRS  
10 summons, because Petitioner fails to state a claim for which relief can be granted.  
11 As explained above, Respondent has given testimony and provided, through counsel,  
12 all documents relating to his foreign accounts in his possession. Any other  
13 documents regarding his foreign accounts that the IRS seeks are not in Respondent’s  
14 possession or control. Therefore, an order compelling the testimony and the  
15 production of books, papers, records, and other data demanded in the IRS summons  
16 will be fruitless.  
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20 **III. CONCLUSION**  
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22 Respondent has produced documents, through counsel, requested by the IRS  
23 summons that he obtained after he and his attorney took significant steps to comply  
24 with the summons. Respondent made efforts to cooperate with the IRS summons,  
25 including participating in a lengthy interview for several hours conducted by  
26 Revenue Agent [REDACTED] and three other Revenue Agents, and submitting documents  
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1 Respondent received from the banks to Revenue Agent [REDACTED] through his attorney.  
2 As recently as October 24, [REDACTED], Respondent, through his attorney, sent Bank Leumi  
3 another letter requesting any and all documents and information relating to his  
4 account. Respondent is not in possession or control of any other documents or  
5 information sought by the IRS summons and any order to compel further testimony  
6 or documents will be fruitless. Therefore, Respondent respectfully requests that the  
7 Court dismiss the government's petition.  
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13 Dated: October 25, [REDACTED]

Respectfully submitted,  
PEDRAM BEN-COHEN  
Attorney for Respondent

16 /s/ Pedram Ben-Cohen  
17 PEDRAM BEN-COHEN  
18 [REDACTED]

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