

1 Expedite
2 No hearing set
3 Hearing is set
4 Date:
5 Time:
6 Judge/Calendar:

SKAMANIA COUNTY
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GRACE D. CROSS
SUPERIOR COURT CLERK

7 SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR SKAMANIA COUNTY

9 BOB'S WELDING AND AUTO REPAIR, INC.;
10 TLC OPERATIONS, LLC d/b/a CROSSCUT
11 ESPRESSO & DELI; GATOR CREEK
12 GARDENS, a sole proprietorship; JOY FAMILY
13 HARDWARE, LLC d/b/a CARSON
14 HARDWARE; GALT'S GULCH, LLC d/b/a The
15 SKAMANIA OBSERVER; and TIMOTHY
16 CALLAHAN, LORRAINE CREON, ABIGALE
17 COATES, MATTHEW JOY, and HANNAH JOY,
18 as individuals,

19 Plaintiffs,

20 v.

21 WASHINGTON STATE DEPARTMENT OF
22 LABOR AND INDUSTRIES; WASHINGTON
23 STATE DEPARTMENT OF LABOR AND
24 INDUSTRIES IN CLARK COUNTY
25 WASHINGTON; GOVERNOR JAY INSLEE, in
26 his official capacity; and JOEL SACKS, in his
27 official capacity.

28 Defendants.

No. 20-2 00074-30

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF, AND
DAMAGES

I. INTRODUCTION

1.1 "We know that wearing a mask outside health care facilities offers little, if any, protection from infection. Public health authorities define a significant exposure to COVID-19 as face-to-face contact within 6 feet with a patient with symptomatic COVID-19 that is sustained for at least a few minutes (and some say more than 10 minutes or even 30 minutes). The chance of catching COVID-19 from a passing interaction in a public space is therefore minimal. *In many*

1 *cases, the desire for widespread masking is a reflexive reaction to anxiety over the pandemic.”*

2 New England Journal of Medicine, N. Engl. J. Med. 382:21, May 21, 2020 (emphasis added).

3 1.2 No more accurately can the description “reflexive reaction to anxiety” be applied to
4 the government’s treatment of citizens of Skamania County, in response to COVID 19. Skamania
5 County is home to 12,083 people, spread out over 1,683 square miles. Aside from a few towns,
6 each with populations at around 2,000 individuals or under, the county is inhabited by mostly trees
7 and wildlife. As of September 29, 2020, Skamania County has had only 65 cases of COVID-19,
8 which contributed to one death. There are currently only six (6) active cases of COVID 19.¹

9 1.3 Despite this, on June 24, 2020, Secretary of Health, John Weisman, issued a state-
10 wide order, requiring all private citizens of the State of Washington, healthy or not, living in a
11 county with minimal COVID-19 cases or not, to wear masks in public. Out of concern that some
12 individuals would not comply voluntarily, Governor Jay Inslee issued a Proclamation on July 7,
13 2020, No. 20-25.6 (the “Deny-Service Proclamation”, attached hereto as **Exhibit A**), deputizing
14 (commandeering) business owners in Washington State to enforce Weisman’s mask order. The
15 Proclamation orders business owners to, among other things, deny service to customers who are
16 not wearing face coverings, and compel their employees to wear them too. Despite the lack of
17 emergency in Skamania County, that order continues to remain in full force and effect now.

18 1.4 Instead of using the State’s resources to enforce State laws and Proclamations, the
19 Deny-Service Proclamation commandeers businesses to become the enforcement arm of the State
20 to police anyone not wearing a mask within the businesses’ jurisdiction (i.e. the place of business),
21 and subjects them to penalties if they do not. This poorly publicized and vague order violates
22 Plaintiffs’ right to engage in business absent unreasonable interference, right to free speech and
23 expression, right to bodily autonomy, and common law rights.

24 1.5 COMES NOW, Plaintiffs Bob’s Welding and Auto Repair, Inc., TLC Operations,
25 LLC d/b/a Crosscut Espresso & Deli, Gator Creek Gardens, a sole proprietorship, Joy Family

26 _____
27 ¹ See <https://www.skamaniacounty.org/departments-offices/community-health/public-health/covid-19> (last visited
28 Sept. 29, 2020)

1 Hardware, LLC d/b/a Carson Hardware, Galt’s Gulch, LLC d/b/a The Skamania Observer, and
2 individual Plaintiffs Timothy Callahan, Lorraine Creon, Abigale Coates, Matthew Joy, and Hannah
3 Joy, (“Plaintiffs”), by and through counsel, and bring this claim for declaratory judgment, damages,
4 and injunctive relief for violation of civil rights and liberties guaranteed by the Washington State
5 Constitution, and common law rights. They bring their claims against Defendant Governor Jay
6 Inslee (“Governor” or “Defendant Inslee”), in his official capacity as Governor of the State of
7 Washington, Washington State Department of Labor and Industries (“L&I”), Washington State
8 Department of Labor and Industries in Clark County Washington (“L&I Clark County”), and Joel
9 Sacks, in his official capacity as Director of Labor and Industries.

10 1.6 Plaintiffs bring this complaint for injunctive and declaratory relief, asking the Court
11 to issue an order declaring that the Deny-Service Proclamation violates their due process and free
12 speech rights and is without basis in law. Furthermore, that the Deny-Service Proclamation
13 unlawfully deputizes businesses to enforce the vague Deny-Service Proclamation. Such unlawful
14 deputization results in violations of individuals’ right to privacy. Finally, Plaintiffs request damages
15 for profits lost on account of the Proclamation, under the common law torts of nuisance and
16 interference with a business expectancy.

17 II. PARTIES

18 2.1 Plaintiffs are private businesses and their owners doing business in Skamania
19 County in the State of Washington, and are subject to the Deny-Service Proclamation. None of the
20 Plaintiffs have tested positive for the COVID-19 or exhibited symptoms of that virus within the last
21 two months.

22 2.2 Defendant, Governor Jay Inslee, is Governor of Washington and is sued in his
23 official capacity. *See* Chapter 43.06, RCW.

24 2.3 Defendant Inslee is the individual promulgating the Deny-Service Proclamation in
25 violation of Plaintiffs’ rights.

26 2.4 Defendant, Department of Labor and Industries (L&I), is an agency of the State of
27 Washington. L&I is dedicated to the safety, health, and security of workers in Washington State.

1 as of Sept. 29, 2020).² The population of the State of Washington is approximately 7.8 million.³
2 In other words, COVID 19 has resulted in the death of less than .03% of the population in
3 Washington State.

4 4.3 The Governor issued his Deny-Service Proclamation on July 7, 2020. For the three
5 month period approximately prior to then, from March 15 through June 15, there had been 25,704
6 new cases and 1160 deaths, for a known mortality rate of those infected of 4.5%. Since then,
7 however, as more persons have been tested, the known mortality rate has decreased. From June 15
8 through September 15, 2020, the date at which reliable data is available at the time of this filing,
9 there were 54,253 new cases and 805 deaths, for a mortality rate of 1.4%.⁴

10 4.4 In short, while the number of confirmed cases has increased due to increased testing,
11 the known mortality rate has *decreased* dramatically, from 4.5% from March 15 through June 15,
12 to 1.5% from June 15 through September 15, the date of most recent confirmed data. Presumably,
13 the mortality rate will continue to drop as more tests are performed.

14 4.5 By comparison, in the State of Washington, flu/pneumonia deaths totaled 1,041 in
15 the last year as recorded by the Center for Disease Control in 2017, and approximately six times as
16 many died of heart disease, at 11,582, than from the current rate of COVID 19 deaths.⁵ None of
17 these diseases caused the Governor to declare a State of Emergency and no Orders or Proclamations
18 were issued.

19 C. COVID-19 in Skamania County

20 4.6 As of September 29, 2020, Skamania County has 65 confirmed cases of COVID-19
21 and 1 death.⁶

24 ² See <https://www.doh.wa.gov/Emergencies/NovelCoronavirusOutbreak2020COVID19/DataDashboard> (last visited
25 Sept. 29, 2020).

³ See <https://worldpopulationreview.com/states/washington-population/> (last visited Sept. 29, 2020).

⁴ See <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited September 29, 2020)

⁵ See <https://www.cdc.gov/nchs/pressroom/states/washington/washington.htm> (last visited Sept. 29, 2020).

⁶ See <https://www.skamaniacounty.org/departments-offices/community-health/public-health/covid-19> (last visited
27 Sept. 29, 2020)

1 4.7 Of the 65 cases, only five (5) required hospitalizations. There are only 6 current
2 ongoing cases.⁷

3 4.8 Thus, in Skamania County where the population is 12,083 people, for a person in
4 Skamania County to contract COVID-19 he or she would have to interact with approximately 2,000
5 persons, each for a protracted period of time, before he or she would contract the disease—though
6 in fact the number would be higher, since 5 of the 6 are being hospitalized.

7 **D. Lack of Scientific Consensus Regarding the Ability of Cloth Masks To Protect**
8 **From COVID-19**

9 4.9 Regardless of the significance of the threat of COVID-19, both the Center for
10 Disease Control (“CDC”) and the World Health Organization (“WHO”) have made contradictory
11 statements regarding the dangers of COVID-19, the means of spreading the virus and the best
12 method for prevention of further spread.

13 4.10 It is unclear that wearing masks is commensurate to any benefit that they provide to
14 stopping the spread of COVID 19.

15 **E. The Political Controversy Surrounding the Mask Requirements**

16 4.11 The necessity of face coverings, the science behind wearing face coverings and the
17 coercive overreach of government that they represent have all become issues of contentious
18 political controversy.⁸

19 ⁷ *Id.*

20 ⁸ See, e.g., Gaia Vince, *Attitudes towards lockdown are proving divisive in countries like the US – and those divisions*
21 *are falling down familiar party lines. But why does partisanship shape our compliance with public health campaigns?*,
22 BBC Future, <https://www.bbc.com/future/article/20200505-why-its-so-hard-to-be-rational-about-covid-19> (last visited
23 June 8, 2020); Justin Murphy, *Why are Conservatives Less Worried About Coronavirus?*, Psychology Today,
24 <https://www.psychologytoday.com/us/blog/polarized/202003/why-are-conservatives-less-worried-about-coronavirus>
25 (last visited Sept. 29, 2020) (“‘COVID-19’ is not perceived as a pathogen threat at all [to the Republican voter]. It’s just
26 another blip of liberal noise circulated to discredit a Republican President.... If liberals and Democratic voters perceive
27 COVID-19 as a major threat... [i]t is just because there happens to be a Republican President at the moment.”);

28 [https://www.motherjones.com/kevin-drum/2020/04/america-is-on-lockdown-except-in-the-south/;](https://www.motherjones.com/kevin-drum/2020/04/america-is-on-lockdown-except-in-the-south/)

<https://www.theatlantic.com/politics/archive/2020/03/social-distancing-culture/609019/>

<https://www.wsj.com/articles/masks-could-help-stop-coronavirus-so-why-are-they-still-controversial-11593336601>

<https://www.msn.com/en-us/news/us/californias-mask-order-tests-the-limits-of-newsoms-executive-power/>

1 4.12 As such, wearing a face covering or refusing to wear a face covering has become a
2 political statement.⁹

3 **F. Plaintiffs do not Wish to Impose Their (or Somebody Else’s) Beliefs on Masks on**
4 **Others**

5 4.13 For various reasons, Plaintiffs do not wish to wear masks. They do not believe that
6 COVID 19 is a significant disease, or at the very least they do not believe the indignity of wearing
7 masks is worth the health benefits that may arise therefrom.

8 4.14 Plaintiffs wish to respect the rights of others. They do not oppose customers or
9 employees wearing masks in their businesses. They also do not wish to compel their customers or
10 employees to wear masks.

11 4.15 Not wearing masks and not forcing their customers and employees to wear masks is
12 a form of expressive speech conduct for them. For Plaintiffs to allow customers and employees to
13 enter and remain without masks communicates that the Plaintiffs do not agree with the
14 government’s dominant narrative on COVID 19 issues, that they disagree generally with the
15 government’s draconian response to COVID 19, and that the loss of human dignity in wearing
16 masks is not worth the potential benefits. It is also respectful to differing viewpoints on these issues.

17 **G. Defendant Governor Inslee issues his July 7, 2020 Deny-Service Proclamation**
18 **without Authority of Law, in Violation of Constitutional Rights, and without**
19 **Proper Notice to Plaintiffs**

20 4.16 Despite the fact that COVID 19 has resulted in the death for.03% of the Washington
21 population, despite the fact that there are minimal cases in Skamania County, despite the fact that
22 the use of cloth masks provides only dubious benefits, and despite the fact that wearing or not
23 wearing a mask has become a form of expressive conduct (speech), on July 7, 2020 Defendant
24 Governor Inslee issued the Deny-Service Proclamation compelling businesses to enforce Secretary
25 of Health John Weisman’s mask order. By doing so he decided, by executive fiat, to compel others
(business owners) to enforce his belief that COVID 19 is a significant threat, that masks are

26 ⁹ [https://www.abc.net.au/news/2020-07-01/coronavirus-masks-are-political-in-us-donald-trump-rejects-](https://www.abc.net.au/news/2020-07-01/coronavirus-masks-are-political-in-us-donald-trump-rejects-them/12403962)
27 [them/12403962](https://www.abc.net.au/news/2020-07-01/coronavirus-masks-are-political-in-us-donald-trump-rejects-them/12403962) (“Wearing a mask or face covering in the US has become about more than just slowing the spread of
28 COVID-19 — some experts say it’s a political statement, signaling another layer in the deep divisions within
America.”)

1 effective, and that the indignity and discomfort of wearing masks is to be preferred over COVID
2 19 risks.

3 4.17 The Deny-Service Proclamation states, in relevant part, as follows:

- 4 • No employee may work unless that employee wears a face covering when working,
5 except when working alone or when the job involves no in-person interaction, as
6 detailed in the Safe Start Washington Phased Reopening Plan; and, further, that
7 employers must provide cloth facial coverings to employees....
- 8 • *No business may operate, allow a customer to enter a business, or conduct*
9 *business with a customer inside any building that is open to the public or outdoors*
10 *in a public place unless the customer is wearing a face covering*, as required by
11 Order of the Secretary of Health 20-03. (emphasis added). See **Exhibit A**.

12 4.18 The Deny-Service Proclamation remains in effect “until the state of emergency,
13 issued on February 29, 2020... is rescinded, or until 11:59 p.m. on August 6, 2020.” See, **Exhibit**
14 **A**. The Governor extended the Deny-Service Proclamation on July 24, 2020, through Proclamation
15 20-25.7, indefinitely. See, **Exhibit B** (This order... remains in effect until the state of emergency,
16 issued on February 29, 2020, pursuant to Proclamation 20-05, is rescinded or until this order is
17 amended or rescinded.”).

18 4.19 Lastly, the violators of the Deny Service Proclamation may be subject to criminal
19 penalties, as a gross misdemeanor, pursuant to RCW 43.06.220(5). See, **Exhibit A**.

20 4.20 Defendant Governor Inslee issued the Deny-Service Proclamation pursuant to RCW
21 38.08, 38.52 and 43.06, and it is to remain in effect pursuant to RCW 43.06.220(1)(h). See **Exhibit**
22 **A**. RCW 38.08 discusses the governor’s authority as commander-in-chief and is unrelated to the
23 Deny-Service Proclamation and cannot form the basis for issuing the Deny-Service Proclamation.

24 4.21 RCW 43.06.010(12) lists when the Governor may proclaim a state of emergency:
25 “after finding that a public disorder, disaster, energy emergency, or riot exists within this state or
26 any part thereof which affects life, health, property, or the public peace....”

1 4.22 RCW 43.06.220(1)(h) permits the Governor to issue an order prohibiting “[s]uch
2 other activities as he or she reasonably believes should be prohibited to help preserve and maintain
3 life, health, property or the public peace.”

4 4.23 The Deny-Service Proclamation was issued without legal authority.

5 4.24 COVID-19 does not fall under “public disorder, disaster, energy emergency or riot.”

6 4.25 Further, neither the 2,100 COVID-19 related deaths state-wide, nor the single death
7 in Skamania County, authorize such a proclamation of emergency in Skamania County, particularly
8 when other comparable, and more severe, health crises have not led to such a proclamation.

9 4.26 The Deny-Service Proclamation states that “the worldwide COVID-19 pandemic and
10 its progression in Washington State continue to threaten the life and health of our people as well as the
11 economy of Washington State, and remain a public disaster affecting life, health, property or the public
12 peace.”

13 4.27 However, the Deny-Service Proclamation fails to address why this remains to be the
14 case when the known mortality rate of COVID-19 in Washington State has dropped to 1.4% for the
15 last three month period (from 4.5% for the prior three month period, with an overall of 2.4% since
16 the beginning of tracking March through Sept. 15, 2020¹⁰) since the initial Emergency Proclamation
17 was issued, and why the Deny-Service Proclamation is necessary in Skamania County particularly.

18 4.28 The Deny-Service Proclamation infringes upon Plaintiffs’ rights without adequate
19 justification. As to the Plaintiffs’ free speech and expression rights, the Deny-Service Proclamation
20 is neither narrowly tailored nor does it serve a compelling government interest in Skamania County.
21 As to their right to pursue a vocation and conduct their businesses free from unreasonable
22 government interference, the Deny-Service Proclamation was not issued with authority of law and
23 is not tailored to them, in Skamania County.

24 4.29 The Deny-Service Proclamation is vague.

25
26
27 ¹⁰ See <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited Sept. 29, 2020).

1 4.30 None of the Plaintiffs received formal notice of the Deny-Service Proclamation nor
2 guidance from L&I regarding how to implement the Deny-Service Proclamation.

3 **H. The Proclamation Deputizes (Commandeers) Private Businesses to Enforce Mask**
4 **Wearing, and also Compels Plaintiffs to Invade their Customers' Privacy**

5 4.31 The practical effect of the Deny-Service Proclamation is that each business owner
6 is required to enforce the Secretary of Health John Weisman's June 24, 2020 Mask Order ("Mask
7 Order") against its own employees and customers, to the detriment of their businesses in the form
8 of alienating customers and employees. *See, Exhibit A.*

9 4.32 While the Mask Order allows exemptions from wearing face coverings, such as
10 medical and mental conditions and disabilities, neither the Deny-Service Proclamation nor L&I
11 explain how a business should differentiate between those with and without such exemptions, or
12 how intrusively they must probe to determine if a customer or employee has a genuine exemption.

13 4.33 The result of this is that businesses, such as Plaintiffs, must regularly invade their
14 customers' privacy rights by asking them whether and what medical or mental conditions they have
15 that permits that individual not to wear a mask when entering that business. *See, Washington State*
16 *Constitution, Article I, Sec. 7 ("No person shall be disturbed in his private affairs, or his home*
17 *invaded, without authority of law.")*

18 **I. The Deny-Service Proclamation Compels Plaintiffs to use Their Bodies and Their**
19 **Businesses to Espouse Views they Disagree With**

20 4.34 Plaintiffs do not agree with the Governor's narrative on the significance of COVID
21 19, the degree to which they should prevent its spread by covering their faces and changing their
22 behavior, the efficacy of masks, or the Governor's response to COVID 19 in general.

23 4.35 For Plaintiffs, wearing a mask communicates assent with the Governor's narrative
24 on COVID 19.

25 4.36 On the other hand, not wearing a mask, and allowing employees and customers to
26 not wear a mask if they do not wish to within their businesses, communicates their dissent from the
27 Governor, and the State's, narrative on COVID 19.

28 **J. The Deny-Service Proclamation Intrudes Upon Plaintiffs' Physical Autonomy**

1 4.37 Plaintiffs do not want to wear masks because masks are physically uncomfortable
2 and undignified.

3 4.38 Plaintiffs are also concerned that breathing in face coverings makes their breathing
4 labored and may be dangerous to their health.

5 **K. The Deny-Service Proclamation Harms Plaintiffs' Business Operations and Use of**
6 **their Property**

7 4.39 The Governor's Deny-Service Proclamation harms Plaintiffs in multitudinous ways.

8 4.40 For Plaintiffs, complying with the Governor's Deny-Service Proclamation harms
9 them in that they must turn away customers who refuse to wear masks for personal health,
10 ideological, or religious reasons.

11 4.41 Alternatively, if Plaintiffs choose to serve these non-confirming customers, they
12 suffer fear of fine and imprisonment.

13 4.42 Plaintiffs have been contacted by Labor and Industries investigating possible
14 instances of non compliance. In other words, Labor and Industries has potentially sought to punish
15 Plaintiffs for *not* turning away paying customers.

16 4.43 Plaintiffs' businesses also are at risk of suffering the moral opprobrium associated
17 with being perceived as non-law abiding, and the lost profits associated therewith.

18 4.44 Plaintiffs have been harassed by members of the community, and some customers
19 have refused to return to Plaintiffs' businesses because of an appearance that Plaintiffs are serving
20 non-conforming customers. It is one thing for a business owner to politely disagree with a customer
21 about an important public issue (prior to the Deny-Service Proclamation, Plaintiffs could politely
22 decline to force others to wear masks). It is another thing for that business owner to break the law
23 (if Plaintiffs do not enforce the mask orders, they do so in violation of the Deny-Service
24 Proclamation). The former suggests different values. The latter suggests lawlessness and
25 irresponsibility. The result of appearing non law abiding results in lost profits for Plaintiffs.

26 4.45 For Plaintiffs, forcing employees who do not wish to wear masks for health or
27 ideological reasons causes friction and disrupts the employer/employee relationships.

1 4.46 Alternatively, not enforcing the Proclamation results in fear of penalty in the form
2 of financial penalty and jail.

3 4.47 Either the friction and/or the fear of legal reprisal hurts Plaintiffs’ productivity
4 because of the stress it induces.

5 4.48 For Plaintiffs, wearing masks alienates them from some of their clientele in that they
6 cannot freely speak with them, thereby harming their businesses.

7 **L. The Deny-Service Proclamation Compels Plaintiffs to Invade their Customers’ and
8 Employees’ Privacy, and Invades Plaintiff Hannah Joy’s Privacy as an Individual**

9 4.49 The Deny-Service Proclamation is deeply intrusive into the private affairs of
10 Plaintiffs, their customers, and their employees.

11 4.50 The right to privacy is specifically enshrined in Washington State’s constitution,
12 which states that “No person shall be disturbed in his private affairs, or his home invaded, without
13 authority of law.” Washington State Constitution, Article I, Sec. 7.

14 4.51 The Deny-Service Proclamation, which incorporates Secretary of Health John
15 Weisman’s orders, requires Plaintiffs to enforce the Proclamation, but not against persons with “a
16 medical condition, mental health condition, developmental or cognitive condition, or disability....”
17 See **Exhibit C** (Order of Secretary of Health, incorporated into the extension of the original Deny-
18 Service Proclamation, **Exhibit B**).

19 4.52 If a customer enters Plaintiffs’ establishments without a mask, Plaintiffs cannot
20 avoid the appearance of lawlessness without enquiring into why the individual is not wearing a
21 mask. Plaintiffs are left with the choice of asking this question, and pushing deeper in if the answer
22 is not satisfactory, or appearing that they are flouting the mask orders.

23 4.53 In the alternative, Plaintiffs must enforce the mask orders with callous indifference
24 to the health of their customers. In fact, there is a perverse incentive to do so even when a customer
25 cannot wear a mask, because an outside observer cannot know why the particular customer is not
26 wearing a mask. In other words, even if Plaintiffs respect the privacy and health rights of their
27 customers consistent with the mask orders, they still may be seen as non law abiding.

1 4.54 Plaintiffs have received no guidance on how to verify if a customer has a health need
2 preventing the wearing of masks, or how deeply they should probe into customers' explanations.

3 4.55 At least one Plaintiff, Hannah Joy, has been personally harmed by the intrusive
4 Deny-Service Proclamation.

5 4.56 Plaintiff Hannah Joy suffers from a frailty that precludes her from wearing masks.

6 4.57 In August 2020, Plaintiff Hannah Joy attended the weekly county commissioner
7 meeting open to the public. The meeting was being held in person and over videoconference.

8 4.58 At the meeting, one of the commissioners offered her a mask and she informed the
9 commissioner that she could not wear one. This same commissioner informed her that she was
10 required to tell him why she could not wear a mask.

11 4.59 In order to comply with a public official's demand, Hannah Joy informed the
12 commissioner and all those attending the meeting of her medical condition, which she would have
13 preferred to have kept private and confidential. This experience of being forced to inform others of
14 her condition was traumatizing, and placed in her emotional distress.

15 4.60 Enforcement of the Deny-Service Proclamation by the commissioner directly
16 resulted in violation of her privacy rights under the Washington State Constitution.

17 4.61 Because of the Deny-Service Proclamation, and the poorly publicized explanation
18 of how to enforce the Deny-Service Proclamation, both businesses are also forced to invade their
19 customers' privacy in the same way.

20 V. CLAIMS

21 COUNT I

22 **Claim for Declaratory Judgment that the Deny-Service Proclamation Was Issued Without 23 Legal Authority and Violates Plaintiffs' Rights**

24 5.1 The Plaintiffs re-allege the facts as set for above as if fully set forth herein.

25 5.2 The Deny-Service Proclamation is not authorized by law.

26 5.3 The Governor purports to have authority to promulgate his Deny Service
27 Proclamation under RCW 43.06, which allows him to declare a state of emergency and issue orders
28

1 thereto pertaining. The governor’s declaration of emergency and order in this case, however, is
2 outside of his authority under RCW 43.06.

3 5.4 In the alternative, if he is in fact acting within the meaning of RCW 43.06, the
4 Legislature delegated such authority to him without clear guidelines and without safeguards,
5 thereby violating the prohibition of delegation of legislature authority absent proper safeguards.

6 5.5 RCW 43.06.010(12), which contains the governor’s power to declare a state of
7 emergency, does not grant him the power to declare a continuing emergency in Skamania County,
8 where one person has died with COVID 19.

9 5.6 RCW 43.06.010(12) requires the governor to proclaim that state of emergency in
10 the area affected and requires that his emergency powers be effective only “within the area
11 described in the proclamation.” Thus, RCW 43.06.010(12) requires that the Governor issue state of
12 emergency proclamations in a manner that is tailored to that particular region. Here, the Governor
13 issued a state-wide emergency order outside the scope of his authority. As such, the Deny-Service
14 Proclamation that is based on the state of emergency is void.

15 5.7 There is no public disorder, disaster, energy emergency, or riot in Skamania County.
16 Thus, the Governor has no power, under RCW 43.06.010(12) to issue a state of emergency affecting
17 Skamania County, and the Deny-Service Proclamation that is based on the state of emergency is
18 void.

19 5.8 Alternatively, if 1 death in a population of 12,083 qualifies as a State of Emergency
20 under statute, this broad and unfettered delegation of authority by the Legislature violates the
21 constitutional prohibition against delegation of authority without safeguards. There are insufficient
22 guidelines for the use of the power, and there are no safeguards that exist to control arbitrary action
23 and abuse of discretionary power. Specifically, RCW 43.06.010(12) allows too many circumstances
24 to be brought into the sweep of the governor’s broad and unfettered discretion to declare emergency,
25 and does not provide *any* limit to the duration of the orders which may be issued under RCW
26 4.06.220(1). *Compare* RCW 43.06.220(2), (4), limiting the duration of the governor’s powers to 30
27 days.

1 5.9 Moreover, the state of emergency must be terminated when “order has been
2 restored.” *See*, RCW 43.06.210.

3 5.10 RCW 43.06.220, delineating the governor’s emergency powers once emergency is
4 declared, does not grant the governor authority to order business owners to wear masks, refuse
5 service to customers, and refuse to employ employees.

6 5.11 RCW 43.06.220 subsection (1) grants the governor exclusively proscriptive powers
7 tied to clearly identifiable threats such as riots or natural disasters. It does not grant him prescriptive
8 to prevent the general spread of a disease that is rarely the sole cause of death in its victims.

9 5.12 RCW 43.06.220(1)(a) – (g) allows the Governor to prohibit certain acts tied to riot
10 and natural disasters. Subsection (1)(h) is a catchall provision allowing the governor to prohibit
11 “such other activities as he or she reasonably believes should be prohibited to help preserve and
12 maintain life, health, property or the public peace.”

13 5.13 RCW 43.06.220(1) does not authorize the Governor to enact the Deny-Service
14 Proclamation because it is prescriptive, requiring Plaintiffs to take certain, affirmative conduct
15 such as refusing customers and terminating employees. This kind of prescriptive power is not
16 authorized by RCW 43.06.220(1), or that statute at all.

17 5.14 In the alternative, even if the Governor is authorized, under RCW 43.06.220, to
18 demand affirmative conduct, the Legislature did not grant the governor the power to make
19 infectious disease related orders particularly. The legislature granted the governor the power to
20 issue orders responding to “public disorder, disaster, energy emergency, or riot” proclaimed in the
21 area affected, and only within the area described in the proclamation. The power to provide for the
22 control and prevention of diseases, on the other hand, is granted to the State and Local boards of
23 health, under RCW 70.05 and RCW 43.20. While RCW 43.20 grants the State Board of Health the
24 power to pass measures of universal application when appropriate, RCW 43.20.050, RCW 70.05
25 specifically grants local boards of health the authority to pass measures responsive to diseases in
26 their jurisdictions. RCW 70.05.060. If the legislature intended to give the governor universal power
27 to take action to prevent the spread of infectious diseases, it could have. It did not.

1 5.15 An actual, present and existing dispute exists between the Plaintiffs and Defendants
2 because Defendants are compelling Plaintiffs to wear masks, refuse customers, and refuse to
3 employ (terminate) employees. Being forced to do these things causes harm to Plaintiffs in that they
4 are being forced to outwardly express agreement over political and cultural topics with which they
5 disagree, thereby violating their free speech and due process rights for which there is no remedy at
6 law, are forced to turn away customers or terminate employees. In the alternative, Plaintiffs suffer
7 from fear of the risk of fine and imprisonment if they do not obey the Deny-Service Proclamation.
8 The parties have genuine opposing interests in that the Plaintiffs do not wish to wear masks, compel
9 their employees to do so, or refuse customers who do not wear masks unless the customer discloses
10 private, personal information. This disagreement is substantial, and a judicial determination as to
11 the legality of the Deny-Service Proclamation will be final and conclusive as to this controversy.

12 COUNT II

13 **Claim for Declaratory Judgment That the Deny-Service Proclamation Violates Plaintiffs’ Rights to Due Process Under Article I, Section 3 of the Washington State Constitution**

14 5.16 The Plaintiffs re-allege the facts as set for above as if fully set forth herein.

15 5.17 The Deny-Service Proclamation interferes with the Plaintiffs’ right to pursue a
16 calling or vocation, and right to bodily autonomy.

17 5.18 Article I, Section 3 of the Washington State Constitution protects Plaintiffs from the
18 State’s interference with rights and liberties absent authority of law (“[n]o person shall be deprived
19 of life, liberty, or property, without due process of law.”)

20 5.19 The Deny-Service Proclamation violates Article I, Section 3 of the Washington State
21 Constitution because RCW 43.06 does not authorize the governor to compel business owners to
22 wear masks, refuse service to customers who do not wear masks, and compel their employees to
23 wear masks.

24 **A. Interference with the Right to Pursue an Occupation or Calling**

25 5.20 Under Article I, Section 3 of the Washington Constitution, Plaintiffs enjoy a right to
26 pursue an occupation or profession free from unreasonable government interference. The Deny-
27 Service Proclamation interferes with Plaintiffs’ pursuit of a profession or occupation because it
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1 compels them conduct their business in a manner in which they otherwise would not, in a manner
2 harmful to them, or subjects them to the threat of punishment for failing to do so. The Deny-Service
3 Proclamation, over Plaintiffs' objection:

- 4 • Requires Plaintiffs to refuse service to customers who do not want to wear masks
5 for health, religious, or ideological reasons, thereby harming Plaintiffs financially in
6 that they lose the customer in that moment, and/or lose the customer's good will;
7 and/or
- 8 • Places Plaintiffs in jeopardy of fine and imprisonment if they do not turn away
9 customers who do not wear masks;
- 10 • Requires Plaintiffs to cease to employ (terminate or suspend) employees who refuse
11 to wear masks; and/or
- 12 • Requires Plaintiffs to compel their employees to wear masks over their objection,
13 thereby deteriorating the employee/employer relationship; and/or
- 14 • Places Plaintiffs in jeopardy of fine or imprisonment if they do not compel their
15 employees to wear masks at the expense of the employer/employee relationship;
- 16 • Causes the Plaintiffs to suffer fear, anxiety, and/or actual loss of income for fear of
17 being prosecuted for violation of the Deny-Service Proclamation; and/or
- 18 • Subjects Plaintiffs to the moral opprobrium attendant to the perception of violating
19 the law, and the loss of good will that that creates with customers and potential
20 customers.

21 5.21 The above interference with the Plaintiffs' right to pursue a vocation or calling
22 negatively impacts their right to such pursuit.

23 **B. Interference with Bodily Autonomy**

24 5.22 Article I, Section 3 of the Washington Constitution protects citizens from
25 deprivation of life, liberty, or property without due process of law.

26 5.23 The due process clause of the Washington Constitution protects against state
27 infringement of those fundamental rights and liberties that are deeply rooted in history and tradition,
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1 and that are implicit in the concept of ordered liberty. State action that infringes on fundamental
2 rights is reviewed under strict scrutiny.

3 5.24 Citizens, including Plaintiffs, have a fundamental right to bare their faces to the air,
4 sun, and to one another. Unlike some nations that may have a history of facial coverings, this basic,
5 human right relating to bodily autonomy—baring one’s face—is deeply rooted in our nation’s
6 history and traditions, and implicit in the concept of our ordered liberty.

7 5.25 The Governor’s Order violates these rights because it compels Plaintiffs, and
8 compels Plaintiffs to compel their customers and employees, to wear masks in their private
9 businesses.

10 5.26 The government is invading Plaintiffs’ rights without a compelling government
11 interest. Even if the government has a compelling government interest in stopping the spread of
12 COVID 19 generally, that interest is not being narrowly tailored to the conditions of Skamania
13 County. The infringement upon Plaintiffs’ rights, then, is in violation of the State constitution.

14 5.27 An actual, present and existing dispute exists between the Plaintiffs and Defendants
15 because Defendants are compelling Plaintiffs to wear masks, refuse customers, and refuse to
16 employ (terminate) employees. Being forced to do these things causes harm to Plaintiffs in that they
17 are being forced to outwardly express agreement over political and cultural topics with which they
18 disagree, thereby violating their free speech and due process rights for which there is no remedy at
19 law, are forced to turn away customers or terminate employees. In the alternative, Plaintiffs suffer
20 from fear of the risk of fine and imprisonment if they do not obey the Deny-Service Proclamation.
21 The parties have genuine opposing interests in that the Plaintiffs do not wish to wear masks, compel
22 their employees to do so, or refuse customers who do not wear masks unless they demand personal,
23 private medical information from those customers. This disagreement is substantial, and a judicial
24 determination as to the legality of the Deny-Service Proclamation will be final and conclusive as to
25 this controversy.

26 5.28
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COUNT III

Claim for Declaratory Judgment That the Deny-Service Proclamation Violates Plaintiffs' Rights to Free Speech Under Article I, Section 5 of the Washington State Constitution

5.29 The Plaintiffs re-allege the facts as set for above as if fully set forth herein.

5.30 Under Article I, Section 5 of the Washington State Constitution, Plaintiffs enjoy a right to free speech and freedom from compelled speech. This right to free speech and freedom from compelled speech extends to nonverbal conduct sufficiently imbued with meaning so as to convey a particularized message. State action that infringes upon the fundamental right of free speech is analyzed under strict scrutiny.

5.31 At the time of the drafting of this complaint, September 2020, not wearing a mask in public conveys a highly particularized message regarding COVID 19 related issues. The act subjects the person to ridicule by some and appreciation by others: it communicates dissent from the government's dominant narrative on COVID-19. Alternatively, wearing a mask communicates assent with the Government's version of events. The Deny-Service Proclamation compels the latter.

5.32 The Deny-Service Proclamation interferes with Plaintiffs' free speech rights because it:

- Prohibits Plaintiffs from engaging personally or together with likeminded employees (and customers) in expressive activity dissenting from the government's dominant narrative;
- Compels Plaintiffs to espouse agreement with the Government's dominant narrative, conscripting their own bodies and the bodies of their customers and employees to do so;
- Compels Plaintiffs, who have employees, to not only adopt the government's speech for themselves, but also compel their subordinates to wear masks, thereby being deputized by the Order to compel others to speak in a manner contrary to their choosing;
- Interferes with Plaintiffs' right to communicate in general, since it obscures their faces, and compels Plaintiffs to interfere with their employees' rights in this regard as well; and/or

- Subjects Plaintiffs to the risk of fine and imprisonment, and fear and anxiety for failure to comply with the Order; and/or
- Subjects Plaintiffs to the moral opprobrium attendant to the perception of violating the law, and the loss of profits associated with the same.

5.33 The above effects infringe upon the Plaintiffs' free speech rights.

5.34 These violations are subject to strict scrutiny. Since the Deny-Service Proclamation was not issued lawfully, *see* Count I, above, it cannot satisfy strict scrutiny.

5.35 Even if the Deny-Service Proclamation was validly enacted pursuant to RCW 43.06, it was not issued in furtherance of a compelling government interest. Moreover, it is wildly overbroad and not narrowly tailored.

5.36 Even if the Deny-Service Proclamation were justified by a compelling government interest, it is not narrowly tailored to Skamania County. Skamania County has suffered one death from COVID-19 infection. Regardless of how significant COVID 19 might be in other Counties, it is not significant in Skamania County. Yet, the Deny-Service Proclamation applies to all businesses in all counties without distinction.

5.37 An actual, present and existing dispute exists between the Plaintiffs and Defendant because the governor is compelling Plaintiffs to wear masks that they object to wearing, and the wearing of which causes them harm in the form of financial loss, harm to their free speech rights and their freedom of conscience, and a violation of their essential freedoms for which there is no remedy at law. The parties have genuine opposing interests in that the Plaintiffs do not wish to wear masks for the above reasons, do not wish to turn customers away who do not wear them or ask customers about the private, personal information, and do not wish to compel their own employees to wear masks on behalf of the governor's desired message. This disagreement is substantial, and a judicial determination as to the legality of the Deny Service Proclamation will be final and conclusive as to this controversy.

COUNT IV

Claim for an Injunction Enjoining Defendants From Enforcing the Deny-Service Proclamation Against Them

5.38 Plaintiffs re-allege each and every fact set forth above, as if fully set forth herein.

5.39 The Governor does not have the authority to promulgate or enforce the Deny Service Proclamation under RCW 43.06 as a statutory and constitutional matter.

5.40 Even if the governor did have the authority under the statute to promulgate the Deny-Service Proclamation, it violates Plaintiffs’ free speech and due process rights without satisfying strict scrutiny.

5.41 Plaintiffs have a right to conduct their businesses, accept the customers they wish, and employ the persons they desire, free from unreasonable government interference. At a minimum, government interference must be statutorily or constitutionally authorized. Plaintiffs have a right to express themselves on the contested topic of wearing masks and be free from mouthing the governor’s narrative on COVID-19.

5.42 Plaintiffs have a due process right to bare their faces in public and in their own businesses.

5.43 The public issues speech that Plaintiffs seek to engage in, and the one-sided message regarding COVID 19 that Plaintiffs wish to not be compelled to engage in, is current and relevant at this time, the Fall of 2020. Public dissent from the government’s narrative regarding the significance of COVID-19 is relevant only now, and will not be once the harm done by the Governor’s response to COVID 19 has been inflicted. In order for Plaintiffs’ expression regarding dissent over the COVID-19 issues to be meaningful, it must be made now, or never.

5.44 Plaintiffs are being irreparably harmed each day that they are unable to voice dissent from the narrative promulgated by the governor.

5.45 Further, if Plaintiffs fail to wear a mask, or fail to compel others to wear a mask, as required by the Deny Service Proclamation, they may be punished by fine and imprisonment.

5.46 Further, the Deny-Service Proclamation criminalizes failure to act in accordance with the actions of any other agency or office based on the requirement to wear a face covering.

1 5.47 Plaintiffs have no adequate remedy at law to prohibit Defendants from enforcing the
2 Order against them, absent an injunction from this Court ordering the same.

3 5.48 Plaintiffs have a probability of success on the merits. Defendants do not have the
4 authority to issue the Deny Service Proclamation, and its issuance unequivocally violates Plaintiffs'
5 free speech and due process rights without adequate justification and/or without being narrowly
6 tailored.

7 5.49 Further, because L&I and L&I Local are enforcement arms of the Governor, there
8 is a violation of the separation of powers: the Governor and his agents drafted the Deny-Service
9 Proclamation and then enforce it and adjudicate it.

10 5.50 This Court should issue an injunction permanently enjoining Defendant from
11 enforcing the Deny Service Proclamation, finding that (i) Defendant Governor Inslee did not have
12 the authority to issue the Proclamation, (ii) that Plaintiffs are harmed each day that they are subject
13 to the Deny-Service Proclamation, (iii) that Plaintiffs have no adequate remedy at law to protect
14 their rights against the unlawful Deny-Service Proclamation beyond injunctive relief, and (iv) that
15 Plaintiffs have a likelihood of success on the merits that the Deny-Service Proclamation is
16 unenforceable and violates their rights without adequate justification.

17 **COUNT V**

18 **Declaratory Judgment That the Deny-Service Proclamation Violates Article 1 Section 7 of
19 the Constitution, and Plaintiffs' Privacy Rights**

20 5.51 Plaintiffs re-allege each and every fact set forth above, as if fully set forth herein.

21 5.52 Washington State's constitution provides that "No person shall be disturbed in his
22 private affairs, or his home invaded, without authority of law." Washington State Constitution,
23 Article I, Sec. 7.

24 5.53 By issuing the Deny-Service Proclamation, Governor Inslee has violated the privacy
25 rights of any and all individuals entering Plaintiffs' businesses. This is because the Deny-Service
26 Proclamation requires customers in Plaintiffs' businesses to disclose their intimate and private
27 affairs to Plaintiffs, and whoever else might hear, if they do not wear masks for health or disability
28 reasons.

1 5.54 Practically, the only way that Plaintiffs can know if a customer that is not wearing a
2 mask falls within an exception is to ask the customer. Thus, the Governor’s order effectively
3 compels Plaintiffs to violate their customers’ privacy rights.

4 5.55 Enforcing the government’s mask orders harms Plaintiffs. First, Plaintiffs may incur
5 potential liability for inflicting distress upon customers who do not wish to disclose intimate
6 information, but do so. This is what happened in the case of Hannah Joy. Second, Plaintiffs forcing
7 customers to disclose intimate health information in a public setting will necessarily make those
8 customers uncomfortable in Plaintiffs’ businesses and resentful towards Plaintiffs for invading their
9 private affairs. Plaintiffs will lose the profits they otherwise would have realized from these
10 customers.

11 5.56 Plaintiffs should not be required to violate the privacy rights of other Washington
12 State citizens at the Governor’s behest.

13 5.57 Finally, as individuals, Plaintiffs are required to disclose their own personal health
14 information to others in order to enter businesses. Plaintiff Hannah Joy experienced this personally
15 when the commissioner demanded that she disclose her intimate health information, in a public
16 setting.

17 5.58 An actual, present and existing dispute exists between the Plaintiffs and Defendant
18 because the governor is compelling Plaintiffs to enforce the Deny-Service Proclamation on his
19 behalf and the enforcement of the Deny-Service Proclamation subjects the Plaintiffs to potential
20 liability and friction with customers. Further, it causes the violation of privacy rights of individuals
21 who enter Plaintiffs’ businesses, and potentially Plaintiffs themselves. The parties have genuine
22 opposing interests in that the Plaintiffs do not wish to enforce the Deny-Service Proclamation for
23 the above reasons, do not wish to turn customers away who do not wear them, and do not wish to
24 demand the private, personal information of customers who are not wearing face coverings, and do
25 not wish to disclose their own health information. This disagreement is substantial, and a judicial
26 determination as to the legality of the Deny Service Proclamation will be final and conclusive as to
27 this controversy.

COUNT VI

Declaratory Judgment that the Deny-Service Proclamation Is Void-As-Vague

5.59 Plaintiffs re-allege each and every fact set forth above, as if fully set forth herein.

5.60 Defendants failed to publicize and properly explain how Plaintiffs were required to enforce the Deny-Service Proclamation.

5.61 Plaintiffs received no notice that the Deny-Service Proclamation was issued.

5.62 Plaintiffs received no training or guidance as to how to implement the Deny-Service Proclamation.

5.63 Plaintiffs do not know whether to demand private information, such as what was done by the Commissioner to Plaintiff Hannah Joy, or whether requiring such information violates customers' privacy rights. They do not know how far they should probe regarding private and intimate information to confirm the validity of the customer's explanation.

5.64 As a result, Plaintiffs have unintentionally violated the privacy rights of individuals coming to their premises.

5.65 In order to ensure that individuals' right to privacy is not violated, while at the same time ensuring that Plaintiffs are not inadvertently violating the Deny-Service Proclamation, this Court should issue a declaratory judgment that the Deny-Service Proclamation is void-as-vague and thereby unenforceable.

5.66 An actual, present and existing dispute exists between the Plaintiffs and Defendant because the governor is compelling Plaintiffs to enforce the Deny-Service Proclamation on his behalf and the enforcement of the Deny-Service Proclamation causes them harm in the form of financial loss, harm to their free speech rights and their freedom of conscience, and a violation of their essential freedoms for which there is no remedy at law. Further, it causes Plaintiffs to violate the rights of their customers. The parties have genuine opposing interests in that the Plaintiffs do not wish to enforce the Deny-Service Proclamation for the above reasons, do not wish to turn customers away who do not wear them, and do not wish to demand the private, personal information of customers who are not wearing face coverings. This disagreement is substantial, and a judicial

1 determination as to the legality of the Deny Service Proclamation will be final and conclusive as to
2 this controversy.

3 **COUNT VII**

4 **Claim for Damages and Injunction from Nuisance**

5 5.67 Plaintiffs re-allege each and every fact set forth above, as if fully set forth herein.

6 5.68 A nuisance is whatever is injurious to health or indecent or an obstruction to the free
7 use of property, so as to essentially interfere with the comfortable enjoyment of the life and
8 property.

9 5.69 Any person whose property is injuriously affected or whose personal enjoyment is
10 lessened by a nuisance may sue to recover damages and injunctive relief to abate the nuisance.

11 5.70 Plaintiffs have an interest in the use and enjoyment of their property for their
12 business activities. This includes allowing customers onto their premises without masks if they
13 wish, and allowing their employees to work without masks if they wish to do so.

14 5.71 The Governor's Deny-Service Proclamation interferes with Plaintiffs' use and
15 enjoyment of their property by compelling them to turn away potential customers that would
16 otherwise patronize their businesses, terminate employees who do not wish to wear masks, or suffer
17 from penalties if they do not obey. In the alternative, the governor's proclamation compels Plaintiffs
18 to either turn away these potential customers or suffer moral opprobrium, and the loss of profits
19 associated with it, for serving these customers.

20 5.72 The Governor's interference with Plaintiffs' use and enjoyment of their property is
21 unlawful since it is not justified under any of the Governor's emergency powers.

22 5.73 Plaintiffs seek injunction and damages for the obstruction of the free use of their
23 property interfering with their enjoyment thereof.

24 **COUNT VIII**

25 **Claim for Damages and Injunction from Interference with a Prospective Advantage or
26 Business Expectancy**

27 5.74 Plaintiffs re-allege each and every fact set forth above, as if fully set forth herein.
28

1 5.75 To show tortious interference with a prospective advantage or business expectancy,
2 Plaintiffs must show five elements:

3 5.75.1 The existence of a valid business expectancy;

4 5.75.2 That the Defendant had knowledge of the expectancy;

5 5.75.3 An intentional interference inducing or causing termination of the expectancy;

6 5.75.4 That the defendant interfered for an improper purpose or used improper means;

7 and

8 5.75.5 Resultant damage.

9 5.76 Here, Plaintiffs expected and expect customers to frequent their establishments, and
10 the Governor can be charged with this knowledge. The Governor compels Plaintiffs to refuse
11 service to a portion of Plaintiffs' expected customer pool, and the money Plaintiffs would receive
12 for goods and services is lost to Plaintiffs.

13 5.77 In the alternative, if Plaintiffs do serve non-conforming customers, Plaintiffs are
14 maligned by other customers because Plaintiffs are perceived as non-law abiding.

15 5.78 Thus, the Governor in fact terminated a Plaintiffs' business expectancy.

16 5.79 The Governor used improper means in inducing the termination of the expectancy
17 because he had no authority, under his emergency powers, to compel Plaintiffs to refuse service to
18 non-mask wearing customers or, in the alternative, his Proclamation was arbitrary and capricious.

19 5.80 Finally, the Governor has caused Plaintiffs damages in the form of lost profits from
20 customers they have had to refuse to serve. In the alternative, the Governor has caused the Plaintiffs
21 damages from the moral opprobrium they suffer because they do not turn away customers without
22 masks, which results in lost profits by those customers who refuse to patronize the businesses on
23 account of Plaintiffs' perceived lawlessness.

24 5.81 Plaintiffs seek injunction and damages for the Governor's interreference with their
25 business expectancies.

1 **VI. REQUESTED RELIEF**

2 WHEREFORE, Plaintiffs hereby pray for the following relief:

3 6.1 Declaratory judgment that, for the reasons alleged herein, the Deny-Service
4 Declaration was issued without legal authority and is *ultra vires*;

5 6.2 Declaratory judgment that, for the reasons alleged herein, the Deny-Service
6 Proclamation violates Plaintiffs' rights to due process under Article I, Section 3 of the Washington
7 State Constitution;

8 6.3 Declaratory judgment that, for the reasons alleged herein, the Deny-Service
9 Proclamation violates Plaintiffs' rights to free speech under Article I, Section 5 of the Washington
10 State Constitution;

11 6.4 Preliminary and permanent injunctive relief, enjoining the Defendants from
12 enforcing the Deny-Service Proclamation;

13 6.5 Declaratory judgment that, for the reasons alleged herein, the Deny-Service
14 Proclamation is unenforceable because it compels Plaintiffs to violate the right to privacy their
15 customers and employees enjoy, under Article 1, Section 7 of the Washington State Constitution,
16 and violates their privacy as well;

17 6.6 Declaratory judgment that, for the reasons alleged herein, the Deny-Service
18 Proclamation is void-as-vague;

19 6.7 Damages for the loss of enjoyment of their property and injunction enjoining further
20 unlawful interference with the use and enjoyment of their property;

21 6.8 Damages for the loss of business expectancies in the form of customers that
22 Plaintiffs have had to turn away due to the Deny-Service Proclamation;

23 6.9 Such other and further relief as the Court may deem appropriate.
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1 RESPECTFULLY SUBMITTED this 1st day of October, 2020.

2
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EXHIBIT A

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 and 20-25 et seq.**

20-25.6

**“SAFE START – STAY HEALTHY”
COUNTY-BY-COUNTY PHASED REOPENING**

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-53 and 20-55 through 20-61, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, I issued Proclamations 20-25, 20-25.1, 20-25.2, and 20-25.3 (*Stay Home – Stay Healthy*), and I subsequently issued Proclamation 20-25.4 (“*Safe Start – Stay Healthy*” *County-By-County Phased Reopening*), wherein I amended and transitioned the previous proclamations’ prohibitions to the “*Safe Start – Stay Healthy*” prohibitions, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4 and according to the phase each county was subsequently assigned by the Secretary of Health; and on July 1, 2020, I issued Proclamation 20-25.5 (“*Safe Start – Stay Healthy*” *County-By-County Phased Reopening*) wherein I amended the previous proclamations, and incorporated the prohibitions involving statewide face coverings in *Order of the Secretary of Health 20-03*; and prohibited, among other things, employers from failing to cooperate with public health authorities; and updated the Reopening Plan; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State and remains a significant health risk to all of our people, especially members of our most vulnerable populations; and

WHEREAS, when I issued the *Safe Start-Stay Healthy* order (Proclamation 20-25.4) on May 31, 2020, there were approximately 21,349 cases of COVID-19 in Washington State with 1,118 deaths; when I issued the *Safe Start-Stay Healthy* order (Proclamation 20-25.5) on July 1, 2020, there were approximately 32,824 cases and 1,332 deaths; and, now, as of July 7, 2020, the Department of Health indicated that there have been 37,420 cases and 1,384 deaths, demonstrating the ongoing, present threat of this lethal disease; and

WHEREAS, health professionals and epidemiological modeling experts predict that although Washington State has passed the peak of the first wave of COVID-19 and has made adequate progress to modify some of the initial community mitigation efforts, the nature of COVID-19 viral transmission, including both asymptomatic and symptomatic spread as well as the relatively high infectious nature, suggests it is appropriate to slowly re-open Washington State only through a careful, phased, and science-based approach. Modelers continue to agree that fully relaxing social distancing measures will result in a sharp increase in the number of cases, which the country is currently experiencing in many states; and

WHEREAS, the United States Centers for Disease Control and Prevention recommends that, in addition to its recommendation to maintain six-feet of physical distance from non-household members and frequent hand washing with soap and water or alcohol-based hand sanitizer, people wear cloth face coverings when they are in public settings where they cannot reliably maintain six feet of distance from others at all times, given the substantial increase in the numbers of cases of COVID-19 infection, these precautions must be mandatory; and

WHEREAS, the science also suggests that by ensuring safe social distancing hygiene practices, and the use of cloth face coverings, many business and recreational activities can be conducted with limited exposure to customers, which is important to revitalizing Washington State's economy, restoring jobs, and providing necessary goods and services; and

WHEREAS, the Washington State Department of Health's data and modeling demonstrate that many counties have significantly reduced or eliminated the number of new COVID-19 cases sufficiently to enable those counties to control and respond to virus outbreaks within the capacity of existing local and regional health care systems without significant increased risk of being overwhelmed, and this data continues to support providing all counties with an opportunity to lift some restrictions, subject to certain conditions and requirements, including the use of cloth face coverings; and

WHEREAS, on June 8, 2020, I ordered all employees to wear a face covering when working, except when working alone or when the job involves no in-person interaction, as detailed in the *Safe Start Washington Phased Reopening Plan*; and, further, that employers must provide cloth facial coverings to employees, unless their exposure dictates a higher level of protection as described in the Department of Labor & Industries' COVID-19 workplace safety and health requirements; and

WHEREAS, on June 24, 2020, the Secretary of Health issued Order 20-03, effective June 26, 2020, requiring all individuals in Washington state to wear a face covering that covers their nose and mouth

when in any indoor or outdoor public setting, except under certain circumstances, which provides a minimum level of protection for Washingtonians when they are not at work where the Department of Labor & Industries' face covering requirements apply; and

WHEREAS, due to a surge in COVID-19 infections in Yakima County, on June 24, 2020, I issued Proclamation 20-60, wherein I prohibited all employers in Yakima County from operating, allowing a customer to enter a business, or conducting in-person business with a customer unless the customer wore a face covering in compliance with Order of the Secretary of Health 20-03;

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people; and

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamations 20-25, et seq., are amended to extend all of the prohibitions and each expiration date therein to 11:59 p.m. on August 6, 2020, and that except as otherwise provided in this order, the *Safe Start Washington Phased Reopening County-by-County Plan* found [here](#), the *Order of the Secretary of Health 20-03*, issued on June 24, 2020, found [here](#), and all other provisions of Proclamations 20-25, et seq., shall remain in full force and effect.

FURTHERMORE, in addition to new prohibitions established in this Order and Reopening Plan, for the convenience of the reader, I repeat the language in Proclamation 20-25.5 below; and

FURTHERMORE, until there is an effective vaccine, effective treatment or herd immunity, it is crucial to continue to maintain some level of community interventions to suppress the spread of COVID-19 throughout all phases of recovery; and, therefore, throughout all phases, individuals should (or must, as noted below) continue to engage in personal protective behaviors including:

- practicing physical distancing, staying at least six feet away from other people;
- wearing cloth face coverings in public settings (required, with some exceptions, pursuant to *Order of the Secretary of Health 20-03*);

- staying home if sick;
- avoiding others who are sick;
- washing hands frequently;
- covering coughs and sneezes;
- avoiding touching eyes, nose and mouth with unwashed hands; and
- disinfecting surfaces and objects regularly; and

FURTHERMORE, I hereby incorporate a reference to the previously issued order requiring face coverings in the work place and further order, in addition to other requirements detailed in the *Safe Start Washington Phased Reopening Plan*, that:

While at work:

- No employee may work unless that employee wears a face covering when working, except when working alone or when the job involves no in-person interaction, as detailed in the *Safe Start Washington Phased Reopening Plan*; and, further, that employers must provide cloth facial coverings to employees, unless their exposure dictates a higher level of protection as described in the Department of Labor & Industries’ COVID-19 Workplace Safety and Health Requirements. These prohibitions involving the use of face coverings supersede the prohibitions involving the use of face coverings in *Order of the Secretary of Health 20-03* to the extent that they would apply to employees when working.

When not at work:

- As required by *Order of the Secretary of Health 20-03*, or as I otherwise direct, no individual who is not expressly exempted may appear in any indoor or outdoor public setting, including but not limited to, a business, without wearing a face covering.

Employers:

- No employer may operate, allow a customer to enter a business, conduct business, or employ employees unless the employer (a) cooperates with public health authorities in the investigation of cases, suspected cases, outbreaks, and suspected outbreaks of COVID-19; (b) cooperates with the implementation of infection control measures, including but not limited to isolation and quarantine and following the cleaning guidelines set by the CDC to deep clean and sanitize; (c) complies with all public health authority orders and directives; and (d) complies with all Department of Labor & Industries interpretive guidance, regulations, and rules and Department of Labor & Industries-administered statutes. Cooperation and compliance requirements are listed in the Reopening Plan.
- No business may operate, allow a customer to enter a business, or conduct business with a customer inside any building that is open to the public or outdoors in a public place unless the customer is wearing a face covering, as required by *Order of the Secretary of Health 20-03*.
- No employer may operate, unless it notifies the employer’s local health jurisdiction within 24 hours if the employer suspects COVID-19 is spreading in the employer’s workplace, or if the employer is aware of 2 or more employees who develop confirmed or suspected COVID-19 within a 14-day period; and

FURTHERMORE, I continue to permit the low-risk activities previously permitted as reflected or clarified in formal guidance documents [here](#), and which may be updated or modified as the science and data support; and

FURTHERMORE, in collaboration with the Washington State Department of Health, in furtherance of the physical, mental, and economic well-being of all Washingtonians, I will continue to analyze the data and epidemiological modeling and adjust the *Safe Start Washington Phased Reopening Plan* accordingly. Such adjustments may include, if necessary based on the data and science, delaying progress of any or all counties to a subsequent phase, or returning any or all counties to a prior phase.

ADDITIONALLY, in furtherance of these prohibitions and for general awareness:

1. Employers must comply with all conditions for operation required by the state Department of Labor & Industries, including interpretive guidance, regulations and rules, such as [WAC 296-800-14035](#), and Department of Labor & Industries-administered statutes.
2. Everyone is required to cooperate with public health authorities in the investigation of cases, suspected cases, outbreaks, and suspected outbreaks of COVID-19 and with the implementation of infection control measures pursuant to State Board of Health rule in WAC 246-101-425.
3. All mandatory guidelines for businesses and activities, which remain in effect except as modified by this Proclamation and the *Order of the Secretary of Health 20-03*, may be found at the Governor's Office [website](#), [COVID-19 Resources and Information](#), and at [COVID-19 Reopening Guidance for Businesses and Workers](#).

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

All persons are reminded again that no credentialing program or requirement applies to any activities or operations under this Proclamation.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5). Further, if people fail to comply with the required social distancing and other protective measures while engaging in this phased reopening, I may be forced to reinstate the prohibitions established in earlier proclamations.

EXHIBIT B



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 and 20-25 et seq.**

20-25.7

**“SAFE START - STAY HEALTHY”
COUNTY-BY-COUNTY PHASED REOPENING**

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-53 and 20-55 through 20-63, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, I issued Proclamations 20-25, 20-25.1, 20-25.2, and 20-25.3 (*Stay Home - Stay Healthy*), and I subsequently issued Proclamation 20-25.4 on May 31, 2020, (*“Safe Start – Stay Healthy” County-By-County Phased Reopening*), wherein I amended and transitioned the previous proclamations’ prohibitions to the *“Safe Start – Stay Healthy”* framework, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4, et seq., and according to the phase each county was subsequently assigned by the Secretary of Health; and

WHEREAS, when I issued Proclamation 20-25.4 on May 31, 2020, I ordered that, beginning on June 1, 2020, counties would be allowed to apply to the Department of Health to move forward to the next phase of reopening more business and other activities; and by July 2, 2020, a total of five counties were approved to move to a modified version of Phase 1, 17 counties were in Phase 2, and 17 counties were in Phase 3; and

WHEREAS, when I issued the *Safe Start– Stay Healthy* order (Proclamation 20-25.4) on May 31, 2020, there were approximately 21,349 cases of COVID-19 in Washington State with 1,118 deaths ; and when I issued the *Safe Start-Stay Healthy* order (Proclamation 20-25.5) on July 1, 2020, there were approximately 32,824 cases and 1,332 deaths; and

WHEREAS, on July 1, 2020, when I issued Proclamation 20-25.5 (*“Safe Start – Stay Healthy” County-By-County Phased Reopening*), I amended the previous proclamations, and incorporated the prohibitions involving statewide face coverings in *Order of the Secretary of Health 20-03*; and

prohibited, among other things, employers from failing to cooperate with public health authorities; and updated the Reopening Plan; and

WHEREAS, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remains in place today while I work with the Department of Health and other epidemiological experts to determine appropriate strategies to mitigate the recent increased spread of the virus and increased hospitalizations and deaths, and those strategies may include restricting some business and other activities; and

WHEREAS, when I last issued an extension of the *Safe Start– Stay Healthy* order (Proclamation 20-25.6) on July 7, 2020, the Department of Health reported that there were 37,420 cases, 4,723 hospitalizations and 1,384 deaths; and just over 2 weeks later (16 days), on July 23, 2020, there were 50,009 cases, 5,276 hospitalizations and 1,482 deaths, demonstrating the ongoing present threat and a dangerous upward spread of this lethal disease, and an apparent disregard by many individuals for the health and safety measures recommended by the Washington State Department of Health and the Centers for Disease Control and Prevention to control its spread; and

WHEREAS, on July 7, 2020, I issued Proclamation 20-25.6 (“*Safe Start – Stay Healthy*” *County-By-County Phased Reopening*), wherein I amended the previous proclamations, and, among other things, prohibited all employers in Washington from operating, allowing a customer to enter a business, or conducting business with a customer inside any building that is open to the public or outdoors in a public place unless the customer is wearing a face covering as required by *Order of the Secretary of Health 20-03*; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State and remains a significant health risk to all of our people, especially members of our most vulnerable populations; and

WHEREAS, health professionals and epidemiological modeling experts advise that Washington is still in a state of COVID-19 outbreak, and pauses in phase reopening, restrictions on gathering size, and increased mask use may help prevent Washington from experiencing the crisis situation in Florida and Arizona; and

WHEREAS, the United States Centers for Disease Control and Prevention recommends that, in addition to its recommendation to maintain six-feet of physical distance from non-household members and frequent hand washing with soap and water or alcohol-based hand sanitizer, people wear cloth face coverings when they are in public settings where they cannot reliably maintain six feet of distance from others at all times, given the substantial increase in the numbers of cases of COVID-19 infection, these precautions must be mandatory; and

WHEREAS, the science also suggests that by ensuring safe social distancing hygiene practices, and the use of cloth face coverings, many business and recreational activities can be conducted with limited exposure to customers, which is important to revitalizing Washington State’s economy, restoring jobs, and providing necessary goods and services; and

WHEREAS, on June 8, 2020, I ordered all employees to wear a face covering when working, except when working alone or when the job involves no in-person interaction, as detailed in the *Safe Start*

Washington Phased Reopening Plan, and, further, that employers must provide cloth facial coverings to employees, unless their exposure dictates a higher level of protection as described in the Department of Labor & Industries' COVID-19 workplace safety and health requirements; and

WHEREAS, on June 24, 2020, the Secretary of Health issued Order 20-03, effective June 26, 2020, requiring all individuals in Washington State to wear a face covering that covers their nose and mouth when in any indoor or outdoor public setting, except under certain circumstances, which provides a minimum level of protection for Washingtonians when they are not at work where the Department of Labor & Industries' face covering requirements apply; and

WHEREAS, due to a surge in COVID-19 infections in Yakima County, on June 24, 2020, I issued Proclamation 20-60, wherein I prohibited all employers in Yakima County from operating, allowing a customer to enter a business, or conducting in-person business with a customer unless the customer wore a face covering in compliance with *Order of the Secretary of Health 20-03*; and

WHEREAS, on July 24, 2020, the Secretary of Health issued Order 20-03.1, effective July 25, 2020, which expands the Secretary's prior face covering mandate to require all people in Washington State to wear a face covering when they are outside of their house, mobile home, apartment, condominium, hotel or motel room, bedroom in a congregate living setting, or other dwelling unit; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people; and

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamations 20-25, et seq., are amended to extend all of the prohibitions described herein until this order is amended or rescinded. And except as otherwise provided in this order, the *Safe Start Washington Phased Reopening County-by-County Plan* found [here](#), the *Order of the Secretary of Health 20-03.1*, issued on July 24, 2020, found [here](#), and all other provisions of Proclamations 20-25, et seq., shall remain in full force and effect.

FURTHERMORE, in addition to new prohibitions established in this Order and Reopening Plan, for the convenience of the reader, I repeat the language in Proclamation 20-25.6 below; and

FURTHERMORE, until there is an effective vaccine, effective treatment or herd immunity, it is crucial to continue to maintain some level of community interventions to suppress the spread of COVID-19 throughout all phases of recovery; and, therefore, throughout all phases, individuals should (or must, as noted below) continue to engage in personal protective behaviors including:

- practicing physical distancing, staying at least six feet away from other people;
- wearing face coverings in public settings (required, with some exceptions, pursuant to *Order of the Secretary of Health 20-03.1*);
- staying home if sick;
- avoiding others who are sick;
- washing hands frequently;
- covering coughs and sneezes;
- avoiding touching eyes, nose and mouth with unwashed hands; and
- disinfecting surfaces and objects regularly; and

FURTHERMORE, I hereby incorporate by reference the previously-issued order requiring face coverings in the work place and further order, in addition to other requirements detailed in the *Safe Start Washington Phased Reopening Plan*, that:

While at work:

- No employee may work unless that employee wears a face covering when working, except when working alone or when the job involves no in-person interaction, as detailed in the *Safe Start Washington Phased Reopening Plan*; and, further, that employers must provide cloth facial coverings to employees, unless their exposure dictates a higher level of protection as described in the Department of Labor & Industries' COVID-19 Workplace Safety and Health Requirements. These prohibitions involving the use of face coverings supersede the prohibitions involving the use of face coverings in *Order of the Secretary of Health 20-03.1* to the extent that they would apply to employees when working.

When not at work:

- As required by *Order of the Secretary of Health 20-03.1*, or as I otherwise direct, no individual may appear in any indoor or outdoor public or non-public setting outside of their house, mobile home, apartment, condominium, hotel or motel room, or other dwelling unit without wearing a face covering, unless the individual or activity is specifically exempted. Among other exemptions, an individual does not have to wear a face covering while in an outdoor area if they maintain a distance of at least six feet from non-household members.

Employers:

- No employer may operate, allow a customer to enter a business, conduct business, or employ employees unless the employer (a) cooperates with public health authorities in the investigation of cases, suspected cases, outbreaks, and suspected outbreaks of COVID-19; (b) cooperates with the implementation of infection control measures, including but not limited to isolation and quarantine and following the cleaning guidelines set by the CDC to deep clean and sanitize; (c) complies with all public health authority orders and directives; and (d) complies with all Department of Labor & Industries interpretive guidance, regulations, and rules and Department of Labor & Industries-administered statutes. Cooperation and compliance requirements are listed in the Reopening Plan.

- No business may operate, allow a customer to enter a business, or conduct business with a customer inside any building that is open to the public or outdoors in a public place unless the customer is wearing a face covering, as required by *Order of the Secretary of Health 20-03.1*.
- No employer may operate, unless it notifies the employer's local health jurisdiction within 24 hours if the employer suspects COVID-19 is spreading in the employer's workplace, or if the employer is aware of 2 or more employees who develop confirmed or suspected COVID-19 within a 14-day period; and

FURTHERMORE, I continue to permit the low-risk activities previously permitted as reflected or clarified in formal guidance documents [here](#), and which may be updated or modified as the science and data support; and

FURTHERMORE, in collaboration with the Washington State Department of Health, in furtherance of the physical, mental, and economic well-being of all Washingtonians, I will continue to analyze the data and epidemiological modeling and adjust the *Safe Start Washington Phased Reopening Plan* accordingly. Such adjustments may include, if necessary based on the data and science, delaying progress of any or all counties to a subsequent phase, or returning any or all counties to a prior phase.

ADDITIONALLY, in furtherance of these prohibitions and for general awareness:

1. *Order of the Secretary of Health 20-03.1*, issued on July 24, 2020, is incorporated by reference, may be amended as is necessary, and all such amendments are also incorporated by reference.
2. Employers must comply with all conditions for operation required by the state Department of Labor & Industries, including interpretive guidance, regulations and rules, such as [WAC 296-800-14035](#), and Department of Labor & Industries-administered statutes.
3. Everyone is required to cooperate with public health authorities in the investigation of cases, suspected cases, outbreaks, and suspected outbreaks of COVID-19 and with the implementation of infection control measures pursuant to State Board of Health rule in WAC 246-101-425.
4. All mandatory guidelines for businesses and activities, which remain in effect except as modified by this Proclamation and the *Order of the Secretary of Health 20-03.1*, may be found at the Governor's Office [website](#), [COVID-19 Resources and Information](#), and at [COVID-19 Reopening Guidance for Businesses and Workers](#).

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military

Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

All persons are reminded again that no credentialing program or requirement applies to any activities or operations under this Proclamation.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5). Further, if people fail to comply with the required social distancing and other protective measures while engaging in this phased reopening, I may be forced to reinstate the prohibitions established in earlier proclamations.

This order goes into effect immediately, and remains in effect until the state of emergency, issued on February 29, 2020, pursuant to Proclamation 20-05, is rescinded or until this order is amended or rescinded.

Signed and sealed with the official seal of the state of Washington on this 24th day of July, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

EXHIBIT C



STATE OF WASHINGTON

DEPARTMENT OF HEALTH

*PO Box 47890 • Olympia, Washington 98504-7890
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**ORDER OF THE SECRETARY OF HEALTH
AMENDING ORDER 20-03**

20-03.1

Face Coverings - Statewide

WHEREAS, Washington State Governor Jay Inslee has issued Proclamation 20-05, subsequently amended and extended, proclaiming a statewide State of Emergency due to an outbreak of coronavirus disease 2019 (COVID-19) in the United States and community spread of COVID-19 in Washington State; and

WHEREAS, COVID-19 spreads mainly from person to person through respiratory droplets when infected people, many of whom do not exhibit COVID-19 symptoms, cough, sneeze, or talk, and evidence suggests that wearing a cloth face covering reduces an infected person's chance of spreading the infection to others and may protect uninfected persons from larger droplets from infected people around them; and

WHEREAS, the Washington State Department of Health, the United States Centers for Disease Control and Prevention, and the World Health Organization recommend that, in addition to their recommendations to maintain six feet of physical distance from non-household members and wash hands frequently with soap and water or alcohol-based hand sanitizer, people wear cloth face coverings when they are in public settings where they cannot reliably maintain six feet of distance from others at all times, given the substantial increase in the numbers of cases of COVID-19 infection, these precautions must be mandatory; and

WHEREAS, although many Washingtonians already regularly wear face coverings when in public, requiring all Washingtonians to wear cloth face coverings in public will help control and prevent the spread of COVID-19 in Washington State; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to constitute an emergency threatening the safety of the public health, demanding action by the Secretary of Health, and only a small number of Washington's local health officers have issued orders requiring the general public in their jurisdictions to wear cloth face coverings in public; and

WHEREAS, on June 24, 2020, I issued Order of the Secretary of Health 20-03 directing every person in Washington State to wear a face covering when in any indoor or outdoor public setting, subject to certain exceptions; and

WHEREAS, for the same reasons stated above, requiring people to wear face coverings when they are outside their house, mobile home, apartment, condominium, hotel or motel room, bedroom in a congregate living setting, or other dwelling unit will also help control and prevent the spread of COVID-19 in Washington State.

NOW, THEREFORE, I, John Wiesman, Washington State Secretary of Health, as a result of the above-noted situation, and under RCW 43.70.130, RCW 70.05.070, WAC 246-100-036, and any other applicable authority, do hereby amend Order 20-03 and order as follows:

Every person in Washington State must wear a face covering that covers their nose and mouth when they are outside of their house, mobile home, apartment, condominium, hotel or motel room, or other dwelling unit, subject to the exceptions below.

- If a person lives in a congregate living setting where they share living facilities with other residents, their dwelling unit is their bedroom. They must wear a face covering when they are outside their bedroom, including inside the building, subject to the exceptions below.
 - Congregate living settings include, but are not limited to, fraternity, sorority, boarding, and other similar shared houses, dormitory buildings, nursing homes, assisted living facilities, adult family homes, other long-term care facilities, group care facilities, and other similar settings.
 - Unless listed above, congregate living settings do not otherwise include houses, mobile homes, apartments, condominiums, hotel or motel rooms, supported living homes, state-operated living alternatives, state-owned psychiatric hospitals, or psychiatric residential treatment facilities.
 - A bedroom includes any living space, bathroom, or facility attached to the bedroom that is not generally open to the other residents of the congregate living setting.
 - Non-family members who live together in congregate living settings are not household members. “Family member” means an aunt, child, cousin, grandchild, grandparent, parent, sibling, spouse, or uncle, whether biological, adoptive, step, foster, de facto, in loco parentis, or by guardianship
- Every person must wear a face covering in both public and non-public settings outside of their home, including, but not limited to, in outdoor areas, businesses, government buildings, healthcare settings, public transportation, elevators, hallways, stairways, parking garages, kitchens, lounges, lobbies, storage areas, garbage/recycling areas, and laundry rooms.

Individuals may remove their face coverings when they are outside of their house, mobile home, apartment, condominium, hotel or motel room, or other dwelling unit under the following circumstances:

- While engaged in the act of eating or drinking, provided that:
 - People eating or drinking in congregate living settings maintain a distance of at least six feet from each other to the extent reasonably possible; and
 - People eating or drinking in other settings outside of a home maintain a distance of at least six feet from non-household members;
- While engaged in indoor or outdoor exercise activities, such as walking, hiking, bicycling, or running, provided that a distance of at least six feet is maintained from non-household members, except that face covering requirements for individuals engaged in team sports activities and in some other exercise activities, including training at fitness training facilities, are governed by the requirements issued by the Governor;
- While in an outdoor area, provided that a distance of at least six feet is maintained from non-household members;
- While showering, bathing, or engaging in other personal hygiene or grooming activities that require the removal of the face covering;
- When any party to a communication is deaf or hard of hearing and not wearing a face covering is essential to communication;
- While obtaining a service that requires temporary removal of the face covering;
- While sleeping;

- When necessary to confirm the individual's identity;
- When federal or state law prohibits wearing a face covering or requires the removal of a face covering; and
- When unable to put on a face covering due to an emergency.

The following individuals are exempt from the requirements to wear a face covering:

- Children younger than five years old; and
 - Children who are younger than two years old should never wear face coverings due to the risk of suffocation.
 - Children who are two, three, or four years old, with the assistance and close supervision of an adult, are strongly recommended to wear a face covering at all times in settings, like grocery stores or pharmacies, where it is likely that a distance of at least six feet cannot be maintained from non-household members and vulnerable people must go.
- Persons with a medical condition, mental health condition, developmental or cognitive condition, or disability that prevents wearing a face covering. This includes, but is not limited to, persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.

For purposes of this order, a face covering must:

- Fit snugly against the sides of the face;
- Completely cover the nose and mouth;
- Be secured with ties, ear loops, elastic bands, or other equally effective method;
- Include at least one layer of cloth, although multiple layers are strongly recommended;
- Allow for breathing without restriction; and
- Be capable of being laundered and machine dried without damage or change to shape.

A face covering may also be a mask or covering that provides a higher level of protection than a cloth face covering, such as an N95 mask, though people are generally encouraged to use cloth face coverings to preserve access to these higher grade face coverings for health care and other settings where they are most needed.

Children in childcare facilities and K-12 public and private schools may use face shields as an alternative to a cloth face covering if authorized pursuant to an order of the Governor.

This order does not apply to persons who are incarcerated. Correctional facilities, as part of their Safe Start plans, will have specific guidance on the wearing of face coverings or masks for both incarcerated individuals and staff.

Other agencies and officials have taken or may take action to require the wearing of face coverings in certain settings and jurisdictions and for certain purposes. Every person in Washington State must wear a face covering whenever legally required to do so by this order or by the action of any other agency or official. This order and the actions of other agencies and officials must be followed to the extent they are not in conflict.


If this order and the action of any other agency or official are in conflict, the more protective requirement must be followed, unless prohibited by a federal or state statute or rule. For example, this order allows individuals to remove their face coverings in outdoor public settings if they are able to maintain a distance of six feet from non-household members. If a local health officer issues an order requiring people to wear a face covering in outdoor public settings at all times, without an exception for physical distancing, then the local health officer's order must be followed because it is more protective than this order.

Any face covering requirement imposed pursuant to an order of the Governor must be followed, such as face covering requirements for employees.

This order shall take effect on July 25, 2020, and remain in effect until rescinded or superseded by a subsequent order of the Secretary of Health or until the Governor issues a proclamation declaring the termination of the State of Emergency declared by Proclamation 20-05, as amended and extended by subsequent amendatory proclamations, whichever is earlier.

Members of the public are required by law to comply with this order, and violators may be subject to enforcement pursuant to RCW 43.70.130(7), RCW 70.05.120(4), and WAC 246-100-070(3).

Signed this 24th day of July, 2020.



John Wiesman, DrPH, MPH
Secretary of Health