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8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

10 FEDERAL TRADE COMMISSION,  
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 12                   Petitioner,  
 13                   v.  
 14 DONOR RELATIONS, LLC, and  
 15 COURTESY CALL, INC.,  
 16                   Respondents.

Case No. 2:18-cv-00183-GMN-CWH

**FEDERAL TRADE COMMISSION'S  
 OPPOSITION TO RESPONDENTS'  
 MOTION TO DISMISS FOR LACK  
 OF PERSONAL JURISDICTION,  
 FOR INSUFFICIENT PROCESS,  
 AND FOR INSUFFICIENT  
 PROCESS MADE BY SPECIAL  
 APPEARANCE**

**Hearing date: February 20, 2018**  
**Hearing Time: 2:00 p.m.**

19           Having failed to file any opposition to the Federal Trade Commission's  
 20 Petition to Enforce Civil Investigative Demands (CIDs), Respondents Donor  
 21 Relations, LLC, and Courtesy Call, Inc., instead have moved to dismiss the  
 22 enforcement petition, contending that personal jurisdiction is lacking and service  
 23 was improper. The sole basis for their motion is the novel notion that the FTC  
 24 should have initiated these enforcement proceedings by serving them with a  
 25 summons issued by a clerk under FED. R. CIV. P. 4, instead of an order to show  
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1 cause signed and entered by this Court. Such a summons, they further claim, is  
2 necessary to establish personal jurisdiction.

3 It is long established that the district courts may initiate proceedings to  
4 enforce agency process by issuing an order to show cause. Moreover, service of an  
5 order to show cause is sufficient to confer personal jurisdiction. The motion to  
6 dismiss should be denied.  
7

### 8 Argument

9 1.a. Respondents' insistence on a rigid and technical application of Rule 4 in  
10 proceedings to enforce FTC CIDs is both improper and contrary to longstanding  
11 precedent. As courts have recognized, "the Federal Rules of Civil Procedure were  
12 written for post-complaint litigation." *United States v. Markwood*, 48 F.3d 969, 982  
13 (6th Cir. 1995) (Department of Justice CID). Therefore, "[m]ost of the Rules are  
14 simply inapplicable to the pre-complaint enforcement of an administrative  
15 subpoena." *Id. Accord EEOC v. Deer Valley Unified Sch. Dist.*, 968 F.2d 904, 906  
16 (9th Cir. 1992) (local and FED. R. CIV. P. discovery rules inapplicable to agency  
17 subpoena enforcement proceedings "which may or may not result in any further  
18 action before the district court."); *United States v. Church of Scientology of Cal.*, 520  
19 F.2d 818, 821 (9th Cir. 1975) (holding, in IRS summons<sup>1</sup> enforcement, that FED. R.  
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26 <sup>1</sup> Under 26 U.S.C. § 7602, the name of the IRS's compulsory process is the  
"summons," which should not be confused with the "summons" discussed in FED. R.  
CIV. P. 4.

1 CIV. P. are flexible and district court may limit their application in summary  
2 proceeding to enforce investigative process).<sup>2</sup>

3 This flexible approach is consistent with the intent of the Advisory  
4 Committee responsible for drafting the rules. Rule 81(a)(5) states that the Federal  
5 Rules apply to subpoena enforcement proceedings, but only to the extent that it is  
6 not “otherwise provided . . . by court order in the proceedings.” FED. R. CIV. P.  
7 81(a)(5) (emphasis added). As explained in the accompanying Notes, the Rule is  
8 intended to provide for a “summary determination” in process enforcement  
9 proceedings and thus “is drawn so as to permit application of the rules in the  
10 proceedings *whenever the district court deems them helpful.*” FED. R. CIV. P. 81,  
11 advisory committee notes to subdivision (a)(3) (1946 amendment) (emphasis added).  
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14 b. For these reasons, courts have consistently rejected the proposition that  
15 service of a complaint and summons are required mechanisms for initiating the  
16 resolution of disputes in agency law enforcement investigations. *See In re Line of*  
17 *Bus. Rep. Litig.*, 595 F.2d at 704-05 (complaint and summons are not required to  
18 initiate proceedings to enforce FTC compulsory process); *United States v. Stoltz*, 525  
19 F. Supp. 617, 620 (D.D.C. 1981) (“The proceeding here, though denominated an  
20 order to show cause rather than a complaint, and thereby shortening the time limits  
21 involved, is appropriate for a subpoena enforcement proceeding.”). As the Ninth  
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25 <sup>2</sup> *See also United States v. Dick*, 694 F.2d 1117, 1118-19 (8th Cir. 1982) (“Further,  
26 Rule 81(a)(3) of the Federal Rules clearly gives district courts the discretionary  
authority to limit the applicability of the Rules.”); *In re Line of Bus. Rep. Litig.*, 595  
F.2d 685, 704-05 (D.C. Cir. 1978) (Rule 81 gives district courts authority to deviate  
from the federal rules in subpoena enforcement proceedings).

1 Circuit has described, “Once the Government has established its prima facie case,  
2 the district court issues an order requiring the party on whom the [IRS] summons  
3 has been served to show cause, at an enforcement hearing, why compliance with the  
4 summons should not be required.” *United States v. Samuels, Kramer & Co.*, 712  
5 F.2d 1342, 1345 (9th Cir. 1983) (IRS).  
6

7 c. While a Rule 4 summons and an order to show cause both give notice, an  
8 order to show cause is better suited to the needs of administrative investigative  
9 process because it also establishes a briefing schedule and hearing date, thus  
10 facilitating a quick resolution of issues in an ongoing agency investigation. By  
11 contrast, a Rule 4 summons does none of these, but merely sets in motion the  
12 extended procedures that were crafted for plenary civil litigation. For this reason,  
13 courts – including this court – have invariably issued such orders in proceedings to  
14 enforce FTC CIDs and subpoenas, as well as compulsory process from other  
15 agencies.<sup>3</sup> *See, e.g., FTC v. Bowman*, 248 F.2d 456, 457 (7th Cir. 1957); *FTC v.*  
16 *Paglia*, Case No. 2:14-cv-01480-GMN-CWH (D. Nev. 2014); *see also United States v.*  
17 *Groo LLC*, Case No. 2:17-cv-01605-RFB-PAL (D. Nev. 2017) (IRS); *EEOC v. Fisher*  
18 *Packing & Gravel Co.*, Case. No. 2:-12-cv-00649-JCM-CWH (D. Nev. 2012); *EEOC v.*  
19 *Maryland Cup Corp.*, 785 F.2d 471, 475 (4th Cir. 1986); *United States v. Assoc’d*  
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24 <sup>3</sup> Other recent FTC process enforcement cases include the following, all of which  
25 the courts initiated by issuing an order to show cause: *FTC v. Redwood Scientific*  
26 *Techs., Inc.*, Case No. 2:17-cv-07921-SJO-PLA (C.D. Cal. 2017); *FTC v. Tracers Info.*  
*Specialists, Inc.*, Misc. No. 8:16-mc-00018-VMC-TGW (M.D. Fla. 2016); *FTC v. The*  
*Western Union Co.*, Misc. No. 1:13-mc-00131-AKH (S.D.N.Y. 2013); *FTC v. Church*  
*& Dwight Co., Inc.*, Misc. No. 1:10-mc-00149-EGS/JMF (D.D.C. 2010).

1 *Merch. Corp.*, 256 F. Supp. 318, 320 (S.D.N.Y. 1966) (observing that IRS sought  
2 summons enforcement by order to show cause for “years”).

3         The Order to Show Cause issued in this proceeding is no different than those  
4 entered in prior cases and follows perfectly from the agency’s need for prompt  
5 resolution of these issues in order to investigate in an expeditious manner. The  
6 Order acknowledged that these are “summary” proceedings for which discovery is  
7 not allowed, except upon a specific showing of need. ECF No. 3 at 2. Citing Rule  
8 81(a)(5) and the Advisory Committee Notes, the Order then directed the FTC to  
9 serve a copy of the Order and related pleadings on Respondents “using as  
10 expeditious means as possible.” It thus required a manner of service that, while not  
11 a summons issued by the Clerk, nonetheless ensured that notice would be provided  
12 quickly. ECF No. 3 at 3.

13         2. Respondents are also wrong in arguing that personal jurisdiction is  
14 lacking unless the Clerk issues a summons. The Court of Appeals for this Circuit  
15 has rejected this proposition, explaining that “the district court acquired personal  
16 jurisdiction . . . by service of the show cause order and petition for enforcement.”  
17 *United States v. Hooper*, No. 95-35565, 76 F.3d 389, \*1 (9th Cir. Dec. 11, 1995)  
18 (citing *United States v. Gilleran*, 992 F.2d 232, 233 (9th Cir. 1993)); accord *United*  
19 *States v. Miller*, 609 F.2d 336, 338 (8th Cir. 1979) (service of petition and order to  
20 show cause was “proper basis for asserting personal jurisdiction”). In short, service  
21 of the show cause order on Respondents pursuant to the terms of the Court’s show  
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1 cause order on February 6, 2018, was sufficient to confer personal jurisdiction. See  
2 ECF No. 7.

3 **Conclusion**

4 The motion to dismiss should be denied.

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6 Respectfully submitted,

7 DAVID C. SHONKA  
8 Acting General Counsel

9 LESLIE RICE MELMAN  
10 Assistant General Counsel for Litigation

11 /s/ Burke W. Kappler  
12 BURKE W. KAPPLER  
13 Attorney

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20 Dated: February 13, 2018

**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on February 13, 2018, I served the foregoing OPPOSITION  
3 TO RESPONDENTS' MOTION TO DISMISS FOR LACK OF PERSONAL  
4 JURISDICTION, FOR INSUFFICIENT PROCESS, AND FOR INSUFFICIENT  
5 PROCESS MADE BY SPECIAL APPEARANCE upon counsel for Respondents Donor  
6 Relations, LLC, and Courtesy Call, Inc., by filing it through the CM/ECF system which  
7 provides a Notice of Electronic Filing to counsel appearing in the case.  
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10 */s/ Burke W. Kappler*  
11 BURKE W. KAPPLER  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,  
  
Petitioner,  
  
v.  
  
DONOR RELATIONS, LLC, and  
  
COURTESY CALL, INC.,  
  
Respondents.

Case No. 2:18-cv-00183-GMN-CWH  
  
**[PROPOSED]  
ORDER**

Upon review of Respondents Donor Relations, LLC’s and Courtesy Call, Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction, for Insufficient Service, and for Insufficient Process Made by Special Appearance [ECF No. 8], the Opposition filed by Petitioner Federal Trade Commission [ECF No. 11], any related pleadings, and the arguments of counsel, it is hereby

**ORDERED** that Respondents’ Motion to Dismiss be, and hereby is, **DENIED**.

Dated: \_\_\_\_\_

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Gloria M. Navarro, Chief Judge  
United States District Court