

[ ] EXPEDITE  
[X] Hearing is set  
Date: 04/23/21  
Time: 9:00AM  
Judge/Calendar: Judge Lanese

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.

No. 20-2-02460-34

REPLY TO MOTION TO DISMISS AND  
MOTION TO VACATE

Defendant, FOWLER NAT D. AND MARY M DBA FARMBOY DRIVE IN (“Farm Boy”), by and through undersigned counsel, Harbor Appeals and Law, PLLC, provides this reply to the motion to dismiss and vacate.

1. REPLY ARGUMENT

1.1. The Temporary Restraining Order and All Orders Issued Thereafter were Gross Due Process Violations, Not Meeting the Requisite Elements of CR 65, and are Void.

Once a due process violation occurs, it cannot be undone. *Olympic Forest Products, Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 430, 511 P.2d 1002 (1973). The order constituting the violation is void as is all subsequent orders based on it. *Hart v. Hawtin*, No. 50350-6-II, 2019

Wash. App. LEXIS 842, at \*33 n.9, (unpublished opinion) (holding not following “procedures in Reply Motion to Dismiss and Vacate  
Page 1 of 10

1 any applicable statute” is a denial of “meaningful opportunity to be heard,” a due process violation,  
2 and has the “potential to undermine the integrity of the legal system.”).

3  
4 Violations of Due Process Clause or the substantive requirements of CR 65 render  
5 restraining orders void. *Id.* at 367 (stating “As early as 1900, the Washington Supreme Court held  
6 in *In re Groen* that [CR 65] prerequisites exist to ensure that parties are afforded minimum due  
7 process protections.”). Disobedience of a void order cannot constitute contempt. *Dike v. Dike*, 75  
8 Wash.2d 1, 7–8, 448 P.2d 490 (1968); *State v. Turner*, 98 Wn.2d 731, 739, 658 P.2d 658, 662  
9 (1983).

10 Under CR 65, “Due process requires a proper showing of emergent need for the restraint  
11 and a provision for immediate notice and early hearing.” *Estates of Smaldino*, 151 Wn. App. at  
12 371. In the “case” of “a temporary restraining order” that “is granted without notice, *the motion of*  
13 *preliminary injunction shall be set down for hearing at the earliest possible time and takes*  
14 *precedence over all other matters. . . .*” CR 65(b) (emphasis added). “In the case of prelitigation  
15 restraining orders, *due process may well require that every requirement of the rule be satisfied.*”  
16 *Estates of Smaldino*, 151 Wn. App. at 372–73 (emphasis added).

17  
18 “TRO’s [are] . . . an extraordinary remedy.” *Id.* at 370. “Ex parte TROs are governed by  
19 CR 65(b).” *Id.* at 366. Court Rule 65 “*supplements . . . any statute prescribing the basis for*  
20 *obtaining injunctive relief*” and “*prevail[s] over statutes if there are procedural conflicts.*” CR  
21 65(e) (emphasis added). “The specific requirements of Rule 65(b) are not mere technical legal  
22 niceties.” *Estates of Smaldino*, 151 Wn. App. at 370. “They are strongly worded, mandatory  
23 provisions which should be respected.” *Id.* “They are not meaningless words.” *Id.* “[W]hen such  
24 an order is issued ex parte, the dangers of abuse are great.” *Id.*

1 In addition to above, CR 65(b) requires: First, clear facts under oath demonstrate  
2 “*immediate and irreparable injury . . . will result*” to the “applicant before the adverse party . . .  
3 can be heard in opposition.” Second, the “applicant’s attorney certifies” in “writing” . . . the  
4 “reasons supporting the applicant’s claim that notice should not be required.” CR 65(b) (emphasis  
5 added). Third, the order “shall define the injury and state why it is irreparable and why the order  
6 was granted without notice. . . .” Fourth, it shall state when it expires not to exceed 14 days. CR  
7 65(b). Fifth, the order “*shall describe in reasonable detail, and not reference to the complaint or  
8 other document, the act or acts sought to be restrained. . . .*” CR 65(d) (emphasis added). “The  
9 word ‘shall’ in a statute . . . imposes a mandatory requirement unless a contrary . . . intent is  
10 apparent.” *Erection Co. v. Dep’t of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288, 290 (1993).

11  
12 Last, CR 65 “*supplements . . . any statute prescribing the basis for obtaining injunctive  
13 relief*” and “*prevail[s] over statutes if there are procedural conflicts.*” CR 65(e) (emphasis added).  
14 Stated simply, meeting the high standard of CR 65 is a due process requisite to an ex-parte  
15 restraining order. *See Estates of Smaldino*, 151 Wn. App. at 370.

16  
17 Here, original temporary restraining order was a due process violation because the high  
18 standard of CR 65 for ex-parte no notice restraining orders was not remotely met. The petition by  
19 Labor & Industries did not allege “*immediate and irreparable injury . . . will*” occur to the  
20 “applicant,” *i.e.*, Labor & Industries, or to anyone else. (Petition, filed 12/15/20). Rather, it  
21 alleged that “Enjoinment of Farm Boy Drive In from business activity of indoor dine-in service is  
22 necessary to prevent further violations of Washington law. . . .” (Petition, filed 12/15/20). It  
23 alleged “risk” and a “substantial probability” of harm. (Petition, filed 12/15/20). That is not the  
24 standard under CR 65. It is a due process violation to issue an ex-parte restraining order based on  
25

1 those allegations. Moreover, the declarations were not based on personal knowledge, rather double  
2 hearsay. Regardless, the tiny restaurant Farm Boy allegedly operating in-doors could not “*result*  
3 *in actual and substantial injury to the Department in its role of protecting worker’s statewide.*”  
4 (Reply at 9, filed 01/15/21). That is absurd. The leviathan agency could not be “irreparably”  
5 harmed by Farm Boy doing anything. The superior court violated due process rights.  
6

7 Further, RCW 49.17.170 does not help Labor & Industries because CR 65 “*supplements .*  
8 *. . any statute prescribing the basis for obtaining injunctive relief*” and “*prevail[s] over statutes if*  
9 *there are procedural conflicts.*” CR 65(e). Meeting the higher standard of CR 65 was a due process  
10 requisite to an ex-parte restraining order. CR 65(e); *Estates of Smaldino*, 151 Wn. App. at 370.

11 Additionally, the Ex-Parte Restraining Order and Petition did not certify why “notice  
12 should not be required.” (Petition, filed 12/15/20; Ex-Parte Restraining Order, filed 12/16/20). The  
13 Order did not “define the injury and state why it is irreparable and why the order was granted  
14 without notice. . . .” (Ex-Parte Restraining Order, filed 12/16/20). Nor did the Order “describe in  
15 reasonable detail . . . the act or acts to be restrained.” Rather, it referenced “[an]other document”—  
16 something CR 65 specifically forbids. CR 65(d).  
17

18 As Farm Boy repeatedly pointed out—no one at Farm Boy has ever been sick. It has  
19 literally been over four month, and no one has been harmed or sick or complained of being so at  
20 Farm Boy. No employee and no customer have complained. Farm Boy employees denied  
21 wrongdoing and explained themselves. (*e.g.*, Declaration of Alejandra Hamblin, filed 01/13/21).  
22 The evidence suggesting Farm Boy violated the Proclamation was (double) hearsay *not based on*  
23 *personal knowledge—which is required under CR 65*. Regardless, even if accepting the  
24 (scientifically bogus) Dashboard statistics of COVID-19 “deaths” and “cases”, the chances of  
25

1 catching and dying with COVID-19 in Thurston County or this State is absolutely miniscule  
2 (0.0144846 statewide and 0.00912 in Thurston County), and essentially zero at Farm Boy because  
3 no employee is over 47 years old. (Supplement to Motion to Dismiss and Vacate, Attachments 3,  
4 4, 5, 6, 7, 8, filed 02/22/21) (nearly all deaths are people over 60 years old). The facts alleged did  
5 not rise to the level of “*immediate and irreparable harm*” that “*will*” occur. CR 65. In reality—no  
6 harm has occurred, and no one has ever been sick. The passage of time has demonstrated that  
7 Labor & Industries had no emergency basis whatsoever to bring an ex-parte, no notice, restraining  
8 order petition in the first place. The circular argument that an emergency has been declared does  
9 not demonstrate an emergency at Farm Boy that meets the standard of CR 65 in this particular  
10 case.  
11

12 Last, and perhaps the most egregious violation of due process is that Farm Boy was  
13 bootstrapped into a star chamber and held in contempt *before even a hearing on the restraining*  
14 *order/injunction motion*. This in and of itself was a gross violation of the fundamental due process  
15 protections that CR 65(b) expressly preserves: “*the motion of preliminary injunction shall be set*  
16 *down for hearing at the earliest possible time and takes precedence over all other matters. . . .*”—  
17 including contempt motions. What this means is that under CR 65 and the Due Process Clause is  
18 that Farm Boy was entitled to a hearing on the injunction *before it could be held in contempt of*  
19 *ex-parte, no notice, restraining order*. The Court put the cart before the horse and grossly violated  
20 due process rights. Thus, the restraining and contempt orders are void as due process violations  
21 and under CR 60 or CR 12 this Court should vacate them. *Olympic Forest Products, Inc. v.*  
22 *Chaussee Corp.*, 82 Wn.2d 418, 430, 511 P.2d 1002 (1973); *Hart v. Hawtin*, No. 50350-6-II, 2019  
23 Wash. App. LEXIS 842, at \*33 n.9; *Dike v. Dike*, 75 Wash.2d 1, 7–8, 448 P.2d 490 (1968); *State*  
24

1 v. *Turner*, 98 Wn.2d 731, 739, 658 P.2d 658, 662 (1983).

2 1.2. Labor & Industries Failed to Personally Service the Petition, Any Summons, or  
3 Orders on Mary Fowler; Consequently, It Failed to Complete Commencement of the  
4 Suit and the Court Never Obtained Personal Jurisdiction Over Farm Boy.

5 Orders issued without personal jurisdiction are void regardless of any lapse of time. *E.g.*,  
6 *Powell v. Nolan*, 27 Wash. 318, 346, 68 P. 389, 390 (1902); *Asahi Metal Indus. Co. v. Superior*  
7 *Court of California, Solano Cty.*, 480 U.S. 102, 113, 107 S. Ct. 1026, 1032, 94 L. Ed. 2d 92 (1987);  
8 *Prof'l Marine Co. v. Those Certain Underwriters at Lloyd's*, 118 Wash. App. 694, 703-04, 77 P.3d  
9 658, 663 (2003). "Where a court lacks jurisdiction over the parties . . . its judgment is void." *In*  
10 *re Estates of Smaldino*, 151 Wn. App. 356, 366, 212 P.3d 579, 584 (2009). "A void order . . . may  
11 be attacked at any time." *Id.*

12 Any motion and ex-parte temporary restraining order must be personally served on the  
13 party being restrained. CR 65(d); *Estates of Smaldino*, 151 Wn. App. at 366. "Service of the  
14 summons . . . is necessary to complete the commencement of the action. . . ." *E.g.*, *Powell*, 27  
15 Wash. at 346. Court Rule 4(d)(1) states "the summons and complaint shall be served together."  
16 Court Rule 5 and CR 12 further require the issuance of a summons and complaint. Where a  
17 summons has not be filed, let alone served, and where a summons has not been personally served  
18 on the party, or the business owner in the case of a sole proprietorship, the trial court lacks personal  
19 jurisdiction. RCW 4.28.080; *Powell*, 27 Wash. at 346; *Asahi Metal Indus. Co.*, 480 U.S. at 113;  
20 *Prof'l Marine Co.*, 118 Wash. App. at 703-04. Commencement of the suit fails without service of  
21 a summons and complaint because the summons is what grants personal jurisdiction over the party.  
22 CR 3; CR 4; CR 5; CR 65(d).

24 Here, Mary Fowler was never personally served anything and nothing in the record

1 remotely reflects that she has been. Attempted service on employee, unauthorized to receive  
2 service, is not personal service on Mary Fowler. RCW 4.92.080. Moreover, at the time applicable  
3 orders were issued, no firsthand declarations reflected any attempt at personal service on her.  
4 (Declarations of Mary Fowler). Thus, the trial court lacked personal jurisdiction to issue restraining  
5 and subsequent contempt orders. This Court should vacate all prior orders under CR 60 or CR 12.  
6

7 Moreover, personal service of a summons and complaint is required to convey personal  
8 jurisdiction and complete commencement of a suit. CR 3; CR 4; CR 5. There has been no filing or  
9 service of any summons. *Personal* jurisdiction is not and could not be conferred by RCW §§  
10 49.17.130, 170. Labor & Industries argued otherwise in its Response that a summons need not be  
11 filed nor served for a superior court—*sitting in general jurisdiction under CR 65*—to commence  
12 an action or obtain personal jurisdiction. (Responses to Motion to Dismiss and Vacate, filed  
13 02/26/21 and 03/03/21). It argues that *provisions, e.g., RCW 34.05.510, in the Administrative*  
14 *Procedures Act—related to superior courts having appellate jurisdiction when reviewing*  
15 *administrative appeals—apply to it seeking ex-parte, no notice, CR 65 restraining orders.* It argues  
16 that since no summons is required for an *administrative appeal*, no summons required for ex-parte,  
17 no notice, CR 65 restraining order.<sup>1</sup>  
18

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19  
20 <sup>1</sup> The filing of multiple duplicate case coversheets, declarations, and petitions—an error common with *pro se* litigants  
21 unfamiliar with civil court—demonstrates Labor & Industries’ (e.g., administrative law) attorneys where not familiar  
22 with starting actions in superior court at all. (Docket). Notably, these same attorneys moved for the same ex-parte  
23 restraining order relief, against another tiny mom-and-pop business, in Cowlitz County, under superior court cause  
24 number, 20-2-00868-08. (Att. 1, Cowlitz County Case Docket). There, the case was dismissed by the trial court  
25 because of Labor & Industries failure to properly serve a summons and complaint—but not until after the attorneys  
for Labor & Industries belated attempted to cure the defect by personally serving a summons and complaint a month  
late. By then Governor Inslee vacated his ban on indoor dining. The point is that Labor & Industries arguments  
regarding not needing a summons served in civil litigation are nothing more than post hoc rationalizations *and attempts*  
*to find an argument and justification for the improper procedure the agency chose when asking a superior court for*  
*ex-parte injunctive relief clearly governed by the civil rules.* E.g., CR 65(e) (stating “These rules are intended to  
supplement and not to modify any statute prescribing the basis for obtaining injunctive relief. *These rules shall prevail*  
*over statutes if there are procedural conflicts*) (emphasis added).

1 Labor & Industries also desperately attempts to stitch together another after the fact  
2 justification/argument for not filing or serving a summons by citing RCW 34.05.578. This RCW  
3 allows an agency to file a petition in superior court to seek enforcement of its rules. The agency  
4 argues that since RCW 34.05.578 does not say a summons has to be issued or served—then there  
5 is no need. Of course, the same RCW *does not say the petition has to be personally, or otherwise,*  
6 *served at all.* By Labor & Industries’ logic, personal—or any—service of the petition is not  
7 needed; the superior court can just issue orders against people, without service of the petition or a  
8 summons, disregarding any court rules otherwise. Obviously, these arguments are absurd. Court  
9 rules—are exactly that—rules that the superior court must follow in civil litigation. Moreover,  
10 RCW 34.05.578(4) reflects this reality stating, “A petition for civil enforcement filed by an agency  
11 may request, and the court may grant . . . any . . . civil remedy *provided by law.* . . .”  
12

13 In sum, civil remedies requested of a superior court require the following of civil rules, *i.e.*,  
14 law applicable to civil cases, and that requires a summons and complaint served, among other  
15 things. Since there has never been a service of a summons, the trial court lacked personal  
16 jurisdiction to issue orders, commencement of the suit was not completed, and all such orders  
17 issued are void. This Court should vacate under CR 60 of CR 12.  
18

19 1.3. The Personal Jurisdiction Argument was Not Waived.

20 A party may move under CR 12 to dismiss the action where there has been an insufficiency  
21 in process or service of process. CR 12(b)(2), (4), (6). Waiver of the defense of personal  
22 jurisdiction is not waived by appearing in an action and is preserved if raised by motion. CR 12(h);  
23 *Adkinson v. Digby, Inc.*, 99 Wn.2d 206, 209, 660 P.2d 756, 757 (1983) (holding “CR 12(b)  
24



1 provides that a party may make some defenses including those based on lack of jurisdiction and  
2 insufficient service of process by motion”).

3 Here, from the moment its attorney became aware of the restraining order, Farm Boy has  
4 challenged factual basis of the restraining order as not meeting the requisite due process elements  
5 for issuance of an ex-parte CR 65, no notice, restraining order. It “objected to every material finding  
6 in the temporary restraining order” which includes service and personal jurisdiction and it objected  
7 to the notion that “immediate and irreparable injury, loss or damage will result” to Labor &  
8 Industries, or anyone else. (Motion to Dismiss at 5, filed 01/13/21). Regardless, personal jurisdiction  
9 cannot be obtained when orders entered are void because of a due process violation at the outset. *See*  
10 Section 1.1.

11  
12 1.4. The Injunction and Contempt Order Issued February 9, 2021, was Entered When  
13 There was No Prohibition on Anything Labor & Industries Alleged Farm Boy was  
14 Doing. This Mistaken Order and Procedural Irregularity Should be Vacated.

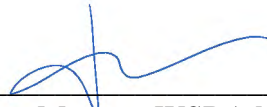
15 A case is moot if the court cannot provide the basic relief originally sought or can no longer  
16 provide effective relief. *Josephinium Assocs. v. Kahli*, 111 Wn. App. 617, 622, 45 P.3d 627 (2002);  
17 *Orwick v. Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793, 796 (1984). Under CR 60(b)(1), Orders may  
18 be vacated for “Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a  
19 judgment or order.” Court Rule 12 allows dismissal when relief cannot be granted.

20 Here, a threshold matter, Farm Boy never actually got notice, or a copy, of the February 9,  
21 2021, Injunction Order. It was never provided by the Court to counsel at the time of filing. Unlike  
22 other orders, it was not emailed and sent to counsel. Undersigned did not learn of the February 9,  
23 2021, Order until well after filing the Supplement to the Motion to Dismiss and Vacate. Regardless,  
24 Farm Boy provides that no proclamation was in effect, barring anything it was allegedly doing, as  
25

1 of January 5, 2021. (Supplemental to Motion to Dismiss and Vacate, Ex. 10, Restrictions on Indoor  
2 Dining Lifted in Thurston County, filed 02/22/21). Labor & Industries provides that any possible  
3 restrictions by any proclamation were lifted “at the end of January.”<sup>2</sup> (Att. 2, Selection from Labor  
4 & Industries Brief). Because the Injunction and Contempt Order from February 9, 2021, was issued  
5 after any party argues there was any possible restriction allegedly imposed on Farm Boy, the  
6 February 9, 2021, Order should be vacated. The case was moot, the claim for relief could not be  
7 granted as the proclamation was not in effect, and this irregularity is grounds to vacate the February  
8 9, 2021, Order under CR 60 or CR 12.

9  
10 Respectfully submitted this 16th day of April, 2021.

11 HARBOR APPEALS AND LAW, PLLC

12 

13 \_\_\_\_\_  
14 Drew Mazzeo, WSBA No. 46506  
15 Attorney for Farm Boy

16  
17  
18  
19  
20  
21  
22  
23 <sup>2</sup> A fact Labor & Industries was certainly aware of, yet, apparently, did not inform the trial court nor Farm Boy. *See*  
24 RPC 3.3 Candor Toward the Tribunal (“A lawyer shall not knowingly . . . fail to disclose to the tribunal legal authority  
25 in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed  
by the opposing party.”).

# **ATTACHMENT 1**

## Case Information

20-2-00868-08 | Department of Labor and Industries of the State of Washington vs Duling Enterprises LLC

Case Number  
20-2-00868-08  
File Date  
12/29/2020

Court  
Cowlitz  
Case Type  
INJ Injunction

Case Status  
Completed/Re-Completed

## Party

Plaintiff  
Department of Labor and Industries of the State of Washington

Active Attorneys ▼  
Lead Attorney  
Dew, Brian Lamar  
Retained

Attorney  
Hall, Michael King  
Retained

Defendant  
Duling Enterprises LLC

Aliases  
DBA Stuffy's II Restaurant

Active Attorneys ▼  
Lead Attorney  
Ard, Joel Bernard  
Retained

## Events and Hearings

12/31/2020 Case Information Cover Sheet

12/31/2020 Petition ▼

Comment

for Order Compelling Compliance with Agency Order of Immediate Restraint and Injunctive Relief

12/31/2020 Declaration Affidavit ▼

Comment

of Nicholas Streuli

12/31/2020 Declaration Affidavit ▼

Comment

of Anne Soiza

12/31/2020 Declaration Affidavit ▼

Comment

of Scott W. Lindquist, MD. MPH

12/31/2020 Declaration Affidavit ▼

Comment

of Lyndsey Banks

12/31/2020 Declaration Affidavit

12/31/2020 Note for Motion Docket ▼

Comment

Ex Parte

12/31/2020 Affidavit Declaration Certificate Confirmation of Service

12/31/2020 Temporary Restraining Order and Order to Show Cause ▼

Judicial Officer

Scudder, Thad

01/06/2021 Motion to Continue ▼

Comment

and to Quash the Temporary Restraining Order

01/06/2021 Affidavit Declaration Certificate Confirmation of Service

01/07/2021 Show Cause ▼

Judicial Officer

Bashor, Gary

Hearing Time

1:30 PM

Result

Continued

Parties Present ▲

Plaintiff

Assistant Attorney General: Dew, Brian Lamar

Assistant Attorney General: Hall, Michael King

Defendant: Duling Enterprises LLC

01/07/2021 Motion Hearing ▼

Judicial Officer

Bashor, Gary

Comment

CT WILL REISSUE TRO WITHOUT FINDINGS AND SETS SHOW CAUSE HEARING FOR 01/21/2020 AT 8:45AM

01/08/2021 Order ▼

Judicial Officer

Bashor, Gary

Comment

on 01/07/2021 Hearing- Continuing Temporary Restraining Order and Setting Hearing

01/14/2021 Affidavit Declaration Certificate Confirmation of Service

01/15/2021 Reply ▼

Comment

to Response to TRO and Motion to Dismiss

01/15/2021 Declaration Affidavit

01/15/2021 Declaration Affidavit ▼

Comment

of Craig Blackwood

01/15/2021 Affidavit Declaration Certificate Confirmation of Service

01/19/2021 Motion to Shorten Time

01/19/2021 Declaration Affidavit ▼

Comment

in Support of Motion to Shorten Time

01/19/2021 Order Denying Motion Petition ▼

Judicial Officer  
Bashor, Gary

Comment  
to Shorten Time

01/19/2021 Motion ▼

Comment  
for Contempt

01/19/2021 Declaration Affidavit

01/19/2021 Declaration Affidavit ▼

Comment  
of Lyndsey Banks

01/19/2021 Affidavit Declaration Certificate Confirmation of Service

01/19/2021 Notice of Appearance

01/19/2021 Response ▼

Comment  
to Injunction and Motion to Dismiss Case and Vacate Restraining Order on Constitutional Grounds

01/19/2021 Affidavit Declaration Certificate Confirmation of Service

01/19/2021 Motion to Dismiss ▼

Comment  
and Vacate a Restraining Order

01/19/2021 Affidavit Declaration Certificate Confirmation of Service

01/21/2021 Show Cause ▼

Judicial Officer  
Bashor, Gary

Hearing Time  
8:45 AM

Result  
Continued

Parties Present ▲  
Plaintiff

Assistant Attorney General: Dew, Brian Lamar

Assistant Attorney General: Hall, Michael King

01/21/2021 Motion Hearing ▼

Judicial Officer  
Bashor, Gary

Comment  
CT SETS MATTER TO 2/4/2021 AT 1:00 TO HEAR THE MOTION ON  
SHOW CAUSE; CONTEMPT AND MOTION TO DISMISS

01/21/2021 Order ▼

Comment  
on 01/21/2021 Hearing- Continuing Restraining Order and Setting Hearing

01/22/2021 Affidavit Declaration Certificate Confirmation of Service ▼

Comment  
Michelle Kennedy

01/26/2021 Reply ▼

Comment  
to Response to TRO and Motion to Dismiss- AMENDED

01/26/2021 Declaration Affidavit

01/26/2021 Affidavit Declaration Certificate Confirmation of Service

01/28/2021 Motion ▼

Comment  
for Contempt- Supplement

01/28/2021 Declaration Affidavit ▼

Comment  
of Lyndsey Banks- Second

01/28/2021 Note for Motion Docket ▼

Comment  
Already set

01/28/2021 Affidavit Declaration Certificate Confirmation of Service

02/02/2021 Affidavit Declaration Certificate Confirmation of Service

02/02/2021 Response ▼

Comment  
to Motion for Contempt - Skai Hogue

02/03/2021 Affidavit Declaration Certificate Confirmation of Service ▼



Comment  
Glenda Duling

02/03/2021 Certificate of Mailing

02/03/2021 Affidavit Declaration Certificate Confirmation of Service ▼

Comment  
Michelle Kennedy

02/04/2021 Show Cause ▼

Judicial Officer  
Bashor, Gary

Hearing Time  
1:00 PM

Result  
Held

Comment  
Contempt and Dismissal

Parties Present ▲  
Plaintiff

Assistant Attorney General: Dew, Brian Lamar

Assistant Attorney General: Hall, Michael King

02/04/2021 Motion Hearing ▼

Judicial Officer  
Bashor, Gary

Comment  
JURISDICTIONAL ISSUE NEEDS TO BE RESOLVED; CT SETS MATTER  
TO 2/18/2021 AT 10:00AM

02/05/2021 Petition ▼

Comment  
for Order Compelling Compliance with Agency Order of Immediate Restraint

02/05/2021 Summons

02/10/2021 Notice Withdraw and Substitution of Counsel

02/11/2021 Notice of Intent to Withdraw

02/16/2021 Affidavit Declaration Certificate Confirmation of Service

02/17/2021 Motion to Dismiss

02/17/2021 Proposed Order Findings

02/17/2021 Affidavit Declaration Certificate Confirmation of Service

02/17/2021 Order of Dismissal Without Prejudice ▼

Judicial Officer  
Bashor, Gary

02/17/2021 Case Resolution Dismissal Without Trial

02/18/2021 Motion Hearing ▼

Judicial Officer  
Bashor, Gary

Hearing Time  
10:00 AM

Cancel Reason  
Dismissed

Comment  
Show cause, contempt, dismissal

03/01/2021 Affidavit Declaration Certificate Confirmation of Service

## Financial

Department of Labor and Industries of the State of Washington

Total Financial Assessment	\$240.00
Total Payments and Credits	\$240.00

12/29/2020	Transaction		\$240.00
	Assessment		

1/29/2021	Mail Payments	Receipt # 08-2021-01661	Department; of; Labor; and; Industries; of; the; State; of; Washington	(\$240.00)
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# **ATTACHMENT 2**

Order to Show Cause and Temporary Restraining Order” on December 31, 2020. Resp., Ex. 15. The response cited various statutes and cases but did not raise any service issues. On January 5, 2021, the Court considered the show cause motion and rejected an argument that Farm Boy was not operating in defiance of its temporary restraining order.<sup>1</sup> So on January 13, the Court issued an order extending the TRO until “otherwise ordered by this Court or Farm Boy is permitted to resume offering indoor dining services pursuant to the Governor’s COVID-19 proclamations, whatever occurs first.” Resp., Ex. 20 at 4. The show cause order also set a preliminary injunction hearing for January 19, 2021. *Id.* During the January 5 hearing, Farm Boy raised no concerns with service.

Despite the TRO and the show cause order, Farm Boy continued to offer indoor dining services in violation of the Governor’s proclamations and WAC 296-800-14035. On January 13, 2021, therefore, L&I moved for a second order of contempt. Resp., Ex. 22. On that same day, Farm Boy filed the “Defendant’s Response to Preliminary Injunction and Motion to Dismiss Case and Vacate Restraining Order on Constitutional Grounds.”

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<sup>1</sup> Farm Boy wrongly states that the prohibition on indoor dining services expired on January 5, 2021. Resp. at 6. Under the Governor’s Proclamation 20-25.11, the prohibition remained in place until January 11, and under Proclamation 20-25.12 and the “Healthy Washington—Roadmap to Recovery,” indoor dining services continued to be prohibited until Thurston County entered Phase II, which occurred at the end of January. App. 6.