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FILED  
THURSTON COUNTY, WA  
SUPERIOR COURT

APR 20 2021

Linda Myhre Enlow  
Thurston County Clerk

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<input type="checkbox"/> EXPEDITE <input checked="" type="checkbox"/> Hearing is set Date: March 12, 2021 Time: 9:00 am Judge/Calendar: Judge Lanese
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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.

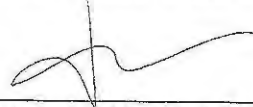
NO. 20-2-02460-34

COVER SHEET FOR PROPOSED  
ORDER

Cover sheet for Proposed Order.

DATED this 21st day of April, 2021.

HARBOR APPEALS AND LAW, PLLC



Drew Mazzeo, WSBA# 46506  
Attorney for Defendant

20-2-02460-34  
PROR 141  
Proposed Order Findings  
10150617



Cover Sheet for Proposed Order  
Page 1 of 1

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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

[PROPOSED] ORDER GRANTING  
MOTION TO VACATE AND DISMISS

(Clerks action required)

THIS MATTER having come on before the Court and the Court having reviewed the records herein and being fully advised, the Court HEREBY FINDS:

1. The original ex-parte Petition by Labor & Industries did not allege “immediate and irreparable injury . . . will” occur to the “applicant,” *i.e.*, Labor & Industries. It alleged “risk” and a “substantial probability” of harm. The harm to the Petitioner, Labor & Industries, sought to prevent was injury to the agency in its “role of protecting workers statewide.”

2. First-hand witness testimony, based on personal knowledge, regarding what Farm Boy was or was not allegedly doing did not support the original ex-parte Petition by Labor & Industries.

3. Farm Boy allegedly operating in-doors did not rise to the level of “immediate and irreparable injury . . . will” occur to the “applicant,” *i.e.*, Labor & Industries

1           4.       The original ex-parte Petition by Labor & Industries, and original temporary order,  
2 did not adequately define the injury and state why it is irreparable and why the order was granted  
3 without notice. Nor did the original temporary order “describe in reasonable detail . . . the act or  
4 acts to be restrained.” Rather, it referenced “[an]other document”—something CR 65 specifically  
5 forbids.  
6

7  
8           5.       No evidence ever presented even suggest that any one at Farm Boy has ever been  
9 sick. Neither customers nor employees have complained or provided any substantial evidence  
10 demonstrating irreparable or substantial harm will occur. It is notable that since the original  
11 temporary order was issued, over four months ago, there has been no evidence submitted of any  
12 one at Farm Boy contracting COVID-19 or getting sick. There has been no evidence that Labor  
13 & Industries “role of protecting workers statewide” has been impacted by anything Farm Boy has  
14 alleged done or not done.  
15

16  
17           6.       Farm Boy employees denied wrongdoing and objected to all findings by the Court.  
18

19           7.       Dashboard statistics of COVID-19 demonstrate a low chance of catching or dying  
20 from COVID-19 in Thurston County. This chance is even more remote at Farm Boy because no  
21 employee is over 47 years old.  
22

23           8.       An emergency declared by the governor statewide does not necessarily mean there  
24 is an emergency or harm occurring at Farm Boy that meets the requirements for an ex-parte, no  
25 notice, restraining order. Such (circular) logic would have perverse consequences, in other cases,  
26 such as allowing eviction of, or restraining orders issued against, persons and/or residential  
27 tenants for allegedly violating a proclamation but the landlord or petitioner not having to  
28 demonstrate or prove actual harm or an emergency situation actually occurring.  
29

30           9.       Mary Fowler was never personally served pleading or filing. No summons has

1 been filed or served as of the date of this Order. Nat Fowler is no longer alive.

2 10. Before a hearing on the injunction, Farm Boy was held in contempt.

3  
4 11. During January of 2021, the governor's prohibition on indoor dining in Thurston  
5 County was effectively lifted.

6 12. Order in the affected area, Thurston County, has been restored. Elections were  
7 held last November and there is no significant impediment to the legislature passing law regarding  
8 COVID-19.

9  
10 13. Finding as to the constitutionality of the Governor's authority to issue  
11 proclamations are not necessary given the above findings. However, findings would support that  
12 the Governor does not have constitutional authority to issue proclamations regarding COVID-19  
13 at this point in time.

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16 14. \_\_\_\_\_  
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22 The Court HEREBY CONCLUDES:

23  
24 1. The requirements of CR 65 govern the issuance of the original ex-parte no notice  
25 restraining order. Those requirements are not technicalities and were required to be met when the  
26 Court issued the ex-parte, no-notice, restraining order. Not following them has the potential to  
27 undermine the legitimacy of legal system.

28  
29 2. Labor & Industries Petition and alleged "risk" and "substantial probability" of  
30 harm did not meet the requisites of CR 65. The Petition failed to alleged claims for which relief

1 could be granted under CR 65. The declarations and evidence, lacking firsthand personal  
2 knowledge, provided did not rise to the level of a substantial probability of harm.

3  
4 3. Due process violations occurred when the requirements of CR 65 were not met  
5 and the original ex-parte no notice restraining order, and subsequent restraining orders, were  
6 issued. Those due process violation cannot be undone by any subsequent action. The original ex-  
7 parte no notice restraining order and subsequent restraining orders as well as the injunction order  
8 issued in February of 2021 are void.

9  
10 4. All contempt orders issued in this matter are void. Disobedience of a void order  
11 cannot constitute contempt.

12  
13 5. Labor & Industries failure to personal serve a summons and the petition on Mary  
14 Fowler resulted in the failure to complete commencement of this action and the Court lacked  
15 personal jurisdiction to enter orders against Farm Boy.

16  
17 6. Under CR 65, the Court was required to issue an order on the injunction petition  
18 before issuing contempt orders. The injunction and contempt order entered in February of 2021  
19 was issued when there was no applicable prohibition on indoor dining and should be vacated  
20 under CR 60.

21  
22 7. Conclusions as to the constitutionality of the Governor's authority to issue  
23 proclamations are not necessary given the above findings. However, conclusions would support  
24 that the Governor does not have constitutional authority to issue proclamations regarding  
25 COVID-19 at this point in time. \_\_\_\_\_  
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The Court HEREBY ORDERS:

1. Defendant's motion to vacate and Dismiss is GRANTED.
2. All restraining, injunction, and contempt orders are HEREBY VACATED.
3. Relief, as pled for in the Petition, cannot be granted and the action is HEREBY DISMISSED with PREJUDICE.

4. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED \_\_\_\_\_

\_\_\_\_\_  
Judge

Presented by:

Harbor Appeals and Law, PLLC

\_\_\_\_\_  
Drew Mazzeo WSBA #46506  
Attorney for Farm Boy