

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

DEPARTMENT OF LABOR AND
INDUSTRIES OF STATE OF
WASHINGTON,

Plaintiff,

v.

FOWLER NAT D. AND MARY M
DBA FARMBOY DRIVE IN,

Defendant.

Superior Court No.: 20-2-02460-34
Court of Appeals No.: 55463-1-II

SUPPLEMENT TO NOTICE OF APPEAL TO
COURT OF APPEALS, DIVISION II

Defendant, FOWLER NAT D. AND MARY M DBA FARMBOY DRIVE IN (“Farm Boy”) supplements its notice of appeal with further orders from the court¹:

1. Order Granting Preliminary Injunction and Denying Motion to Dismiss, and Second Order of Contempt, entered by Judge Chris Lanese on February 9, 2021. (Attachment 1).
2. Judgment, entered by Judge Chris Lanese on February 9, 2021 (Attachment 2).
3. Order retaining Jurisdiction, entered by Judge Chris Lanese on February 25, 2021.

¹ A hearing is set for April 23, 2021, before the trial court hear Farm Boy’s motion to dismiss and motion to vacate. (Attachment 4).

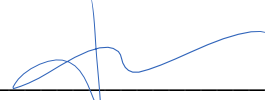
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(Attachment 3).

Copies of all such orders are attached.

DATED this 18th day of March, 2021.

HARBOR APPEALS AND LAW, PLLC



Drew Mazzeo, WSBA No. 46506
Attorney for Farmboy

CERTIFICATE OF SERVICE

My name is Stacia Smith, I am over the age of 18. I declare this statement to be true and correct, under penalty of perjury under the laws of the state of Washington. I caused to be served this Supplement to Notice of Appeal, on March 18, 2021, on the follow persons in the described manner:

Attorney General of Washington, Labor and Industries Division Att: Michael Hall, WSBA No. 19871 7141 Clearwater Drive SW PO BOX 40121 Olympia, WA 98504-0121 (360) 586-7707 Email: michael.hall@atg.wa.gov	Via email and USPS First Class Mail.
Attorney General of Washington, Labor and Industries Division Att: Brian Dew, WSBA No. 18877 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 (360) 564-7740 Email: brian.dew@atg.wa.gov	Via email and USPS First Class Mail.
Jason Celski PO BOX 1135 Rochester, WA 98579-1135 Email: celskilaw@gmail.com	Via email.



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Stacia Smith
Paralegal to Drew Mazzeo

ATTACHMENT 1



FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

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Linda Myhre Enlow
Thurston County Clerk

EX PARTE

**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 PRELIMINARY
INJUNCTION AND DENYING
MOTION TO DISMISS, AND
SECOND ORDER OF CONTEMPT

This matter came on for hearing on the 19th day of January, 2021. The Court heard argument from Michael Hall, Assistant Attorney General, on behalf of the Plaintiff (Department), and Jason A. Celski 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;
4. Farm Boy's Declarations filed in response to the Department's Motion for Order of Contempt;

ORDER GRANTING PRELIMINARY
INJUNCTION AND DENYING MOTION
TO DISMISS, AND SECOND ORDER OF
CONTEMPT

- 1 5. The Court's December 29, 2020 Order of Contempt;
- 2 6. Farm Boy's Response to Order to Show Cause and Temporary Restraining Order;
- 3 7. The Department's Reply to Defendants' Response to Order to Show Cause and
- 4 Temporary Restraining Order;
- 5 8. The Court's January 12, 2021 Order on Show Cause Hearing;
- 6 9. The Department's Motion for Second Order of Contempt, and pleadings filed therewith;
- 7 10. The Declaration of Alejandra Hambling;
- 8 11. Farm Boy's Response to Preliminary Injunction and Motion to Dismiss Case and Vacate
- 9 Restraining Order on Constitutional Grounds; and
- 10 12. The Department's Reply to Response to Preliminary Injunction and Motion to Dismiss,
- 11 and pleadings filed therewith.

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

13 **FINDINGS OF FACT**

- 14 1. COVID-19 is a dangerous and highly contagious virus that creates a risk of substantial
- 15 bodily injury or death. The virus is presently out of control in the State of Washington.
- 16 2. Indoor dining at restaurants increases the likelihood of transmission of COVID-19 as it
- 17 involves multiple people sitting in close quarters often not wearing masks.
- 18 3. Governor Jay Inslee has issued a series of proclamations in response to the COVID-19
- 19 pandemic. Proclamation 20-25.8, issued on November 15, 2020, prohibited restaurants
- 20 and bars from providing indoor dining services through December 14, 2020.
- 21 Proclamation 20-25.9, issued on December 10, 2020, extended the prohibition on
- 22 indoor dining services to January 4, 2021. Proclamation 20-25.11, issued on
- 23 December 30, 2020, further extended the prohibition on indoor dining services through
- 24 January 11, 2021.
- 25 4. Proclamation 20-25.12, issued on January 11, 2021, implemented the "Healthy
- 26 Washington: Roadmap to Recovery" plan. This Roadmap to Recovery divides

- 1 Washington into eight regions and establishes a two-phase plan to begin resumption of
2 activities in the State. Indoor dining activities are prohibited in Phase 1; during Phase 2
3 indoor dining is limited to 25% capacity. No regions have yet progressed to Phase 2.
- 4 5. The Department has issued a series of emergency regulations, codified at WAC 296-
5 800-14035, that require employers to comply with the Governor's COVID-19
6 proclamations.
- 7 6. As they relate to restaurants, the Governor's COVID-19 proclamations only prohibit
8 the provision of indoor dining services. None of the proclamations, nor any of the
9 Department's rules implementing those proclamations, prohibit restaurants from
10 providing take-out or drive-through services.
- 11 7. Under the Governor's COVID-19 proclamations and the Department's rules
12 implementing those proclamations, restaurants are permitted to have their employees
13 take food orders, prepare food, and serve food on a take-out or drive-through basis.
- 14 8. The Governor's COVID-19 proclamations, and the Department's rules implementing
15 those proclamations, apply equally to all facilities that provide indoor dining services.
- 16 9. On December 7, 2020, the Department issued an order of immediate restraint
17 prohibiting Farm Boy from providing indoor dining services.
- 18 10. On December 15, 2020, this Court issued a Temporary Restraining Order pursuant to
19 RCW 49.17.130 and RCW 49.17.170. The TRO ordered Farm Boy to comply with the
20 Department of Labor & Industries's December 7, 2020 order of immediate restraint.
- 21 11. Farm Boy continued to provide indoor dining services after receiving the TRO.
- 22 12. On December 29, 2020, the Court issued an Order of Contempt against Farm Boy,
23 holding Farm Boy in contempt of the Court's December 15, 2020 TRO. The Order of
24 Contempt imposed sanctions on Farm Boy of \$2,000 per day for the period beginning
25 on December 18, 2020, and continuing at \$2,000 per day until Farm Boy complied
26 with the TRO or until otherwise ordered by the Court.

1 13. Despite the TRO and the Order of Contempt, Farm Boy has continued providing
2 indoor dining services in violation of the Governor's COVID-19 proclamations and
3 the Department's rules implementing those regulations through at least January 7, 2021.

4 14. By continuing to provide indoor dining services, Farm Boy has failed or refused to
5 perform an act that is within its power to perform.

6 15. The sanctions imposed in the December 29, 2020 Order of Contempt have been
7 inadequate to bring Farm Boy into compliance with the TRO.

8 16. The Department has a clear legal right to enforce the provisions of the Washington
9 Industrial Safety and Health Act, RCW ch. 49.17, and the regulations promulgated
10 thereunder.

11 17. By continuing to provide indoor dining services, Farm Boy is violating WAC 296-
12 800-14035. The Department therefore has a well-grounded fear of immediate invasion
13 of its clear legal right.

14 18. By continuing to provide indoor dining services, Farm Boy is placing its employees
15 and patrons to a risk of contracting COVID-19. Farm Boy's actions are therefore
16 leading to or will result in actual and substantial injury.

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

18 **CONCLUSIONS OF LAW**

- 19 1. This Court has jurisdiction over the parties to, and the subject of, this matter.
20 2. A preliminary injunction should issue requiring Farm Boy to comply with the
21 Governor's COVID-19 proclamations and the Department's regulations implementing
22 those proclamations.
23 3. Neither the Governor's COVID-19 proclamations, the Department's regulations
24 implementing those proclamations, nor the TRO violates any right to hold private
25 employment.
26

1 4. Neither the Governor's COVID-19 proclamations, the Department's regulations
2 implementing those proclamations, nor the TRO violates equal protection.

3 5. Farm Boy has been in contempt of the TRO at least through January 7, 2021.

4 Additional sanctions are necessary to bring Farm Boy into compliance. Those sanctions
5 should include awarding the Department judgment in the amount of sanctions accrued
6 from December 18, 2020, through January 7, 2021. This amount is \$42,000.

7 Based on the foregoing Findings of Fact and Conclusions of law, the Court issues the
8 following

9 **ORDER**

10 1. Farm Boy's Motion to Dismiss Case and Vacate Restraining Order on
11 Constitutional Grounds is denied.

12 2. Farm Boy is enjoined from providing indoor dining services in violation of the
13 Governor's COVID-19 proclamations and the Department's regulations implementing those
14 proclamations. This preliminary injunction shall remain in place until otherwise ordered by the
15 Court or until Farm Boy comes into compliance with the State's COVID-19 restrictions..

16 3. Farm Boy has been in violation of the TRO from December 18, 2020, through
17 January 7, 2021. The Court shall enter judgment in the Department's favor in the amount of
18 sanctions accrued during this period, for a total of \$42,000.

19 4. Remedial sanctions in the amount of \$2,000 per day shall continue to be
20 imposed for periods after January 7, 2021 under the TRO and under the preliminary injunction
21 on and after January 19, 2021 until Farm Boy complies with the preliminary injunction or until
22 otherwise ordered by the Court.

23 5. Farm Boy may purge its contempt for periods after January 7, 2021, by
24 presenting evidence of compliance with the TRO or preliminary injunction. Such evidence
25 shall include a sworn statement and supporting evidence that Farm Boy is in compliance with
26 WAC 296-800-14035 in reference to the Governor's COVID-19 proclamations cited above.

1 This Court shall retain jurisdiction in this action to implement, carry out, and enforce the
2 terms of the Court's order, and to entertain any suitable motions or applications related to this
3 matter.

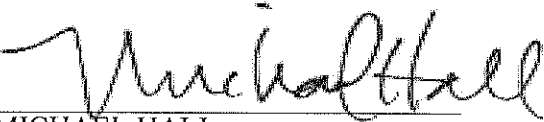
4 DATED this 8th day of February, 2021.

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JUDGE

CHRISTOPHER LANESE

8 PRESENTED BY:

9 ROBERT W. FERGUSON
10 Attorney General

11 

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

15
16 APPROVED AS TO FORM,
17 NOTICE OF PRESENTATION WAIVED:

18 CELSKI LAW FIRM P.L.L.C.

19
20 _____
21 JASON A. CELSKI
22 WSBA No. 37848
23 Attorneys for Nat D. Fowler and Mary M. Fowler,
24 dba Farm Boy Drive In
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26

ATTACHMENT 2

20-2-02460-34
JD 85
Judgment
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FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

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Linda Myhre
Thurston County Clerk

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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

DEPARTMENT OF LABOR AND
INDUSTRIES OF THE STATE OF
WASHINGTON

NO. 20-2-02460-34

JUDGMENT

Plaintiff,

v.

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

Defendant.

JUDGMENT SUMMARY (RCW 4.64.030)

- 1. Judgment Creditor: State of Washington
- 2. Judgment Debtor: Fowler Nat D. and Mary M. dba Farm Boy Drive In
- 3. Principal Amount of Judgment: \$42,000.00
- 4. Interest to Date of Judgment: \$0
- 5. Attorney Fees: \$0
- 6. Costs: \$0
- 7. Other Recovery Amounts: \$0
- 8. Principal Judgment Amount shall bear interest at 12% per annum.
- 9. Attorney Fees, Costs and Other Recovery Amounts shall bear interest at 12% per annum.
- 10. Attorney for Judgment Creditor: Michael Hall, Assistant Attorney General

JUDGEMENT

1

ATTORNEY GENERAL OF WASHINGTON
Labor & Industries Division
7141 Cleanwater Drive SW
PO Box 40121
Olympia, WA 98504-0121
(360) 586-7707
FAX: (360) 586-7717

1 11. Attorney for Judgment Debtor: Jason A. Celski

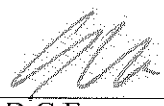
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3 This matter came on for hearing on the 19th day of January, 2021. The Court heard
4 argument from Michael Hall, Assistant Attorney General, on behalf of the Plaintiff (Department
5 of Labor & Industries), and Jason A. Celski on behalf of the Defendant (Farm Boy). At the close
6 of the hearing the Court found Farm Boy to have been in contempt of the Court's Temporary
7 Restraining Order from December 18, 2020, through January 7, 2021, and ordered that judgment
8 in the Department's favor be entered for contempt sanctions accrued during that period in the
9 amount of \$42,000.

10 The Court considered the pleadings filed in the action, including the Department's
11 Motion for Second Order of Contempt and pleadings filed therewith, and the Declaration of
12 Alejandra Hamblin. The Court also considered its Order Granting Preliminary Injunction and
13 Denying Motion to Dismiss, and Second Order of Contempt, filed contemporaneously
14 herewith. The Findings of Fact and Conclusions of Law from that order are incorporated herein
15 by reference.

16 Based on the argument of counsel and the pleadings, the Court enters judgment in this
17 matter as follows:

- 18 1. Based on Farm Boy's contempt of the Court's Temporary Restraining Order,
19 the Department is awarded judgment in the amount of \$42,000.
20 2. The Department is awarded interest from the date of entry of this judgment as
21 provided by RCW 4.56.110.

22 DATED this 8th day of February, 2021.

23
24 
25 JUDGE

CHRISTOPHER LANESE

26 JUDGMENT

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ATTORNEY GENERAL OF WASHINGTON
Labor & Industries Division
7141 Cleanwater Drive SW
PO Box 40121
Olympia, WA 98504-0121
(360) 586-7707
FAX: (360) 586-7717

ATTACHMENT 3

20-2-02460-34
ORAJ 102
Order Accepting Jurisdiction
9824580



FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2021 FEB 25 AM 9:46

Linda Myhre Enlow
Thurston County Clerk

**SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

DEPARTMENT OF LABOR AND
INDUSTRIES OF THE STATE OF
WASHINGTON,
Plaintiff,
vs.
FOWLER NATE D.AND MARY M. DBA
FARMBOY DRIVE IN,
Defendant(s).

No. 20-2-02460-34

ORDER RETAINING JURISDICTION

Clerk's Action Required

It is ORDERED that:

1. Judge Chris Lanese has retained jurisdiction of this case.
2. All future hearings in this case shall be heard by Judge Lanese.

Dated: 02/16/2021.

JUDGE CHRIS LANESE

Order Retaining Jurisdiction

**THURSTON COUNTY SUPERIOR COURT
FAMILY & JUVENILE COURT**
Mail: 2000 Lakeridge Dr SW, Olympia WA 98502
Location: 2801 32nd Ave SW, Tumwater WA 98512
Phone: (360)709-3201 Clerk: (360) 709-3260

ATTACHMENT 4

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SUPERIOR COURT
THURSTON COUNTY, WA

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LINDA MYHRE ENLOW
THURSTON COUNTY CLERK

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 Hearing is set
Date:____
Time:____
Judge/Calendar:

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20-2-02460-34
ORGMT 118
Order Granting Motion Petition
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

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DEPARTMENT OF LABOR AND
INDUSTRIES OF STATE OF
WASHINGTON,

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Plaintiff,

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v.

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FOWLER NAT D. AND MARY M
DBA FARMBOY DRIVE IN,

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Defendant.

No. 20-2-02460-34

AGREED ORDER GRANTING
CONTINUANCE

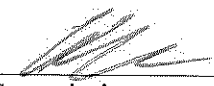
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Defendant, FOWLER NAT D. AND MARY M DBA FARMBOY DRIVE IN
("Defendants"), by and through undersigned counsel, moves this Court for a continuance of the
March 12, 2021, hearing on dismissal and vacating prior orders. Based on the record herein and the
agreement of the parties, IT HEREBY ORDERED:

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1. Defendant's motion is hereby GRANTED.
2. The Clerk shall note Defendant's Motion to Dismiss and Vacate, including
Supplemental Motion, for a hearing on April 9th 23, 2021

, at 9:00AM, on Judge Lanese's motion hearing calendar docket.

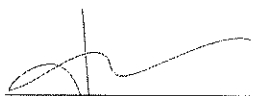
3. The matter will be heard without oral
argument. The parties will file proposed orders
prior to the hearing.

DATED this 4th day of ~~February~~, 2021.
March

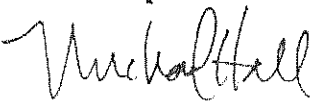


Judge/Commissioner **CHRISTOPHER LANESE**

Presented by:
HARBOR APPEALS AND LAW, PLLC



Drew Mazzeo, WSBA No. 46506
Attorney for Farmboys

Agreed by:


Michael Hall WSBA # 19871
Attorney for Plaintiff