UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

U.S. Department of Labor, *Keith E. Sonderling, Acting Secretary of Labor*, Plaintiff, v. Jared A. Smith *doing business as* Gambino's Pizza, Defendant.	Case No. 26-mc-103-JWB-GEB

REPORT AND RECOMMENDATION

This matter comes before the Court on the United States Department of Labor's ("DOL") Petition to Enforce Administrative Subpoena ("Petition") and attached Exhibits (ECF Nos. 1 and 1-1 to 1-3). By way of the Petition and Exhibits, the DOL seeks a court order compelling Respondent Jared A. Smith *doing business as* Gambino's Pizza ("Respondent") to produce the documents requested in the administrative subpoena personally served on Respondent on December 11, 2025. As discussed in further detail below, the undersigned recommends the District Judge grant the DOL's request and order Respondent to fully comply with the subpoena.[1]

[1] The undersigned magistrate judge proceeds by way of a report and recommendation because the matter referred is case dispositive. *See Perez v. Alegria*, No. 15-MC-401-SAC, 2015 WL 4744487, at *7 n.1 (D. Kan. June 24, 2015) (issuing report and recommendation regarding enforcement of administrative subpoena, noting prior decisions concluding magistrate judges lacked authority to issue a final decision disposing of an administrative subpoena enforcement proceeding); *Fed. Deposit Ins. Corp. v. Appl*, No. 24-MC-209-HLT-ADM, 2024 WL 5347465, at *4 n.1 (D. Kan. Oct. 9, 2024), *report and recommendation adopted*, No. 2:24-MC-00209-HLT-ADM, 2024 WL 5347460 (D. Kan. Nov. 7, 2024); *Equal Emp. Opportunity Comm'n v. Kansas*

I. Notice

Within fourteen (14) days after a party is served with a copy of this Report and Recommendation, any party may, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2), file written objections to this Report and Recommendation. A party must file any objections within the fourteen-day period if the party wants to have appellate review of the proposed findings of fact, conclusions of law, or recommended disposition.

II. Background

Unless otherwise indicated, the facts stated in this section are taken from the Petition and attached Exhibits (ECF Nos. 1 and 1-1 to 1-3). The Exhibits consist of Declarations from 1) Wage and Hour Investigator Guadalupe Montes (ECF No. 1-1); 2) Wage and Hour Technician Dene'e L. McElhiney (ECF No. 1-2); and 3) Department of Labor Senior Trial Attorney Dana M. Hauge (ECF No. 1-3).

On May 7, 2025, the Wage and Hour Division of the DOL opened an investigation of Respondent to determine whether the establishment, Gambino's Pizza at Marion, Kansas, is compliant with the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. ("FLSA") and the regulations promulgated thereunder. Specifically, the investigation aims to determine whether Respondent and his employees are subject to the

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City Kansas Cmty. Coll., No. 2:23-MC-00202-DDC-ADM, 2023 WL 5955793, at *6 (D. Kan. July 21, 2023), *report and recommendation adopted sub nom. United States Equal Emp. Opportunity Comm'n v. Kansas City, Kansas Cmty. Coll*., No. 23-202-DDC-ADM, 2024 WL 3665290 (D. Kan. Aug. 6, 2024); *NLRB v. Midwest Heating & Air Conditioning, Inc*., No. 07-mc-222- KHV, 2008 WL 4330022, at *4 (D. Kan. Sept. 16, 2008) ("Unlike typical pretrial motions which district judges routinely refer to magistrate judges, the question of subpoena enforcement was not ancillary to the case.").

FLSA, and if so, to determine the scope of FLSA coverage and if Respondent violated the FLSA. On May 22, 2025, Wage and Hour Investigator Guadalupe Montes ("Mr. Montes"), traveled to Respondent's place of business to hold an opening conference wherein the investigation of FLSA compliance was explained and a letter given requesting documents by May 28, 2025. Respondent told Mr. Montes he would provide documents by the end of the following week.

When documents were not received, Mr. Montes called Respondent on June 11, 2025, June 12, 2025 and July 2, 2025. Mr. Montes left messages each time as no one answered the calls. On July 23, 2025, Wage and Hour Assistant District Director Martha Pint ("Ms. Pint") sent a 72-hour letter to Respondent by certified mail, requesting documents within 72 hours or warning a subpoena may issue for the documents. When the 72-hour letter was not responded to, Mr. Montes again called Respondent on August 7, 2025, August 25, 2025, and September 22, 2025, and left messages as no one answered.

Because no documents were produced in response to the above actions, Wage and Hour, through Regional Administrator Michael Lazzeri, issued a Subpoena Duces Tecum to Respondent on December 9, 2025 pursuant to 29 U.S.C §§ 209 and 211 of the FLSA ("Subpoena"). The Subpoena required the documents requested therein be produced on or before December 22, 2025. The timeframe for the documents requested was May 1, 2024, to the present. The Subpoena sought documents relating to the ownership and structure of the business, tax returns, annual dollar volume of business, employee information, payroll and time records, wages, deductions, exemptions, and cash payments. The Subpoena was personally served on December 11, 2025, by Hour and Wage Technician Dene'e

McElhiney, who handed the Subpoena to Respondent and saw Respondent begin to read it. Despite this, Respondent failed to produce any of the requested documents.

On March 9, 2026, Dana Hauge ("Ms. Hague"), a senior trial attorney with the DOL, sent a letter to Respondent regarding non-compliance with the Subpoena and asking for Respondent to contact her and provide a date for production of the subpoenaed documents. The letter included a warning that failure to cooperate could lead to the filing of this enforcement action. The letter was sent to three places: 1) to Respondent (i.e., Gambino's Pizza c/o Jared A. Smith); 2) to Jared Smith's residential address; and 3) to the residential address of Jared Smith's father, Jay Smith. On DOL's information and belief, Jared Smith's father, Jay Smith, may have had an ownership interest in the restaurant during the time period covered by the document requests. All three letters were sent by overnight mail with a delivery confirmation received for each letter. Ms. Hauge did not receive a response to the letter.

On March 25, 2026, Ms. Hauge called the restaurant to speak with Jared Smith. Ms. Hauge was able to speak with Jared Smith's wife, Jennifer, and left a message for Mr. Smith to call her about the Subpoena and stated it was an important matter. On March 30, 2026, Ms. Hauge sent a second letter to the same three places as the March 9th letter. This letter provided a firm April 13, 2026 deadline to respond or produce documents, warning an enforcement action would be filed if nothing was received. On April 2, 2026, Jennifer Smith emailed Ms. Hauge stating they were gathering the requested information. However, no documents were provided by the April 13th deadline.

On April 14, 2026**,** Ms. Hauge emailed Jennifer Smith to report no documents were

received and told Mrs. Smith that "the subpoenaed documents include many things that employers are required by law to maintain, so they should be easy to access." Mrs. Smith responded within a minute stating, "Working on sending them now." However, no documents were received, leading Ms. Hague to email Mrs. Smith again on April 15 and April 20, 2026. Ms. Hague did not receive a response to either email.

Based on the above non-compliance with the Subpoena, DOL initiated this enforcement action on April 20, 2026, with the filing of the Petition and accompanying Exhibits. On June 4, 2026, the Court entered an Order Directing Respondent to Appear and Show Cause before the undersigned on August 25, 2026 for why an order should not be entered to enforce the Subpoena and require Respondent to produce the documents requested therein (ECF No. 3). This Order also tolled the statute of limitations on any underlying FLSA claim from December 9, 2025 until such time as Respondent comes into full compliance with the Subpoena (*Id.*). Finally, the Order required Wage and Hour to serve the Petition and accompanying Exhibits and the Order itself on Respondent by June 26, 2026, and set a July 24, 2026 deadline for Respondent to file a response to the Petition (*Id.*).

On June 11, 2026, Wage and Hour Technician McElhiney personally served Respondent with the foregoing documents (ECF No. 4). However, Respondent failed to file a response by the July 24th deadline and failed to appear for the August 25th show-cause hearing. Ms. Hauge, Mr. Montes and Ms. Pint did appear for the hearing. During the hearing, Ms. Hauge confirmed DOL had not received any of the subpoenaed documents. Ms. Hague also recounted for the Court several recent communications she

had with Respondent wherein Respondent promised, but failed, to produce the documents, including a promise to show up at hearing with the documents in-hand.

On August 27, 2026, two days after the show-cause hearing, Ms. Hauge emailed the undersigned's chambers reporting receipt of a thumb drive of documents from Mr. Smith. Ms. Hague stated Wage and Hour would require a couple of business days to review the documents and determine whether sufficient information was provided to dismiss this enforcement action. On September 11, 2026, Ms. Hauge sent a follow-up email stating the information supplied was incomplete and inadequate. Accordingly, the DOL, per Ms. Hauge's email, is proceeding with this enforcement action and still seeks an order requiring Respondent to fully comply with the Subpoena.

III. Legal Standard

"Administrative agencies' investigative powers are analogous to a grand jury in that an agency can investigate on a mere suspicion the law is being violated."[2] And, in "the exercise of their lawful investigatory powers, administrative agencies are conferred 'broad discretion to require the disclosure of information concerning matters within their jurisdiction.'"[3] Here, the FLSA, 29 U.S.C. § 209, and the Federal Trade Commission Act, 15 U.S.C. §§ 49, 50, grant the DOL authority to subpoena the production of documents relevant to an ongoing investigation.[4]

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[2] *Perez*, 2015 WL 4744487, at *2.

[3] *Fed. Deposit Ins. Corp.*, 2024 WL 5347465, at *2 (citing *Martin v. Gard*, 811 F. Supp. 616, 619 (D. Kan. 1993) (quoting *Phillips Petroleum Co. v. Lujan*, 951 F.2d 257, 260 (10th Cir. 1991))).

[4] *See also Perez*, 2015 WL 4744487, at *2.

When seeking judicial enforcement of an administrative subpoena, the DOL bears the initial burden of proof.[5] To meet this burden, DOL must show 1) the investigation is within the its authority; 2) the information sought is reasonably relevant to the investigation and not too indefinite; and 3) the administrative prerequisites have been satisfied.[6] Once DOL has made its threshold showing of these factors, the Court must enforce the Subpoena unless Respondent proves 1) the Subpoena is overly broad or burdensome or 2) the enforcement would constitute an abuse of the court's process.[7]

Here, because Respondent did not respond to the Petition, appear for the show-cause hearing, or otherwise communicate an objection to the Subpoena, the Court only considers whether the DOL has met its initial burden of proof by establishing the three requirements stated above.[8] "An affidavit from a government official is sufficient to establish a prima facie showing that these requirements have been met."[9] Here, as stated in the above section, DOL submitted three Declarations from government officials in support the Petition.

IV. Discussion

For the reasons stated below, the undersigned finds the DOL has met its burden for judicial enforcement of the Subpoena because 1) the investigation of Respondent is within

[5] *Id.*
[6] *See id.*; *Fed. Deposit Ins. Corp.*, 2024 WL 5347465, at *2.
[7] *Fed. Deposit Ins. Corp.*, 2024 WL 5347465, at *2.
[8] *Id.*
[9] *Id.* (citations omitted); *see also United States v. Wilson*, 98 F.4th 1204, 1221 (10th Cir. 2024) (prima facie showing "can be fulfilled by a simple affidavit of an agent involved in the investigation").

its authority; 2) the subpoenaed information is reasonably relevant to the investigation and not too indefinite; and 3) the administrative prerequisites have been satisfied. Accordingly, the undersigned **recommends** the District Judge **grant** DOL's request in the Petition to enforce the Subpoena and order Respondent to fully produce the documents requested therein.

A. Investigation of Respondent is within DOL's Authority

Per the Petition and the Declarations attached thereto, the DOL, through the Wage and Hour Division, began an investigation of Respondent in May of 2025 to determine whether Respondent and his employees are subject to the FLSA, to determine the scope and applicability of FLSA coverage to Respondent, and to determine if Respondent violated the FLSA.

The FLSA requires, among other things, that employers covered by the FLSA pay non-exempt employees a minimum wage for all hours worked and at a premium rate for all overtime hours worked.[10] The DOL is responsible for administering and enforcing the FLSA.[11] The FLSA authorizes the DOL to "investigate and gather data regarding the wages, hours, and other conditions and practices of employment" in industries subject to the FLSA.[12] It further authorizes the DOL to "enter and inspect such places and such records . . . , question such employees, and investigate such facts, conditions, practices, or matters as [it] may deem necessary or appropriate to determine whether any person has

[10] *See* 29 U.S.C. §§ 206–207; *Perez*, 2015 WL 4744487, at *2.
[11] *See* 29 U.S.C. §§ 204, 211(a), 216(c); *Perez,* 2015 WL 4744487, at *2.
[12] 29 U.S.C. § 211(a); *see also Perez*, 2015 WL 4744487, at *2.

violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter."[13]

To aid in these investigations, the FLSA grants the DOL authority to subpoena witnesses and documentary evidence relating to matters under investigation.[14] Additionally, the DOL is permitted to issue subpoenas for the purpose of gathering the requested documents even if coverage under the FLSA has not yet been established.[15]

Accordingly, the DOL's investigation of Respondent and issuance of the Subpoena are within its authority, satisfying the first requirement laid out above. Furthermore, if the recipient of a subpoena fails to comply, DOL "may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence."[16] Thus a court may, in case of such failure to comply, issue an order requiring the recipient of the subpoena to produce the requested documents.[17]

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[13] *Id.*

[14] *See* 29 U.S.C. § 209 (stating that for the purpose of hearings or investigations, the DOL has the full range of enforcement powers possessed by the Federal Trade Commission under 15 U.S.C. §§ 49–50); *Perez*, 2015 WL 4744487, at *2.

[15] *See Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 214 (1947); *CSG Workforce Partners, LLC v. Watson*, 512 F. App'x 830 (10th Cir. 2013) (employer failed to establish that its coverage defense to subpoena enforcement proceeding fell within any exception to the general rule that coverage defenses could not be raised in a subpoena enforcement proceeding).

[16] 15 U.S.C. § 49.

[17] *See id*. ("Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case . . . of refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation . . . to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.").

B. The Subpoenaed Information is not too Indefinite and is Reasonably Relevant to the Investigation

To quell any Fourth Amendment concerns regarding unreasonable searches and seizures, administrative subpoenas, while not subject to probable cause, must be "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome."[18] Courts have termed this the "reasonable relevance" standard.[19] "The standard for judging relevanc[e] in an investigatory proceeding is more relaxed than in an adjudicatory one."[20] "If the material [or testimony] requested 'touches a matter under investigation,' then relevancy is established."[21] Thus, relevancy is measured against the "general purposes of [the agency's] investigation."[22]

Here, the Petition and Declarations attached thereto show the subpoenaed documents meet this reasonable relevance standard. First, the subpoena contains specific document requests regarding ownership and structure of the business, tax returns, annual dollar volume of business, employee information, payroll and time records, wages, deductions, exemptions and cash payments. And, the requests are limited to the timeframe of May 1, 2024, to the present. Accordingly, the requests are not too indefinite because they are specific and limited in time and scope.[23]

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[18] *See Wilson*, 98 F.4th at 1221 (citations omitted).
[19] *Id*.
[20] *Fed. Deposit Ins. Corp*, 2024 WL 5347465, at *3 (citations omitted).
[21] *Id.*
[22] *Id.*
[23] *See, e.g., Perez,* 2015 WL 4744487, at *3 (FLSA subpoena not too indefinite because the specific categories of information enable respondent to understand what is being sought).

Second, the documents are relevant to the DOL's investigation because they seek information to determine whether Respondent would be subject to the FLSA, such as ownership documentation and information regarding total dollar volume of sales and volume of goods purchased or received. The subpoenaed documents also seek information about employees, payroll, wages and hours worked to determine if Respondent is meeting FLSA obligations including payment of a minimum wage for all hours worked and payment of a premium rate for hours worked over forty in a workweek. Thus, the reasonable relevant standard is met.

C. Administrative Prerequisites Satisfied

Finally, the administrative prerequisites are satisfied. The subpoena was signed by the Regional Administrator of the Wage and Hour Division and required production of documents more than 7 days after service.[24] Additionally, Respondent had sufficient notice of the subpoena, satisfying any due process concerns. Not only was he personally served with the subpoena, but DOL's counsel, Dana Hague, as described above, reached out multiple times to Respondent and his wife after service of the subpoena to inquire about compliance.[25] Therefore, the third requirement is met and an order enforcing compliance with the Subpoena is appropriate.

[24] *See id.* (describing certain administrative prerequisites when issuing a subpoena).

[25] *Contra Equal Emp. Opportunity Comm'n v. Overland Charters, Inc*., No. 2:25-MC-00215-DDC-TJJ, 2025 WL 3496182 (D. Kan. Dec. 5, 2025) (denying request to enforce administrative subpoena based on due process concerns because EEOC provided no evidence to show respondent received proper notice of its obligation to respond to the subpoena).

IT IS THEREFORE RECOMMENDED that the District Judge **GRANT** the DOL's Petition to Enforce Administrative Subpoena (ECF No. 1) and order Respondent Jared A. Smith *doing business as* Gambino's Pizza to fully respond to the Subpoena, which was personally served on Respondent on December 11, 2025.

IT IS FURTHER ORDERED that the Clerk's Office is directed to mail a copy of this Report and Recommendation to Jared A. Smith *doing business as* Gambino's Pizza at 114 E. Main Street, Marion, KS 66861.

IT IS SO ORDERED.

Dated: September 21, 2026, at Wichita, Kansas.

s/Gwynne E. Birzer
GWYNNE E. BIRZER
United States Magistrate Judge