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SUPERIOR COURT OF WASHINGTON
FOR LEWIS COUNTY

No. **20 2 0073621**

Gene Gonzales and Susan Gonzales,
Horwath Family Two, LLC, and the
Washington Landlord Association,

Plaintiffs,

vs.

Governor Jay Inslee and State of
Washington,

Defendants.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

Plaintiffs allege as follows:

INTRODUCTION

1. In the wake of the novel coronavirus, Defendant Jay Inslee, Governor of the State of Washington, ("Defendant" or "Governor") hastily instituted a series of emergency proclamations numbered as Proclamation 20-19 through 20-19.4 which prohibit people who provide rental housing from exercising their

1 contractual and statutory remedies to evict tenants who have no right to remain
2 in their property. These includes tenants who refuse to pay rent for any or no
3 reason whatsoever, knowing that they cannot be evicted for not paying rent and
4 cannot be charged any late fees or be subject to an enforceable debt or obligation
5 that is collectable for being delinquent on rental payments.

6 2. Plaintiffs are sympathetic to tenants who have actually suffered hardship
7 due to the COVID-19 Pandemic. Plaintiffs have every incentive to work with
8 those tenants who do not have the financial means to pay all or some portion of
9 their rent. However, the Proclamations actively undermine any such attempts at
10 cooperation and allow tenants who have the ability to pay all or some of their
11 rent to ignore and ultimately escape their contractual obligations for the
12 foreseeable future regardless of whether they have been financially harmed by
13 the Pandemic.

14 3. While many businesses have suffered as a result of the Pandemic, the
15 owners of rental property are the only people who are required by any of the
16 Governor's emergency proclamations to continue to provide a good or service
17 without charge. Stores and restaurants lost business opportunities due to the
18 Pandemic, but they were not required to continue to provide goods or food to
19 customers without an ability to charge for the items they sold. The Governor's
20 Proclamations regarding eviction require housing providers to continue to
21 provide rental housing without an ability to insist that tenants pay for the
22 privilege they agreed to when they voluntarily entered into their leases.
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1 4. Additionally, the owners of rental property are still required to pay
2 property taxes and for maintenance and, in many situations, pay for sewer,
3 water, garbage services or mortgages on the properties even though the tenants
4 in their property are not paying rent.

5 5. The Proclamations violate the rights of people who provide rental housing
6 by destroying a fundamental feature of their contracts, oppressively placing on
7 them the burden of providing free housing to any and all tenants instead of
8 properly spreading the burden on the public as a whole, and essentially
9 mandating that their property be used for private use by tenants, a burden which
10 is absolutely prohibited by Article I, Section 16 of the Washington state
11 constitution.

12 6. "To be sure, individual rights secured by the Constitution do not disappear
13 during a public health crisis." *In re Abbott*, 954 F.3d 772, 784 (5th Cir. 2020).
14 Fundamental and unalienable rights are by their very nature "essential" – they
15 are the same essential rights which led to the founding of this country and this
16 state. For, "[h]istory reveals that the initial steps in the erosion of individual
17 rights are usually excused on the basis of an 'emergency' or threat to the public.
18 But the ultimate strength of our constitutional guarantee lies in the unhesitating
19 application in times of crisis and tranquility alike." *United States v. Bell*, 464
20 F.2d 667, 676 (2d Cir. 1972) (Mansfield, J., concurring).

21 7. "Emergency does not create power. Emergency does not increase granted
22 power or remove or diminish the restrictions imposed upon power granted or
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1 reserved. The Constitution was adopted in a period of grave emergency. Its
2 grants of power to the federal government and its limitations of the power of the
3 States were determined in light of emergency, and they are not altered by
4 emergency. What power was thus granted and what limitations were thus
5 imposed are questions which have always been, and always will be, the subject of
6 close examination under our constitutional system.” *Home Bldg. & Loan Ass’n v.*
7 *Blaisdell*, 290 U.S. 398, 426 (1934).

8 PARTIES

9 8. Plaintiffs Gene Gonzales and Susan Gonzales are the owners of properties
10 which they lease to tenants in Centralia, Washington.

11 9. Plaintiff Horwath Family Two, LLC is a limited liability company organized
12 in the State of Washington and the owner of residential property which it leases
13 to tenants in Centralia, Washington.

14 10. Plaintiff Washington Landlord Association (WLA) is a nonprofit
15 association of landlords organized under the laws of the State of Washington
16 with members in Lewis County.

17 11. Defendant Jay Inslee is the chief executive officer and Governor of the
18 State of Washington.

19 12. The State of Washington is duly organized state government within the
20 United States of America.

1 responsible for paying for electricity. The tenant has not responded to Plaintiffs'
2 repeated efforts to communicate to work out make payment options.

3 19. Plaintiff Horwath Family Two, LLC has other rental properties and has
4 worked with other tenants to find equitable solutions if the tenants are having
5 difficulty paying for rent for any reason, including COVID-19-related reasons,
6 such as loss or reduction in employment.

7 20. Plaintiff Washington Landlord Association (WLA) is a nonprofit
8 association organized under the laws of the State of Washington, representing
9 the interests of landlords in Washington State. The WLA has members in Lewis
10 County who lease residential property and are affected by the Governor's
11 Proclamations challenged herein. Representing the interests of landlords in
12 litigation such as this case is within the mission of the WLA.

13 **B. The Outbreak of COVID-19**

14 19. The global COVID-19 pandemic ("Pandemic") brought on by the Novel
15 Coronavirus has caused catastrophic and unprecedented economic damage across
16 the globe, and with it, significant loss of life and fundamental changes to both
17 world and national economies. The Pandemic has turned the world upside-down,
18 causing profound damage to the lives of all Americans and to the national
19 economy. To be sure, State of Washington and U.S. officials have faced
20 tremendous adversity in planning, coordinating, and at times, executing effective
21 nationwide and statewide policies to protect the general public's health, safety
22 and welfare during this time of crisis. However, the Proclamations, as well-

1 intentioned as they may be, have had an unlawful and disparate impact on
2 housing providers.

3 20. In response to the outbreak in the State of Washington, on February 29,
4 2020, Governor Inslee issued a "State of Emergency" Order to address the threat
5 of the spread of the Pandemic throughout Washington's communities. Governor
6 Inslee subsequently issued Proclamation No. 20-25 on March 23, 2020, which,
7 among other things, mandated that "all individuals living in the State of
8 Washington" were to "stay home or at their place of residence except as needed to
9 maintain the continuity of operations of the critical infrastructure sectors and
10 other "essential services."

11 **C. The Governor's Eviction-Related Proclamations**

12 21. On March 18, 2020, Governor Inslee issued Proclamation 20-19. In
13 relevant part, the Order purported to suspend provisions of state law that would
14 allow the providers of residential rental housing to evict tenants even if they
15 were able to pay rent but chose not to do so. The Proclamation stated it was to
16 remain in effect until April 17, 2020.

17 22. On April 16, 2020, Governor Inslee issued Proclamation No. 20-19.1
18 which remained in effect until June 4, 2020. This Proclamation, like the others
19 before it, has three provisions which Plaintiffs contend are in violation of
20 constitutional rights as explained below. Those provisions are:

21 a. A prohibition on evictions (Eviction Moratorium), which is not tied to
22 anything related to the Pandemic. However, it is subject to exceptions where the
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1 lessor (a) provides an affidavit that the eviction is necessary to respond to a
2 significant and immediate risk to the health, safety, or property of others created
3 by the resident; or (b) provides at least 60 days' written notice of intent to (i)
4 personally occupy the premises as a primary residence, or (ii) sell the property.

5 b. A prohibition on imposing fees for late payment (Suspension of Late Fees),
6 regardless of whether the Pandemic has impacted the tenant's ability to pay and
7 the inability to treat unpaid rent as a debt or financial obligation. The inability to
8 treat unpaid debt as a financial obligation of the tenant is lifted only if the lessor
9 offers the tenant and the tenant refused or failed to comply with, a repayment
10 plan that was reasonable based on the individual financial, health, and other
11 circumstances of that resident. However, there is no corresponding obligation of
12 tenants to cooperate with the development of a repayment plan and tenants may
13 refuse to provide information that would enable the creation of a repayment plan
14 that is reasonable based on the tenant's financial, health and other
15 circumstances.

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17 23. On June 2, 2020, Governor Inslee issued Proclamation 20-19.2, which was
18 to remain in effect until August 1, 2020. On July 24, 2020, Governor Inslee issued
19 Proclamation 20-19.3, which was to remain in effect until October 15, 2020. On
20 October 14, 2020, Governor Inslee issued Proclamation 20-19.4, a true and
21 correct copy of which is attached hereto as Appendix A. It remains in effect until
22 December 31, 2020. The restrictions described above are included in all of these
23 Proclamations with some variation in each.

1 24. While purportedly intended to provide relief to tenants impacted by the
2 Pandemic, the Proclamations are not tailored to a tenant's actual inability to pay
3 rent and significantly (and needlessly) infringe on the constitutional rights of
4 housing providers within the State of Washington. This action seeks a ruling that
5 Proclamations 20-19 through 20-19.4 are illegal and the enforcement of
6 Proclamation 20-19.4 should be enjoined.

7 25. Proclamation 20-19.4, among other things, prohibits housing providers
8 from initiating or continuing residential eviction proceedings based upon non-
9 payment of rent. While Proclamation 20-19.4 provides no relief for housing
10 providers and requires them to continue meeting their contractual and statutory
11 obligations as lessors, it completely abrogates the material obligations of lessees
12 and eliminates all the contractual remedies housing providers ordinarily have
13 when tenants breach their lease provisions. Under the Proclamations, tenants
14 may continue to occupy their respective premises at no charge, utilizing the
15 water, power, trash, sewage, and other fees that the housing providers must
16 continue to pay without reimbursement. By stripping all remedies away from
17 owners – without requiring tenants to demonstrate an inability to pay rent – the
18 Proclamations create a legal disincentive for tenants who can pay all or some of
19 what they owe from doing so because there is no recourse for such calculated
20 behavior.
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22 26. The Proclamations fail to address how a housing provider would be able to
23 collect rent from those tenants who take advantage of the Eviction Moratorium.

1 22. Proclamation 20-19.4 asserts that the Governor has exercised his
2 “emergency powers under RCW 43.06.220 by prohibiting certain activities and
3 waiving and suspending specified laws and regulations.”

4 23. Proclamation 20-19.4 also asserts that the Governor is operating “under
5 Chapters 38.08, 38.52 and 43.06 RCW” in proclaiming that a State of Emergency
6 exists and that Proclamations 20-05 and 20-19, *et seq.*, are amended to
7 temporarily prohibit residential evictions and temporarily impose other related
8 prohibitions statewide until” December 31, 2020. “Accordingly, based on the
9 above noted situation and under the provisions of RCW 43.06.220(1)(h) ... I
10 prohibit the following activities related to residential dwellings and commercial
11 rental properties in Washington state” after which is included the provision on
12 evictions.

13 24. The Proclamations challenged herein are not authorized by RCW
14 43.06.220. This is evident from the different language in Subsections (1) and (2).
15 Subsection (2) authorizes the Governor to “issue an order or orders concerning
16 waiver or suspension of statutory obligations or limitations” in limited areas.
17 RCW 43.06.220(4) states: “ No order or orders concerning waiver or suspension of
18 statutory obligations or limitations under subsection (2) of this section may
19 continue for longer than thirty days unless extended by the legislature through
20 concurrent resolution. If the legislature is not in session, the waiver or
21 suspension of statutory obligations or limitations may be extended in writing by
22 the leadership of the senate and the house of representatives until the legislature
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1 can extend the waiver or suspension by concurrent resolution.” However,
2 “leadership” of the legislature is not the legislature.

3 25. Subsection (1) of RCW 43.06.220(1) provides that the Governor may
4 prohibit certain activities. Subsection (h) includes the catch all provision which
5 the Governor cites in his Proclamations that he may prohibit “[s]uch other
6 activities as he or she reasonably believes should be prohibited to help preserve
7 and maintain life, health, property or the public peace.”

8 26. Subsection (2) provides strictures on suspending statutory obligations. If
9 Subsection (1)(h)’s reference to “other activities” includes statutory obligations as
10 the Proclamations suggest, that conclusion makes Subsection (2) meaningless, a
11 result which is contrary to the standards of statutory construction.

12 27. If the Proclamations are otherwise lawful, they suspend the following
13 statutory obligations:

- 14 a. RCW 59.12.030 provides that tenants are liable for unlawful detainer if
15 the tenant remains after the lease term has ended, if the tenant is in
16 default in the payment of rent or if the tenant fails to comply with
17 requirements of the lease after ten days notice, if the tenant commits or
18 causes waste, carries on an unlawful business or allows a nuisance to
19 occur or if the person has no right to enter the property at all.
- 20 b. RCW 59.18.080 requires that “The tenant shall be current in the
21 payment of rent including all utilities which the tenant has agreed in the
22 rental agreement to pay before exercising any of the remedies accorded
23 him or her under the provisions of this chapter.”

- 1 c. RCW 59.18.130 provides that “Each tenant shall pay the rental amount
2 at such times and in such amounts as provided for in the rental
3 agreement or as otherwise provided by law[.]”
- 4 d. RCW 59.18.130(1)-(10) sets forth ten enumerated statutory obligations of
5 tenants.
- 6 e. RCW 59.18.140 provides that “(1) The tenant shall conform to all
7 reasonable obligations or restrictions, whether denominated by
8 the landlord as rules, rental agreement, rent, or otherwise,
9 concerning the use, occupation, and maintenance of his or her
10 dwelling unit, appurtenances thereto, and the property of which
11 the dwelling unit is a part if such obligations and restrictions are
12 not in violation of any of the terms of this chapter and are not
13 otherwise contrary to law, and if such obligations and restrictions
14 are brought to the attention of the tenant at the time of his or her
15 initial occupancy of the dwelling unit and thus become part of the
16 rental agreement.”
- 17 f. RCW 59.18.160 provides that the lessor may (1) Bring an action in an
18 appropriate court, or at arbitration if so agreed for any remedy provided
19 under this chapter or otherwise provided by law.
- 20 g. RCW 59.18.170 provides that landlords may charge late fees if rent is
21 paid more than five days late.
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1 h. RCW 59.18.050 provides: “The district or superior courts of this
2 state may exercise jurisdiction over any landlord or tenant with
3 respect to any conduct in this state governed by this chapter or
4 with respect to any claim arising from a transaction subject to this
5 chapter within the respective jurisdictions of the district or
6 superior courts as provided in Article IV, section 6 of the
7 Constitution of the state of Washington.”

8 28. In *Faciszewski v. Brown*, 187 Wn.2d 308 (2016), the Court explained: “To
9 regain possession of the property, the landlord may file an unlawful detainer
10 action against the tenant. RCW 59.12.070. Upon filing an unlawful detainer
11 action, the landlord may request the court to issue a writ of restitution restoring
12 the property to the landlord. RCW 59.12.090. For residential property, a landlord
13 seeking a writ of restitution must request a show cause hearing. RCW 59.18.370.”
14 *Id.* at 314.

15 29. Proclamation by the Governor 20-19.4 waives, suspends, amends, modifies
16 and otherwise limits the statutory obligations and limitations imposed on
17 landlords and tenants in the Residential Landlord-Tenant Act of 1973, Chapter
18 59.18 RCW.

19 30. Proclamation by the Governor 20-19.4 waives, suspends, amends, modifies
20 and otherwise limits the statutory obligations and limitations imposed on
21 landlords and tenants in the Unlawful Detainer statute, chapter 59.12 RCW.
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1 31. The Governor has no authority to waive statutory obligations in regard to
2 the providers of rental housing to evict tenants under RCW 43.06.220(1) or (2).

3 32. Plaintiffs seek a declaratory judgment of rights and obligations under the
4 Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil
5 Rule 57 as to the allegations above. An actual dispute exists between Plaintiffs
6 and Defendants whose interests are genuinely opposing in nature. These
7 disputed interests are direct and substantial. A judicial determination can
8 provide a final and conclusive resolution as to the parties' rights and
9 responsibilities.

10 **SECOND CAUSE OF ACTION**

11 **RCW 43.06.220 Unlawfully Delegates Legislative Powers and**

12 **Violates the Separation of Powers Principle**

13 33. Plaintiffs incorporate by reference each and every allegation contained in
14 the preceding paragraphs as though set forth in full here.

15 34. RCW 43.06.220 purports to give the Governor pure legislative power to
16 suspend laws, even though it is subject to certain conditions. The Washington
17 constitution gives the Governor only a limited role in the legislative process,
18 namely the power to veto. *See Washington State Grange v. Locke*, 153 Wn.2d 475,
19 487 (2005) and that power is limited to the time period before the new legislation
20 becomes effective and is subject to an overriding vote of the legislature. Article
21 III, Section 12 of the Washington constitution. In light of the limited legislative
22 role of the Governor, the constitution does not allow the legislature to delegate its
23 legislative power to repeal or suspend a law to any other person.

1 35. While there have been disputes as to whether the legislature has properly
2 delegated legislative power to administrative agencies that promulgate rules,
3 *State v. Crown Zellerbach Corp.*, 92 Wn.2d 894 (1979), there is no authority to
4 suggest the legislature can delegate pure legislative authority (such as the repeal
5 or suspension of laws) to anyone, including the Governor, a fraction of the
6 legislature or any other person entity, elected or otherwise.

7 36. “Under art. II, § 1, [t]he legislative authority of the State is vested in the
8 Legislature ... and it is unconstitutional for the Legislature to abdicate or
9 transfer its legislative function to others.” *Amalgamated Transit Union Local 587*
10 *v. State*, 142 Wn.2d 183, 234 (2000). This includes an inability to transfer
11 legislative functions even to the people even the people have a power to legislate
12 through the initiative process. *Amalgamated Transit Union*, 142 Wn.2d at 204.

13 37. “There is no question that under art. II, § 1 the Legislature cannot
14 delegate its legislative authority. As noted, ‘[I]t is unconstitutional for the
15 legislature to abdicate or transfer to others its legislative function.’” *King County*
16 *v. Taxpayers of King County*, 133 Wn.2d 584, 605 (1997) (quoting *Keeting v. PUD*
17 *No. 1 of Clallam County*, 49 Wn.2d 761, 767 (1957)). The Supreme Court
18 concluded that unconstitutional delegation of legislative power occurred by giving
19 voters power to determine whether a proposal should be enacted.

20 38. Therefore, there is no authority that the legislature can delegate to
21 anyone—even the Governor—the quintessential legislative power to enact,
22 amend or suspend laws. The Proclamations purport to suspend numerous laws.

1 39. Nevertheless, Washington’s governmental structure is not without
2 solutions. In times of emergencies, the Governor has the power to call the
3 legislature back into session to amend, repeal or suspend laws when the
4 legislative branch determines such amendment, repeal or suspension is
5 appropriate. Article II, Section 12(2) and Article III, Section 7. However, the
6 Governor has chosen not to call the legislature back into session to deal with the
7 Covid-19 Pandemic and determine what laws should be suspended or replaced or
8 supplemented with others.

9 40. “The Legislature is prohibited from delegating its purely legislative
10 functions’ to other branches of government.” *Auto. United Trades Org. v. State*,
11 183 Wash.2d 842, 859 (2015) (AUTO) (quoting *Diversified Inv. P’ship v. Dep’t of*
12 *Soc. & Health Servs.*, 113 Wash.2d 19, 24 (1989)).

13 41. The unlawful delegation of legislative authority is born out of the
14 separation of powers doctrine, inherent in both Washington and federal
15 jurisprudence. The principal function of the separation of powers doctrine is to
16 provide a “safeguard against the encroachment or aggrandizement of one branch
17 at the expense of the other.” *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). The
18 separation of powers doctrine “serves mainly to ensure that the fundamental
19 functions of each branch remain inviolate.” *Colvin v. Inslee*, 195 Wn.2d 879, 892
20 (2020) (quoting *Carrick v. Locke*, 125 Wn.2d 129, 134 (1994)). The Washington
21 State Constitution does not contain a formal separation of powers clause, but
22 “the very division of our government into different branches has been presumed
23 throughout our state's history to give rise to a vital separation of powers

1 doctrine.’” *Brown v. Owen*, 165 Wn.2d 706, 718 (2009) (quoting *Carrick*, 125
2 Wn.2d at 135).

3 42. In light of that doctrine, “it is unconstitutional for the Legislature to
4 abdicate or transfer its legislative function to others.” *Brower v. State*, 137
5 Wash.2d 44, 54 (1998) (citation omitted).

6 43. Washington law recognizes that one branch of government cannot
7 overwrite the legislative branch. *See State v. Munson*, 23 Wn. App. 522, 525
8 (1979) (citing *State v. Thompson*, 111 Wash. 525, 527 (1920)).

9 44. Hence, even if RCW 43.06.220 were deemed to authorize the Governor’s
10 Proclamations challenged herein, RCW 43.06.220 is an unconstitutional
11 delegation of legislative power to the Governor which violates the separation of
12 powers doctrine.

13 45. Plaintiffs seek a declaratory judgment of rights and obligations under the
14 Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil
15 Rule 57 as to the allegations above. An actual dispute exists between Plaintiffs
16 and the Governor whose interests are genuinely opposing in nature. These
17 disputed interests are direct and substantial. A judicial determination can
18 provide a final and conclusive resolution as to the parties’ rights and
19 responsibilities.

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THIRD CAUSE OF ACTION

**Unconstitutional Interference with Power of the Judiciary and Right to Petition
Government for Redress of Grievances**

46. Plaintiff incorporates by reference each and every allegation contained in previous paragraphs as though set forth in full here.

47. Proclamation 20-19.4 prohibits the following:

Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property.

48. Plaintiffs have a statutory right to seek eviction of tenants. This provision of the Proclamation interferes with Plaintiffs' constitutional right to seek redress in the judicial branch of government, but also interferes with the judicial branch's independent power to resolve disputes and thereby violates the separation of power doctrine inherent in the constitution.

49. In *Waples v. Yi*, 169 Wn.2d 152 (2010), the Court concluded that the notice requirement in a statute conflicted with a court rule on the commencement of a lawsuit and for that reason the statute was in violation of the separation of powers as intruding on the inherent power of the judiciary.

50. The Legislature cannot exercise or prevent the exercise of judicial powers by the judiciary. *O'Connell v. Conte*, 76 Wn.2d 280 (1969) (legislative

1 determination that attorney general should be guardian for incompetent persons
2 invaded the judiciary's role).

3 51. The Proclamations challenged herein invade the judiciary's role in
4 resolving disputes involving tenants and their violation of conditions of their
5 lease or failure to pay rent. The judiciary's power to resolve these disputes is
6 inherent in the judicial branch and is supported by existing statutory law. The
7 Proclamations violate the power of the judiciary and the right of owners of rental
8 property to seek relief from the judiciary.

9 52. Plaintiffs seek a declaratory judgment of rights and obligations under the
10 Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil
11 Rule 57 as to the allegations above. An actual dispute exists between Plaintiffs
12 and Defendants whose interests are genuinely opposing in nature. These
13 disputed interests are direct and substantial. A judicial determination can
14 provide a final and conclusive resolution as to the parties' rights and
15 responsibilities.

16 **FOURTH CAUSE OF ACTION**

17 **Violation of the Takings Clause of Art. I, § 16 of the Washington Constitution**

18 46. Plaintiffs incorporate herein by reference each and every allegation
19 contained in the preceding paragraphs of this Complaint as though fully set forth
20 herein.

21 47. Article I, Section 16 of the Washington Constitution provides that just
22 compensation be provided prior to any taking of property for public use and
23 prohibits taking of private property for private use.

1 48. The State Supreme Court has concluded that the standards for finding a
2 taking of property without formal condemnation are the same as finding a taking
3 under the Fifth Amendment to the United States Constitution. *Yim v. City of*
4 *Seattle (Yim I)*, 194 Wn. 2d 651, 672 (2019). When the state requires a physical
5 occupation of private property, that is considered a *per se* taking under federal
6 law and now under state law. Federal law is also clear that occupation of private
7 property is a *per se* taking even if the occupation is temporary or less than
8 permanent. *Arkansas Game and Fish v United States*, 568 U.S. 23 (2012).

9 49. Washington courts have routinely held that the Washington Constitution
10 provides just compensation to property owners when their land is taken because
11 the law seeks to bar the government from forcing some people alone to bear
12 public burdens which, in all fairness and justice, should be borne by the public as
13 a whole. “The talisman of a taking is government action which forces some
14 private persons alone to shoulder affirmative public burdens, ‘which, in all
15 fairness and justice, should be borne by the public as a whole.’” *Mission Springs,*
16 *Inc. v. City of Spokane*, 134 Wn.2d 947, 964 (1998) (quoting *Armstrong v. United*
17 *States*, 364 U.S. 40, 49 (1960)).

18 50. Prohibiting Plaintiffs from rightfully collecting rent from its tenants in the
19 State of Washington, in exchange for the tenants’ lawful possession of Plaintiffs’
20 properties, despite other compliance measures being taken to satisfy the public
21 health interests at stake and to financially compensate those affected by COVID-
22 19, violates Plaintiffs’ fundamental Constitutional rights.
23

1 51. Additionally, the taking of Plaintiffs' property interests are not for public
2 use at all, but for the private use of tenants. No member of the public, much less
3 the public as a whole, has a right to use those tenancies or avoid paying rent for
4 occupying a property. Unlike the Fifth Amendment to the United States
5 Constitution, Article I, Section 16 of the Washington constitution is explicit:
6 "Private property shall not be taken for private use." *See also State ex rel.*
7 *Washington State Convention and Trade Center v. Evans*, 136 Wn.2d 811 (1998)
8 ("The constitution prohibits the taking of private property for a private use.")
9 The Proclamations are in violation of the explicit prohibition in Article I, Section
10 16 of the Washington state constitution on the state taking private property for
11 private use.

12 52. Plaintiffs seeks a declaratory judgment of rights and obligations under the
13 Washington Uniform Declaratory Judgment Act, RCW 7.24.,010 and Civil Rule

14 57. An actual dispute exists between Plaintiffs and Defendants whose interests
15 are genuinely opposing in nature. These disputed interests are direct and
16 substantial. A judicial determination can provide a final and conclusive
17 resolution as to the parties' rights and responsibilities.

18 FIFTH CAUSE OF ACTION

19 Unconstitutional Impairment of Contracts

20 53. Plaintiffs incorporate by reference each and every allegation contained in
21 previous paragraphs as though set forth in full here.
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1 54. Plaintiffs have contracts with their tenants that require the payment of
2 rent as well as impose other conditions of the tenancy and allow for eviction if
3 rent is not paid without the consent of Plaintiffs.

4 55. The Proclamations challenged herein completely destroys that essential
5 portion of the contract that a tenant must either pay rent, obtain Plaintiffs'
6 consent or be evicted. The Proclamations violate the impairment of contracts
7 clause in Article I, Section 23 of the Washington constitution.

8 56. An unconstitutional impairment of contracts occurs when "the state law
9 has, in fact, operated as a substantial impairment of a contractual relationship."
10 *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). Furthermore,
11 "[t]he impaired relationship must be a 'contract' in the usual sense of the word
12 'signifying an agreement of two or more minds, upon sufficient consideration, to
13 do or not to do certain acts.'" *Haberman v. Wash. Pub. Power Supply System*,
14 109 Wn.2d 107, 145 (1987)(quoting *Crane v. Hahlo*, 258 U.S. 142, 146 (1922)).
15 Plaintiffs' leases with their tenants are contracts under Washington law.

16 57. "A contract is impaired by a statute which alters its terms, imposes new
17 conditions or lessens its value." *Caritas Servs., Inc. v. Dep't of Soc. & Health*
18 *Servs.*, 123 Wn.2d 391, 404 (1994). An impairment may be substantial if a party
19 relied on the supplanted clause. *Id.* at 405. In entering into leases, Plaintiffs
20 relied upon the provision of the leases that require payment of rent as a condition
21 of occupying Plaintiffs' property and that eviction could be the result if rent was
22 not paid.

1 58. The Proclamations have altered the terms of Plaintiffs' contracts,
2 essentially added the condition that there would be no eviction, regardless of
3 ability to pay, when rent is not paid, and lessened the value of the lease to
4 Plaintiffs.

5 59. Plaintiffs seek a declaratory judgment of rights and obligations under the
6 Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil
7 Rule 57 as to the allegations above. An actual dispute exists between Plaintiffs
8 and Defendants whose interests are genuinely opposing in nature. These
9 disputed interests are direct and substantial. A judicial determination can
10 provide a final and conclusive resolution as to the parties' rights and
11 responsibilities.

12 PRAYER FOR RELIEF

13 WHEREFORE, Plaintiffs now respectfully request the Court to award the
14 following relief:

- 15 A. An order declaring the Governor's Proclamations 20-19 through 20-19.4 are
16 void as being without statutory authority;
- 17 B. An order declaring RCW 43.05.220 to be an unconstitutional delegation of
18 legislative power to the Governor;
- 19 C. An order declaring Proclamations 20-19 through 20-19.4 violate the separate
20 of powers doctrine and violate Plaintiffs' right to seek redress of grievances
21 in the judiciary;
- 22 D. An order declaring Proclamations 20-19 through 20-19.4 as causing an
23 unconstitutional taking or damaging of property by mandating physical

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occupancy of property by tenants without first payment of compensation and
for a private and nonpublic use;

E. An order declaring Proclamations 20-19 through 20-19.4 to constitute an
unconstitutional impairment of contract;

F. An order awarding costs and attorney fees in this action; and

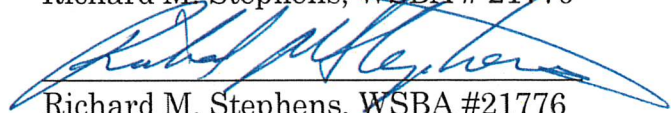
B. Such other and further relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED this 1st day of December, 2020.

STEPHENS & KLINGE LLP

Richard M. Stephens, WSBA # 21776

By:



Richard M. Stephens, WSBA #21776

Attorneys for Plaintiffs

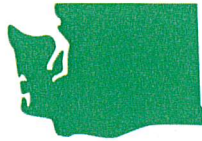
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Appendix A



**PROCLAMATION BY THE GOVERNOR
EXTENDING AND AMENDING 20-05, 20-19, et seq.**

20-19.4

Evictions and Related Housing Practices

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 several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; 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, continues to broadly spread throughout Washington State; and

WHEREAS, the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

WHEREAS, many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

WHEREAS, the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

WHEREAS, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

WHEREAS, under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

WHEREAS, on May 29, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-626, and ordered that courts should begin to hear non-emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

WHEREAS, the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 “that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;” and

WHEREAS, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities; transient housing in hotels and motels; “Airbnbs”; motor homes; RVs; and camping areas; and

WHEREAS, due to the impacts of the pandemic, individuals and families have had to move in with friends or family, and college students have had to return to their parents’ home, for example, and such residents should be protected from eviction even though they are not documented in a lease. However, this order is not intended to permit occupants introduced into a dwelling who are not listed on the lease to remain or hold over after the tenant(s) of record permanently vacate the dwelling (“holdover occupant”), unless the landlord, property owner, or property manager (collectively, “landlord”) has accepted partial or full payment of rent, including payment in the form of labor, from the holdover occupant, or has formally or informally acknowledged the existence of a landlord-tenant relationship with the holdover occupant; and

WHEREAS, a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

WHEREAS, hundreds of thousands of tenants in Washington are unable to pay their rent, reflecting the continued financial precariousness of many in the state. According to the unemployment information from the Washington State Employment Security Department website as of October 7, 2020, current data show there are more than six times as many people claiming unemployment benefits in Washington than there were a year ago, and almost 100,000 more people claiming unemployment benefits than at the peak of the Great Recession; and

WHEREAS, a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities, employment in essential business services, or otherwise engaged in permissible activities, and will promote public health and safety by reducing the progression of COVID-19 in Washington State; 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’ “Stay Home – Stay Healthy” requirements to “Safe Start – Stay Healthy” requirements, 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, 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 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 those strategies may include dialing back business and other activities; and

WHEREAS, on July 23, 2020, in response to the statewide increased rates of infection, hospitalizations, and deaths, I announced an expansion of the Department of Health’s face covering requirements and several restrictions on activities where people tend to congregate; and

WHEREAS, when I issued Proclamation 20-19.3 on July 24, 2020, the Washington State Department of Health reported at least 51,849 confirmed cases of COVID-19 with 1,494 associated deaths; and today, as of October 11, 2020, there are at least 93,862 confirmed cases with 2,190 associated deaths; and

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

WHEREAS, the Washington State Department of Health (DOH) 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 Washington State 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.

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 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, and that Proclamations 20-05 and 20-19, et seq., are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until 11:59 p.m. on December 31, 2020, as provided herein.

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 Washington State 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.

ACCORDINGLY, based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, effective immediately and until 11:59 p.m. on December 31, 2020, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of

this Proclamation. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury, and does not dispense landlords, property owners, or property managers from their notice obligations prior to entering the property, or from wearing face coverings, social distancing, and complying with all other COVID-19 safety measures upon entry, together with their guests and agents. Any eviction or termination of tenancy notice served under one of the above exceptions must independently comply with all applicable requirements under Washington law, and nothing in this paragraph waives those requirements.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury.
- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that (a) the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution, that contain the findings required by this paragraph.
- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.
- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.**
- Nothing in this order precludes a landlord, property owner, or property manager from engaging in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. “Customary and routine” means communication practices that were in place prior to the issuance of Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a resident of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation without threatening eviction; or are otherwise consistent with this order. Within these communications and parameters, it is permissible for landlords, property owners and property managers to provide information to residents regarding financial resources, and to provide residents with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.
- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling or parcel of land occupied as a dwelling. This prohibition does not apply to a landlord, property owner, or property manager who provides (a) advance notice of a rent increase required by RCW 59.20.090(2) (Manufactured/Mobile Home Landlord-Tenant Act), or (b) notice of a rent increase specified by the terms of the existing lease, provided that (i) the noticed rent increase does not take effect until after the expiration of Proclamation 20-19.4, and any modification or extension thereof, and (ii) the notice is restricted to its limited purpose and does not contain any threatening or coercive language, including any language threatening eviction or describing unpaid rent or other charges. Unless expressly permitted in this or a subsequent order, under no circumstances may a rent increase go into effect while this Proclamation, or any extension thereof, is in effect. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

- Landlords, property owners, and property managers are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.
- The preceding prohibitions do not apply to operators of long-term care facilities licensed or certified by the Department of Social and Health Services to prevent them from taking action to appropriately, safely, and lawfully transfer or discharge a resident for health or safety reasons, or a change in payer source that the facility is unable to accept, in accordance with the laws and rules that apply to those facilities. Additionally, the above prohibition against increasing, or threatening to increase, the rate of rent for any dwelling does not apply to customary changes in the charges or fees for cost of care (such as charges for personal care, utilities, and other reasonable and customary operating expenses), or reasonable charges or fees related to COVID-19 (such as the costs of PPE and testing), as long as these charges or fees are outlined in the long-term care facility's notice of services and are applied in accordance with the laws and rules that apply to those facilities, including any advance notice requirement.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity; (b) as it relates to "significant and immediate" risk to the health and safety of others, includes any behavior by a resident which is imminently hazardous to the physical safety of other persons on the premises (RCW 59.18.130 (8)(a)); (c) cannot be established on the basis of the resident's own health condition or disability; (d) excludes the situation in which a resident who may have been exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (e) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

FURTHERMORE, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

ADDITIONALLY, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, et seq., is to provide relief to those individuals who have been impacted by the COVID-19 crisis. Landlords and tenants are expected to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike. I strongly

encourage landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

ADDITIONALLY, I want to thank the stakeholders and legislators who participated in the eviction moratorium workgroup with my executive senior policy advisors. The workgroup discussed a broad range of issues, and that discussion informed the modifications reflected in this order. I am directing my policy advisors to continue to work with stakeholders over the next 30 days to consider additional amendments to the moratorium to ensure that the moratorium's protections for non-payment of rent apply narrowly to those persons whose ability to pay has been directly or indirectly materially impacted by the COVID-19 virus.

MOREOVER, as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional direction concerning the specific parameters for reasonable repayment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 14th day of October, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

_____/s/_____
Jay Inslee, Governor

BY THE GOVERNOR:

_____/s/_____
Secretary of State