

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

**R. ALEXANDER ACOSTA,
Secretary of Labor, United States
Department of Labor,**

Petitioner,

v.

Case No: 5:18-mc-2-Oc-JSM-PRL

**SCOTT SMITH ROOFING, INC., and
WAYNE SMITH, and individual,**

Respondents.

ORDER TO SHOW CAUSE

This matter, arising from an Occupational Safety and Health Administration (“OSHA”) investigation, comes before the Court upon the petition of R. Alexander Acosta, Secretary of Labor, United States Department of Labor, for an Order compelling Respondents, Scott Smith Roofing, Inc., and Wayne Smith, to comply with the Subpoena *Duces Tecum* and Administrative Subpoena *Ad Testificandum* issued by OSHA. Petitioner has also filed an Emergency Motion for an Expedited Hearing on the basis that, pursuant to Section 9(c) of the Occupational Safety and Health Act of 1970, 29 U.S. C. § 651, *et seq.*, the agency’s six-month period for investigation will expire on April 20, 2018. (Docs. 1 & 3).

Petitioner requests that the Court set an expedited hearing to permit Respondents to show cause why they should not be required to comply with the Subpoenas, that the Court enter an Order tolling the Act’s six-month statute of limitations, and award Petitioner costs and expenses of filing the petition. (Doc. 1). The petition is supported by the Declarations of Michelle Gonzalez, the Assistant Area Director for OSHA in Jacksonville, Florida (Doc. 1-1), Karen Mock, who is

employed as OSHA Counsel in the Office of the Solicitor for the U.S. Department of Labor (Doc. 1-2, p. 7), and Dianne Cuyler, an OSHA Compliance Safety and Health Officer who initiated an inspection of Respondents after observing a worksite. (Doc. 1-1, p. 9). The petition is also supported by exhibits, including the subpoena *duces tecum* (Doc. 1-2, p. 32), and the subpoena *ad testificandum* (Doc. 1-1, p. 39), as well as the incorporated certificates of service indicating that they were served on October 21, 2017, via registered mail upon Wayne Smith, the registered agent of Scott Smith Roofing, Inc.

Upon due consideration of the Petition and the supporting documents, it is hereby **ORDERED and ADJUDGED:**

(1) Respondent, Scott Smith Roofing, Inc.,¹ and WAYNE SMITH, shall appear before United States Magistrate Judge Philip Lammens in the United States Courthouse, Courtroom 1A, Golden-Collum Memorial Federal Building & U.S. Courthouse, 207 N.W. Second Street, Ocala, Florida on **March 27, 2018 at 1:30 p.m.** to show cause why Respondents should not be compelled to comply with the subpoenas served upon them by OSHA on November 21, 2017.

(2) A copy of this Order, the Petition, memorandum in support, and supporting declarations and exhibits shall be served consistent with the Federal Rules of Civil Procedure upon Respondent Wayne Smith and upon the officer or authorized agent of Scott Smith Roofing, Inc., within **fourteen (14) days** of the date of this Order.


(3) Within **fourteen (14) days** of the service of a copy of this Order, Respondents shall file and serve a written response to the Petition. Only those issues raised by motion or responsive

¹ In considering its obligations, the corporate Respondent should be mindful that, pursuant to Local Rule 2.03(e), for the Middle District of Florida, “[a] corporation may appear and be heard only through counsel admitted to practice in the Court.”

pleading shall be considered by the Court, and any uncontested allegations in the Petition shall be deemed admitted.

(4) Petitioner's request for a tolling of the statute of limitations is taken under advisement and shall be considered, if necessary, at a later stage of the proceedings upon an appropriate motion filed by Petitioner with authority supporting such a request.

DONE and **ORDERED** in Ocala, Florida on February 6, 2017.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties
Courtroom Deputy