

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	NO. 19-CV-1435
	:	
	:	
MILLER'S ORGANIC FARM and	:	
AMOS MILLER	:	
	:	
Defendants	:	

DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENT

Introduction

Defendants Miller's Organic Farm and Amos Miller, by and through the undersigned, respectfully submit this motion pursuant to F.R.C.P. 59(e) to alter or amend this Court's Order issued on July 22, 2021 (Doc. 105) imposing *inter alia* a \$250,000 civil contempt fine for defendants' violation of the November 19, 2019 Injunction Order ("Injunction Order") (Doc. 44) and April 16, 2020 Consent Decree ("Consent Decree") (Doc. 67). More specifically, defendants respectfully request, for the reasons set forth in this motion and supporting brief, that this Court alter/amend its Order of July 22, 2021 ("Contempt Order") (Doc. 105) by: (1) eliminating the fine in its entirety; (2) in the alternative, reducing the fine to no more than \$25,000; and (3) in the alternative, if any fine of any amount is imposed, giving the defendants 90 days from the date of disposition of this motion to make payment.

Supplemental Facts

1. On or before July 22, 2021, defendants ceased the slaughtering and delivery of amenable animals as required by the Contempt Order (Doc. 105 ¶¶ 116-119), except for the liquidation of existing inventory of consumer-packed, non-seized, frozen amenable meat/poultry products to members of Miller's private membership association as authorized by the Court. (Doc. 105 ¶¶ 109-115). See Exhibit 1 (Declaration of Amos Miller).

2. On or before July 22, 2021, defendants ceased all amenable meat-and-poultry-related retail-exempt operations pending compliance with federal and state requirements as required by the Contempt Order (Doc. 105 ¶¶ 120-121), except for the liquidation of existing inventory of consumer-packed, non-seized, frozen amenable meat/poultry products to members of Miller's private membership association as authorized by the Court. (Doc. 105 ¶¶ 109-115). See Exhibit 1.

3. On August 4, 2021, defendants supplied the Food Safety and Inspection Service (FSIS) with the name of their proposed qualified, independent third party in order to conduct the inventory required by the Contempt Order (Doc. 105 ¶ 102). This submission was approved by FSIS later that same day. See Exhibit 1.

4. On August 5, 2021, defendants posted a pre-approved public statement on the Miller's Organic Farm website with the information required by the Contempt Order (Doc. 105 ¶¶ 122-123). See Exhibit 1.

5. On August 18, 2021, defendants wired \$14,436.26 to the government to reimburse the U.S. Food Safety and Inspection Service (FSIS) for its enforcement costs as required by the Contempt Order (Doc. 105 ¶¶ 100-101). See Exhibit 1.

6. Defendants have taken all actions required of them to date to comply with the Contempt Order, except for payment of the \$250,000 fine. See Exhibit 1.

Grounds For Relief

7. Defendants are no longer out of compliance with the Injunction Order, Consent Decree or Contempt Order, making payment of the \$250,000 fine unnecessary to bring them into compliance. See *Labrobe Steel Co. v. United Steelworkers of America, AFL-CIO*, 545 F.2d 1336 (3d. Cir. 1976) (holding coercive sanctions are intended to bring defiant party into compliance).

8. The \$250,000 fine is not conditioned on defendants' continued failure to obey. See *Labrobe Steel Co.*, 545 F.2d at 1344. As such, the fine is criminal in nature and unconstitutional in the absence of a criminal jury trial. See *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 829 (1994).

9. The \$250,000 fine is excessive and not the least coercive sanction reasonably calculated to win compliance with the Court's orders. See *Pasternack v. Klein*, No. 14-2275, 2017 WL 1508970, at *2 (E.D. Pa. April 27, 2017) (citing *Matter of Grand Jury Impaneled Jan. 21, 1975*, 529 F.2d 543, 551 (3d. Cir. 1976)).

10. The methodology used by the Court for calculating the \$250,000 fine, which was largely based on the pounds of meat involved, is not consistent with the factors the Court was required to consider, specifically the “character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.” *United States v. United Mine Workers of America*, 330 U.S. 258, 303-304 (1947)..

11. The \$250,000 fine is inconsistent with the extenuating circumstances that prompted Mr. Miller’s acts of noncompliance, specifically the decision of Belmont Meats to stop using the defendants’ natural citric acid. See *Taggart v. Lorenzen*, 139 S.Ct. 1795 (2019) (holding a contemnor’s lack of bad faith should be considered by the Court in determining an appropriate sanction).

12. In the alternative, should the Court uphold the issuance of a fine in any amount against defendants, defendants respectfully request that the Court grant defendants 90 days from the disposition of this motion to make payment.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 19-CV-1435
	:	
	:	
MILLER'S ORGANIC FARM and	:	
AMOS MILLER	:	
	:	
Defendants	:	

**DEFENDANTS' BRIEF IN SUPPORT OF
THEIR MOTION TO ALTER/AMEND JUDGMENT**

Defendants Miller's Organic Farm and Amos Miller, by and through the undersigned, respectfully submit this brief in support of their motion pursuant to F.R.C.P. 59(e) and to alter or amend this Court's order issued on July 22, 2021 (Doc. 105) imposing *inter alia* a \$250,000 civil contempt fine for defendants' violation of the November 19, 2019 Injunction Order ("Injunction Order") (Doc. 44) and April 16, 2020 Consent Decree ("Consent Decree") (Doc. 67). For the reasons expressed in their motion and brief, the defendants respectfully request that this Court alter or amend its order of July 22, 2021 ("Contempt Order") (Doc. 105), by: (1) eliminating the fine entirely; (2) in the alternative, reducing the fine to no more than \$25,000; and (3) in the alternative, giving defendants an additional 90 days to make payment.

Argument

“The filing of a Rule 59(e) motion within the 28-day period “suspends the finality of the original judgment” for purposes of an appeal.” *Banister v. Davis*, 140 S.Ct. 1698, 1703 (2020) (quoting *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 373 n.10 (1984)). The purpose is “not [to] address new arguments or evidence that the moving party could have raised before the decision issued.” *Id.* at 1703 (citations omitted). However, courts may consider new arguments based on newly discovered or previously unavailable evidence.” *Id.* at 1703 n. 2. (citation omitted).

The instant motion is based on evidence of the defendants’ compliance with the Contempt Order shortly after it was issued on July 22, 2021, and thus, by its very nature, could not have been presented prior to that time.

In *United States v. United Mine Workers of America*, 330 U.S. 258 (1947), the Supreme Court explained the purpose of sanctions in civil contempt proceedings:

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. [Citation omitted.] Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the

probable effectiveness of any suggested sanction in bringing about the result desired.

Id. at 303–304.

The \$250,000 fine imposed by the Contempt Order does not appear designed to compensate the United States for the losses it has sustained due to defendants' violation of the Injunction Order and/or Consent Decree. This is evident from the Contempt Order's statement that the fine was to "effect defendants' future compliance, by making them aware of the seriousness of their violations and the consequences for future violations." (Doc. 105 ¶ 99). This intent is also evident from the Contempt Order's separate award of enforcement costs. (Doc. 105 ¶¶ 100-101).

Rather, the \$250,000 fine imposed by the Contempt Order appears to be structured as a coercive sanction. "Coercive sanctions . . . look to the future and are designed to aid the plaintiff by bringing a defiant party into compliance with the court order or by assuring that a potentially contumacious party adheres to an injunction by setting forth in advance the penalties the court will impose if the party deviates from the path of obedience." *Labrobe Steel Co. v. United Steelworkers of America, AFL-CIO*, 545 F.2d 1336, 1344 (3d. Cir. 1976). "[A] court may levy a fine of a specified amount for past refusal to conform to the injunction, conditioned, however, on the defendant's continued failure to obey." *Id.* "The Third Circuit has mandated, however, that the district court use 'the least coercive sanction (e.g. a monetary penalty) reasonably calculated to win compliance with its orders.'"

Pasternack v. Klein, No. 14-2275, 2017 WL 1508970, at *2 (E.D. Pa. April 27, 2017) (citing *Matter of Grand Jury Impaneled Jan. 21, 1975*, 529 F.2d 543, 551 (3d. Cir. 1976)). “A fine of between \$100 and \$1,000 per day is often used to coerce compliance with court orders.” *Id.* at *3.

Under these precedents, the Court should rescind or, in the alternative, drastically reduce the \$250,000 fine for the reasons set forth below.

First, the circumstances have significantly changed for the better since issuance of the Contempt Order. More specifically, defendants have fully complied with the Contempt Order’s requirements to:

- Cease slaughtering operations and deliveries (Doc. 105 ¶¶ 116-119) except for the liquidation of existing inventory of consumer-packed, non-seized, frozen amenable meat/poultry products to members of Miller’s private membership association as authorized by the Order (Doc. 105 ¶¶ 109-115);
- Cease all amenable meat-and-poultry-related retail-exempt operations pending compliance with federal/state requirements as required by the Contempt Order (Doc. 105 ¶¶ 120-121), except for the liquidation of existing inventory of consumer-packed, non-seized, frozen amenable meat/poultry products to members of Miller’s private membership association as authorized by the Order (Doc. 105 ¶¶ 109-115);
- Make a pre-approved, public statement on the Miller’s Organic Farm website (Doc. 105 ¶¶ 122-123); and
- Reimburse the government for its enforcement costs (Doc. 105 ¶¶ 100-101).

See Exhibit 1 (Declaration of Amos Miller). Defendants have also begun the process of conducting an inventory of all meat and poultry located at Miller’s facilities by submitting the name of its proposed qualified, independent third party to the

government within the 20-day deadline imposed in the Contempt Order (Doc. 105 ¶ 102). See Exhibit 1. Provided the defendants continue on their current course by satisfying the remainder of their obligations to complete an independent inventory within 60 days (Doc. 105 ¶¶ 102-108), and continue exercising their right to liquidate their existing inventory within 90 days (Doc. 105 ¶¶ 109-115), the Court's continued insistence on payment of the \$250,000 fine would be improper because the fine is no longer necessary to ensure compliance.

Second, the \$250,000 fine is not conditioned on the defendants' continued failure to obey the Injunction Order, Consent Decree, and/or Contempt Order. *Labrobe Steel Co. v. United Steelworkers of America, AFL-CIO*, 545 F.2d 1336, 1344 (3d. Cir. 1976). To the contrary, the fine imposed by the Court has no nexus whatsoever to the defendants' future conduct. In other words, under the current structure of the Contempt Order, nothing the defendants have done from July 22, 2021 forward, or will continue to do in the future, no matter how pleasing to the government and this Court, will get them out of paying the \$250,000 fine. As such, the fine imposed by the Court is criminal rather than civil in nature. See *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 829 (1994) ("Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. Thus, a flat, unconditional fine totaling even as little as \$50 announced after a finding of contempt is criminal if the contemnor has

no subsequent opportunity to reduce or avoid the fine through compliance.”) (internal citation and quotation omitted). As such, the imposition of the \$250,000 fine was unconstitutional in the absence of a criminal jury trial. *Id.* at 836-837.

Third, the \$250,000 fine is not “the least coercive sanction (e.g. a monetary penalty) reasonably calculated to win compliance with its orders.” *Pasternack v. Klein*, No. 14-2275, 2017 WL 1508970, at *2 (E.D. Pa. April 27, 2017) (citing *Matter of Grand Jury Impaneled Jan. 21, 1975*, 529 F.2d 543, 551 (3d. Cir. 1976)). To the contrary, the fine is 100 times larger than the \$2,500 fine the Court imposed as part of the Consent Decree, which was an amount adequate to coerce the defendants’ compliance with the Consent Decree from April 16, 2020, until May 18, 2021 (Doc. 105 ¶ 83).¹ It is also 25 times larger than the maximum *criminal* fine under the Federal Meat Inspection Act, 21 U.S.C. § 676(a), and the Poultry Products Inspection Act, 21 U.S.C. § 461(a). Indeed, the \$250,000 fine amounts to a penalty of \$3,788 per day for the 66-day period between May 18, 2021, and the Contempt Order of July 22, 2021, that the defendants were out of compliance. This is dramatically higher than typical sanction of \$100 to \$1,000 per day. See *Pasternack v. Klein*, No. 14-2275, 2017 WL 1508970, at *3 (E.D. Pa. April 27, 2017).

¹ While the Contempt Order makes reference to FSIS’s warning letters issued October 15, 2020, and February 16, 2021 (Doc. 105 ¶¶ 18-20), this alleged misconduct did not form the basis for contempt sanctions. (Doc. 105 ¶ 83).

Fourth, the methodology used by the Court for calculating the \$250,000 fine was largely driven by the pounds of meat involved. (Doc. 105 ¶¶ 94-97). While this methodology is traceable back to the formula established in the Injunction Order, it bears no relation to the factors that the Court was required to consider in fixing a coercive sanction, specifically the “character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.” *United Mine Workers*, 330 U.S. at 303-304. Indeed, the evidentiary record and the Contempt Order are silent on these factors.

Finally, the \$250,000 fine imposed by the Court is inconsistent with the extenuating circumstances that prompted Mr. Miller’s acts of noncompliance. In *Taggart v. Lorenzen*, 139 S.Ct. 1795 (2019), the Supreme Court opined:

We have not held, however, that subjective intent is always irrelevant. Our cases suggest, for example, that civil contempt sanctions may be warranted when a party acts in bad faith. On the flip side of the coin, a party’s good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction.

Id. at 1802 (internal citation and quotation omitted). Here, as reflected in the Contempt Order, Mr. Miller had been taking his animals to Belmont Meats for slaughter from the issuance of the Injunction Order until May 18, 2021, when Belmont Meats’ manager Daniel Zook told him that he was no longer willing to use Miller’s own citric acid as an antimicrobial. (Doc. 105 ¶¶ 28-30). Mr. Zook explained that this decision was prompted by concerns that use of Miller’s natural citric acid

could jeopardize the chances of Belmont Meats becoming a fully licensed, inspected establishment. (Doc. 105 ¶ 29). This presented a problem for Mr. Miller, whose customers were concerned about the use of a commercial citric acid. N.T. (6/16/21) at 75-76. While Mr. Miller clearly made the wrong decision by resuming slaughtering operations on his own, and should have sought further guidance from the government before taking the situation into his own hands, his actions were provoked by a sudden change in circumstances, not by some evil desire to trick the government.

2



/s/ Edward G. Smith
EDWARD G. SMITH, J.

BY THE COURT:

3. The court will hold a telephone conference on the record on Monday, September 27, 2021, at 2:30 p.m. Counsel for the parties shall call 1-571-353-2300 and use pin 363973916# to enter the conference call.