

12/31/2020 10:46:39 AM

Linda Myhre Enlow
Thurston County Clerk

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:
4 Date: 1/5/2021
5 Time: 3:00 PM
6 **Hon. Chris Lanese**

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 DEPARTMENT OF LABOR AND
10 INDUSTRIES OF THE STATE OF
11 WASHINGTON

Plaintiff,

v.

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

Defendant.

NO. 20-2-02460-34

ORDER ON SHOW CAUSE
HEARING

[PROPOSED]

14 This matter came on for hearing on the 5th day of January, 2021. The Court heard argument
15 from Michael Hall, Assistant Attorney General, on behalf of the Department of Labor & Industries,
16 and Jason A. Celski on behalf of the Defendant Fowler Nat D. and Mary M dba Farm Boy Drive In
17 (Farm Boy). The Court considered the files and records in this matter, including:

- 18 1. The Department's Petition for Order Compelling Compliance with Agency Order of
19 Immediate Restraint Pursuant to RCW 49.17.130 and for Injunctive Relief Under
20 RCW 49.17.170, and pleadings filed therewith; and
21 2. This Court's Temporary Restraining Order issued on December 15, 2020.

22
23 Based on the foregoing, the Court makes the following:

24 **FINDINGS OF FACT**

- 25 1. On December 7, 2020, the Department issued an order of immediate restraint
26 prohibiting Farm Boy from providing indoor dining services.

- 1 2. On December 15, 2020, this Court issued a Temporary Restraining Order pursuant to
2 RCW 49.17.130 and RCW 49.17.170. The TRO ordered Farm Boy to comply with the
3 Department of Labor & Industries' December 7, 2020 order of immediate restraint.
- 4 3. The TRO was served on Farm Boy on December 17, 2020.
- 5 4. The Department has a clear legal right to enforce the requirements of the Washington
6 Industrial Safety and Health Act and the rules promulgated thereunder.
- 7 5. RCW 49.17.130 authorizes the Department, in making inspections and investigations
8 under Chapter 49.17 RCW, to issue an order of immediate restraint if it believes an
9 employer has violated a requirement of any safety or health standard which violation is
10 such that a danger exists from which there is substantial probability that death or
11 serious physical harm could result to an employee.
- 12 6. Where an order of immediate restraint has been issued, RCW 49.17.130(3) authorizes
13 the Office of the Attorney General, on behalf of the Department, to "make an
14 application to the superior court of the county wherein such condition of employment
15 or practice exists for a temporary restraining order or such other relief as appears to be
16 appropriate under the circumstances."
- 17 7. Pursuant to RCW 49.17.170(1), "[i]n addition to and after having invoked the powers
18 of restraint vested in the director as provided in RCW 49.17.130 the superior courts of
19 the state of Washington shall have jurisdiction upon petition of the director, through
20 the attorney general, to enjoin any condition or practice in any workplace from which
21 there is a substantial probability that death or serious physical harm could result to any
22 employee immediately or before the imminence of such danger can be eliminated
23 through the enforcement procedures otherwise provided by this chapter."
- 24 8. The factual record establishes that: On December 7, 2020, the Department issued an
25 order of immediate restraint to Farm Boy regarding business activity located at 3840
26 Maytown Rd SW, Olympia, WA 98512.. The order of immediate restraint required the

1 employer to immediately cease the business activity of indoor dine-in service and to
2 comply with Governor Jay Inslee's COVID proclamations and WAC 296-800-14035.
3 Following issuance of the Order of Immediate Restraint on December 7, 2020, Farm
4 Boy engaged in the business activity of indoor dine-in service. Following issuance of
5 the temporary restraining, it continued to engage in the activity of indoor dine-in
6 services.

7 9. The Department has a well-grounded fear of immediate invasion of its clear legal right
8 to enforce the requirements of the Washington Industrial Safety and Health Act, as
9 allowing Farm Boy to continue to provide indoor dine-in service constitutes a
10 violation of WAC 296-800-14035 and the Washington Industrial Safety and Health
11 Act.

12 10. Actual and substantial injury will result by allowing Farm Boy to continue operation in
13 violation of the Order of Immediate Restraint in that employees in the State of
14 Washington will be exposed to the risk of contracting COVID-19.

15 11. There is a substantial probability that death or serious physical harm could result to
16 employees immediately or before the imminence of such danger can be eliminated
17 through the enforcement procedures otherwise provided by Chapter 49.17 RCW.

18 12. There has been no change in the status quo since the TRO was issued and served.

19 13. Good cause exists to continue to keep the temporary restraining order in place in this
20 matter.

21
22 Based on the foregoing Findings of Fact, the Court makes the following:

23 **CONCLUSIONS OF LAW**

- 24 1. This Court has jurisdiction over the parties to, and the subject of, this matter.
25 2. The TRO was properly issued and should remain in full force and effect until otherwise
26 ordered by the Court.

1 Based on the foregoing Findings of Fact and Conclusions of law, the Court issues the
2 following:

3 **ORDER**

4 1. The temporary restraining order shall remain in full force and effect until
5 otherwise ordered by this Court.

6 2. It is ordered that this matter be set for hearing for the Department's motion for
7 preliminary injunction on January 22, 2021 at 9:00 a.m. or at _____.
8 Location _____.

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

12 DATED this ____ day of _____, 2020.

13
14 _____
15 JUDGE

16 PRESENTED BY:

17 ROBERT W. FERGUSON
18 Attorney General

19 

20 Brian Dew, WSBA No. 18877
21 (206) 389-2186

22 Michael Hall, WSBA No. 19871
23 (360) 586-7761

24 Assistant Attorneys General

25 COPY SENT TO:

26 JASON A. CELSKI
27 WSBA No. 37848

28 Defendant Fowler Nat D. and Mary M dba Farm Boy Drive In