



FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.

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Linda Myhre Enlow  
Thurston County Clerk

EX PARTE

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

DEPARTMENT OF LABOR AND  
INDUSTRIES OF THE STATE OF  
WASHINGTON

Plaintiff,

v.

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

Defendant.

NO. 20-2-02460-34

ORDER GRANTING PRELIMINARY  
INJUNCTION AND DENYING  
MOTION TO DISMISS, AND  
SECOND ORDER OF CONTEMPT

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

1. The Department's Petition for Order Compelling Compliance with Agency Order of Immediate Restraint Pursuant to RCW 49.17.130 and for Injunctive Relief Under RCW 49.17.170, and pleadings filed therewith;
2. The Court's December 15, 2020 Temporary Restraining Order Compelling Compliance with Agency Order of Immediate Restraint and Order to Show Cause;
3. The Department's Motion for Order of Contempt, and pleadings filed therewith;
4. Farm Boy's Declarations filed in response to the Department's Motion for Order of Contempt;

ORDER GRANTING PRELIMINARY  
INJUNCTION AND DENYING MOTION  
TO DISMISS, AND SECOND ORDER OF  
CONTEMPT

- 1 5. The Court's December 29, 2020 Order of Contempt;
- 2 6. Farm Boy's Response to Order to Show Cause and Temporary Restraining Order;
- 3 7. The Department's Reply to Defendants' Response to Order to Show Cause and
- 4 Temporary Restraining Order;
- 5 8. The Court's January 12, 2021 Order on Show Cause Hearing;
- 6 9. The Department's Motion for Second Order of Contempt, and pleadings filed therewith;
- 7 10. The Declaration of Alejandra Hambling;
- 8 11. Farm Boy's Response to Preliminary Injunction and Motion to Dismiss Case and Vacate
- 9 Restraining Order on Constitutional Grounds; and
- 10 12. The Department's Reply to Response to Preliminary Injunction and Motion to Dismiss,
- 11 and pleadings filed therewith.

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

#### 13 **FINDINGS OF FACT**

- 14 1. COVID-19 is a dangerous and highly contagious virus that creates a risk of substantial
- 15 bodily injury or death. The virus is presently out of control in the State of Washington.
- 16 2. Indoor dining at restaurants increases the likelihood of transmission of COVID-19 as it
- 17 involves multiple people sitting in close quarters often not wearing masks.
- 18 3. Governor Jay Inslee has issued a series of proclamations in response to the COVID-19
- 19 pandemic. Proclamation 20-25.8, issued on November 15, 2020, prohibited restaurants
- 20 and bars from providing indoor dining services through December 14, 2020.
- 21 Proclamation 20-25.9, issued on December 10, 2020, extended the prohibition on
- 22 indoor dining services to January 4, 2021. Proclamation 20-25.11, issued on
- 23 December 30, 2020, further extended the prohibition on indoor dining services through
- 24 January 11, 2021.
- 25 4. Proclamation 20-25.12, issued on January 11, 2021, implemented the "Healthy
- 26 Washington: Roadmap to Recovery" plan. This Roadmap to Recovery divides

1 Washington into eight regions and establishes a two-phase plan to begin resumption of  
2 activities in the State. Indoor dining activities are prohibited in Phase 1; during Phase 2  
3 indoor dining is limited to 25% capacity. No regions have yet progressed to Phase 2.  
4 5. The Department has issued a series of emergency regulations, codified at WAC 296-  
5 800-14035, that require employers to comply with the Governor's COVID-19  
6 proclamations.  
7 6. As they relate to restaurants, the Governor's COVID-19 proclamations only prohibit  
8 the provision of indoor dining services. None of the proclamations, nor any of the  
9 Department's rules implementing those proclamations, prohibit restaurants from  
10 providing take-out or drive-through services.  
11 7. Under the Governor's COVID-19 proclamations and the Department's rules  
12 implementing those proclamations, restaurants are permitted to have their employees  
13 take food orders, prepare food, and serve food on a take-out or drive-through basis.  
14 8. The Governor's COVID-19 proclamations, and the Department's rules implementing  
15 those proclamations, apply equally to all facilities that provide indoor dining services.  
16 9. On December 7, 2020, the Department issued an order of immediate restraint  
17 prohibiting Farm Boy from providing indoor dining services.  
18 10. On December 15, 2020, this Court issued a Temporary Restraining Order pursuant to  
19 RCW 49.17.130 and RCW 49.17.170. The TRO ordered Farm Boy to comply with the  
20 Department of Labor & Industries's December 7, 2020 order of immediate restraint.  
21 11. Farm Boy continued to provide indoor dining services after receiving the TRO.  
22 12. On December 29, 2020, the Court issued an Order of Contempt against Farm Boy,  
23 holding Farm Boy in contempt of the Court's December 15, 2020 TRO. The Order of  
24 Contempt imposed sanctions on Farm Boy of \$2,000 per day for the period beginning  
25 on December 18, 2020, and continuing at \$2,000 per day until Farm Boy complied  
26 with the TRO or until otherwise ordered by the Court.

1 13. Despite the TRO and the Order of Contempt, Farm Boy has continued providing  
2 indoor dining services in violation of the Governor's COVID-19 proclamations and  
3 the Department's rules implanting those regulations through at least January 7, 2021.

4 14. By continuing to provide indoor dining services, Farm Boy has failed or refused to  
5 perform an act that is within its power to perform.

6 15. The sanctions imposed in the December 29, 2020 Order of Contempt have been  
7 inadequate to bring Farm Boy into compliance with the TRO.

8 16. The Department has a clear legal right to enforce the provisions of the Washington  
9 Industrial Safety and Health Act, RCW ch. 49.17, and the regulations promulgated  
10 thereunder.

11 17. By continuing to provide indoor dining services, Farm Boy is violating WAC 296-  
12 800-14035. The Department therefore has a well-grounded fear of immediate invasion  
13 of its clear legal right.

14 18. By continuing to provide indoor dining services, Farm Boy is placing its employees  
15 and patrons to a risk of contracting COVID-19. Farm Boy's actions are therefore  
16 leading to or will result in actual and substantial injury.

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

18 **CONCLUSIONS OF LAW**

- 19 1. This Court has jurisdiction over the parties to, and the subject of, this matter.  
20 2. A preliminary injunction should issue requiring Farm Boy to comply with the  
21 Governor's COVID-19 proclamations and the Department's regulations implementing  
22 those proclamations.  
23 3. Neither the Governor's COVID-19 proclamations, the Department's regulations  
24 implementing those proclamations, nor the TRO violates any right to hold private  
25 employment.  
26

1 4. Neither the Governor's COVID-19 proclamations, the Department's regulations  
2 implementing those proclamations, nor the TRO violates equal protection.

3 5. Farm Boy has been in contempt of the TRO at least through January 7, 2021.

4 Additional sanctions are necessary to bring Farm Boy into compliance. Those sanctions  
5 should include awarding the Department judgment in the amount of sanctions accrued  
6 from December 18, 2020, through January 7, 2021. This amount is \$42,000.

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

9 **ORDER**

10 1. Farm Boy's Motion to Dismiss Case and Vacate Restraining Order on  
11 Constitutional Grounds is denied.

12 2. Farm Boy is enjoined from providing indoor dining services in violation of the  
13 Governor's COVID-19 proclamations and the Department's regulations implementing those  
14 proclamations. This preliminary injunction shall remain in place until otherwise ordered by the  
15 Court or until Farm Boy comes into compliance with the State's COVID-19 restrictions..

16 3. Farm Boy has been in violation of the TRO from December 18, 2020, through  
17 January 7, 2021. The Court shall enter judgment in the Department's favor in the amount of  
18 sanctions accrued during this period, for a total of \$42,000.

19 4. Remedial sanctions in the amount of \$2,000 per day shall continue to be  
20 imposed for periods after January 7, 2021 under the TRO and under the preliminary injunction  
21 on and after January 19, 2021 until Farm Boy complies with the preliminary injunction or until  
22 otherwise ordered by the Court.

23 5. Farm Boy may purge its contempt for periods after January 7, 2021, by  
24 presenting evidence of compliance with the TRO or preliminary injunction. Such evidence  
25 shall include a sworn statement and supporting evidence that Farm Boy is in compliance with  
26 WAC 296-800-14035 in reference to the Governor's COVID-19 proclamations cited above.

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.

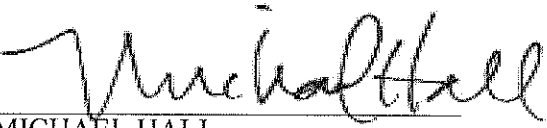
4 DATED this 8<sup>th</sup> day of February, 2021.

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JUDGE

  
CHRISTOPHER LANESE

PRESENTED BY:

ROBERT W. FERGUSON  
Attorney General

  
MICHAEL HALL  
Assistant Attorney General  
WSBA No. 19871  
Attorneys for Department of Labor & Industries

APPROVED AS TO FORM,  
NOTICE OF PRESENTATION WAIVED:

CELSKI LAW FIRM P.L.L.C.

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