

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**FIVE CORNER PRODUCE LLC D/B/A CROSS  
ISLAND FRUITS**

**And**

**Case No. 29-CA-257298**

**LOCAL 2013, UNITED FOOD AND  
COMMERCIAL WORKERS, AFL-CIO**

**MOTION FOR DEFAULT JUDGMENT  
WHERE RESPONDENT HAS FAILED TO FILE AN ANSWER**

**PLEASE TAKE NOTICE** that the undersigned Counsel for the General Counsel, upon the below-stated facts, and the annexed documents and exhibits referred to herein, hereby moves that:

The Board, prior to and without the necessity of a hearing, issue an order containing findings of fact and conclusions of law in accordance with the allegations of the Complaint in the above case, and requiring Five Corner Produce LLC d/b/a Cross Island Fruits (“Respondent”), to appropriately remedy the unfair labor practices found, including such other, further and different relief as may be proper in the circumstances.

In support of said Motion, Counsel for the General Counsel shows and alleges that:

1. On or about February 28, 2020, Local 2013, United Food and Commercial Workers, AFL-CIO (“Charging Party”) filed the charge in this proceeding alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act, (“the Act”). Service of the charge was made upon Respondent by U.S. Mail on or March 3, 2020. Copies of the charge and cover letters accompanying the charges with affidavits of service are attached as Exhibits A.

2. On May 4, 2020, a Complaint and Notice of Hearing was issued in the above case. A copy of said Complaint is attached as Exhibit B. The Complaint requires, *inter alia*, that

Respondent file an answer to the Complaint pursuant to Section 102.20 and 102.21 of the Rules and Regulations of the Board. The Complaint was served, pursuant to Section 102.4 of the Rules and Regulations of the Board upon Respondent by e-issuance email on May 4, 2020, and by regular mail on May 4, 2020. A copy of the Corrected Affidavit of Service is attached hereto as Exhibit C.

3. Pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the deadline for filing Respondent's Answer to the Complaint was May 18, 2020.

4. On May 20, 2020, investigating Field Examiner Delby Alba sent a letter to Respondent by e-mail and regular mail, advising Respondent that it has not filed an Answer to the Complaint, and advising that if an answer was not received by May 27, 2020, Counsel for the General Counsel would seek Default Judgment from the Board. A copy of this letter is attached hereto as Exhibit D.

5. To date, no answer has been filed by, or on behalf of Respondent, and Respondent has not made any application for an extension of time to file an answer. Respondent has been served with the charge and Complaint and with all notices and documents pertaining to this proceeding and thus has been put on notice of the procedures that it was required to follow, including the requirement of filing an answer to the Complaint.

6. Section 102.20 of the Board's Rules and Regulations provides that if no answer is filed, "all of the allegations in the Complaint shall be deemed to be admitted...to be true and may be so found by the Board." Furthermore, the Complaint additionally notified Respondent that, "[i]f no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true."

7. Based upon the above exhibits, the Motion for Default Judgment should be granted.

8. As an appropriate remedy for the allegations in the Complaint, Counsel for the

General Counsel requests that Respondent, its officers, agents, successors and assigns be required to: (a) meet and bargain with the Charging Party as the exclusive collective bargaining representative of the Unit and post an appropriate notice.

**WHEREFORE**, Counsel for the General Counsel respectfully moves the Board for the relief prayed for herein as follows:

(a) To find, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, that the allegations in the Complaint are true;

(b) To rule upon this Motion prior to the opening of any hearing and prior to the taking of any evidence; and

(c) Prior to, and without necessity of further proof, a Board Order issue against Respondent, its officers, agents, successors, and assigns, containing findings of fact and conclusions of law in accordance with the allegations of the Complaint.

Dated: June 4, 2020, at Brooklyn, New York

/s/ Erin E. Schaefer  
Erin E. Schaefer, Esq.  
Counsel for the General Counsel  
National Labor Relations Board  
Region 29  
Two MetroTech Center, Suite 5100  
Brooklyn, New York 11201  
(718) 765-6158  
Erin.Schaefer2@nlrb.gov

# Exhibit A

INTERNET  
FORM NLRB-501  
(2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

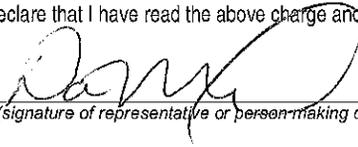
**DO NOT WRITE IN THIS SPACE**

Case  
29-CA-257298

Date Filed  
2/28/2020

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer Five Corner Produce LLC d/b/a Cross Island Fruits	b. Tel. No. 516-340-9757
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 246 Hempstead Avenue Lynbrook, NY 11563	e. Employer Representative Joseph Rossi
	g. e-Mail
	h. Number of workers employed 15
i. Type of Establishment (factory, mine, wholesaler, etc.) Grocery Store	j. Identify principal product or service
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) UFCW Local 2013 ("Union") and Five Corner Produce LLC d/b/a Cross Island Fruits ("Employer") are parties to a recently expired Collective Bargaining Agreement ("CBA"). Prior to the expiration of the CBA, and within the 10(b) period, the Union sent demands to bargain with related requests for information. The Employer has not responded to the Union's demand for bargaining or requests for information in direct violation of Sections 8(a)(1) and (5) of the Act.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) United Food and Commercial Workers Local 2013	
4a. Address (Street and number, city, state, and ZIP code) 9235 4th Avenue Brooklyn, NY 11209	4b. Tel. No. (800) 393-1135
	4c. Cell No.
	4d. Fax No. (718) 745-2976
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) United Food and Commercial International Union	
<b>6. DECLARATION</b>	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	David F. Watkins, Esquire (Print/type name and title or office, if any)
	Tel. No. (856) 795-2181
	Office, if any, Cell No.
	Fax No. (856) 581-4214
	e-Mail dwatkins@obbblaw.com
Address 509 S. Lenola Rd, Bldg. 6, Moorestown, NJ 08057	2/28/2020 (date)

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (718)330-7713  
Fax: (718)330-7579



Download  
NLRB  
Mobile App

March 3, 2020

JOSEPH ROSSI  
FIVE CORNER FOODS D/B/A CROSS ISLAND FRUITS  
246 Hempstead Ave  
Lynbrook, NY 11563-1615

Re: Five Corner Produce LLC d/b/a Cross Island  
Fruits  
Case 29-CA-257298

Dear Mr. ROSSI:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Examiner DELBY ALBA whose telephone number is (718)765-6179. If this Board agent is not available, you may contact Supervisory Field Examiner KATE ANDERSON whose telephone number is (718)765-6181.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Procedures:** Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

March 3, 2020

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov) or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Drew-King". The signature is written in a cursive, flowing style.

KATHY DREW-KING  
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

29-CA-257298

**1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY** CORPORATION  LLC  LLP  PARTNERSHIP  SOLE PROPRIETORSHIP  OTHER (Specify )**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

**4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

**9. DURING THE MOST RECENT (Check appropriate box):  CALENDAR YR  12 MONTHS or  FISCAL YR (FY dates )**

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$ \_\_\_\_\_B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$ \_\_\_\_\_C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ \_\_\_\_\_D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$ \_\_\_\_\_F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_H. **Gross Revenues** from all sales or performance of services (**Check the largest amount**):  
 \$100,000  \$250,000  \$500,000  \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: \_\_\_\_\_**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?** YES  NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

**12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE**

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

**PRIVACY ACT STATEMENT**

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**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FIVE CORNER PRODUCE LLC D/B/A CROSS  
ISLAND FRUITS**

Charged Party

and

**LOCAL 2013 OF THE UNITED FOOD AND  
COMMERCIAL WORKERS UNION**

Charging Party

**Case 29-CA-257298**

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 3, 2020, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

JOSEPH ROSSI  
FIVE CORNER FOODS D/B/A CROSS  
ISLAND FRUITS  
246 Hempstead Ave  
Lynbrook, NY 11563-1615

March 3, 2020

Date

Tasha V. Fred, Designated Agent of NLRB

Name

*/s/ Tasha V. Fred*

Signature

# Exhibit B

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**FIVE CORNER PRODUCE LLC D/B/A CROSS  
ISLAND FRUITS**

**and**

**Case No. 29-CA-257298**

**LOCAL 2013, UNITED FOOD AND  
COMMERCIAL WORKERS, AFL-CIO**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by Local 2013, United Food and Commercial Workers, AFL-CIO (Charging Party or Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Five Corner Produce LLC d/b/a Cross Island Fruits (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Charging Party on February 28, 2020, and a copy was served on Respondent by U.S. mail on March 3, 2020.
2. (a) At all material times, Respondent has been a domestic corporation with an office and place of business located at 246 Hempstead Ave, Lynbrook, New York (Lynbrook facility), where it has been engaged in operating a retail grocery store.

(b) A subpoena duces tecum (No. B-1-18YNMPN) was served on Respondent's Custodian of Records by email and by regular mail on April 15, 2020, requiring and directing Respondent to produce by April 24, 2020 certain documents to the Regional Director of Region 29 of the Board, or to her designee, relevant to Respondent's annual gross volume of business.

(c) Since April 24, 2020, Respondent has neither produced the documents required by the subpoena duces tecum referred to above in paragraph 2(b), nor did it file a Petition to Revoke said subpoena.

(d) Annually, Respondent in the course and conduct of its business operations described above in paragraph 2(a), purchased and received at its Lynbrook facility goods, products and materials in a dollar amount that is more than *de minimis* from suppliers located within the State of New York, said suppliers meeting a Board direct test for the assertion of jurisdiction.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.<sup>1</sup>
4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.
5. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All of its employees in all of its present and future locations within the New York Metropolitan area, excluding employees continuously working less than thirty (30) hours a week, supervisors, and guards as defined in the National Labor Relations Act.

6. At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective bargaining agreements, the most recent of which was effective from April 1, 2016 through March 31, 2019.

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<sup>1</sup> Pursuant to *Tropicana Products, Inc.*, 122 NLRB 121 (1958), General Counsel need only establish statutory jurisdiction where an employer refuses, upon a reasonable request, to provide information relevant to a jurisdictional determination. The General Counsel asserts that it has made more than reasonable efforts to permit Respondent to provide any and all evidence demonstrating that it does not meet the Board's discretionary standards for the assertion of jurisdiction. Respondent has refused to cooperate with General Counsel's requests and failed to provide any documents pursuant to a validly issued subpoena. See *Valentine Painting & Wallcovering, Inc.*, 331 NLRB 883 (2000), *enfd.*, 8 Fed.Appx. 116 (2d. Cir., 2001), *Continental Packaging Corp.*, 327 NLRB No. 74 (1998); *Edward J. Alexander*, 235 NLRB 1500 (1978); *Quality Courts Motels, Inc.*, 194 NLRB 1035 (1972).

7. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.
8. On or about the following dates, the Union, in writing, requested that Respondent bargain collectively for a successor collective bargaining agreement with the Union as the exclusive collective-bargaining representative of the Unit:
  - a. November 1, 2018; and
  - b. December 18, 2019.
9. Since on or about December 18, 2019, Respondent has failed and refused to respond to the Union's requests as described above in paragraph 8 and has failed and refused to bargain a successor collective bargaining agreement with the Union as the exclusive collective-bargaining representative of the Unit.
10. By the conduct described above in paragraph 9, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(1) and (5) of the Act.
11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Complaint. The Answer must be **received by this office on or before May 18, 2020**. Respondent must serve a copy of the Answer on each of the other parties.

The Answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the Answer

rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

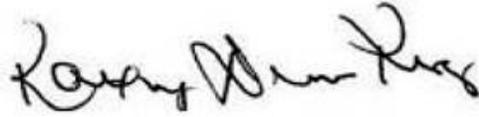
Pursuant to Sections 102.22 of the Board's Rules and Regulations, any request for an extension of time to file an answer must be filed by the close of business on May 18, 2020. This request should be in writing and addressed to the Regional Director of Region 29.

### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on August 3, 2020 at 9:30 A.M., and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The

procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: May 4, 2020



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KATHY DREW-KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 29-CA-257298

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Joseph Rossi  
Five Corner Produce LLC/ d/b/a Cross Island  
Fruits  
246 Hempstead Ave  
Lynbrook, NY 11563-1615

David F. Watkins JR., Esquire  
O'Brien, Belland & Bushinsky, LLC  
509 S. Lenola Road, Building 6  
Moorestown, NJ 08057

Local 2013 of the United Food and  
Commercial Workers Union  
9235 4th Avenue  
Brooklyn, NY 11209

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility

of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

**Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

# Exhibit C

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**FIVE CORNER PRODUCE LLC D/B/A CROSS  
ISLAND FRUITS**

**and**

**Case 29-CA-257298**

**LOCAL 2013 OF THE UNITED FOOD AND  
COMMERCIAL WORKERS UNION**

**CORRECTED AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with  
forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 4, 2020, I served the above-entitled document(s) by **e-issuance or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

Joseph Rossi  
Five Corner Produce LLC/ d/b/a Cross Island  
Fruits  
246 Hempstead Ave  
Lynbrook, NY 11563-1615  
crossisland10@aol.com

**FIRST CLASS MAIL AND E-ISSUANCE**

David F. Watkins JR., Esquire  
O'Brien, Belland & Bushinsky, LLC  
509 S. Lenola Road, Building 6  
Moorestown, NJ 08057  
dwatkins@obbblaw.com

**FIRST CLASS MAIL AND E-ISSUANCE**

Local 2013 of the United Food and  
Commercial Workers Union  
9235 4th Avenue  
Brooklyn, NY 11209

**FIRST CLASS MAIL**

June 3, 2020

Maria Gonzalez-Berger, Designated Agent  
of NLRB

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

*/s/ Maria Gonzalez-Berger*

\_\_\_\_\_  
Signature

# Exhibit D

**From:** [Alba, Delby](#)  
**To:** [crossisland10@aol.com](mailto:crossisland10@aol.com)  
**Subject:** NLRB Case No. 29-CA-257298 FIVE CORNER PRODUCE LLC D/B/A CROSS ISLAND FRUITS  
**Date:** Wednesday, May 20, 2020 11:51:00 AM  
**Attachments:** [Notice No Answer to Complaint FINAL.pdf](#)

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Mr. Rossi,

Please see attachment. Failure to file an answer to Complaint by close of business on May 27, 2020, may result this office issuing a motion for Default Judgment with the Board against you (the Respondent).

Should you have any questions, you may contact me.

Respectfully,

**Mr. Delby Alba**

Board agent  
National Labor Relations Board, Region 29  
Two Metrotech Center, Suite 5100  
Brooklyn, NY 11201  
Tel: (718) 765-6179  
Cel: (202) 531-1867



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
TWO METRO TECH CENTER STE 5100  
BROOKLYN, NY 11201-3838

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (718)330-2843  
Fax: (718)330-7579

May 20, 2020

**BY ELECTRONIC MAIL TO** crossisland10@aol.com

Joseph Rossi  
Five Corner Produce LLC d/b/a Cross Island Fruits  
246 Hempstead Ave  
Lynbrook, NY 11563-1615  
Email: crossisland10@aol.com

Re: Five Corner Produce LLC d/b/a Cross Island Fruits  
Case No. 29-CA-257298

Dear Mr. Rossi:

On May 4, 2020, the Regional Director for Region 29 issued a Complaint and Notice of Hearing (the Complaint) in the above-referenced matter that was served by email and regular mail on you. On page 3 – Answer Requirement- of the Complaint, you were notified that pursuant to Section 102.20 and 102.21 of the National Labor Relations Board (“Board”) Rules and Regulations, your Answer was to be received by this office on or before May 18, 2020. To date, no answer has been filed on behalf of Respondent.

Section 102.20 of the Board's Rules and Regulations states in pertinent part that “[a]ll allegations in the Complaint, if no answer is filed, or any allegation in the Complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.”

For your convenience, I am enclosing a copy of the Complaint. If an Answer to the Complaint is not received in this office on or before the close of business on Wednesday, May 27, 2020, a Motion for Default Judgment may be filed with the Board against Respondent based upon the failure to file an Answer. Should you have any questions, you may contact me at (718) 765-6179.

Sincerely yours,  
/s/  
Delby Alba, Field Examiner

Enclosures: Complaint and Notice of Hearing

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**FIVE CORNER PRODUCE LLC D/B/A CROSS  
ISLAND FRUITS**

**and**

**Case No. 29-CA-257298**

**LOCAL 2013, UNITED FOOD AND  
COMMERCIAL WORKERS, AFL-CIO**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by Local 2013, United Food and Commercial Workers, AFL-CIO (Charging Party or Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Five Corner Produce LLC d/b/a Cross Island Fruits (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Charging Party on February 28, 2020, and a copy was served on Respondent by U.S. mail on March 3, 2020.
2. (a) At all material times, Respondent has been a domestic corporation with an office and place of business located at 246 Hempstead Ave, Lynbrook, New York (Lynbrook facility), where it has been engaged in operating a retail grocery store.

(b) A subpoena duces tecum (No. B-1-18YNMPN) was served on Respondent's Custodian of Records by email and by regular mail on April 15, 2020, requiring and directing Respondent to produce by April 24, 2020 certain documents to the Regional Director of Region 29 of the Board, or to her designee, relevant to Respondent's annual gross volume of business.

(c) Since April 24, 2020, Respondent has neither produced the documents required by the subpoena duces tecum referred to above in paragraph 2(b), nor did it file a Petition to Revoke said subpoena.

(d) Annually, Respondent in the course and conduct of its business operations described above in paragraph 2(a), purchased and received at its Lynbrook facility goods, products and materials in a dollar amount that is more than *de minimis* from suppliers located within the State of New York, said suppliers meeting a Board direct test for the assertion of jurisdiction.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.<sup>1</sup>
4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.
5. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All of its employees in all of its present and future locations within the New York Metropolitan area, excluding employees continuously working less than thirty (30) hours a week, supervisors, and guards as defined in the National Labor Relations Act.

6. At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive

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<sup>1</sup> Pursuant to *Tropicana Products, Inc.*, 122 NLRB 121 (1958), General Counsel need only establish statutory jurisdiction where an employer refuses, upon a reasonable request, to provide information relevant to a jurisdictional determination. The General Counsel asserts that it has made more than reasonable efforts to permit Respondent to provide any and all evidence demonstrating that it does not meet the Board's discretionary standards for the assertion of jurisdiction. Respondent has refused to cooperate with General Counsel's requests and failed to provide any documents pursuant to a validly issued subpoena. See *Valentine Painting & Wallcovering, Inc.*, 331 NLRB 883 (2000), *enfd.*, 8 Fed.Appx. 116 (2d. Cir., 2001), *Continental Packaging Corp.*, 327 NLRB No. 74 (1998); *Edward J. Alexander*, 235 NLRB 1500 (1978); *Quality Courts Motels, Inc.*, 194 NLRB 1035 (1972).

collective bargaining agreements, the most recent of which was effective from April 1, 2016 through March 31, 2019.

7. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.
8. On or about the following dates, the Union, in writing, requested that Respondent bargain collectively for a successor collective bargaining agreement with the Union as the exclusive collective-bargaining representative of the Unit:
  - a. November 1, 2018; and
  - b. December 18, 2019.
9. Since on or about December 18, 2019, Respondent has failed and refused to respond to the Union's requests as described above in paragraph 8 and has failed and refused to bargain a successor collective bargaining agreement with the Union as the exclusive collective-bargaining representative of the Unit.
10. By the conduct described above in paragraph 9, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(1) and (5) of the Act.
11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Complaint. The Answer must be **received by this**

**office on or before May 18, 2020.** Respondent must serve a copy of the Answer on each of the other parties.

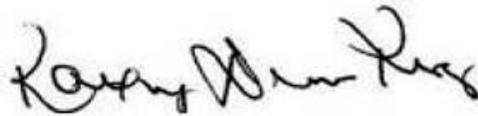
The Answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

Pursuant to Sections 102.22 of the Board's Rules and Regulations, any request for an extension of time to file an answer must be filed by the close of business on May 18, 2020. This request should be in writing and addressed to the Regional Director of Region 29.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on August 3, 2020 at 9:30 A.M., and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: May 4, 2020



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KATHY DREW-KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

Attachments

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**FIVE CORNER PRODUCE LLC D/B/A CROSS  
ISLAND FRUITS**

**And**

**Case 29-CA-257298**

**LOCAL 2013 OF THE UNITED FOOD AND  
COMMERCIAL WORKERS UNION**

**STATEMENT OF SERVICE OF: Motion for Default Judgment**

I, the undersigned employee of the National Labor Relations Board, hereby state, under penalty of perjury that, in according with NLRB Rules & Regulations § 102.114(i), a copy of the foregoing was sent to each party in the manner, and at the addresses listed below and on the date indicated below:

Service Date: June 4, 2020

By E-File:  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001  
<http://nrlb.gov>

By Email:  
Joseph Rossi, Five Corner Produce LLC/ d/b/a  
Cross Island Fruits  
[crossisland10@aol.com](mailto:crossisland10@aol.com)

David F. Watkins JR., Esquire  
O'Brien, Belland & Bushinsky, LLC  
[dwatkins@obbblaw.com](mailto:dwatkins@obbblaw.com)

By Regular Mail:  
Joseph Rossi  
Five Corner Produce LLC/ d/b/a Cross Island Fruits  
246 Hempstead Ave  
Lynbrook, NY 11563-1615

June 4, 2020

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*/s/ Erin Schaefer*  
Erin Schaefer, Counsel for General Counsel