

01/13/2021 4:38:35 PM

Linda Myhre Enlow  
Thurston County Clerk

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

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

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

14                                   Plaintiff,

15                   v.

16 FOWLER NAT D. AND MARY M.  
17 DBA FARM BOY DRIVE IN

18                                   Defendant.

NO. 20-2-02460-34

SECOND ORDER OF CONTEMPT

[PROPOSED]

**Clerk's Action Required**

19           This matter came on for hearing on the 12th day of January 2021. The Court heard argument  
20 from Michael Hall, Assistant Attorney General, on behalf of the Department of Labor & Industries,  
21 and Jason Celski on behalf of the Defendant (Farm Boy). The Court considered the files and records  
22 in this matter, including:

- 23 1.       The files and records herein;
- 24 2.       The Department's Motion for Second Order of Contempt;
- 25 3.       The Declaration of Lyndsey Banks in Support of Department's Motion for Second Order  
26 of Contempt;
4.       The Declaration of Bryan Templeton in Support of Department's Motion for Second Order  
of Contempt;

1 5. The Declaration of Michael Hall in Support of Department's Motion for Second Order of  
2 Contempt;

3 6. The Declaration of Scott W. Lindquist;

4 7. \_\_\_\_\_

5 8. \_\_\_\_\_

6 9. \_\_\_\_\_

7  
8 Based on the foregoing, the Court makes the following:

9 **FINDINGS OF FACT**

- 10 1. On December 15, 2020, this Court issued a Temporary Restraining Order (TRO)  
11 pursuant to RCW 49.17.130 and RCW 49.17.170. The TRO ordered Farm Boy to  
12 comply with the Department of Labor & Industries' December 7, 2020 Order of  
13 Immediate Restraint, which prohibited Farm Boy from providing indoor dining  
14 services.
- 15 2. The TRO was served on Farm Boy on December 17, 2020.
- 16 3. After the TRO issued, Farm Boy continued to provide indoor dining services in  
17 violation of the Department's Order of Immediate Restraint and in violation of this  
18 Court's TRO.
- 19 4. On December 29, 2020, this Court issued an order finding Farm Boy in contempt of  
20 the December 15, 2020 TRO. As a remedial sanction, the order of contempt imposed a  
21 \$2,000 per day penalty on Farm Boy for each day that Farm Boy was in contempt of  
22 the TRO. The total penalty as of January 14, 2021 is \$56,000 (28 days of contempt x  
23 \$2,000 per day).
- 24 5. Since the order of contempt issued, Farm Boy has continued to provide indoor dining  
25 services in violation of the Department's Order of Immediate Restraint, the December  
26 15, 2020 TRO, and the December 29, 2020 order of contempt.

- 1 6. By continuing to provide indoor dining services, Farm Boy has failed or refused to
- 2 perform an act that is within its power to perform.
- 3 7. The previous remedial sanction of \$2,000 per day has been ineffectual in terminating
- 4 Farm Boy's continuing contempt of court.
- 5 8. \_\_\_\_\_
- 6 9. \_\_\_\_\_
- 7 10. \_\_\_\_\_

8 Based on the foregoing Findings of Fact, the Court makes the following

9 **CONCLUSIONS OF LAW**

- 10 1. This Court has jurisdiction over the parties to, and the subject of, this matter.
- 11 2. Farm Boy remains in violation of the Temporary Restraining Order issued on December
- 12 15, 2020, and served on December 17, 2020.
- 13 3. Pursuant to RCW 7.21.030, remedial sanctions against Farm Boy for its violation of the
- 14 TRO are appropriate.
- 15 4. The previous contempt sanction against Farm Boy of \$2,000 per day has been ineffectual
- 16 in terminating Farm Boy's continuing contempt of court.
- 17 5. Additional remedial sanctions are warranted pursuant to RCW 7.21.030(2). These
- 18 sanctions should be as follows: the sanctions imposed through January 14, 2021, should
- 19 be reduced to a judgment in the amount of \$56,000 made payable immediately.
- 20 6. Contempt sanctions in the amount of \$2,000 per day should remain in effect until Farm
- 21 Boy comes into compliance with the TRO. Farm Boy may purge its contempt for
- 22 sanctions imposed after January 14, 2021, by presenting evidence of compliance with the
- 23 TRO. Such evidence shall include a sworn statement that Farm Boy has ceased providing
- 24 indoor dining services and will comply with the TRO if permitted to reopen.
- 25 7. \_\_\_\_\_
- 26 8. \_\_\_\_\_

1 9. \_\_\_\_\_

2 At the request of the Department of Labor and Industries, and based on the foregoing  
3 Findings of Fact and Conclusions of law, the Court issues the following:

4 **ORDER OF CONTEMPT**

5 1. Farm Boy remains in contempt of the temporary restraining order issued on  
6 December 15, 2020 and served on December 17, 2020 and has not complied with the order of  
7 contempt issued on December 29, 2020.

8 2. The prior sanctions against Farm Boy of \$2,000 per day for each day Farm Boy  
9 is in contempt of the TRO remain in place. Farm Boy may purge its contempt for sanctions  
10 imposed after January 14, 2021 by presenting evidence of compliance with the TRO. Such  
11 evidence shall include a sworn statement that Farm Boy has ceased providing indoor dining  
12 services and will comply with the TRO if permitted to reopen.

13 3. The contempt sanctions up to and including January 14, 2021, in the amount of  
14 \$56,000, shall be reduced to judgment. Farm Boy shall pay this amount upon entry of the  
15 judgment.

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

18 5. \_\_\_\_\_

19 6. \_\_\_\_\_

20 7. \_\_\_\_\_

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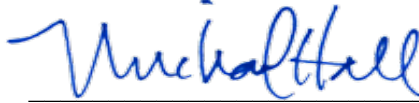
1 This Court shall retain jurisdiction in this action to implement, carry out, and enforce the  
2 terms of the Court's order, and to entertain any suitable motions or applications related to this  
3 matter.

4 DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

5  
6 \_\_\_\_\_  
7 JUDGE

8 PRESENTED BY:

9 ROBERT W. FERGUSON  
10 Attorney General

11 

12 \_\_\_\_\_  
13 MICHAEL HALL  
14 Assistant Attorney General  
15 WSBA No. 19871  
16 Attorneys for Department of Labor & Industries  
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