

01/04/2021 2:11:04 PM

Linda Myhre Enlow
Thurston County Clerk

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:
4 Date: 1/5/2021
5 Time: 1:30 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

12 Plaintiff,

13 v.

14 FOWLER NAT D. AND MARY M.
15 DBA FARM BOY DRIVE IN

16 Defendant.

NO. 20-2-02460-34

DEPARTMENT'S REPLY TO
DEFENDANTS' RESPONSE TO
ORDER TO SHOW CAUSE AND
TEMPORARY RESTRAINING
ORDER

17 In response to the Department's motion for a temporary restraining order, Farm Boy does
18 not dispute the validity of the Governor's COVID-19 proclamations, nor does it argue that WAC
19 296-800-14035 is unenforceable. Likewise, Farm Boy does not assert that it has not violated
20 these laws, along with the Court's temporary restraining order and order of contempt. Instead,
21 Farm boy takes the position that it is *entitled* to violate the law because other businesses are at
22 least as hazardous as its own.

23 It cannot be disputed that indoor dining at restaurants contributes significantly to the
24 spread of coronavirus. This is proven by the studies attached to the Department's prior pleadings,
25 as well as the declarations the Department has filed. As set out in the Declaration of Anne Soiza,

26 In a study published in November 2020, researchers from Stanford and Northwestern
Universities studied the extent to which "Points of Interest" (POIs) such as restaurants,
grocery stores, and religious establishments contributed to the spread of COVID-19. . . .
The study concludes that "a small minority of 'superspreader' points of interest account

1 for a large majority of the infections, and that restricting the maximum occupancy at each
2 point of interest is more effective than uniformly distributing mobility.” . . . More
3 specifically, the Chang study determined that “[c]ertain categories of POIs also
4 contributed far more to infections (for example, full-service restaurants and hotels),
5 although [the authors’] model predicted time-dependent variation in how much each
6 category contributed . . . For example, restaurants and fitness centers contributed less to
7 the predicted number of infections over time, *probably because of lockdown orders to*
8 *close these POIs . . .*” . . . In other words, facilities such as full-service restaurants are
9 high risk hazards and powerful contributors to the spread of COVID-19, with reductions
10 in their contributions over time being attributed to lockdowns, i.e., closures. . . .

11 In an additional study published in November 2020, researchers found that COVID-19
12 “droplet transmission can occur at a distance greater than 6 feet if there is direct air flow
13 from an infected person in an indoor setting.” In one restaurant, a subject was infected
14 by someone more than 20 feet away. . . . The study further noted that the “attack rate” at
15 the subject restaurant was greater than that of the secondary attack rate among total close
16 contacts and household contacts. . . .

17 Declaration of Anne Soiza, ¶¶ 26, 27.

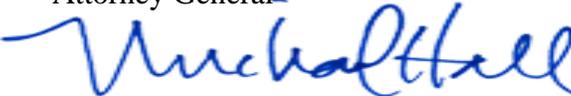
18 In the face of this overwhelming evidence, Farm Boy asserts that it should still be allowed
19 to provide indoor dining services because its safety precautions make it no more dangerous than
20 various other businesses. The issue before the Court, however, is not whether the Governor
21 should have imposed additional restrictions on other businesses, nor is it whether Farm Boy is
22 so safe that - in contrast to the hundreds of Washington restaurants who have chosen to abide by
23 the law - it should be exempt from the indoor dining services prohibition.

24 Instead, the question is simple: given that Farm Boy has never complied with the
25 Governor’s proclamations and WAC 296-800-14035, should the Court’s temporary restraining
26 order requiring such compliance remain in place pending the preliminary injunction hearing?

The answer is “yes.”

DATED this 4th day of January, 2021.

ROBERT W. FERGUSON
Attorney General



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