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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

MOTION FOR ORDER OF  
CONTEMPT

**I. INTRODUCTION**

The Department of Labor & Industries of the State of Washington moves the Court for an order finding Defendant Nat D. Fowler and Mary M. Fowler dba Farm Boy Drive In (Farm Boy) in contempt of the Court's temporary restraining order issued on December 15, 2020, and imposing appropriate sanctions.

The Department's motion is based on the files and records in this matter and the accompanying Declaration of Lyndsey Banks.

**II. STATEMENT OF FACTS**

**A. The Order of Immediate Restraint and the Temporary Restraining Order**

On December 4, 2020, the Department issued an order of immediate restraint (OIR) to Farm Boy. The OIR, sent on December 7, 2020, directed Farm Boy to cease providing indoor

1 dining services. Farm Boy received its copy of the OIR on December 8, 2020. Despite having  
2 received the OIR, Farm Boy continued to provide indoor dining services. Banks Decl., ¶ 8.

3 Based on Farm Boy’s violation of the OIR, the Department moved this Court for a  
4 temporary restraining order directing Farm Boy to comply with the OIR. The Court issued the  
5 TRO on December 15, 2020, and Farm Boy received it on December 17, 2020.

6 **B. Events Since the TRO**

7 Following its receipt of the TRO, Farm Boy was observed to be providing indoor dining  
8 services on December 19 and 22. Banks Decl., ¶¶ 10, 12. The Court held a show cause hearing  
9 on the TRO on December 22, 2020. During the hearing, counsel for the Department advised the  
10 Court that Farm Boy was continuing to provide indoor dining services in violation of the OIR  
11 and the TRO. The Court expressed concern upon hearing this and explained the parties’  
12 obligation to adhere to Court orders. The Court also described the potential consequences of  
13 violating a court order, including being found in contempt of Court.

14 Shortly after the show cause hearing, Farm Boy posted a video on its Facebook page  
15 stating that it intended to remain open. With respect to indoor dining services in particular, Farm  
16 Boy’s representative stated, “I cannot legally confirm or deny that we are open for dine-in  
17 seating. You can drive by and see if we’re open for dine-in seating, but I cannot publicly say  
18 that.” Banks Decl., ¶ 13. The following day, December 23, 2020, Farm Boy was observed to be  
19 providing indoor dining services in defiance of the OIR, the TRO, and the Court’s statements at  
20 the show cause hearing. Banks Decl., ¶ 14.

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1 **III. ARGUMENT**

2 **A. Farm Boy Is in Violation of the Court’s December 15, 2020 Temporary**  
3 **Restraining Order**

4 The Court’s temporary restraining order directs Farm Boy to comply with the OIR, which  
5 prohibits Farm Boy from providing indoor dining services. Despite this order, Farm Boy  
6 continues to provide indoor dining services in violation of the OIR. There is no question that by  
7 doing so, Farm Boy is violating the TRO.

8 **B. An Order Finding the Defendants to Be in Contempt of Court Is Warranted**

9 The integrity of the State’s judicial system requires parties to respect the authority of the  
10 courts and comply with its directives. A judge or commissioner may impose a sanction for  
11 contempt of court pursuant to RCW 7.21. “It is the duty of the courts to enforce their valid orders,  
12 and, when it comes to their knowledge that such orders are not obeyed, they should enforce  
13 obedience by punishment for contempt.” *State v. McCoy*, 122 Wn. 94, 97, 209 P. 1112  
14 (1922)(citing *State ex rel. Smith v. Smith*, 17 Wn. 430, 50 Pac. 52.).

15 Pursuant to the TRO, “Farm Boy Drive In is hereby ordered to comply with the  
16 Department of Labor & Industries’ December 7, 2020 Order of Immediate Restraint.” The TRO  
17 also advises Farm Boy that “Violation of this Order may also subject the violator to Contempt  
18 of Court.” Despite this order, Farm Boy has continued to provide the indoor dining services that  
19 the OIR prohibits. Farm Boy is therefore in contempt of court. *See* RCW 7.40.150 (“Whenever  
20 it shall appear to any court granting a restraining order . . . , or by affidavit, that any person has  
21 willfully disobeyed the order after notice thereof, such court shall award an attachment for  
22 contempt against the party charged, or an order to show cause why it should not issue”).

23 **C. The Court Should Impose Appropriate Penalties Against the Defendants for Their**  
24 **Contempt**

25 In a civil contempt action, a court imposes remedial sanctions. *In re Interests of M.B.*,  
26 101 Wn.App. 425, 438, 3 P.3d 780 (2000). A “remedial sanction” is “a sanction imposed for the

1 purpose of coercing performance when the contempt consists of the omission or refusal to  
2 perform an act that is yet in the person’s power to perform.” RCW 7.21.010.

3 RCW 7.21.030 provides that sanctions may be imposed upon a person found to be in  
4 contempt of court. Specifically, “the court may initiate a proceeding to impose a remedial  
5 sanction . . . on the motion of a person aggrieved by a contempt of court in the proceeding to  
6 which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and  
7 hearing, may impose a remedial sanction authorized by this chapter.” RCW 7.21.030(1).  
8 Subsection (2) of the statute describes specific sanctions that the court can impose:

9 If the court finds that the person has failed or refused to perform an act that is yet within  
10 the person's power to perform, the court may find the person in contempt of court and  
impose one or more of the following remedial sanctions:

11 (a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1)(b)  
12 through (d). The imprisonment may extend only so long as it serves a coercive purpose.

13 (b) A forfeiture not to exceed two thousand dollars for each day the contempt of court  
continues.

14 (c) An order designed to ensure compliance with a prior order of the court.

15 (d) Any other remedial sanction other than the sanctions specified in (a) through (c) of  
16 this subsection if the court expressly finds that those sanctions would be ineffectual to  
terminate a continuing contempt of court.

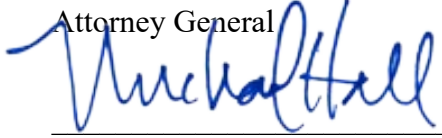
17 RCW 7.21.030(2). It is plainly within the power of Farm Boy to stop providing indoor dining  
18 services. Remedial sanctions under RCW 7.21.030(2) are therefore warranted.

19 The Department submits that the Court should sanction Farm Boy \$2,000 per day, or  
20 such other amount as the Court deems just, for the period from service of the TRO to the hearing  
21 on the Department’s motion. This period begins on December 17, 2020, and runs through  
22 December 29, 2020, for a total of 12 days. Remedial sanctions against Farm Boy for its contempt  
23 of court should therefore be \$24,000, or such other amount as the Court deems just. The  
24 Department further submits that Farm Boy should be sanctioned \$2,000 per day, or such other  
25 amount as the Court deems just, if it continues to violate the TRO after issuance of the contempt  
26 order.

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**IV. CONCLUSION**

Farm Boy is in violation of this Court's temporary restraining order. As such, it is in contempt of court and should be sanctioned accordingly.

ROBERT W. FERGUSON  
Attorney General  


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