

1  EXPEDITE  
2  No Hearing Set  
3  Hearing is Set:  
4     Date: 1/19/2021  
5     Time: 1:30 pm  
6 Hon. Chris Lanese

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9                   **STATE OF WASHINGTON**  
10                   **THURSTON COUNTY SUPERIOR COURT**

11 DEPARTMENT OF LABOR AND  
12 INDUSTRIES OF THE STATE OF  
13 WASHINGTON

NO. 20-2-02460-34

MOTION FOR SECOND ORDER  
OF CONTEMPT

Plaintiff,

v.

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

16  
17 Defendant.

18                   **I. INTRODUCTION**

19                 The Department of Labor & Industries of the State of Washington moves the Court for a  
20 second order finding Defendant, Nat D. Fowler and Mary M. Fowler dba Farm Boy Drive In  
21 (Farm Boy), in contempt of the Court’s temporary restraining order issued on December 15,  
22 2020, and imposing further sanctions.

23  
24                 The Department’s motion is based on the files and records in this matter and the  
25 accompanying Declarations of Scott Lindquist, Lyndsey Banks and Bryan Templeton.  
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1 **II. STATEMENT OF FACTS**

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

3 On December 4, 2020, the Department issued an order of immediate restraint (OIR) to  
4 Farm Boy. The OIR, sent on December 7, 2020, directed Farm Boy to cease providing indoor  
5 dining services. Farm Boy received its copy of the OIR on December 8, 2020. Despite having  
6 received the OIR, Farm Boy continued to provide indoor dining services. Declaration of Lyndsey  
7 Banks (“First Banks Decl.”), ¶ 8.  
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9 Based on Farm Boy’s violation of the OIR, the Department moved this Court for a  
10 temporary restraining order directing Farm Boy to comply with the OIR. The Court issued the  
11 TRO on December 15, 2020, and Farm Boy received it on December 17, 2020.  
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13 **B. Events Since the TRO**

14 Following its receipt of the TRO, Farm Boy was observed providing indoor dining  
15 services on December 19 and 22. First Banks Decl., ¶¶ 10, 12. The Court held a show cause  
16 hearing on the TRO on December 22, 2020. During the hearing, the Court was advised that Farm  
17 Boy was continuing to provide indoor dining services in violation of the OIR and the TRO. The  
18 Court expressed concern upon hearing this and explained the parties’ obligation to adhere to  
19 Court orders. The Court also described the potential consequences of violating a court order,  
20 including being found in contempt of Court.  
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22 Shortly after the show cause hearing, Farm Boy posted a video on its Facebook page  
23 stating that it intended to remain open. With respect to indoor dining services in particular, Farm  
24 Boy’s representative stated, “I cannot legally confirm or deny that we are open for dine-in  
25 seating. You can drive by and see if we’re open for dine-in seating, but I cannot publicly say  
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1 that.” First Banks Decl., ¶ 13. The following day, December 23, 2020, Farm Boy was observed  
2 providing indoor dining services in defiance of the OIR, the TRO, and the Court’s statements at  
3 the show cause hearing. First Banks Decl., ¶ 14.

4 **C. The First Order of Contempt**

5 Because Farm Boy continued to violate the TRO after the December 22 hearing, the  
6 Department moved for an order of contempt. On December 29, 2020, the Court entered an order  
7 holding Farm Boy in contempt of the TRO and imposing sanctions of \$2,000 per day beginning  
8 with the date on which Farm Boy received the TRO and continuing until Farm Boy came into  
9 compliance. As of the date of this filing, Farm Boy has accumulated \$56,000 in penalties (\$2,000  
10 x 28 days).

11 **D. Farm Boy Is Still Defying the TRO**

12 Despite the OIR, the TRO, and the order of contempt, Farm Boy continues to provide  
13 indoor dining services. On January 1, 2021, Farm Boy posted on its Facebook page a flyer  
14 advertising a “rally” for January 4, 2021, at Farm Boy’s location. The flyer states that  
15 “REBELLION TO TYRANTS IS OBEDIENCE TO GOD,” and indicates that “WE DO NOT  
16 FOLLOW UNCONSTITUTIONAL COURT ORDERS.” The flyer continues, “Join us for our  
17 civil disobedience and grand re-opening at Farm Boy in defiance of these unconstitutional court  
18 orders.” Declaration of Lyndsey Banks in Support of Department’s Motion for Second Order of  
19 Contempt (“Third Banks Decl.”), ¶ 16. A video taken during the rally shows numerous people  
20 dining at tables inside Farm Boy, none wearing masks. Third Banks Decl., ¶¶ 17-18.

21 On January 5, the day after the “rally,” the Court conducted a show cause hearing to  
22 determine whether the TRO should remain in place. The Court ruled that the TRO would remain  
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1 in place until Farm Boy was permitted by the Governor’s COVID-19 proclamations to offer  
2 indoor dining services again. Despite this ruling Farm Boy continued to flout the Court’s  
3 authority, posting a video on its website mere hours later proclaiming that “we’re going to keep  
4 rallying like we’re rallying,” that “[w]e are going to continue this battle, and fight, and do  
5 everything we have to do to keep our doors open,” and that “we’re still here, we’re still standing  
6 strong, we’re still going to continue what we’re doing.” In the January 5 video, Farm Boy also  
7 encourages other restaurants to violate the Governor’s proclamations, stating that if five to ten  
8 more restaurants do so, “it’s going to show them that we’re not going to, to continue to let them  
9 push us around, and control what they think we can and cannot do.” Third Banks Decl., ¶¶ 20-  
10 22.  
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12 Two days later, on January 7, 2021, DOSH representatives visited Farm Boy’s location.  
13 The restaurant’s blinds were closed, but there was a sign in a window reading “We Are Open.  
14 Enter at Own Risk. Our Freedoms and our Livelihood are Essential. The precautions we take are  
15 [blank].” The representatives observed multiple vehicles in Farm Boy’s parking lot, and people  
16 going from those vehicles into Farm Boy. Some of these people stayed inside Farm Boy for  
17 approximately 40 minutes and departed the restaurant with no bags of food. One group was in  
18 the restaurant for at least one hour and 40 minutes, and also left without take-out orders.  
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20 Besides observing Farm Boy patrons entering the restaurant, remaining inside for  
21 extended periods, and leaving without take-out food, the DOSH representatives ordered food at  
22 Farm Boy’s drive-through window. While picking up the food the representatives were able to  
23 see through the window into the dining area. There were at least 12 patrons in the restaurant  
24 eating food at tables and three employees working without masks. One of the representatives  
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1 asked the drive-through attendant if he could eat his drive-through food inside Farm Boy; the  
2 attendant responded with a wink and stated “I can’t say yes or not to that.” Declaration of Bryan  
3 Templeton in Support of Department’s Motion for Second Order of Contempt, ¶¶ 4-7.

### 4 III. ARGUMENT

#### 5 A. Farm Boy Is in Violation of the Court’s December 15, 2020 Temporary 6 Restraining Order

7 The Court’s temporary restraining order directs Farm Boy to comply with the OIR, which  
8 prohibits Farm Boy from providing indoor dining services. The order of contempt reaffirms this  
9 prohibition, and the order on show cause keeps the prohibition in place. Despite these orders,  
10 Farm Boy continues to provide indoor dining services in violation of the OIR. There is no  
11 question that by doing so, Farm Boy continues to violate the TRO.  
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#### 13 B. A Second Order Finding the Defendants to Be in Contempt of Court Is Warranted

14 On December 29, 2020, the Court entered an order holding Farm Boy in contempt of the  
15 TRO and imposing sanctions of \$2,000 per day beginning with the date on which Farm Boy  
16 received the TRO and continuing until Farm Boy came into compliance. Farm Boy continues  
17 to ignore the court’s order. As a result, the Department asks that a second order of contempt be  
18 issued and further sanctions imposed. The integrity of the State’s judicial system requires parties  
19 to respect the authority of the courts and comply with its directives. A judge or commissioner  
20 may impose a sanction for contempt of court pursuant to RCW 7.21. “It is the duty of the courts  
21 to enforce their valid orders, and, when it comes to their knowledge that such orders are not  
22 obeyed, they should enforce obedience by punishment for contempt.” *State v. McCoy*, 122 Wn.  
23 94, 97, 209 P. 1112 (1922)(citing *State ex rel. Smith v. Smith*, 17 Wn. 430, 50 Pac. 52.).  
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1 Pursuant to the TRO, Farm Boy was “ordered to comply with the Department of Labor  
2 & Industries’ December 7, 2020 Order of Immediate Restraint.” Despite this Court’s December  
3 29, 2020 order finding Farm Boy in contempt of the TRO, Farm Boy has continued to offer  
4 indoor dining services. Farm Boy is thus violating two of this Court’s orders, and has publicly  
5 stated that “I stop keeping track [of the fines] because I’m not paying them.” Banks Decl., ¶ 19.  
6 A second order of contempt should therefore issue.  
7

8 **C. The Court Should Impose Appropriate Sanctions Against the Defendants for  
9 Their Contempt**

10 In a civil contempt action, a court imposes remedial sanctions. *In re Interests of M.B.*,  
11 101 Wn.App. 425, 438, 3 P.3d 780 (2000). A “remedial sanction” is “a sanction imposed for the  
12 purpose of coercing performance when the contempt consists of the omission or refusal to  
13 perform an act that is yet in the person’s power to perform.” RCW 7.21.010.

14 RCW 7.21.030 provides that sanctions may be imposed upon a person found to be in  
15 contempt of court. Specifically, “the court may initiate a proceeding to impose a remedial  
16 sanction . . . on the motion of a person aggrieved by a contempt of court in the proceeding to  
17 which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and  
18 hearing, may impose a remedial sanction authorized by this chapter.” RCW 7.21.030(1).  
19 Subsection (2) of the statute describes specific sanctions that the court can impose:  
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21 If the court finds that the person has failed or refused to perform an act that is yet within  
22 the person's power to perform, the court may find the person in contempt of court and  
23 impose one or more of the following remedial sanctions:

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

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

1 (c) An order designed to ensure compliance with a prior order of the court.  
2

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

5 RCW 7.21.030(2). It is plainly within the power of Farm Boy to stop providing indoor dining  
6 services. Further remedial sanctions under RCW 7.21.030(2) are therefore warranted.

7 In its previous contempt order, the Court imposed a penalty of \$2,000 per day on Farm  
8 Boy. This has been inadequate to bring Farm Boy into compliance with the TRO – indeed, as  
9 noted above, Farm Boy’s owner told the Seattle Times, “I stop keeping track [of the fines]  
10 because I’m not paying them.” Banks Decl., ¶ 19. The Department therefore submits that the  
11 Court should impose an additional sanction on Farm Boy pursuant to RCW 7.21.030(2)(c), i.e.,  
12 “[a]n order designed to ensure compliance with a prior order of the court.” In addition to the  
13 continuing \$2000 a day sanction, the Department also asks that the sanctions to date be reduced  
14 to a judgment in the amount of \$56,000, and that Farm Boy be ordered to pay this amount upon  
15 entry of the judgment.  
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**IV. CONCLUSION**

Farm Boy continues to violate this Court's temporary restraining order despite having already been found in contempt of that order. As such, it remains in contempt of court and should be sanctioned accordingly.

DATED this 13<sup>th</sup> day of January 2021.

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