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Linda Myhre Enlow
Thurston County Clerk

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**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

DEPARTMENT OF LABOR AND
INDUSTRIES OF THE STATE OF
WASHINGTON

Plaintiff,

v.

FOWLER NAT D. AND MARY M.
DBA FARM BOY DRIVE IN

Defendant.

NO. 20-2-02460-34

ORDER GRANTING SECOND
ORDER OF CONTEMPT AND
AFFIRMING TEMPORARY
RESTRAINING ORDER

[PROPOSED]

This matter came on for hearing on the 12th day of March 2021. The Court heard argument from Michael Hall, Assistant Attorney General, on behalf of the Plaintiff (Department), and Andrew Mazzeo on behalf of the Defendant (Farm Boy). The Court considered the files and records in this matter, including:

1. The Department's Petition for Order Compelling Compliance with Agency Order of Immediate Restraint Pursuant to RCW 49.17.130 and for Injunctive Relief Under RCW 49.17.170, and pleadings filed therewith;
2. The Court's December 15, 2020 Temporary Restraining Order Compelling Compliance with Agency Order of Immediate Restraint and Order to Show Cause;
3. The Department's Motion for Order of Contempt, and pleadings filed therewith;

- 1 4. Farm Boy's Declarations filed in response to the Department's Motion for Order of
- 2 Contempt;
- 3 5. The Court's December 29, 2020 Order of Contempt;
- 4 6. Farm Boy's Response to Order to Show Cause and Temporary Restraining Order;
- 5 7. The Department's Reply to Defendants' Response to Order to Show Cause and
- 6 Temporary Restraining Order;
- 7 8. The Court's January 12, 2021 Order on Show Cause Hearing;
- 8 9. The Department's Motion for Second Order of Contempt, and pleadings filed therewith;
- 9 10. The Declaration of Alejandra Hamblin;
- 10 11. Farm Boy's Response to Preliminary Injunction and Motion to Dismiss Case and Vacate
- 11 Restraining Order on Constitutional Grounds;
- 12 12. The Department's Reply to Response to Preliminary Injunction and Motion to Dismiss,
- 13 and pleadings filed therewith;
- 14 13. Farm Boy's Motion and Memorandum to (1) Dismiss for Lack of Jurisdiction Over the
- 15 Person, Under Due Process Clause of Constitutions, CR 4, CR 12(b)(2), (4), and (5), and
- 16 (2) Vacate All Prior Orders Entered, Under CR 60(b)(5) and Due Process Clause of
- 17 Constitutions, as Void for Lack of Personal Jurisdiction, filed February 8, 2021, and
- 18 pleadings filed therewith;
- 19 14. Declaration of Mary Fowler;
- 20 15. Supplemental to [sic] Motion to Dismiss and Vacate, filed February 22, 2021, and
- 21 pleadings filed therewith;
- 22 16. Department's Response to February 8, 2021 Motion to Dismiss and Motion to Vacate;
- 23 17. [title of brief we're filing today]; and
- 24 18. _____
- 25 19. _____
- 26 20. _____

1 Based on the foregoing, the Court makes the following:

2 **FINDINGS OF FACT**

- 3 1. COVID-19 is a dangerous and highly contagious virus that creates a risk of substantial
4 bodily injury or death. At all times relevant to this matter, the virus has been presently
5 out of control in the State of Washington.
- 6 2. At all times relevant to this matter, indoor dining at restaurants has increased the
7 likelihood of transmission of COVID-19 as it involves multiple people sitting in close
8 quarters often not wearing masks.
- 9 3. Governor Jay Inslee has issued a series of proclamations in response to the COVID-19
10 pandemic. Proclamation 20-25.8, issued on November 15, 2020, prohibited restaurants
11 and bars from providing indoor dining services through December 14, 2020.
12 Proclamation 20-25.9, issued on December 10, 2020, extended the prohibition on
13 indoor dining services to January 4, 2021. Proclamation 20-25.11, issued on
14 December 30, 2020, further extended the prohibition on indoor dining services through
15 January 11, 2021.
- 16 4. Proclamation 20-25.12, issued on January 11, 2021, implemented the “Healthy
17 Washington: Roadmap to Recovery” plan. This Roadmap to Recovery divides
18 Washington into eight regions and establishes a two-phase plan to begin resumption of
19 activities in the State. Indoor dining activities are prohibited in Phase 1; during Phase 2
20 indoor dining is limited to 25% capacity. No regions have yet progressed to Phase 2.
- 21 5. The Department has issued a series of emergency regulations, codified at WAC 296-
22 800-14035, that require employers to comply with the Governor’s COVID-19
23 proclamations.
- 24 6. At all times relevant to this matter, as they relate to restaurants, the Governor’s
25 COVID-19 proclamations have only prohibited the provision of indoor dining
26 services. None of the proclamations, nor any of the Department’s rules implementing

1 those proclamations, have prohibited restaurants from providing take-out or drive-
2 through services.

- 3 7. At all times relevant to this matter, under the Governor’s COVID-19 proclamations
4 and the Department’s rules implementing those proclamations, restaurants have been
5 permitted to have their employees take food orders, prepare food, and serve food on a
6 take-out or drive-through basis.
- 7 8. The Governor’s COVID-19 proclamations, and the Department’s rules implementing
8 those proclamations, apply equally to all facilities that provide indoor dining services.
- 9 9. On December 7, 2020, the Department issued an order of immediate restraint
10 prohibiting Farm Boy from providing indoor dining services.
- 11 10. On December 15, 2020, this Court issued a Temporary Restraining Order pursuant to
12 RCW 49.17.130 and RCW 49.17.170. The TRO ordered Farm Boy to comply with the
13 Department of Labor & Industries’ December 7, 2020 order of immediate restraint.
- 14 11. Farm Boy continued to provide indoor dining services after receiving the TRO.
- 15 12. On December 29, 2020, the Court issued an Order of Contempt against Farm Boy,
16 holding Farm Boy in contempt of the Court’s December 15, 2020 TRO. The Order of
17 Contempt imposed sanctions on Farm Boy of \$2,000 per day for the period beginning
18 on December 18, 2020, and continuing at \$2,000 per day until Farm Boy complied
19 with the TRO or until otherwise ordered by the Court.
- 20 13. On January 12, the Court issued an order extending the TRO until “otherwise ordered
21 by this Court or Farm Boy is permitted to resume offering indoor dining services
22 pursuant to the Governor’s COVID-19 proclamations, whatever occurs first.”
- 23 14. On January 19, 2021, the Court heard argument on Farm Boy’s motion to dismiss and
24 the Department’s motion for second order of contempt. The Court granted the
25 Department’s motion and denied Farm Boy’s. As a contempt sanction, the Court
26

1 entered judgment for L&I on February 8, 2021, in the amount of \$42,000—the total
2 \$2,000 per day sanction from December 18, 2020, through January 7, 2021.

3 15. Despite the TRO and the Order of Contempt, Farm Boy continued to provide indoor
4 dining services in violation of the Governor’s COVID-19 proclamations and the
5 Department’s rule implanting those regulations through January 7, 2021.

6 16. In mid-January, 2021, the Governor issued the “Open Air and Outdoor Seating
7 Requirements” guidance. This guidance provided that restaurants could provided
8 indoor dining services, at 25 percent capacity, provided that specific air flow
9 requirements were met. Farm Boy has never shown that these requirements were met
10 and they post date the contempt time period ending January 7, 2021.

11 17. On February 1, 2021, Thurston County went into Phase II of the Governor’s recovery
12 plan, and now Farm Boy may offer indoor dining services at 25 percent capacity
13 without application of the Open Air and Outdoor Seating Requirements guidance.

14 18. Before issuance of the Open Air and Outdoor Seating Requirements guidance, by
15 continuing to provide indoor dining services, Farm Boy failed or refused to perform an
16 act that is within its power to perform.

17 19. The sanctions imposed in the December 29, 2020 Order of Contempt were inadequate
18 to bring Farm Boy into compliance with the TRO.

19 20. The Department has a clear legal right to enforce the provisions of the Washington
20 Industrial Safety and Health Act, RCW ch. 49.17, and the regulations promulgated
21 thereunder.

22 21. When it continued to provide indoor dining services, Farm Boy violated WAC 296-
23 800-14035. The Department therefore has a well-grounded fear of immediate invasion
24 of its clear legal right.

25 22. When it continued to provide indoor dining services, Farm Boy placed its employees
26 and patrons to a risk of contracting COVID-19. Farm Boy’s actions therefore led to or

1 would have resulted in actual and substantial injury. The equities favor L&I and the
2 Temporary Restraining Order was properly granted

3 Based on the foregoing Findings of Fact, the Court makes the following

4 **CONCLUSIONS OF LAW**

- 5 1. This Court has jurisdiction over the parties to, and the subject of, this matter.
6 2. The Court properly issued a TRO requiring Farm Boy to comply with the Governor's
7 COVID-19 proclamations and the Department's regulations implementing those
8 proclamations.
9 3. Neither the Governor's COVID-19 proclamations, the Department's regulations
10 implementing those proclamations, nor the TRO violate any constitutional, evidentiary,
11 or statutory requirement.
12 4. Farm Boy has been in contempt of the TRO at least through January 7, 2021.
13 Additional sanctions are necessary to bring Farm Boy into compliance. Those sanctions
14 should include awarding the Department judgment in the amount of sanctions accrued
15 from December 18, 2020, through January 7, 2021. This amount is \$42,000.
16 5. The reference to findings of fact and conclusions of law in the Court's February 8,
17 2021, now reference the findings of fact and conclusions of law in this order.

18 Based on the foregoing Findings of Fact and Conclusions of law, the Court issues the
19 following

20 **ORDER**

- 21 1. Farm Boy's motions to dismiss and to vacate orders are denied.
22 2. Based on Thurston County entering Phase II of the Governor's recovery plan,
23 the TRO action is dismissed as of February 1, 2021.
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1 3. Farm Boy was in violation of the TRO from December 18, 2020, through
2 January 7, 2021. The Court properly entered judgment in the Department's favor in the amount
3 of sanctions accrued during this period, for a total of \$42,000.

4 DATED this ____ day of _____, 2021.

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JUDGE

PRESENTED BY:

ROBERT W. FERGUSON
Attorney General



MICHAEL HALL
Assistant Attorney General
WSBA No. 19871
Attorneys for Department of Labor & Industries

COPY TO:

DREW MAZZEO, WSBA No. 46506
JASON A. CELSKI, WSBA No. 37848
Attorneys for Nat D. Fowler and Mary M. Fowler,
dba Farm Boy Drive In