<ul> <li>Expedite</li> <li>No hearing set</li> <li>Hearing is set</li> <li>Date:</li> <li>Time:</li> <li>Judge/Calendar:</li> </ul>		Received & Filed LEWIS COUNTY, WASH Superior Court JUL 0 1 2020 Lewis County Clerk
SUPERIOR ANDREA SEHMEL, KEVIN ROBERT MOTZER, DAWN KENNETH MORSE, JEREM YIENAN SONG, as individua Plaintif v. JOHN WEISMAN, in his offi Secretary of Health of the Stat Defend	IN AND FOR LE	No. 20 2 0045321 VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF CONSTITUTIONAL RIGHTS
	I. INTRO	DUCTION
1.1 "We know that		tside health care facilities offers little, if any,
protection from infection. Pub	lic 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		0 minutes or even 30 minutes). The chance of
catching COVID-19 from a p	assing interaction in	a public space is therefore minimal. In many
cases, the desire for widespre	ad masking is a refl	exive reaction to anxiety over the pandemic."
New England Journal of Medi	cine, N. Engl. J. Med	. 382:21, May 21, 2020 (emphasis added).
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No		P.O. Box 552, Olympia, WA 98507

1.2 COMES NOW, Plaintiffs Andrea Sehmel, Kevin O'Sullivan, Robert Motzer, Dawn Appelberg, Kenneth Morse, Jeremy Wildhaber, and Yienan Song ("Plaintiffs"), by and through counsel, and bring this claim for declaratory judgment and injunctive relief for violation of civil rights and liberties guaranteed by the Washington State Constitution against Defendant John Weisman, in his official capacity as Secretary of Health of the State of Washington ("Secretary of Health" or "Defendant").

1.3 On June 24, 2020, Defendant issued an 'Order' invasive to personal autonomy and an unprecedented use of government coercion, ordering all private citizens of the State of Washington, healthy or not, to wear masks in public. This unprecedented intrusion upon the personal autonomy and speech of Washington's citizens is an affront to the citizens of an ordered democracy, and an anathema to the ideals of ordered liberty based upon the consent of the governed.

1.4 Plaintiffs bring this complaint for injunctive and declaratory relief, asking the Court to issue an order declaring the June 24, 2020 Order of the Secretary of Health (the "Mask Order", attached hereto as Exhibit A) to be in violation of their free speech and due process rights and *ultra vires*. Finally, Plaintiffs request that this Court enjoin Defendant from enforcing the Mask Order.

#### II. PARTIES

2.1 Plaintiffs are private citizens living and/or doing business in several counties in the State of Washington, and are subject to the Mask Order. None of them have tested positive for the COVID-19 or exhibited symptoms of that virus within the last two months.

2.2 Specifically, Jeremy Wildhaber and Yienan Song are citizens of Lewis County.

2.3 Defendant is the Secretary of Health of the State of Washington appointed under RCW 43.30.030 and RCW 43.17.120. Defendant is an executive officer responsible for enforcing public health statutes under RCW 43.30.040 and RCW 43.30.130. Defendant is the individual promulgating the Mask Order in violation of Plaintiffs' rights. Defendant is sued in his official capacity.

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	III.	JURISDICTION	
3.1	The Superior Court of Lew	is County has jurisdiction	in this matter, pursuant to
Chapte	er 7.24 RCW, Chapter 7.40 RC	CW, and Chapter 34.05 RC	CW.
3.2	The venue in Lewis County	is appropriate pursuant to l	RCW 4.92.010(1) and (2).
A. The N	IV. ST ature of COVID-19 and the	ATEMENT OF FACTS Lack of Emergency	
4.1	COVID-19 is a disease cause	ed by the SARS-CoV-2 vir	us. <sup>1</sup>
4.2	The first case of COVID-19	was confirmed in Snohom	iish County, Washington, on
January 21, 20	020. <sup>2</sup>		
4.3	As of July 1, 2020, 32,824 pe	cople have been infected w	ith COVID-19 in the state of
Washington,	of which 1,332 people have	died. <sup>3</sup> The population of	the State of Washington is
approximately	7.8 million. <sup>4</sup>		
4.4	By comparison, in the State of	f Washington, nearly as m	any died of influenza (1,041)
in the last yea	r recorded by the Center for I	Disease Control (2017) and	l nine times as many died of
heart disease	(11,582). <sup>5</sup> None of these dise	eases have caused the Go	vernor to declare a State of
Emergency ar	nd no Orders have been issued	by the Secretary of Health	in response.
4.5	Almost every single day bu	ut one since April 1, 202	20, the death count has not
exceeded twe	nty COVID-19 deaths per day	and since May 2, 2020, th	ne death rate has been below
ten deaths per	day. The last day with a "fin	al" count, June 8, 2020, n	early a month ago, had only
five deaths fro	om COVID-19 in the entire sta	te of Washington. <sup>6</sup>	
4.6	To date, nothing about COV	ID-19 has been extraordin	nary except for the panicked
and panic-ind	ucing response from the gover	mment and the media.	
	c.gov/coronavirus/2019-ncov/faq.ht ohd.org/495/COVID-19-General-In		Basics
	h.wa.gov/Emergencies/NovelCoron		DataDashboard (last visited at
<sup>4</sup> https://worldpo	pulationreview.com/states/washingt c.gov/nchs/pressroom/states/washin		
	h.wa.gov/Emergencies/NovelCoron		/DataDashboard
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No. Verified Com		3	P.O. Box 552, Olympia, WA 98507 P: 360.956.3482   F: 360.352.1874

4.7 In fact, the number of deaths have barely reached one-fourth the amount predicted by the legislature fourteen years ago in RCW 70.26.010 which defined a "pandemic influenza" as one where five thousand Washington State residents would perish.

4.8 Neither the Department of Health, Defendant nor the Governor offer any explanation as to what justified the State of Emergency on which the Defendant's Mask Order is based, and no explanation how the required wearing of masks will in any way reduce infection rates or deaths from COVID-19.

4.9 There has also been no indication why an Order requiring everyone to wear masks has now been issued when the number of deaths has significantly subsided since Washington was first hit with COVID-19 in March.

## B. Lack of Scientific Consensus Regarding the Ability of Cloth Masks To Protect From COVID-19

4.10 Both the Center for Disease Control ("CDC") and the World Health Organization ("WHO") have made a variety of contradictory statements regarding the dangers of COVID-19, the means of spreading the virus and the best method for prevention of further spread.

4.11 The science on the efficacy of mask wearing in preventing the spread of COVID-19 is tentative and contradictory.

4.12 Nonetheless, Defendant requires wearing face coverings in any indoor or outdoor public setting.

4.13 That neither the Governor nor the Secretary of Health has stated the scientific basis for requiring face coverings inherently makes such a requirement undemocratic, as it is done by fiat, and not capable of being subject to any scientific challenge on which to base judicial review.

#### C. The Political Controversy Surrounding the Mask Requirements

4.14 The necessity of face coverings, the science behind wearing face coverings and the coercive overreach of government that they represent have all become issues of contentious political controversy.<sup>7</sup>

<sup>7</sup> See, e.g., Gaia Vince, Attitudes towards lockdown are proving divisive in countries like the US – and those divisions

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1	4.15	As such, wearing a face coverin	ng or refusing to wear a fac	e covering has become a
2	political statement. <sup>8</sup>			
3	4.16	The fact that masks have now	become politically controv	ersial renders Plaintiffs'
4	objections to	wearing masks speech. <sup>9</sup>		
5	D. The S	ecretary of Health's June 24, 2	020 Mask Order	
6	4.17	On June 24, 2020, Defendant is	sued the Mask Order. See I	Exhibit A.
7	4.18	Defendant issued the Mask Orde	er pursuant to RCW 43.70.1	30, 70.05.070 and WAC
8	246-100-036.	See Exhibit A.		
9	4.19	RCW 43.70.130(10) allows the	Secretary of Health to "[t]a	ake such measures as the
10	secretary deer	ns necessary in order to promote	the public health."	
11	4.20	Further, RCW 43.70.130(7) exp	plains that the Secretary of	Health shall "[h]ave the
12	same authorit	y as local health officers, except	that the secretary shall no	t exercise such authority
13	unless the local health officer fails or is unable to do so, or when in an emergency the safety of the			
14	public health	demands it, or by agreement with	the local health officer or	local board of health."
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18	BBC Future, http	familiar party lines. But why does parties://www.bbc.com/future/article/202005	505-why-its-so-hard-to-be-ration	al-about-covid-19 (last visited
19	https://www.psy	Justin Murphy, <i>Why are Conservativ</i> chologytoday.com/us/blog/polarized/20	2003/why-are-conservatives-less	s-worried-about-coronavirus
20	another blip of li	8, 2020) ("COVID-19' is not perceiv beral noise circulated to discredit a Rep major threat [i]t is just because there	ublican President If liberals ar	d Democratic voters perceive
21		herjones.com/kevin-drum/2020/04/ame		· · ·
22	-	atlantic.com/politics/archive/2020/03/sc	-	
23	1	.com/articles/masks-could-help-stop-co	C	controversial-11593336601
24		n.com/en-us/news/us/californias-mask-c		
25		c.net.au/news/2020-07-01/coronavirus-		
26	COVID-19 — so	("Wearing a mask or face covering in thome experts say it's a political statement		
27	America.") <sup>9</sup> https://www.ws	sj.com/articles/masks-could-help-stop-c	oronavirus-so-why-are-they-still	-controversial-11593336601
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4.21 The Mask Order does not state in what way the "progression [of COVID-19] in Washington State continue[s] to constitute an emergency threatening the safety of public health" and "demanding action by the Secretary of Health…" *See,* Exhibit A.

4.22 RCW 70.05.070(2)-(3) grants the local health officer authority to "[t]ake such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction"; and "[c]ontrol and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction."

4.23 Lastly, WAC 246-100-036(3) requires that "[1]ocal health officers shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the Control of Communicable Diseases Manual, 20th edition, published by the American Public Health Association, or other measures he or she deems necessary based on his or her professional judgment, *current standards of practice and the best available medical and scientific information*." (Emphasis added).

4.24 The Mask Order states, in relevant part, that "Every person in Washington State must wear a face covering that covers their nose and mouth when in any outdoor public setting..."

4.25 There is no definition of the "indoor or outdoor public setting", nor are there parameters on the type of face covering required. For example, pursuant to the Mask Order, one may wear a loosely crocheted mask with holes as large as an inch in diameter. The Mask Order presents no scientific basis for distinguishing between types of face coverings.

4.26 Contrary to the requirement set out in WAC 246-100-36(3), the Mask Order does not purport to be based on the best available science. Instead, it states that "evidence *suggests* that wearing a cloth face covering reduced an infected person's chance of spreading the infection to others and *may* protect uninfected persons from larger droplets from infected people around them." *See,* Exhibit A.

4.27 The Mask Order does not cite to any such evidence, nor does it explain why noninfected people or those who have antibodies to COVID-19 must be required to wear masks.

4.28 The Mask Order states that "requiring all Washingtonians to wear cloth face coverings in public will help control and prevent the spread of COVID-19 in Washington State."

4.29 Again, the Mask Order fails to cite to any credible source for this proposition on which the Mask Order is based.

4.30 Lastly, the Mask Order states: "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. . . . Any face covering requirement imposed pursuant to an order of the Governor must be followed."

4.31 Pursuant to all of the above, the Mask Order is vague, overbroad and unauthorized by statute.

4.32 Defendants believe that the COVID-19 is a significant disease, that the Governor's response to it is roughly proportional to the threat posed by the virus, that masks are effective in combatting the spread of the virus, that it is the state's right to dictate to its citizens how they will respond to perceived threats, even over important civil rights.

4.33 It is important to note that the Mask Order does not cite to any scientific authority
as a basis for wearing face cloth face coverings. Rather it is clearly used to *compel compliance* with
Defendants' beliefs. *See,* Exhibit A.

4.34 The Mask Order "remains in effect until rescinded or superseded by a subsequent order of the Secretary of Health or until the Governor issues a proclamation declaring the State of Emergency...whichever is earlier." *See*, **Exhibit A**.

4.35 To date, neither the Secretary of Health, nor the Governor has issued any benchmarks as to when the State of Emergency will be rescinded or "when order [will be] restored." *See*, RCW 43.06.210.

4.36 Violation of the Mask Order is a misdemeanor, and carries with it a maximum fine of \$100.00 and 90 days in jail.

## E. The Mask Order harms all Plaintiffs by invading their personal autonomy, forcing them to espouse views with which they disagree, and causing them physical pain and discomfort

4.37 Plaintiffs vehemently object to Defendant's forcible recruitment of their bodies for "virtue signaling" and coerced adoption of scientifically unsound government policies.

4.38 Plaintiffs do not want to wear masks for a number of reasons.

4.39 First, all Plaintiffs do not believe that masks are a particularly helpful in stopping the spread of COVID-19. Forcing these Plaintiffs to wear masks involuntarily forces them to "virtue signal" to others that wearing masks is effective and that there is currently a state of emergency for which the Secretary of Health and Governor's actions may be warranted, which they do not wish to do.

4.40 Second, wearing masks makes Plaintiffs physically uncomfortable.

4.41 Third, Plaintiffs believe that state and local governments have overreacted to the threat that COVID-19 poses. Refusing to wear a mask in the face of these authorities' urging allows Plaintiffs to communicate their dissent from local and national governments' narratives in an obvious and powerful way. Forcing Plaintiffs to wear masks compels them to use their bodies to express consent and agreement with the governments' views.

4.42 Fourth, Plaintiffs enjoy the autonomy of choosing how to respond to health threats.They enjoy being able to determine how much risk they will take.

#### F. Plaintiffs are afraid to violate the Mask Order

4.43 Plaintiffs are afraid to exercise their right to be free from wearing masks against their will, from espousing affirmation for things they do not believe, and from being uncomfortable in wearing masks.

4.44 Plaintiffs are afraid to exercise their freedoms for a number of reasons.

4.45 First, violation of the Mask Order is a crime, with a maximum penalty of 90 days in jail and a \$100.00 fine. Plaintiffs do not want to be placed in jail for exercising their rights.

4.46 Second, violating the Mask Order results in moral criticism and censure by people around them.

4.47 Since June 24, 2020, the date of the Mask Order, some Plaintiffs have been refused service or accosted on account of not wearing masks or have felt threatened in public.

#### V. CLAIMS

#### COUNT 1

## Claim for declaratory judgment that the Mask Order is *ultra vires* as issued without legal authority

5.1 The Plaintiff re-alleges each and every fact set forth above, as if fully set forth herein.
5.2 Defendant does not have the authority to issue mandatory orders. The authority to pass local legislation lies with the County Board of Health, an elected board of officials. The Mask Order is *ultra vires* and this Court should rule as such by way of declaratory judgment.

5.3 Further, the Mask Order is arbitrary and capricious, and void for unreasonableness, because it is not supported by sufficient necessity as a factual matter. The universal Mask Order is an incomparably draconian response to a mere potential danger, and the requirement to wear masks is neither based on the best available science, nor is tailored to prevent further spread of COVID-19. As such it is arbitrary and capricious, and void for unreasonableness.

5.4 Even if the Mask Order were not arbitrary and capricious, the Mask Order is void as *ultra vires* because the Defendant enacted it without statutory authority. Defendant does not have sweeping power to pass rules and regulations relating to the police powers. The power to promulgate new rules, ordinances, or Orders of general application under RCW 70.05 is vested in the Local Boards of Health under RCW 70.05.060, not the Secretary of Health under RCW 70.05.070 and RCW 43.70.140.

5.5 RCW 70.05.070 and RCW 43.70.140 direct the Secretary of Health and the Local Health Officer to enforce existing ordinances and regulations, but do not give the Secretary of Health police powers. These are vested in the democratically elected Local Board of Health and the Washington State Legislature. As such, the Mask Order was not properly passed, and is void.

5.6 Further, the Defendant does not have the authority to criminalize the failure of an individual to follow requirements by "any other agency or official."

P.O. Box 552, Olympia, WA 98507 P: 360.956.3482 | F: 360.352.1874 5.7 In the alternative, the legislature, in passing RCW 43.70.130 and RCW 70.05.070 to the extent that it grants the Secretary of Health power to create new rules regarding wearing masks, did so in violation of the constitutional prohibition of nondelegation of discretionary power without proper safeguards. The legislature cannot delegate general police powers with criminal penalties to the Secretary of Health without standards defining what is to be done, and without procedural safeguards to control arbitrary action or abuse of power. To the extent that RCW 43.70.130 and 70.05.070 allow the Secretary of Health to pass legislation, the legislature provided insufficient guidance or safeguards in such delegation.

5.8 An actual, present and existing dispute exists between the Plaintiffs and Defendant because Defendant is compelling Plaintiffs to wear masks that they object to wearing. Being forced to wear masks causes harm to Plaintiffs in that they are being forced to outwardly express agreement over political and cultural topics with which they disagree, thereby violating their free speech and due process rights for which there is no remedy at law. The parties have genuine opposing interests in that the Plaintiffs do not wish to wear masks because it is speech contrary to their beliefs and being allowed to choose how to respond to potential safety threats when one has not been identified as positive with a disease is part of the liberty associated with an organized and free society. This disagreement is substantial, and a judicial determination as to the legality of the Order will be final and conclusive as to this controversy.

#### COUNT 2

#### Claim for declaratory judgment that Defendant has violated and continue to violate Plaintiffs' Free Speech rights by the Mask Order

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

5.10 Article I, Section 5 of the Washington State constitution states: "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right."

5.11 Plaintiffs have a free speech interest in the wearing or not wearing of masks. To them, and to many Washingtonians, refusing to wear a mask expresses many things: their dissent from the dominant government narrative regarding the spread of COVID-19, the proportionality of the State government's response to the alleged fear, the role of government in responding to

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perceived emergencies such as COVID-19, the efficacy of masks, and the focus on the temporal world that wearing masks suggests.

5.12 This interest is protected speech activity, protected by Article I, Sections 5 and 11 of the Washington State Constitution.

5.13 By forcing Plaintiffs to wear masks, Defendant violates Plaintiffs' free speech rights by compelling them to voice unanimity behind a message with which they disagree.

5.14 By forcing Plaintiffs to wear masks, Defendant prohibits Plaintiffs from expressing dissent regarding the political topics surrounding COVID-19 by not wearing masks.

5.15 Both of the above interferences with free speech rights are viewpoint-based, nonneutral restrictions because they force Plaintiffs to voice unanimity in support of a particular topic and prohibit them from voicing dissent from a particular topic.

5.16 These violations are subject to strict scrutiny. This compelled speech and prohibition on speech is not justified by a compelling government interest in wearing masks because according to the best available science, required to be followed by the Secretary of Health pursuant to WAC 246-100-36, masks are not shown to be effective in preventing the spread of COVID-19.

5.17 The Order is also not narrowly tailored, since it applies to essentially all adults without distinction of those who have been tested positive for the virus and those who have not, in the various counties in Washington. Some counties, such as Garfield and Wahkiakum counties, have experienced no COVID-19 infections or deaths. Regardless, the citizens of those counties must wear masks according to the Mask Order.

5.18 The Mask Order does not satisfy strict scrutiny, since the Mask Order was not made lawfully, it is unnecessary to advance even a compelling government interest, the regulation is related to expression, and it is wildly overbroad.

5.19 An actual, present and existing dispute exists between the Plaintiffs and Defendants because Defendants are 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

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remedy at law. The parties have genuine opposing interests in that the Plaintiffs do not wish to wear masks for the above reasons, but Defendants are compelling them to wear them, and this disagreement is substantial, and a judicial determination as to the legality of the Mask Order will be final and conclusive as to this controversy.

#### COUNT 3

## Claim for declaratory judgment that the Mask Order violates Plaintiffs' substantive due process rights under the Washington State Constitution

5.20 Defendant has violated Plaintiffs' substantive due process right to dress how they see fit and respond to perceived threats to health and safety as they see fit, free from undue government interference.

5.21 Defendant prohibited Plaintiffs from *not* wearing masks and placing the threat of citation and fine on the right to wear the clothing of their choice and respond to threats as they see fit. This interference with cannot survive constitutional scrutiny.

5.22 The Due Process guarantee of the Washington State Constitution, Article I, section 3, provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

5.23 The Washington State Constitutional protects against state infringement of, among, other things, those fundamental rights and liberties that are deeply rooted in Washington's history and traditions, and that are implicit in the concept of ordered liberty. State action that infringes on fundamental rights is reviewed under strict scrutiny.

5.24 Citizens, including Plaintiffs, have a fundamental right to wear the clothing of their choice and protect their own health as they see fit. This right is deeply rooted in our nation's history and traditions and implicit in the concept of ordered liberty.

#### COUNT 4

#### Claim for an injunction enjoining Defendant from enforcing the Mask Order

5.25 Defendant does not have the authority to promulgate or enforce the Mask Order as a statutory and constitutional matter.

5.26 Even if Defendant has the authority to promulgate the Mask Order, enforcement of the Mask Order violates Plaintiffs' free speech and due process rights without being justified by a sufficient government interest, nor sufficiently tailored to respond to that interest, if any.

5.27 Plaintiffs have a right to express themselves on the contested topic of wearing masks and a due process right to wear what they would like.

5.28 Plaintiffs have a right to express themselves and wear what they would like, unencumbered by arbitrary and capricious government dictates.

5.29 The public issues speech that Plaintiffs seek to engage in is current as of this date. Public dissent from the government's narrative regarding the significance of COVID-19 is relevant only now. In order for their expression regarding dissent over the COVID-19 issues to be meaningful, it must be made now, or never.

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

5.31 Further, if Plaintiffs fail to wear a mask, as required by the Mask Order, they may be punished a maximum fine of \$100.00 and 90 days in jail. Such punishment will be enforced by the local and state law enforcement. See, RCW § 70.05.120 and WAC 246-100-070.

5.32 Further, the Mask Order criminalizes failure to act in accordance with the actions of any other agency or office based on a the requirement to wear a face covering.

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

5.34 Plaintiffs have a probability of success on the merits. Defendant does not have the authority to issue the Mask Order, and its issuance unequivocally violates Plaintiffs' free speech and due process rights without adequate justification.

5.35 This Court should issue an injunction permanently enjoining Defendant from enforcing the Mask Order, finding that (i) Defendant does not have the authority to issue the Mask Order, (ii) that Plaintiffs are harmed each day that they are subject to the Orders, (iii) that Plaintiffs have no adequate remedy at law to protect its rights against any unlawful Mask Orders beyond

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1	injunctive relief, and (iv) that Plaintiffs have a likelihood of success on the merits that the Mask
2	Order is unenforceable and violates their free speech and due process rights without adequate
3	justification.
4	VI. REQUESTED RELIEF
5	WHEREFORE, Plaintiffs hereby pray for the following relief:
6	6.1 Declaratory judgment that, for the reasons alleged herein, Defendant's Mask Order
7	is ultra vires and issued without legal authority;
8	6.2 Declaratory judgment that, for the reasons alleged herein, Defendant has violated
9	and continue to violate Plaintiffs' free speech rights by the Mask Order.
10	6.3 Declaratory judgment that, for the reasons alleged herein, the Mask Order violates
11	Plaintiffs' substantive due process rights.
12	6.4 Preliminary and permanent injunctive relief, enjoining Defendant from enforcing
13	the Mask Order.
14	6.5 Such other and further relief as the Court may deem appropriate.
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16	RESPECTFULLY SUBMITTED this <u>1st</u> day of July, 2020.
17	
18	By: Anelle Aadanik Shella Sadovnik, WSBA #55939
19	Freedom Foundation P.O. Box 552, Olympia, WA 98507
20	P: 360.956.3482   F: 360.352.1874 SSadovnik@freedomfoundation.com
21	<u>Soudo vink agneedonnoundarion.com</u>
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28	No. P.O. Box 552, Olympia, WA 98507 VERIFIED COMPLAINT 14 P: 360.956.3482   F: 360.352.1874

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8	SUPERIOR COURT OF THE S IN AND FOR LEV	
9	ANDREA SEHMEL, KEVIN O'SULLIVAN,	No.
10	ROBERT MOTZER, DAWN APPELBERG, KENNETH MORSE, JEREMY WILDHABER,	DECLARATION OF ANDREA
11	YIENAN SONG, as individuals	SEHMEL VERIFYING COMPLAINT
12	Plaintiffs,	
13	V.	
14 15	JOHN WEISMAN, in his official capacity as Secretary of Health of the State of Washington,	
15	Defendant.	
10		
18		
19	DECLARATION OF ANDREA SEHME	L VERIFYING THE FOREGOING
20	COMPLA	AINT
21	I, Andrea Sehmel, pursuant to RCW 12.08.07	70 declare as follows:
22	1. I am a Plaintiff in the above-caption	ed case. I am over the age of eighteen (18) and
23	am competent to testify to the following facts based	d on my personal knowledge, to which I could
24	and would competently testify if called as a witness	in this matter.
25	2. I have personal knowledge of myse	lf, my activities, and my intentions, including
26	those set out in the foregoing Verified Complaint, an	nd if called upon to testify I would competently
27		
28	No. DECLARATION OF ANDREA SEHMEL 1	P.O. Box 552, Olympia, WA 98507 P: 360.956.3482   F: 360.352.1874

1	testify as to the matters stated herein.
2	3. I verify under penalty of perjury under the laws of the United State of America that
3	the factual statements in this foregoing Complaint concerning myself, my activities, and my
4	intentions are true and correct.
5	
6	I declare under penalty of perjury that the foregoing is true and correct.
7	
8	1st Olympia
9	Signed this day of July, 2020, at, Washington.
10	(DATE) (CITY)
11	Andrea Selimel
12	Andrea Sehmel
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28	No.         P.O. Box 552, Olympia, WA 98507           DECLARATION OF ANDREA SEHMEL         2           P: 360.956.3482   F: 360.352.1874

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Date: Time:		
Judge/Caler	ndar:	
	SUPERIOR COURT OF THE IN AND FOR LE	
	EHMEL, KEVIN O'SULLIVAN,	No.
KENNETH I	OTZER, DAWN APPELBERG, MORSE, JEREMY WILDHABER, NG, as individuals,	DECLARATION OF KEVIN O'SULLIVAN
	Plaintiffs,	
	V.	
	MAN, in his official capacity as Health of the State of Washington,	
	Defendant.	
DECI	LARATION OF KEVIN O'SULLIV	⊿ ∕AN VERIFYING THE FOREGOING
	COMPL	AINT
I, Kev	in O'Sullivan, pursuant to RCW 12.08	8.070 declare as follows:
1.	I am a Plaintiff in the above-caption	ned case. I am over the age of eighteen (18) ar
am competent to testify to the following facts based on my personal knowledge, to which I could		
and would competently testify if called as a witness in this matter.		
2.	I have personal knowledge of mys	elf, my activities, and my intentions, including
those set out in the foregoing Verified Complaint, and if called upon to testify I would competently		
testify as to the matters stated herein.		
3.	I verify under penalty of perjury un	der the laws of the United State of America th
the factual s	statements in this foregoing Compla	int concerning myself, my activities, and n
		FREEDOM

1	intentions are true and correct.
2	I declare under penalty of perjury that the foregoing is true and correct.
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4	Signed this day of July, 2020, at July 1 2020, Washington.
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7	Revin O'Sullivan
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28	FREEDOM         FREEDOM           No.         P.O. Box 552, Olympia, WA 98507           DECLARATION OF KEVIN O'SULLIVAN         2           P: 360.956.3482   F: 360.352.1874

1 2 3 4 5	<ul> <li>Expedite</li> <li>No hearing set</li> <li>Hearing is set</li> <li>Date:</li> <li>Time:</li> <li>Judge/Calendar:</li> </ul>	
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8	SUPERIOR COURT OF THE S	
9	IN AND FOR LEV	
10 11	ANDREA SEHMEL, KEVIN O'SULLIVAN, ROBERT MOTZER, DAWN APPELBERG,	No.
11	KENNETH MORSE, PETER DIAZ, as individuals,	DECLARATION OF ROBERT MOTZER
12	Plaintiffs,	
14	V.	
15	JOHN WEISMAN, in his official capacity as Secretary of Health of the State of Washington,	
16	Defendant.	
17		
18	DECLARATION OF ROBERT MOTZE	R VERIFYING THE FOREGOING
19	COMPLA	AINT
20	I, Robert Motzer, pursuant to RCW 12.08.07	0 declare as follows:
21	1. I am a Plaintiff in the above-caption	ed case. I am over the age of eighteen (18) and
22	am competent to testify to the following facts based on my personal knowledge, to which I could	
23	and would competently testify if called as a witness	in this matter.
24	2. I have personal knowledge of myse	lf, my activities, and my intentions, including
25	those set out in the foregoing Verified Complaint, and	nd if called upon to testify I would competently
26	testify as to the matters stated herein.	
27		
28	No. DECLARATION OF ROBERT MOTZER 1	P.O. Box 552, Olympia, WA 98507 P: 360.956.3482   F: 360.352.1874

1	3. I verify under penalty of perjury under the laws of the United State of America that
2	the factual statements in this foregoing Complaint concerning myself, my activities, and my
3	intentions are true and correct.
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5	I declare under penalty of perjury that the foregoing is true and correct.
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7	Signed this 30 <sup>th</sup> day of June, 2020, at <u>Lacey</u> , W., Washington. (CITY)
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11	Robert Motzer
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	No.         P.O. Box 552, Olympia, WA 98507           DECLARATION OF ROBERT MOTZER         2           P: 360.956.3482   F: 360.352.1874

1 2 3 4 5	<ul> <li>Expedite</li> <li>No hearing set</li> <li>Hearing is set</li> <li>Date:</li> <li>Time:</li> <li>Judge/Calendar:</li> </ul>	
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7	SUPERIOR COURT OF THE	
8	IN AND FOR LEV	WIS COUNTY
9	ANDREA SEHMEL, KEVIN O'SULLIVAN, ROBERT MOTZER, DAWN APPELBERG, KENNETH MORSE, JEREMY WILDHABER,	No.
10	YIENAN SONG, as individuals,	DECLARATION OF DAWN
11	Plaintiffs,	APPELBERG VERIFYING COMPLAINT
12	V.	
13	JOHN WEISMAN, in his official capacity as	
14	Secretary of Health of the State of Washington,	
15	Defendant.	
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17		
18	DECLARATION OF DAWN APPELBE	RG VERIFYING THE FOREGOING
19	COMPL	AINT
20	I, Dawn Appelberg, pursuant to RCW 12.08	.070 declare as follows:
21	1. I am a Plaintiff in the above-caption	ned case. I am over the age of eighteen (18) and
22	am competent to testify to the following facts base	ed on my personal knowledge, to which I could
23	and would competently testify if called as a witness	s in this matter.
24	2. I have personal knowledge of myse	elf, my activities, and my intentions, including
25	those set out in the foregoing Verified Complaint, a	nd if called upon to testify I would competently
26	testify as to the matters stated herein.	
27		
28	No. Declaration of Dawn Appelberg 1	P.O. Box 552, Olympia, WA 98507 P: 360.956.3482   F: 360.352.1874

1	3. I verify under penalty of perjury under the laws of the United State of America that
2	the factual statements in this foregoing Complaint concerning myself, my activities, and my
3	intentions are true and correct.
4	
5	I declare under penalty of perjury that the foregoing is true and correct.
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7	Signed this day of July, 2020, at Pury a Nup, Washington.
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9	(DATE) (CITY)
10	Dawn Appellog
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28	No. DECLARATION OF DAWN APPELBERG 2 P.O. Box 552, Olympia, WA 98507 P: 360.956.3482   F: 360.352.1874

1 2 3 4 5	<ul> <li>Expedite</li> <li>No hearing set</li> <li>Hearing is set</li> <li>Date:</li> <li>Time:</li> <li>Judge/Calendar:</li> </ul>	
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8	SUPERIOR COURT OF THE S IN AND FOR LEV	
9 10	ANDREA SEHMEL, KEVIN O'SULLIVAN,	No.
11	ROBERT MOTZER, DAWN APPELBERG, KENNETH MORSE, JEREMY WILDHABER, YIENAN SONG, as individuals,	DECLARATION OF KENNETH MORSE VERIFYING COMPLAINT
12	Plaintiffs,	
13	V.	
14	JOHN WEISMAN, in his official capacity as Secretary of Health of the State of Washington,	
15	Defendant.	
16		
17	DECLARATION OF KENNETH MORS	SE VERIFYING THE FOREGOING
18	COMPLA	AINT
19 20	I, Kenneth Morse, pursuant to RCW 12.08.07	70 declare as follows:
20	1. I am a Plaintiff in the above-caption	ed case. I am over the age of eighteen (18) and
22	am competent to testify to the following facts base	d on my personal knowledge, to which I could
23	and would competently testify if called as a witness	in this matter.
24	2. I have personal knowledge of myse	lf, my activities, and my intentions, including
25	those set out in the foregoing Verified Complaint, and	nd if called upon to testify I would competently
26	testify as to the matters stated herein.	
27	3. I verify under penalty of perjury und	er the laws of the United State of America that
28	No.	P.O. Box 552, Olympia, WA 98507
	DECLARATION OF KENNETH MORSE 1	P: 360.956.3482   F: 360.352.1874

1	the factual statements in this foregoing Complaint concerning myself, my activities, and my
2	intentions are true and correct.
3	
4	I declare under penalty of perjury that the foregoing is true and correct.
5	, duly a happin
6	Signed this day of June, 2020, at 9:35 Am 0, Washington.
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9	Kenneth Morse
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	No.         P.O. Box 552, Olympia, WA 98507           DECLARATION OF KENNETH MORSE         2         P: 360.956.3482   F: 360.352.1874

1 2 3 4 5	<ul> <li>Expedite</li> <li>No hearing set</li> <li>Hearing is set</li> <li>Date:</li> <li>Time:</li> <li>Judge/Calendar:</li> </ul>	
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7	SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR LEWIS COUNTY	
8 9 10	ANDREA SEHMEL, KEVIN O'SULLIVAN, ROBERT MOTZER, DAWN APPLEBERG, KENNETH MORSE, JEREYMY WILDHABER, YIENAN SONG as individuals,	No. DECLARATION OF JEREMY
11	Plaintiffs,	WILDHABER VERIFYING COMPLAINT
12	v.	
13	JOHN WEISMAN, in his official capacity as	
14	Secretary of Health of the State of Washington,	
15	Defendant.	
16		
17	DECLARATION OF JEREMY WILDHA	BER VERIFYING THE FOREGOING
18	COMPLA	AINT
19 20	I, Jeremy Wildhaber, pursuant to RCW 12.08	3.070 declare as follows:
20 21	1. I am a Plaintiff in the above-caption	ed case. I am over the age of eighteen (18) and
22	am competent to testify to the following facts base	d on my personal knowledge, to which I could
23	and would competently testify if called as a witness	in this matter.
24		If, my activities, and my intentions, including
25	those set out in the foregoing Verified Complaint, a	nd if called upon to testify I would competently
26	testify as to the matters stated herein.	
27	3. I verify under penalty of perjury und	ler the laws of the United State of America that
28	No. Declaration of jeremy wilDhAber 1	FREEDOM 2007 P.O. Box 552, Olympia, WA 98507 P: 360.956.3482   F: 360.352.1874

1	the factual statements in this foregoing Complaint concerning myself, my activities, and my
2	intentions are true and correct.
3	
4	I declare under penalty of perjury that the foregoing is true and correct.
5	
6	Signed this day of July, 2020, at, Washington.
7	(DATE) (CITY)
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9	Jeremy Wildhaber
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	No.         P.O. Box 552, Olympia, WA 98507           DECLARATION OF JEREMY WILDHABER         2           P: 360.956.3482   F: 360.352.1874

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2	<ul> <li>Expedite</li> <li>No hearing set</li> </ul>	
3	Date:	
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7	SUPERIOR COURT OF THE IN AND FOR LE	
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9	ANDREA SEHMEL, KEVIN O'SULLIVAN, ROBERT MOTZER, DAWN APPLEBERG,	No.
10	KENNETH MORSE, JEREYMY WILDHABER, YIENAN SONG as individuals,	DECLARATION OF YIENAN SONG VERIFYING COMPLAINT
11	Plaintiffs,	
12	v.	
13	JOHN WEISMAN, in his official capacity as Secretary of Health of the State of Washington,	
14	Defendant.	
15		_
16		
17	DECLARATION OF YIENAN SONG VERI	FYING THE FOREGOING COMPLAINT
18	I, Yienan Song, pursuant to RCW 12.08.070	declare as follows:
19	1. I am a Plaintiff in the above-caption	ned case. I am over the age of eighteen (18) and
20	am competent to testify to the following facts base	ed on my personal knowledge, to which I could
21	and would competently testify if called as a witnes	s in this matter.
22	2. I have personal knowledge of mys	elf, my activities, and my intentions, including
23	those set out in the foregoing Verified Complaint, a	and if called upon to testify I would competently
24	testify as to the matters stated herein.	
25 26	3. I verify under penalty of perjury un	der the laws of the United State of America that
20	the factual statements in this foregoing Compla	int concerning myself, my activities, and my
28		FREEDOM

1	intentions are true and correct.
2	
3	I declare under penalty of perjury that the foregoing is true and correct.
4	× ·
5	Signed this day of July, 2020, at, Washington.
6	(DATE) (CITY)
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8	Yienan Song
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28	FREEDOM         FREEDOM           No.         P.O. Box 552, Olympia, WA 98507           DECLARATION OF YIENAN SONG         2           P: 360.956.3482   F: 360.352.1874

1	DECLARATION OF SERVICE
2	I, Jennifer Matheson, hereby declare under penalty of perjury under the laws of the State
3	of Washington that on July 1, 2020, I caused the foregoing Summons to be filed with the clerk,
4	and caused a true and correct copy of the same to be sent via legal messenger, to the following:
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6	John Weisman Secretary of Health 111 Israel Rd SE
7	Tumwater, WA 98501
8	Dated: July 1, 2020.
9	Dated. July 1, 2020.
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11	By: Jennifer Matheson
12	Jemmer Mattleson
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28	No.         P.O. Box 552, Olympia, WA 98507           VERIFIED COMPLAINT         15           P: 360.956.3482   F: 360.352.1874

# EXHIBIT A



#### STATE OF WASHINGTON

#### DEPARTMENT OF HEALTH

PO Box 47890 • Olympia, Washington 98504-7890 Tel: 360-236-4030 • 711 Washington Relay Service

#### ORDER OF THE SECRETARY OF HEALTH

20-03

#### **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;

**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 order the following:

### Every person in Washington State must wear a face covering that covers their nose and mouth when in any indoor or outdoor public setting, including, but not limited to:

• Inside any building, including, but not limited to, any business, that is open to the public;

- In healthcare settings, including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician's or dentist's office, veterinary clinic, or blood bank;
- While in line waiting for or riding on public transportation or paratransit, or while riding in a taxi, private car service, ride-sharing vehicle, or other for hire vehicle; and
- In outdoor public areas, including but not limited to public parks, trails, streets, sidewalks, lines for entry, exit, or service, and recreation areas, when a distance of at least six feet cannot be maintained from any non-household member.

## Individuals may remove their face coverings when in public settings under the following circumstances:

- While seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet from guests seated at other tables;
- 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 are governed by the requirements issued by the Governor;
- While in an outdoor public area, provided that a distance of at least six feet is maintained from non-household members;
- 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; and
- When federal or state law prohibits wearing a face covering or requires the removal of a face covering.

#### The following individuals are exempt from the requirement 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, 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 means a cloth face covering that covers the nose and mouth. It can be:

- A sewn mask secured with ties or straps around the head or behind the ears;
- Multiple layers of fabric tied around the head;
- Made from a variety of materials, such as fleece, cotton, or linen; or
- Factory-made or made from household items.

A face covering also includes 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.

This order shall take effect on June 26, 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 criminal penalties pursuant to RCW 43.70.130(7), RCW 70.05.120(4), and WAC 246-100-070(3).

Signed this 24th day of June, 2020.

Wiesman, DrPH, MPH

John Wiesman, DrPH, MPH Secretary of Health