

**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

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

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

Plaintiff, State of Washington, Department of Labor and Industries, Division of Occupational Safety and Health (DOSH) by and through its attorneys ROBERT W. FERGUSON, Attorney General, MICHAEL HALL, Assistant Attorney General, and BRIAN DEW, Assistant Attorney General, requests the Court enforce the order of immediate restraint duly issued by the Department against Farm Boy Drive In, and issue a temporary restraining order prohibiting Farm Boy Drive In from operating with indoor dine-in service at the jobsite located at 3840 Maytown Rd SW, Olympia, WA 98512.

This petition is made pursuant to RCW 49.17.130 and RCW 49.17.170, and is necessary to restrain Farm Boy Drive In from violating safety regulations and putting workers in danger of serious injury or death and continuing to violate public health regulations that endanger employees.

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I. JURISDICTION

1.1 This petition is filed pursuant to RCW 49.17.130, and RCW 49.17.170, which authorize DOSH to seek enforcement of an order of immediate restraint and to obtain a temporary restraining order against Farm Boy Drive In.

1.2 Venue is proper in Thurston County Superior Court pursuant to RCW 4.12.025. The worksite is located at 3840 Maytown Rd SW Olympia, WA Thurston County, Washington.

II. PARTIES

2.1 The Department of Labor and Industries is an agency of the State of Washington. DOSH is responsible for the administration and enforcement of Chapter 49.17 RCW, the State of Washington’s OSHA State Plan.

2.2 Farm Boy Drive In operates a business offering indoor dine-in service in Olympia, Thurston County, Washington.

III. FACTS

3.1 COVID-19 presents a public health crisis in Washington State. COVID-19 is caused by a highly contagious virus, and can result in serious illness or death. It has been classified by the World Health Organization as a worldwide pandemic and continues to spread throughout the state. The spread of rapidly increasing COVID cases in our state threatens to overwhelm our state’s hospital and medical systems.

3.2 The Governor of the State of Washington is authorized to issue emergency proclamations under RCW 43.06.220.

3.3 The Governor issued an initial emergency proclamation (Proclamation 20-05) on February 29, 2020 to address the COVID-19 medical crisis. On March 23, 2020, Governor Jay Inslee issued Proclamation 20-25 (Stay Home, Stay Healthy) ordering all non-essential businesses in Washington State to cease operations except for performing basic minimum operations.

1 3.4 On May 4, 2020, Governor Inslee issued Proclamation 20-25.3, establishing a
2 phased re-opening plan based on COVID-19 case trends, testing and hospital capacity, and
3 other factors.

4 3.5 On July 28, 2020, emergency rule WAC 296-800-14035 became effective and
5 was updated on November 16, 2020. Section 1 states: “Where a business activity is prohibited
6 by an emergency proclamation an employer shall not allow employees to perform work.”

7 3.6 On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, which
8 modified the provisions of Proclamations 20-25, et seq., and provided among other things that
9 “**Restaurants and Bars** are closed for indoor dine-in service.” The prohibitions in
10 Proclamation 20-25.8 were set to expire on December 14, 2020.

11 3.7 On December 10, 2020, Governor Inslee issued Proclamation 20-25.9 which
12 remains in effect until January 4, 2021, 2020, and amends and extends Proclamation 20-25,
13 including Proclamation 20-25.8 and its amendments.

14 3.8 Proclamations 20-25.8 and 25.9 prohibit the business activity of restaurant
15 indoor dine-in service from November 17, 2020, through January 4, 2020.

16 3.9 On December 4, 2020, a DOSH Compliance Safety and Health Officer (CSHO)
17 drove by Farm Boy Drive In and observed the restaurant engaged in the business activity of
18 indoor dining.

19 3.10 On December 8, 2020, the Department had delivered to Farm Boy Drive In, by
20 express courier, an Order of Immediate Restraint directing the restaurant to cease indoor dining
21 activities as required by the Governor’s Proclamations and Department regulation. Farm Boy
22 Drive In received the Order of Immediate Restraint on December 9, 2020.

23 3.11 On December 10, 2020, a DOSH CSHO drove by Farm Boy Drive In, and
24 observed it continuing to engage in the business activity of indoor dine-in service in violation
25 of the Order of Immediate Restraint.
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1 3.12 Not complying with the Governor’s proclamations limiting public exposure to
2 the virus, RCW 49.17.060(1)’s safe work place standards, and DOSH safety and health
3 regulations, potentially exposes workers to respiratory droplets that cause Covid-19 infection: a
4 hazard that can cause serious injury or death.

5 3.13 Farm Boy Drive In has publicly stated that it intends to remain open in violation
6 of the Governor’s Proclamations and the Order of Immediate Restraint. Social media posts
7 confirm that the restaurant has continued to provide indoor dine-in services.

8 3.14 By continuing to provide indoor dine-in services, Farm Boy Drive In presents
9 an immediate and serious danger to employees necessitating immediate intervention. There is a
10 substantial probability that death or serious physical harm could result to any employee before
11 such danger can be eliminated through the regular enforcement procedures otherwise provided
12 by RCW 49.17.

13 3.13 By continuing to offer indoor dining, , Farm Boy Drive In is endangering the
14 health and safety of its employees, employees at other jobsites, and the general public, and is
15 violating RCW 49.17.060, and WAC 296-800-14035 and WAC 296-800-11005.

16 3.14 Immediate relief, including enforcement of the Order of Immediate Restraint,
17 and a temporary restraining order, will protect employees from the transmission of COVID-19,
18 thus preventing serious bodily harm or death.

19 3.15 On December 15, 2020, the Department’s attorney provided notice of this
20 petition to Farm Boy Drive In by: telephoning the business’s publicly available phone number;
21 emailing a copy of the Petition, Proposed Order, and supporting documents to Farm Boy Drive
22 In’s publicly listed email address: lela@farmboydrivein.com; and arranging for personal
23 service of the Petition, Proposed Order, and supporting documents to the business location at
24 3840 Maytown Rd Olympia WA 98512..
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1 **IV. CAUSE FOR TEMPORARY RESTRAINING ORDER**

2 **A. General Standards for Temporary Restraining Order**

3 A Court may enter a temporary restraining order (TRO) without written or oral notice
4 to the adverse party or the adverse party’s attorney “only if (1) it clearly appears from specific
5 facts shown by affidavit or by the verified complaint that immediate and irreparable injury,
6 loss, or damage will result to the applicant before the adverse party her or his attorney can be
7 heard in opposition.” CR 65(b).

8 The TRO applicant’s attorney should certify to the court in writing the efforts, if any,
9 which have been made to give the notice, and the reasons supporting the applicant’s claim that
10 notice should not be required. *Id.*

11 A TRO granted without notice must define the injury and state why it is irreparable and
12 why the order was granted without notice, and last for no more than 14 days. If a TRO is
13 issued without notice to the adverse party, the Court should set a hearing on a motion for a
14 preliminary injunction at the earliest possible time. *Id.*

15 The adverse party may appear on two days’ notice to the applicant and move for the
16 dissolution or modification of the TRO. “In that event the court shall proceed to hear and
17 determine such motion as expeditiously as the ends of justice require.” *Id.*

18 **B. Standards for a Temporary Restraining Order Enforcing an Order and Notice of**
19 **Immediate Restraint.**

20 4.1 RCW 49.17.130 authorizes the Department to issue an order of immediate
21 restraint when, upon inspection, the Department believes that an employer has not provided its
22 employees a place of employment free from recognized hazards that are causing or likely to
23 cause serious injury or death to his or her employees or has violated any safety or health
24 regulation promulgated by the Department which such a danger exists from which there is a
25 substantial probability that death or serious physical harm could result to any employee.
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1 4.2 RCW 49.17.170 authorizes the Department to petition this Court to enjoin the
2 employer from operating in violation of the Governor’s proclamation because such operations
3 expose employees to a substantial probability of death or serious physical harm: “In addition to
4 and after having invoked the powers of restraint vested in the director as provided in RCW
5 49.17.130 the superior courts of the state of Washington shall have jurisdiction upon petition of
6 the director, through the attorney general, to enjoin any condition or practice in any workplace
7 from which there is a substantial probability that death or serious physical harm could result to
8 any employee immediately or before the imminence of such danger can be eliminated through
9 the enforcement procedures otherwise provided by this chapter.”

10 4.3 Emergency WAC 296-800-14035 prohibits a business from operating when
11 precluded by a Governor’s proclamation. Failing to comply with the Governor’s proclamations
12 places Farm Boy Drive In’s employees and workers at other jobsites at risk of substantial
13 probability of death or serious harm.

14 4.4 RCW 49.17.060 and WAC 296-800-11005 require Farm Boy Drive In to provide
15 a workplace free from recognized hazards. COVID-19 is a recognized hazard, and its
16 transmission is exacerbated in the provision of indoor dine-in services. In order to protect its
17 employees, Farm Boy Drive In may not offer indoor dine-in services.

18 4.5 Enjoyment of Farm Boy Drive In from the business activity of indoor dine-in
19 service is necessary to prevent further violations of applicable Washington law as outlined in
20 this section.

21 4.6 Petitioners are entitled to temporary or permanent injunctive relief, including a
22 temporary restraining order to enjoin operation of Farm Boy Drive In indoor dine-in operations.

23 **V. RELIEF REQUESTED**

24 The Petitioner requests that the Court:

25 5.1 Issue an order that: 1) compels compliance with the Department’s order of
26 immediate restraint; 2) requires the Respondent to appear in Court at a specific time and place

1 to show cause for why such Order should not become permanent; and 3) provides that failure to
2 comply with this Court's order shall be subject to Contempt of Court.

3 5.2 Retain jurisdiction in this action to implement, carry out, and enforce the terms
4 of the Court's order and to entertain any suitable motions or applications related to this matter.

5 5.3 Issue an order enjoining Farm Boy Drive In from the business activity of indoor
6 dine-in service at its facility at 3840 Maytown Rd SW, Olympia, WA 98512, until such activity
7 is again allowed by the governor's emergency proclamation.

8 5.4 Award attorney fees and costs.

9 5.5 Order any other relief as the Court may deem just and proper.

10 DATED this 15th day of December, 2020.

11 ROBERT W. FERGUSON
12 Attorney General

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