

01/15/2021 2:22:45 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                                   **STATE OF WASHINGTON**  
9                                   **THURSTON COUNTY SUPERIOR COURT**

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

13                                   Plaintiff,

14                                   v.

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

17                                   Defendant.

NO. 20-2-02460-34

[PROPOSED] ORDER GRANTING  
PRELIMINARY INJUNCTION

**Clerk's Action Required**

18                   This matter came on for hearing on the 19th day of January. The Court heard argument from  
19 Michael Hall, Assistant Attorney General, on behalf of the Department of Labor & Industries, and  
20 Jason A. Celski on behalf of the Defendant Fowler Nat D. and Mary M dba Farm Boy Drive In  
21 (Farm Boy). The Court considered the files and records in this matter, including:

- 22                   1. The Department's Petition for Order Compelling Compliance with Agency Order of  
23                   Immediate Restraint Pursuant to RCW 49.17.130 and for Injunctive Relief Under RCW  
24                   49.17.170, and accompanying declarations;
- 25                   2. This Court's Temporary Restraining Order issued on December 15, 2020;
- 26                   3. Defendant's Response to Preliminary Injunction and Motion to Dismiss Case and Vacate  
                    Restraining Order on Constitutional Grounds;

1 4. Department’s Reply to Response to Preliminary Injunction and Motion to Dismiss, and  
2 accompanying declarations;

3 5. The pleadings and declarations in the Court file.

4 Based on the foregoing, the Court makes the following:

5 **FINDINGS OF FACT**

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

8 2. On December 15, 2020, this Court issued a Temporary Restraining Order pursuant to  
9 RCW 49.17.130 and RCW 49.17.170. The TRO ordered Farm Boy to comply with the  
10 Department of Labor & Industries’ December 7, 2020 order of immediate restraint.

11 3. The TRO was served on Farm Boy on December 17, 2020.

12 4. Several orders extended the Temporary Restraining Order.

13 5. The Department has a clear legal right to enforce the requirements of the Washington  
14 Industrial Safety and Health Act and the rules promulgated thereunder.

15 6. RCW 49.17.130 authorizes the Department, in making inspections and investigations  
16 under Chapter 49.17 RCW, to issue an order of immediate restraint if it believes an  
17 employer has violated a requirement of any safety or health standard which violation is  
18 such that a danger exists from which there is substantial probability that death or  
19 serious physical harm could result to an employee.

20 7. Where an order of immediate restraint has been issued, RCW 49.17.130(3) authorizes  
21 the Office of the Attorney General, on behalf of the Department, to “make an  
22 application to the superior court of the county wherein such condition of employment  
23 or practice exists for a temporary restraining order or such other relief as appears to be  
24 appropriate under the circumstances.”

25 8. Pursuant to RCW 49.17.170(1), “[i]n addition to and after having invoked the powers  
26 of restraint vested in the director as provided in RCW 49.17.130 the superior courts of

1 the state of Washington shall have jurisdiction upon petition of the director, through  
2 the attorney general, to enjoin any condition or practice in any workplace from which  
3 there is a substantial probability that death or serious physical harm could result to any  
4 employee immediately or before the imminence of such danger can be eliminated  
5 through the enforcement procedures otherwise provided by this chapter.”

6 9. The factual record establishes that: On December 7, 2020, the Department issued an  
7 order of immediate restraint to Farm Boy regarding business activity located at 3840  
8 Maytown Rd SW, Olympia, WA 98512. The order of immediate restraint required the  
9 employer to immediately cease the business activity of indoor dine-in service and to  
10 comply with Governor Jay Inslee’s COVID proclamations and WAC 296-800-14035.  
11 Following issuance of the Order of Immediate Restraint on December 7, 2020, Farm  
12 Boy engaged in the business activity of indoor dine-in service. Following issuance of  
13 the temporary restraining order, it continued to engage in the activity of indoor dine-in  
14 services. This has been an on-going activity.

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

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

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

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

1 **CONCLUSIONS OF LAW**

- 2 1. This Court has jurisdiction over the parties to, and the subject of, this matter.
- 3 2. Farm Boy’s constitutional arguments, including assertions about the right to
- 4 employment, Equal Protection, and other claims have no merit.
- 5 3. A preliminary injunction should be in effect until Farm Boy is permitted to resume
- 6 offering indoor dining services pursuant to the Governor’s COVID-19 proclamations.

7 Based on the foregoing Findings of Fact and Conclusions of law, the Court issues the

8 following:

9 **ORDER**

- 10 1. Farm Boy is enjoined from offering indoor dining services until Farm Boy is permitted
- 11 to resume offering indoor dining services pursuant to the Governor’s COVID-19
- 12 proclamations.
- 13 2. This Court shall retain jurisdiction in this action to implement, carry out, and enforce
- 14 the terms of the Court's order, and to entertain any suitable motions or applications
- 15 related to this matter.

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

17 \_\_\_\_\_

18 JUDGE

19 PRESENTED BY:

20 ROBERT W. FERGUSON  
21 Attorney General

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23 \_\_\_\_\_  
24 MICHAEL HALL, WSBA No. 19871  
25 Assistant Attorney General

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COPY SENT TO:

JASON A. CELSKI  
WSBA No. 37848  
Defendant Fowler Nat D. and Mary M dba Farm Boy Drive In