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STATE OF WASHINGTON
DOUGLAS COUNTY SUPERIOR COURT

DAN SUTTON, MARK STRAUB, KYLE
STEINBERG, JIM WALKER,
CHRISTOPHER DAE QUINN, DENNIS
CARINO, DOUG BIANCHI, JESSE RAINS,
AND JOHN DIVIS,

Plaintiffs,

v.

JAY INSLEE, IN HIS OFFICIAL CAPACITY
AS GOVERNOR,

Defendant.

20-2-00139-09

COMPLAINT FOR EMERGENCY
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND TEMPORARY AND
PERMANENT RESTRAINING ORDER

Plaintiffs allege as follows:

I. PRELIMINARY STATEMENT

1. COVID-19 is a novel virus that can cause serious illness and can spread easily from person to person.

2. Chapter 72.06 RCW provides direction for how to prepare for and respond to a “novel virus” such as COVID-19. It places responsibility for doing so at the local level.

3. Now that it is clear that COVID-19 will not overwhelm hospital and other health care resources in Douglas County, there is no longer a “disaster” or any other emergency justifying the issuance of orders pursuant to RCW 43.06.220.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this lawsuit.

1 19. Mr. Straub's household income has been significantly reduced as his wife is a sales
2 professional with a client base comprised almost solely of small businesses. She is compensated on
3 a commission basis.

4 20. As an elected official, Mr. Straub's ability to fulfill the responsibilities in serving
5 constituents has been deeply impacted.

6 21. The ongoing restrictions continue to prevent Mr. Straub from effectively
7 addressing their concerns and needs in a myriad of ways.

8 22. Due to the economy, Mr. Straub's youngest son will be returning to live with him
9 on a temporary basis until such time that local businesses begin hiring again, and he is able to secure
10 a position.

11 23. Mr. Straub's wife takes part in a weekly scheduled Bible Study group and has been
12 unable to participate in these meetings as they have been cancelled through the duration of the
13 order.

14 24. Mr. Straub thereby has been harmed and is still being harmed by the Proclamation.

15 **C. Kyle Steinberg**

16 25. Mr. Steinberg is a resident of Douglas County, Washington.

17 26. Mr. Steinberg is a Douglas County Commissioner.

18 27. As Commissioner, Mr. Steinberg has been unable to meet with constituents and
19 attend to issues that they have raised while restrictions on nonessential travel is in place.

20 28. Mr. Steinberg owns Wenatchee Body and Fender, LLC, an auto-body repair shop
21 in Wenatchee, WA.

22 29. Since Governor Inslee first announced the Stay Home, Stay Healthy Order, there
23 are less opportunities for his business to repair vehicles.

24 30. Mr. Steinberg took out a PPP loan from the SBA and has thus far been able to retain
25 all his employees.

1 31. However, Mr. Steinberg is over-staffed based on the volume of work, and will have
2 to let employees go at the conclusion of the PPP loan-forgiveness period unless there is a significant
3 increase in traffic and corresponding rebound in work opportunities.

4 32. An additional cause for the reduction in his business income includes, of the people
5 who have encountered a need for repair services in the last two months, Mr. Steinberg has observed
6 an extraordinarily high number of customers who are not able to afford the deductible because they
7 recently became unemployed or have experienced a serious loss in income due to the effects of the
8 Stay Home, Stay Healthy Order.

9 33. The Stay Home, Stay Health Order has limited Mr. Steinberg's childcare options
10 while his children are unable to attend school, which has further reduced opportunities to work
11 when work is available.

12 34. Mr. Steinberg's household income has been adversely impacted by The Stay Home,
13 Stay Healthy Order.

14 35. Mr. Steinberg's spouse works in health care, and has been forced to work less
15 because of the shutdown of elective surgeries.

16 36. Mr. Steinberg thereby has been harmed and is still being harmed by the
17 Proclamation.

18 **D. Jim Walker**

19 37. Mr. Walker is a resident of Douglas County, Washington.

20 38. Mr. Walker lives, works, and employees people in Douglas County.

21 39. Mr. Walker is the owner of Lone Pine Fruit & Espresso, established in 2000 and
22 Lone Pine Orchard, established in 1998.

23 40. Due to the Stay at Home order and the nature of the business, he has been unable
24 to conduct business at its fullest.

25 41. This restriction is causing devastating financial hardship on not only to Mr. Walker,
26 but also to his 13 employees and their families.

27

1 42. Mr. Walker and his employees depend on the influx of travelers on Highway 97 to
2 support the business and their jobs. If he is unable to catch the Memorial Day Weekend business,
3 his busiest weekend of the year, the outcome will be catastrophic to the financial stability of the
4 business.

5 43. If more week, or even days, pass under these reduced conditions, Mr. Walker's
6 business of twenty years will not survive.

7 44. Mr. Walker thereby has been harmed and is still being harmed by the Proclamation.

8 **E. Dennis Carino**

9 45. Mr. Carino is a resident of Douglas County, Washington.

10 46. Mr. Carino is a small business owner. Due to the "Stay at Home" order and the
11 nature of his restaurant business, he have been unable to conduct profitable business resulting in
12 devastating financial harm.

13 47. If Mr. Carino is unable to open for in-dining and catch the Memorial Day weekend,
14 which is one of the busiest weekends of the year for his restaurant, the financial harm will be
15 catastrophic and will likely cause the failure of his business.

16 48. Mr. Carino thereby has been harmed and is still being harmed by the Proclamation.

17 **F. Jesse Rains**

18 49. Mr. Rains is a resident of Douglas County, Washington.

19 50. Mr. Rains owns a local small business, Joe's East Sports Bar & Grill.

20 51. Due to the "Stay at Home" order and the nature of the business, Mr. Rains has
21 been unable to continue to conduct business.

22 52. The financial harm has been devastating as Mr. Rains has already missed St.
23 Patrick's Day, which is the busiest day for his business, as well as the local Apple Blossom Festival.

24 53. If Mr. Rains is unable to open and catch the Memorial Day weekend business, which
25 is one of the busiest weekends of the year for the hospitality industry, the financial harm will be
26 catastrophic and likely to cause the failure of his business..

27 54. Mr. Rains thereby has been harmed and is still being harmed by the Proclamation.

1 **G. Christopher Dae Quinn**

2 55. Mr. Quinn is a resident of Douglas County, Washington.

3 56. Mr. Quinn owns property in Douglas County, the city of East Wenatchee.

4 57. Mr. Quinn has commercial tenants unable to pay rent and portions of their expenses
5 for extended periods of time as their businesses are required to be closed due to State orders.

6 58. This has caused these businesses to lay off or furlough hundreds of employees and
7 has dropped his rental income to zero on these properties.

8 59. Mr. Quinn's real estate expenses meanwhile, such as taxes, maintenance, debt
9 service, and insurance, continue to eat away at reserves.

10 60. Mr. Quinn's and his wife's salaries have been slashed by 40%. Being self-employed,
11 they are not eligible for unemployment benefits, or Paycheck Protection Program funding of any
12 sort.

13 61. Mr. Quinn is unable to attend weekly church services and worship with fellow
14 believers. His spiritual life is actively being harmed, and in this difficult and emotional time he lacks
15 the normal support he would receive from fellow church members.

16 62. Mr. Quinn thereby has been harmed and is still being harmed by the Proclamation.

17 **H. Doug Bianchi**

18 63. Mr. Bianchi is a resident of Douglas County, Washington.

19 64. Mr. Bianchi's business revenues are down at least 50% resulting in severe loss of
20 personal income, inability to pay the mortgage on his family farm, and inability to properly maintain
21 his agricultural crop.

22 65. Mr. Bianchi was forced to lay-off two employees.

23 66. Mr. Bianchi thereby has been harmed and is still being harmed by the Proclamation.

24 **I. John Divis**

25 67. Dr. Divis is a resident of Douglas County, Washington.

26 68. Dr. Divis has a Doctorate of Dental Surgery.

27 69. Dr. Divis owns a private dentistry practice.

1 70. Despite financial relief efforts by government officials, Dr. Divis' practice has
2 experienced a significant loss of income, which has produced significant financial strain.

3 71. Dr. Divis expect a second wave of economic effects on the practice as people who
4 have lost their businesses discontinue their regular dental care, negatively impacting their dental
5 health as well.

6 72. Dr. Divis thereby has been harmed and is still being harmed by the Proclamation.

7 **J. Jay Inslee**

8 73. Jay Inslee is the Governor of the State of Washington.

9 **IV. FACTUAL ALLEGATIONS**

10 **A. Conditions in Douglas County**

11 74. As of May 22, 2020, there have been 137 confirmed cases of COVID-19 in Douglas
12 County.¹

13 75. As of May 22, 2020, there have been 3 deaths due to COVID-19 in Douglas
14 County.²

15 76. The cases have been easily handled by the existing health system infrastructure,
16 which is now operating at below capacity.

17 77. Few if any healthcare workers have become infected, and the dreaded scenario in
18 which the healthcare system was itself crippled by a workforce that had become carriers of COVID-
19 19 never materialized.

20 78. There is no public disorder, energy emergency or riot in Douglas County.

21 79. The chief official of the Chelan-Douglas Health District, Dr. Malcolm Butler,
22 asserts the District "is prepared for and capable of dealing with the threat to public health currently
23 posed by COVID-19, as well as the additional threat posed by a phased reopening of the economy."
24
25

26 ¹ <https://www.doh.wa.gov/Emergencies/NovelCoronavirusOutbreak2020COVID19/DataDashboard>

27 ² *Id.*

1 80. Dr. Butler also “do[es] not anticipate a shortage of hospital or other health care
2 resources to deal with the COVID-19 pandemic.”

3 81. The emergency response center established jointly by Chelan and Douglas
4 Counties to prevent the hospital system from being overrun in the event of a mass outbreak has
5 partially deactivated and transitioned into “Recovery Mode,” which is defined as a non emergency
6 situation.

7 82. Dr. Butler has joined other public officials in Douglas County in requesting the
8 Governor loosen the restrictions imposed by the Proclamations in Douglas County. The governor
9 rejected this request.

10 83. There is no shortage of available hospital facilities to deal with foreseeable cases of
11 COVID-19 in Douglas County.³

12 84. Such “public disaster” will not come into existence if Proclamation 20-25.3 is lifted
13 and the county’s 70.26 RCW pandemic preparedness plan is implemented under the direction of
14 the Chelan-Douglas Health District.

15 85. The enforcement of Proclamations 20-05, 20-25, 20-25.1 and 20-25.3 have resulted
16 in grave damage to the physical, emotional, educational, interpersonal, religious, and economic
17 well-being of citizens in Douglas County.

18 **B. Pandemic Flu Preparedness**

19 86. Chapter 70.26 RCW, “PANDEMIC INFLUENZA PREPAREDNESS,” addresses
20 the response of state and local government to the outbreak of a novel virus that causes acute
21 respiratory distress, spreads rapidly, and has the potential of killing as many as 5,000 people in
22 Washington.

23 87. COVID-19 a novel virus that causes acute respiratory distress, spreads rapidly, and
24 has been predicted to have the potential of killing as many as 3,239 people in Washington.⁴

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26 _____
27 ³ *Id.*; *supra* n. 60, 61.

⁴ <https://ihmecovid19storage.blob.core.windows.net/archive/2020-03-30/ihme-covid19.zip>

1 88. COVID-19 has killed under 1,000 people in Washington (931 as of 8:40pm May 10,
2 2020).⁵

3 89. COVID-19 is now predicted to kill a total of 1,189 people in Washington, or 248
4 more people in the indeterminate future than it has now killed in Washington.⁶

5 90. The threat posed by COVID-19 is well within the parameters of the plans
6 established by the state and county health departments pursuant to Chapter 70.26 RCW.

7 **C. The Nature of COVID-19**

8 91. COVID-19 is caused by a virus.⁷

9 92. The COVID-19 virus first began to infect humans in 2019.⁸

10 93. The COVID-19 virus is a new virus within the meaning of RCW 70.26.010(1).

11 94. COVID-19 can cause serious illness.⁹

12 95. COVID-19 spreads easily from person to person.¹⁰

13 96. Merriam-Webster defines “flu” as “1: influenza” and “2: any of several virus
14 diseases marked especially by respiratory or intestinal symptoms.”¹¹

15 97. Merriam-Webster defines “influenza” as “1a : an acute, highly contagious,
16 respiratory disease caused by any of three orthomyxoviruses . . .” and “1b: any of various human
17 respiratory infections of undetermined cause —not used technically.”¹²

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20
21 ⁵ <https://www.doh.wa.gov/Emergencies/NovelCoronavirusOutbreak2020COVID19/DataDashboard>
(last visited at 1:00 pm May 11, 2020).

22 ⁶ <https://ihmecovid19storage.blob.core.windows.net/latest/ihme-covid19.zip> (last visited at 8:40 pm
23 May 10, 2020).

24 ⁷ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>

25 ⁸ *Id.*

26 ⁹ *Id.*

27 ¹⁰ *Id.*

¹¹ <https://www.merriam-webster.com/dictionary/flu>

¹² <https://www.merriam-webster.com/dictionary/influenza>

1 98. Merriam-Webster adds “Note: All types of influenza are commonly called “the
2 flu.””¹³

3 99. COVID-19 is a viral disease.¹⁴

4 100. The COVID-19 virus is a coronavirus.¹⁵

5 101. COVID-19 is marked especially by respiratory symptoms.¹⁶

6 102. COVID-19 is an acute, highly contagious respiratory disease.¹⁷

7 103. COVID-19 satisfies the common English definition of “flu” and “influenza” as
8 those words are used in RCW 70.26.010, whether or not the virus falls within the same scientific
9 classification taxonomy of seasonal influenza, the Asian flu of 1957-58, the Hong Kong flu in 1968-
10 69, or the 2006 Avian or bird flu.

11 104. The first case of COVID-19 was confirmed in Snohomish County, Washington on
12 January 21, 2020.¹⁸

13 105. Prior to January 21, 2020 no case had been reported anywhere else in the United
14 States.

15 **D. The IHME COVID-19 Models**

16 106. The Institute for Health Metrics and Evaluation (IHME) is an independent global
17 health research center at the University of Washington.¹⁹

18 107. IHME has modeled the likely course of COVID-19 in Washington state, including
19 predictions of cases, deaths, and use of health care resources, importantly including hospital beds,
20 intensive care unit beds, and invasive ventilators.²⁰

21 ¹³ *Id.*

22 ¹⁴ *Id.*

23 ¹⁵ *See supra* note 1.

24 ¹⁶ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Symptoms-&-Testing>

25 ¹⁷ https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article

26 ¹⁸ <https://www.snohd.org/495/COVID-19-General-Information>

27 ¹⁹ <http://www.healthdata.org/about>

²⁰ <http://www.healthdata.org/covid>

1 108. IHME's first predictive model was issued on March 25, 2019.²¹

2 109. IHME subsequently issued updated models on March 26, 2020; March 27, 2020;
3 March 29, 2020; March 30, 2020; March 31, 2020; April 1, 2020; April 5, 2020; April 7, 2020;
4 April 8, 2020; April 10, 2020; April 13, 2020; April 17, 2020; April 21, 2020; April 22, 2020; April
5 27, 2020; April 28, 2020; April 29, 2020; May 4, 2020; and May 8, 2020.²²

6 110. The March 25 IHME model and all subsequent IHME models are predicated on
7 various assumptions, including that Washington practiced "social distancing," shorthand for the
8 various mandates of the Proclamations.²³

9 111. The March 25 IHME model predicted between 312 and 2710 Washington State
10 deaths due to COVID-19, with a mean estimate of 1429 deaths.²⁴

11 112. The March 25 IHME model also predicted that by April 14, 2020, at worst
12 Washington state could have a shortage of available hospital beds of as many as 97 beds that day,
13 increasing to an unmeetable need of over 635 beds by April 23, and declining thereafter until there
14 was no predicted shortage by May 3.²⁵

15 113. The March 30 IHME model predicted between 462 and 3,239 Washington state
16 deaths due to COVID-19, with a mean estimate of 1621 deaths.²⁶

17 114. The March 30 IHME model also predicted that by April 13, 2020, at worst
18 Washington state could have a shortage of available hospital beds of as many as 37 beds that day,
19 increasing to an unmeetable need of over 1270 beds by April 29, and declining thereafter until there
20 was no predicted shortage by May 16.²⁷

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22 _____
23 ²¹ <http://www.healthdata.org/covid/data-downloads>

24 ²² *Id.*

25 ²³ *Id.*

26 ²⁴ <https://ihmecovid19storage.blob.core.windows.net/archive/2020-03-25/ihme-covid19.zip>

27 ²⁵ *Id.*

²⁶ <https://ihmecovid19storage.blob.core.windows.net/archive/2020-03-30/ihme-covid19.zip>

²⁷ *Id.*

1 115. The April 1 IHME model predicted between 468 and 1636 Washington state deaths
2 due to COVID-19, with a mean estimate of 978 deaths.²⁸

3 116. The April 1 IHME model no longer predicted that Washington would face any
4 shortage of total hospital beds.²⁹

5 117. The April 1 IHME model did predict that, in a worst case scenario, Washington
6 would face a shortage of available ICE beds beginning March 30, 2020 of 23 beds, peaking with a
7 shortage on April 14 of 275 beds, and continuing through May 4, 2020.³⁰

8 118. The April 5 IHME model predicted between 557 and 741 Washington state deaths
9 due to COVID-19, with a mean estimate of 632 deaths.³¹

10 119. The April 5 IHME model no longer predicated a potential shortage of either
11 hospital beds or ICU beds.³²

12 120. No subsequent IHME model has predicted a potential shortage of any needed
13 hospital resource.³³

14 121. The May 4 IHME model predicted between 1068 and 1304 Washington state
15 deaths due to COVID-19, with a mean estimate of 1160 deaths.³⁴

16 122. The May 8 IHME model predicted between 1070 and 1189 Washington state deaths
17 due to COVID-19, with a mean estimate of 1120 deaths.³⁵

18 123. The May 8 IHME model predicted no shortage of hospital beds or ICE beds.³⁶

21 ²⁸ <https://ihmecovid19storage.blob.core.windows.net/archive/2020-04-01/ihme-covid19.zip>

22 ²⁹ *Id.*

23 ³⁰ *Id.*

24 ³¹ <https://ihmecovid19storage.blob.core.windows.net/archive/2020-04-05/ihme-covid19.zip>

25 ³² *Id.*

26 ³³ <http://www.healthdata.org/covid/data-downloads>

27 ³⁴ <https://ihmecovid19storage.blob.core.windows.net/archive/2020-05-04/ihme-covid19.zip>

³⁵ <https://ihmecovid19storage.blob.core.windows.net/latest/ihme-covid19.zip> (visited May 10, 2020)

³⁶ *Id.*

1 **E. Other Relevant Hospital Resources**

2 124. On March 30, 2020, the United States Army began assembling a 250-bed field
3 hospital at CenturyLink Field in Seattle, to make additional hospital capacity available for the
4 expected surge in required hospital beds.³⁷

5 125. That facility became ready to receive patients on or about April 5, 2020.³⁸

6 126. On April 8, 2020, without having received a single patient, the facility was
7 disassembled and returned to the Army.³⁹

8 127. In late March or early April, the state procured 1,000 hospital beds and over 900
9 ventilators to assist hospitals responding to the COVID-19 emergency.⁴⁰

10 128. In late March or early April, the state leased the former Astria Regional Medical
11 Center in Yakima to serve as a 250-bed field hospital if a need arose in Central Washington.⁴¹

12 **F. Governor Inslee’s Proclamations**

13 129. On February 29, 2020, Governor Jay Inslee issued Proclamation 20-05.⁴²

14 130. Proclamation 20-05 stated that the worldwide outbreak of COVID-19 was a “public
15 disaster that affects life, health, property or the public peace.”⁴³

16 131. Proclamation 20-05 a State of Emergency existed in all counties in the state of
17 Washington and directed the implementation of the plans and procedures contained in the
18 Washington State Comprehensive Emergency Management Plan.⁴⁴

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21 ³⁷ <https://www.kuow.org/stories/washington-state-to-return-centurylink-field-hospital-to-feds>

22 ³⁸ *Id.*

23 ³⁹ *Id.*

24 ⁴⁰ *Id.*

25 ⁴¹ *Id.*

26 ⁴² <https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf>

27 ⁴³ *Id.*

⁴⁴ *Id.*

1 132. Governor Inslee based his declaration on Chapters 38.08, 38.52, and 43.06 RCW.⁴⁵

2 133. Proclamation 20-05 activated the organized militia of Washington State.⁴⁶

3 134. On March 23, 2020, Governor Inslee issued Proclamation 20-25, amending
4 Proclamation 20-25 and entitled “Stay Home – Stay Healthy.” A copy may be found at
5 [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf)
6 [25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf)

7 135. Proclamation 20-25 stated that “models predict that many hospitals in Washington
8 State will reach capacity or become overwhelmed with COVID-19 patients within the next several
9 weeks unless we substantially slow down the spread of COVID-19 throughout the state.”

10 136. No existing statute exists to address the potential problem of hospitals in
11 Washington State reaching capacity or becoming overwhelmed with patients due to the rapid
12 spread of a disease.

13 137. Proclamation 20-25 declared that “a State of Emergency continues to exist in all
14 counties of Washington State.” Proclamation 20-25 imposed a “Stay Home – Stay Healthy Order
15 throughout Washington State by prohibiting all people in Washington State from leaving their
16 homes or participating in social, spiritual and recreational gatherings of any kind regardless of the
17 number of participants, and all non-essential businesses in Washington State from conducting
18 business, within the limitations provided herein.”⁴⁷

19 138. Proclamation 20-25 prohibited a list of activities “under the provisions of RCW
20 43.06.220(1)(h),” and provided that “Violators of this of this order [sic] may be subject to criminal
21 penalties pursuant to RCW 43.06.220(5).”⁴⁸

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25 ⁴⁵ *Id.*

26 ⁴⁶ *Id.*

27 ⁴⁷ *Id.*

⁴⁸ *Id.*

1 139. On April 2, 2020, Governor Inslee issued Proclamation 20-25.1, “Extending Stay
2 Home—Stay Healthy to May 4, 2020.”⁴⁹

3 140. Proclamation 20-25.1 stated that COVID-19 “has broadly spread throughout
4 Washington State and is a significant health risk to all of our people, especially members of our
5 most vulnerable populations.”⁵⁰

6 141. Proclamation 20-25.1 stated that there were at least 5,984 cases of COVID-19 in
7 Washington State with 247 associated deaths, and “models predict that many hospitals in
8 Washington State will reach capacity or become overwhelmed within the next few weeks unless
9 we significantly slow its spread throughout the state.”⁵¹

10 142. Proclamation 20-25.1 also stated that “a large surge in the number of serious
11 COVID-19 infections will compromise the ability of our health care system to deliver necessary
12 health care services.”⁵²

13 143. Proclamation 20-25.1 stated that “a State of Emergency continues to exist in all
14 counties of Washington State,” under the authority of Chapters 38.08, 38.52 and 43.06 RCW.⁵³

15 144. Proclamation 20-25.1 extended the provisions of Proclamation 20-25 “in full force
16 and effect,” until 11:59 pm on May 4, 2020.⁵⁴

17 145. When Proclamation 20-25.1 was issued, the most recent IHME models predicted
18 that hospitalizations would exceed available capacity in the state.⁵⁵

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22 ⁴⁹ [https://www.governor.wa.gov/sites/default/files/20-25.1%20-%20COVID-19%20-%20Stay%20Home%2C%20Stay%20Healthy%20Extension%20\(tmp\).pdf](https://www.governor.wa.gov/sites/default/files/20-25.1%20-%20COVID-19%20-%20Stay%20Home%2C%20Stay%20Healthy%20Extension%20(tmp).pdf)

23 ⁵⁰ *Id.*

24 ⁵¹ *Id.*

25 ⁵² *Id.*

26 ⁵³ *Id.*

27 ⁵⁴ *Id.*

⁵⁵ <https://ihmecovid19storage.blob.core.windows.net/archive/2020-04-01/ihme-covid19.zip>

1 146. On May 4, 2020 Governor Inslee issued Proclamation 20-25.3, entitled “Adjusting
2 and Extending Stay Home—Stay Healthy to May 31, 2020.”⁵⁶

3 147. Proclamation 20-25.3 states that “health professionals and epidemiological
4 modeling experts predict that we have passed the peak of the progression [of the spread of the
5 virus] in the state,” but that “modelers agree that fully relaxing social distancing measures will
6 result in a sharp increase in the number of cases.”⁵⁷

7 148. Proclamation 20-25.3 relaxes some of the restrictions imposed by previous
8 Proclamations.⁵⁸

9 149. Proclamation 20-25.3 states that “the worldwide COVID-19 pandemic and its
10 progression in Washington State continue to threaten the life and health of our people as well as
11 the economy of Washington State, and remain a public disaster affecting life, health, property or
12 the public peace . . .”⁵⁹

13 150. Proclamation 20-25.3 states that under Chapters 38.08, 38.52 and 43.06 RCW “a
14 State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-
15 05 and all amendments thereto remain in effect as otherwise amended . . .”⁶⁰

16 151. Proclamation 20-25.3 states that “Violators of this order may be subject to criminal
17 penalties pursuant to RCW 43.06.220(5). Further, if people fail to comply with the required social
18 distancing while engaging in the phased modifications of the mandatory social distancing
19 requirements, I may be forced to reinstate the prohibitions established in earlier proclamations.”⁶¹

23 ⁵⁶ <https://www.governor.wa.gov/sites/default/files/20-25.3%20-%20COVID-19%20Stay%20Home%20Stay%20Healthy%20-%20Reopening%20%28tmp%29.pdf>

24 ⁵⁷ *Id.*

25 ⁵⁸ *Id.*

26 ⁵⁹ *Id.*

27 ⁶⁰ *Id.*

⁶¹ *Id.*

1 152. Proclamation 20-25.3 does not assert that any model predicts that any hospital in
2 Washington state is in any danger of reaching capacity or becoming overwhelmed.⁶²

3 153. Proclamation 20-25.3 does not assert that any model predicts that the hospital
4 system in Washington state is in any danger of reaching capacity or becoming overwhelmed.⁶³

5 154. No model predicts that any individual hospital, nor the statewide hospital system
6 in Washington state is at danger of reaching capacity or being overwhelmed.

7 155. No model predicts that, if and when the Chelan-Douglas Health District
8 implements its pandemic flu preparedness and response plan in lieu of the Orders contained in
9 Proclamation 20-25.3, the hospital system of Douglas County or the state of Washington will be in
10 any danger of reaching capacity or becoming overwhelmed.

11 V. CAUSES OF ACTION

12 A. First Cause of Action: Declaratory Judgment

13 156. The allegations of the previous paragraphs are incorporated as if fully set forth
14 herein.

15 157. Chapter 70.26 RCW addresses the potential for a “pandemic influenza” that could
16 result in as many as five thousand deaths in Washington.

17 158. COVID-19 is within the definition of a “pandemic influenza,” which is “a new
18 virus [that] appears in the human population, causes serious illness, and then spreads easily from
19 person to person.” RCW 70.26.010.

20 159. None of the current projections for the ultimate number of deaths expected to result
21 from COVID-19 predict more than a quarter of the number of deaths anticipated by RCW
22 70.26.010(3).

23 160. No prior projection for the ultimate number of deaths expected to result from
24 COVID-19 predicted more than 5,000 deaths, below that anticipated by RCW 70.26.010(3).
25

26 ⁶² *Id.*

27 ⁶³ *Id.*

1 161. RCW 43.06.010(12) authorizes the Governor, “after finding that a public disorder,
2 disaster, energy emergency, or riot exists within this state or any part thereof which affects life,
3 health, property, or the public peace, proclaim a state of emergency in the area affected, and the
4 powers granted the governor during a state of emergency shall be effective only within the area
5 described in the proclamation.”

6 162. The only justification for declaring a state of emergency based on COVID-19 was
7 when it appeared that the sudden spread of COVID-19 could overwhelm the hospital and other
8 health care resources available to provide medical care to COVID-19 victims.

9 163. Because Chapter 70.26 RCW anticipates the potential for an influenza pandemic
10 and prescribes the means to respond to such a pandemic, the appearance of a novel virus such as
11 COVID-19 does not by itself constitute a “disaster” justifying the Proclamation of a state of
12 emergency.

13 164. No current model projecting the spread of COVID-19 anticipates that hospital and
14 other health care resources available to treat COVID-19 patients will be overwhelmed.

15 165. RCW 43.06.210 states that the Governor “must terminate said state of emergency
16 proclamation when order has been restored to the area affected.”

17 166. There is no threat to public order in Douglas County.

18 167. The health care resources available in Douglas County have been reduced because
19 of the prohibition on providing non-emergency health care.

20 168. Employees of health care facilities and providers serving Douglas County have been
21 told that their wages will be reduced and their employment may end as a result of the inability of
22 health care providers to earn income.⁶⁴

23 169. The state of emergency declared by Governor Inslee because of COVID-19 is no
24 longer justified in Douglas County.

25
26
27 ⁶⁴ https://www.wenatcheeworld.com/news/coronavirus/update-confluence-health-implements-salary-reductions-for-some-staff/article_ba3e7a36-7f68-11ea-94d5-bb7730a66883.html

1 170. The plaintiff is entitled to a declaratory judgment that the restrictions imposed by
2 Governor Inslee's Proclamations are no longer enforceable.

3 **B. Second Cause of Action: Injunctive Relief**

4 171. The allegations of the previous paragraphs are incorporated as if fully set forth
5 herein.

6 172. Governor Inslee's proclamation declaring a state of emergency throughout all
7 counties in Washington was based on the potential for hospital and other health care resources to
8 be overwhelmed by a "surge" of COVID-19 cases that would exceed the capacity of existing
9 resources to handle.

10 173. Now that there is no model from any recognized public health authority projecting
11 the potential for hospital and other health care resources to be overwhelmed, RCW 43.06.210
12 requires Governor Inslee to terminate the state of emergency proclamation "when order has been
13 restored in the area affected."

14 174. Plaintiff has no adequate remedy at law for a continuation of the COVID-19
15 Proclamations beyond the time when they are justified.

16 175. Plaintiff is entitled to an injunction ordering Governor Inslee to terminate the
17 COVID-19 Proclamations declaring a state of emergency in Douglas County.

18 176. Plaintiff is entitled to an injunction requiring Governing Inslee not to enforce the
19 COVID-19 Proclamations in Douglas County.

20 **C. Third Cause of Action: Declaratory Relief**

21 177. The allegations of the previous paragraphs are incorporated as if fully set forth
22 herein.

23 178. To whatever extent Chapter 43.06 RCW is not subject to judicial review as to the
24 facts constituting an emergency, it is unconstitutional under at least Wash. Const. Art. II Sec. 1.

25 **D. Fourth Cause of Action: Declaratory Relief**

26 179. The allegations of the previous paragraphs are incorporated as if fully set forth
27 herein.

1 180. To whatever extent Chapter 43.06 RCW allows the governor to proclaim an
2 emergency to alter, override, or supersede existing statutes that govern the fact situation identified
3 as an emergency, it is unconstitutional under at least Wash. Const. Art. II Sec. 1.


4 **VI. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for the following relief:

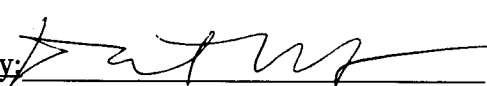
- 6 1. For a declaratory judgment that Proclamation 20-08, Proclamation 20-09, and
7 Proclamation 20-09.1 do not apply to Douglas County.
8 2. For injunctive relief requiring Governor Inslee to terminate any current order
9 declaring a state of emergency in Douglas County.
10 3. For a Declaration that Chapter 43.06 RCW is unconstitutional.
11 4. For an award of Plaintiffs' costs of this suit, including attorney's fees.
12 5. For such other and further relief as this Court deems just and proper.

13
14 May 22, 2020.

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CERTIFICATE OF SERVICE

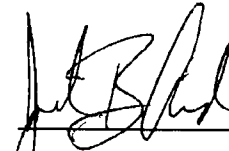
I certify under penalty of perjury under the laws of the United States of America that on May 22, 2020, I served the foregoing COMPLAINT in *Sutton v. Inslee*, together with a MOTION FOR TEMPORARY RESTRAINING ORDER, DECLARATION OF ARD IN SUPPORT OF THE MOTION, DECLARATIONS OF EACH PLAINTIFF, and PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, all via email per agreement between the parties, on the following:

Kathryn Leathers, Kathryn.leathers@gov.wa.gov

Jeffrey Even, Jeffrey.even@atg.wa.gov

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