

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECRETARY OF LABOR, UNITED STATES  
DEPARTMENT OF LABOR,

Petitioner,

-against-

FIVE CORNERS FOOD, INC. d/b/a CROSS  
ISLAND FRUITS, and JOSEPH ROSSI  
individually and as a custodian of records.

Respondents.

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**AZRACK, United States District Judge:**

This matter arises from the United States Department of Labor’s efforts to investigate compliance with the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. 201 et seq. Specifically, on August 6, 2020, its Wage and Hour Division (“WHD”) sent a document request to Five Corners Food, Inc. d/b/a Cross Island Fruits, and Joseph Rossi (together, “Respondents”). (See ECF No. 1-2 at 8-10.)

Presently before the Court is a motion by the Secretary of Labor, United States Department of Labor, (“Secretary”) that seeks adjudication of civil contempt and a coercive fine against Respondents. (ECF No. 13.) Respondents have not opposed the motion.

On January 28, 2021, the Honorable Dennis R. Hurley referred the Secretary’s motion to Magistrate Judge Tiscione for a Report and Recommendation (“R&R”). On February 1, 2022, Magistrate Judge Tiscione issued an R&R recommending that an order to show cause be issued as to why Respondents should not be found in contempt. (ECF No. 18.) The R&R further recommended that a \$250-per-diem fine be imposed until Respondent complies with Judge

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**ORDER**  
21-mc-00237(JMA)(ST)

**FILED  
CLERK**

11/1/2022 12:30 pm

**U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE**

Tiscione's February and May 2021 Orders. (ECF No. 18.)

On March 23, 2022, Judge Hurley concurred with the R&R and directed Respondents to show case in writing on or before April 25, 2022 as to (i) why they should not be held in contempt and (ii) why a \$250-per-diem fine lasting until compliance with Judge Tiscione's February and May 2021 Orders is inappropriate. Further, the parties were directed to appear at a hearing concerning the show-case submissions on June 24, 2022. Respondents, however, failed to respond by the April 25, 2022 and the time for doing so has long since passed.

On March 24, 2022, this action was reassigned to the undersigned. In light of Respondent's failure to file a written response by April 25, 2022, the Court cancelled the hearing scheduled for June 24, 2022.

The Court adopts the Judge Tiscione's R&R and his recommendation that Respondents be held in contempt and that a \$250-per-diem fine be imposed, from the date of this Order, until such time as Respondents fully comply with the Court's February 2021 and May 2021 Orders, (ECF Nos. 7, 10).<sup>1</sup>

### **ORDER**

Upon consideration of the Secretary of Labor's June 30, 2021 Motion for Adjudication of Civil Contempt, following an opportunity for all parties to be heard, and for good cause shown, it is hereby ORDERED that the Secretary of Labor's Motion is GRANTED. Five Corners Food, Inc. d/b/a Cross Island Fruits, and Joseph Rossi (together, "Respondents"), are each held in contempt of this Court's Orders compelling production of records in response to an administrative subpoena duces tecum.

It is further ORDERED that Respondents shall be assessed a \$250-per-diem fine. The fine

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<sup>1</sup> The Court also permits the Secretary to renew their request for an escalating per diem fine should the Respondents fail to comply within 60 days of this Order.

will be assessed until Respondents submit certification to this Court, on notice and copy to the Secretary of Labor, that a complete set of records were provided to the Department of Labor in compliance with the Court's Orders dated February 8, 2021 and May 21, 2021 (ECF Nos. 7, 10). On the date, as determined by this Court, that Respondents have fully complied with these Orders, the daily civil penalty will cease and an order for Respondents to pay the total amount accrued up to that date will be issued.

**SO ORDERED.**

Dated: November 1, 2022  
Central Islip, New York

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*/s/* JMA  
JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE