

01/13/2021 4:43:26 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

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

10 DEPARTMENT OF LABOR AND
11 INDUSTRIES OF THE STATE OF
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

SECOND ORDER OF CONTEMPT

[PROPOSED]

Clerk's Action Required

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

- 21 1. The files and records herein;
22 2. The Department's Motion for Second Order of Contempt;
23 3. The Declaration of Lyndsey Banks in Support of Department's Motion for Second Order
24 of Contempt;
25 4. The Declaration of Bryan Templeton in Support of Department's Motion for Second Order
26 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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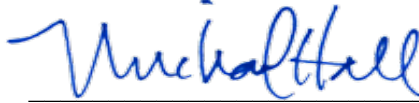
1 This Court shall retain jurisdiction in this action to implement, carry out, and enforce the
2 terms of the Court's order, and to entertain any suitable motions or applications related to this
3 matter.

4 DATED this ____ day of _____, 2021.

5
6 _____
7 JUDGE

8 PRESENTED BY:

9 ROBERT W. FERGUSON
10 Attorney General

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