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PAK PRODUCE, INC., SL ONE GLOBAL,
7 INC., SMF GLOBAL, INC., NARI TRADING,
INC., UNI FOODS, INC., and SEAN LOLOEE

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

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11 FRESH PAK PRODUCE, LLC, SL ONE
12 GLOBAL, INC., SMF GLOBAL, INC., NARI
13 TRADING, INC., UNI FOODS, INC. and
SEAN LOLOEE,

14 Petitioners,

15 v.

16 U.S. DEPARTMENT OF LABOR,

17 Respondent.

Case No.

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO QUASH
ADMINISTRATIVE SUBPOENAS AND
FOR PROTECTIVE ORDER**

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I. INTRODUCTION

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2 The Wage and Hour Division (“WHD”) of the United States Department of Labor is used to
3 riding roughshod over employers. It is much easier when the employer is small and an easy target.
4 But, there comes a time when enough is enough. Even a government agency’s abuse must end.
5 Now is that time. The WHD initiated back-to-back investigations of a local supermarket chain after
6 its principal, Sean Loloee, announced his candidacy for public office, began campaigning and won
7 general and runoff elections for the Sacramento City Council. The first investigation did not occur
8 through open, diligent and well-intentioned hard work on the part of the WHD. It was prompted by
9 secretive communications between a WHD representative and union organizer who was hell-bent
10 on smearing Loloee and defeating his election. Attacking his businesses was her objective, and she
11 made it WHD’s objective too. Not surprisingly, the union organizer knew about the impending
12 investigation before Mr. Loloee.

13 After the two investigations were completed and reportedly closed, the WHD issued
14 subpoenas to Cathay Bank and Five Star Bank for all banking records of the five supermarkets for
15 a five-year period. To make matters worse, the WHD did not notify the supermarkets of the
16 subpoenas or certify to the banks that it had complied with applicable laws. The reason is simple:
17 the subpoenas are defective, overreaching and unenforceable, and the WHD knows it.

18 The information sought from the banks is not relevant to any legitimate investigation. The
19 WHD simply issued a “canned” subpoena with language that it always uses as a dragnet to obtain
20 as many documents as possible. When all is said and done, the WHD does not really want or need
21 the information sought by the “canned” subpoenas. It already has the financial records because Mr.
22 Loloee previously produced them. No doubt the WHD will submit “canned” declarations, void of
23 any meaningful facts, to justify the subpoenas. If the subpoenas were justifiable, the WHD could
24 and should have provided that justification long before. But, it didn’t. It ignored moving parties
25 and their counsel, misrepresented the production date of the Cathay Bank subpoena, and avoided
26 meet and confer efforts.

27 Although Federal Courts, like this one, frequently uphold administrative subpoenas, this case
28 is an exception and deserves careful consideration. The Right to Financial Privacy Act is at stake

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1 and protects the records of one at least one market. Well-established case law from the United States
 2 Supreme Court, the Ninth Circuit Court of Appeals, and a number of district courts protects the
 3 records of all entities from disclosure. At a minimum, this Court should issue a protective order to
 4 prevent disclosure of moving parties' banking, financial and business information to third parties.

5 **II. BACKGROUND**

6 **A. The Wage and Hour Investigation**

7 Sean Loloee ("Loloee") was born in Iran, immigrated to the United States in 1984, and
 8 became a citizen in 1985.¹ In an effort to pursue the "American Dream" and become a productive
 9 member of his community, he began working in the grocery industry and founded a supermarket
 10 chain with locations in culturally diverse and underserved areas of Sacramento, Rancho Cordova
 11 and Dixon.² The supermarkets do business as Viva Supermarket and are separate legal entities:
 12 Fresh Pak Produce, LLC ("Fresh Pak"), SL One Global, Inc. ("SL One"), SMF Global, Inc. ("SMF
 13 Global"), Nari Trading, Inc. ("Nari"), and Uni Foods, Inc. ("Uni").³ Loloee is the only member of
 14 Fresh Pak and the sole shareholder of SL One, SMF Global, Nari and Uni.⁴

15 To further serve his community, Loloee ran for and was elected as a member of the
 16 Sacramento City Council on November 3, 2020.⁵ Shortly after the election, on November 12, 2020,
 17 Michael H. Ontiveros ("Ontiveros") of the Wage and Hour Division of the U.S. Department of
 18 Labor ("WHD") notified Loloee that it was conducting an investigation into "your compliance with
 19 the Families First Coronavirus Response Action" ("FFCRA").⁶ Ontiveros' letter also mentioned
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 22 ¹ Declaration of Sean Loloee ("Loloee Decl."), ¶ 2

23 ² Loloee Decl., ¶ 3

24 ³ Loloee Decl., ¶ 3

25 ⁴ Loloee Decl., ¶ 3

26 ⁵ Loloee Decl., ¶ 7

27 ⁶ Loloee Decl., ¶ 7; Letter from Michael H. Ontiveros, dated November 12, 2020, Exhibit B to
 28 Loloee Decl.

1 the FLSA but not prominently or clearly. The letter was addressed to SL One but personally directed
2 to Loloee. The investigation is identified as Case No. 1922130.

3 On February 19, 2021, the WHD requested 24 categories of documents, including bank
4 records, for four of the Viva Supermarket locations for the period “November 2, 2017 to Present.”⁷
5 Even though the investigation related to SL One, the February 19 letter expressly referred to SL One
6 in the introductory paragraph, and not all locations were part of SL One, Loloee provided responsive
7 information for all locations.⁸ On March 12 and April 2, 2021, Ontiveros confirmed that
8 information had been provided.⁹ At no time did the WHD formally notify Loloee that the
9 investigation had expanded to all entities or to other compliance subjects.¹⁰

10 The WHD had conducted an earlier investigation of SL One (Case No. 1903788) which
11 covered the period February 2, 2018 to February 12, 2020.¹¹ It “conveniently” commenced after
12 Loloee announced his candidacy for the Sacramento City Council and after a local union organizer,
13 who was affiliated with Loloee’s opponent, accused him of criminal wrongdoing and attempted to
14 pressure him into unionizing the markets. The union organizer admittedly had been in contact with
15 the WHD a few weeks before the investigation started, spoke with the investigator, later telephoned
16 Loloee and reported to him that “you’re getting investigated; you’d better watch out.”¹² SL One
17 cooperated in the first investigation, produced requested records, and entered into an agreement in
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20 ⁷ Loloee Decl., ¶ 8; Letter from Brandon Nuess, dated February 19, 2021, Exhibit C to Loloee
21 Decl.

22 ⁸ Loloee Decl., ¶ 8

23 ⁹ Loloee Decl., ¶ 8; Letters and email from Michael H. Ontiveros, dated March 12 and April 2,
24 2021, Exhibits D and E to Loloee Decl.

25 ¹⁰ Loloee Decl., ¶8

26 ¹¹ Loloee Decl., ¶6; Letter from Veronica Villamor, dated February 11, 2020, Exhibit A to Loloee
Decl.

27 ¹² Loloee Decl., ¶4
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1 May 2020.¹³

2 **B. The Subpoenas**

3 Despite Loloee’s production of financial information, including bank records, to the WHD
4 in Case No. 1922130 and previously in Case No. 1903788, the WHD issued subpoenas to Cathay
5 Bank and Five Star Bank on or about October 18, 2021.¹⁴ Except for the bank recipient and date of
6 production, the subpoenas are identical. Compliance was to be made to Brandon Nuess (“Nuess”),
7 Assistant Director of the WHD in Sacramento. The “Subject Period” is the same: October 23, 2017
8 to the date of production. All eight definitions are the same. Each defines “Employer” as:

9 Fresh Pak Produce, LLC and SMG Global, Inc. (sic), SL One Global, Inc., Uni
10 Foods, Inc., and Nari Trading, Inc., doing business as Viva Supermarket at 4211
11 Norwood Avenue, Sacramento, CA 95838; 925 North Adams Street, Dixon, CA
95620; 10385 Folsom Blvd., Rancho Cordova, CA 95670; and 3845 Marysville
Blvd., Sacramento, CA 95838.

12 Each contains the same five instructions, and each seeks the same four categories of documents
13 to be produced:

- 14 1. All bank statements and other documents showing transactions for all business
15 accounts of the Employer, to include the following full/partial accounts with account
16 numbers ending in: [account numbers excluded]. In addition to .pdf files of these
statements, the statements should be produced electronically in Extensible Markup
17 Language (XML) format.
18 2. Photocopies of the fronts and backs of all cancelled checks written from or cleared
under all business accounts held by the Employer.
19 3. All signature authorization cards and documents establishing all business accounts
held by the employer.
20 4. All loan or credit applications by the Employer.

21 Neither subpoena was served upon Loloee or any other representative of Fresh Pak. No
22 notice, as required by 12 U.S.C. §3405, was provided to Loloee, Fresh Pak or any of the other
23 entities.¹⁵

24 _____
25 ¹³ Loloee Decl., ¶ 6

26 ¹⁴ Loloee Decl., ¶¶ 9-10; Subpoena to Cathay Bank, Exhibit F to Loloee Decl.; Subpoena to Five
Star Bank, Exhibit G to Loloee Decl.

27 ¹⁵ Loloee Decl., ¶¶ 9-10
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