

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA**

CARL JACKSON

Plaintiff,

CASE NO:

vs.

ORANGE COUNTY, a political  
subdivision of the State of Florida,

Defendant.

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**VERIFIED COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF  
AND DECLARATORY JUDGMENT**

Plaintiff, CARL JACKSON ("Jackson"), through undersigned counsel, hereby sues Defendant, ORANGE COUNTY, a political subdivision of the State of Florida, ("Orange County"), and alleges the following:

**JURISDICTION AND VENUE**

1. This is a lawsuit for injunctive relief over which this Court has jurisdiction.
2. This is a lawsuit for declaratory judgment over which this Court has jurisdiction under Fla. Stat. § 86 (2019).
3. Venue is proper in Orange County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to certain orders issued by Orange County, and because all or part of the claim for relief at issue in this litigation arose in Orange County.

## PARTIES

4. Plaintiff, Jackson, is a Florida resident, a resident of Orange County, and business owner who has been severely impacted by orders issued by Orange County that have caused interference with his personal liberty and business enterprise.

5. Orange County is a proper Defendant in this action because Orange County created and implemented Emergency Executive Order 2020-23 ("Emergency Order") on June 18<sup>th</sup>, 2020, which deprives Plaintiff's rights guaranteed to him by the Florida Constitution.

## FACTS

6. On April 16, 2020, The White House released "Guidelines for Opening Up America Again," (hereafter "Guidelines") a publication that included a three-phased approach to opening the country during the response to the virus known as COVID-19 and based on the advice of public health experts. The Guidelines advised that individuals "strongly *consider* using face coverings while in public." *Guidelines for Opening Up America Again*, The White House (4-16-2020.) (emphasis added).

7. Afterwards, on April 29<sup>th</sup>, 2020, the Florida Governor Ron DeSantis released Executive Order 20-112 which included a "phased approach" to reopening Florida. This did not include the requirement that Floridians wear face masks in any setting. Executive Order 20-112 *Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery*, State of Florida, (April 29th, 2020). Executive Order 20-112 left it up to an individual's own discretion whether to wear a face mask.

8. Thereafter, on June 18th, Orange County issued the Emergency Order. Unlike the existing national and state emergency orders, the Emergency Order requires all Orange County residents to wear face masks in various circumstances.

9. Orange County Emergency Order 2020-23 states:

1. Face Covering shall mean a uniform piece of material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands.
2. Every person working, living, visiting, or doing business in Orange County is required to wear a Face Covering consistent with the current CDC guideline while in any public place.
3. Medical and surgical face masks, such as "N95" masks or similar medical or surgical masks should be reserved for health care personnel and other first responders with the greatest need for such personal protective equipment. Persons are encouraged to review and comply with the CDC and Florida Department of Health guidelines on personal protective equipment, including with the respect to the use of a medical or surgical face mask, such as "N95" mask or similar medical or surgical mask.
4. All businesses are strongly encouraged to follow CDC guidelines or industry standards (if any) on face coverings and social distancing. Businesses are reminded that Executive Order 2020-12 requires that both employees and patrons of businesses that require employees and patrons to be within six (6) feet must wear a face mask or covering, unless the wearing of the patron's face mask or covering would impede the patron's service, in which case only the service provider must wear a face mask or covering.
5. All businesses are encouraged to prohibit entry of each person who is not wearing a face covering with the exception of those below listed persons.
6. Nothing herein shall require the wearing of face coverings by the following people: i.) Persons under the age of two years old; or ii.) Persons for whom a face covering would cause impairment due to an existing health condition; or iii.) Persons working in a profession who do not have any face-to-face interactions with the public; or iv.) Persons working in a profession where use of a face



covering will not be compatible with the duties of the profession; or v.) Persons exercising while observing social distancing in accordance with the CDC guidelines.

7. This Order does not apply to employees and patrons of first response, government, healthcare or medical, veterinarian, shelter or rehabilitation, childcare, utility providers, construction, or transit agencies.

8. This Order is in addition to the Executive Orders issued by Governor DeSantis. Any provision(s) within this Order that conflict(s) with any State or Federal law or constitutional provisions, or conflict(s) with or are superseded by a current or subsequently-issued Executive Order of the Governor or President of the United States, shall be deemed inapplicable and deemed to be severed from this Order, with the remainder of the Order remaining "intact and in full force and effect. This Order applies to incorporated and unincorporated Orange County.

9. This Order shall become effective on June 20, 2020 at 12:01 A.M. This Order will remain in effect throughout the State of Local Emergency pursuant to COVID-19, unless earlier rescinded.

10. Plaintiff is a business owner who is personally and medically negatively affected by the mandate to wear a mask.

11. On June 8<sup>th</sup>, the World Health Organization ("WHO") announced that "From the data we have, it still seems to be rare that an asymptomatic person actually transmits onward to a secondary individual," casting serious doubt on the rationality and effectiveness of wearing masks in public places. William Feuer, *Asymptomatic spread of coronavirus is 'very rare,' WHO says*, CNBC, June 8<sup>th</sup>, 2020, at 1, <https://www.cnn.com/2020/06/08/asymptomatic-coronavirus-patients-arent-spreading-new-infections-who-says.html>. The day before, on June 7<sup>th</sup>, the WHO specifically addressed popular cloth masks when it said, "Non-medical, fabric masks are being used by many

people in public areas, but there has been limited evidence on their effectiveness and WHO does not recommend their widespread use among the public for control of COVID-19.” In fact, the WHO has warned of the potential risks and disadvantages that should be taken into account during any decision-making process regarding the use of masks. Ultimately, the WHO said that “At the present time, the widespread use of masks everywhere is not supported by high-quality scientific evidence.” World Health Organization, Q&A: Masks and COVID-19, June 7th, 2020 at 1, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-on-covid-19-and-masks>.

### LAW

12. Orange County Emergency Order 2020-23 is first unconstitutional because it violates the Privacy Clause of Article 1 § 23 of the Florida Constitution. Article 1 § 23 of the Florida Constitution states: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." The explicit constitutional right of privacy listed in the Florida Constitution embraces more privacy interests and extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla.1985). The Emergency Order is a radical infringement of the reasonable and legitimate expectation of privacy that most Floridians expect to have over their own bodily and facial autonomy.

13. The Emergency Order is also unconstitutional because it violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution, which reads: "No person shall be deprived of life, liberty or property without due process of law...". The due process clause protects the individual against the arbitrary and unreasonable exercise of governmental power. *Noel v. State*, 191 So. 3d 370, 373 (Fla. 2016). The Emergency Order is arbitrary and unreasonable and the Emergency Order is not backed by a compelling state interest or any facts proving such an interest. (See Section 11 of this complaint.) The original basis for the state of emergency in Orange County which resulted in the issuance of this Orange County Emergency Order was to reach a goal of "flattening the curve" of new hospitalizations resulting from COVID-19. The curve has been successfully flattened and a new mask mandate bears no relationship to this goal. Due process of law protects against the legislative deprivation of life, liberty, or property and the Emergency Order deprives Plaintiff of his liberty. Plaintiff has been deprived of substantive due process by way of the Orange County's interference with his private action and personal liberty.

14. An additional reason the Emergency Order is unconstitutional and violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution is because it is void for vagueness. The Emergency Order leaves all significant terms undefined. Due process is violated when a statute "forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning." *D'Alemberte v. Anderson*, 349 So.2d 164, 166 (Fla. 1977) (quoting *Cline v. Frink Dairy Co.*, 274 U.S. 445, 47 S.Ct. 681, 71 L.Ed. 1146 (1927)). Section 1 of the Emergency Order reads: "Every person working, living, visiting, or doing business in Orange County is required to wear a Face Covering consistent



with the current CDC guideline while in any public place." Multiple terms here remain undefined, such as 'public place', 'living', and 'visiting.' The 2019 Florida statute 876.11 defines 'public place' as "all walks, alleys, streets, boulevards, avenues, lanes, roads, highways, or other ways or thoroughfares dedicated to public use or owned or maintained by public authority; and all grounds and buildings owned, leased by, operated, or maintained by public authority". If this is what the County Mayor means, he should have defined it as such. Still, by including 'public place' in close proximity to 'living,' Orange County has created immediate confusion for the person of common intelligence. Colloquially, "living" refers to a person living in a private dwelling. The Emergency Order also fails to provide a definition for "persons." At this point in time, the word could refer to natural persons or persons by legal fictions, such as corporations. Finally, the Emergency Order is riddled with a confusing interchange of 'required' and 'encouraged', with no delineation as to which phrase is controlling. Orange County should choose whether the Emergency Order is in fact required or encouraged. Ultimately, the language of the Emergency Order is too vague for the average citizen to understand, forcing Orange County residents to guess and be subject to the criminal and civil punishments listed in the Code of Orange County, Ch. 2, Art 9, Sec, 2-310. That section of the Code of Orange County defines the punishment for violation of an emergency order as a term of imprisonment of not more than 60 days and a civil fine not to exceed \$500. (Code of Orange County, Ch. 2, Art 9, Sec, 2-310.)

15. Additionally, the Emergency Order is unconstitutional because it violates the Equal Protection Clause of Art. 1 § 2 of the Florida Constitution, which reads: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among

which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry...". However, in the Emergency Order, government employees are exempt from wearing masks. No difference of risk or exposure and infection exists between those required to wear masks and government employees. By arbitrarily requiring only a portion of the population to comply with the mask mandate, Orange County treats similarly situated people and businesses differently and places unique burdens on some businesses and not on others without justification. Such a classification must bear a rational relationship to a legitimate government interest or it will violate Florida Constitution's equal protection clause. *North Broward Hospital District v. Kalitan*, 219 So. 3d 49, 55 (2017). No conceivable state of facts can provide a rational basis for classifying government employees as existing in a different situation than the average patron or employee. Thus, Orange County has no reason for treating government employees differently and the classification is not rationally related to a legitimate end.

16. Finally, the Emergency Order is unconstitutional because it violates the Religious Freedom Clause of Art. 1 § Section 3 of the Florida Constitution which reads: "There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof." The current Emergency Order 2020-23 contradicts, confuses, and invalidates Orange County's previous Emergency Order 2020-12, dated May 1, 2020 wherein suggestions and recommendations were made regarding "religious services." The most recent Emergency Order 2020-23 has provisions which invalidate prior statements regarding religious services. For instance, requiring "every person... living... in Orange County is required to wear a Face Covering...while in any public place" appears to clearly include



pastors preaching to congregations, people attending religious services, and people gathering their homes for religious services, all of which are deemed “essential activities” under Governor DeSantis Executive Order Number 20-112 and 20-91. Because the violation of an Emergency Order is a second degree felony under Orange County’s Code, this is tantamount to “penalizing the free exercise” of religion under Florida’s Constitution.

17. To obtain a preliminary injunction, Plaintiff must prove: (1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest. *Sch. Bd. of Hernando Cty. v. Rhea*, 213 So.3d 1032, 1040 (Fla. 1st DCA 2017). All four elements are shown and proved below.

18. Plaintiff has a very high likelihood of success on the merits because the Emergency Order is presumptively invalid, implicating an infringement of Plaintiff's privacy right under Article I, Section 23 of Florida’s Constitutional. Due to the fundamental and highly guarded nature of the constitutional right to privacy, any law that implicates the right, regardless of the activity, is subject to strict scrutiny and, therefore, presumptively unconstitutional; thus, the burden of proof rests with the government to justify an intrusion on privacy. *Weaver v. Myers*, 229 So. 3d 1118, 1133 (Fla. 2017). This state constitutional right to privacy includes the right to liberty. *State v. J.P.*, 907 So. 2d 1101, 1115 (Fla. 2004). (holding that the Florida constitutional right to privacy includes the right to liberty and self-determination). An integral component of self-determination is the right to make choices pertaining to one's health and to determine what shall be done with one's own body.

*Burton v. State*, 49 So. 3d 263, 265 (Fla. 1st DCA 2010). Furthermore, Orange County has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Orange County commission regarding public "safety" has not come close to establishing a compelling state interest justifying the intrusion. Ultimately, this explicit constitutional right of privacy embraces more privacy interests and extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield*, 548.

19. Plaintiff lacks an adequate remedy at law. No other remedy exists to protect Plaintiff's rights which the Orange County government is infringing upon. The test for the unavailability of an adequate remedy at law is whether the "irreparable injury is an injury that cannot be cured by money damages." *Lutsky v. Schoenwetter*, 172 So.3d 534, 534 (Fla. 3d DCA 2015) (citing *Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP*, 137 So.3d 1081, 1092 (Fla. 3d DCA 2014)). The deprivation of Plaintiff's rights cannot be remedied by money or any judgment other than an injunction. The ability to move freely has been deprived from the Plaintiff, disallowing him to be "let alone and free." Art. 1 § 23, Fla. Const.

20. Unless an injunction is issued, Plaintiff will suffer irreparable harm because his Constitutional rights are being violated. The mask requirement infringes Plaintiff's right to privacy under the Florida Constitution, Article 1, Section 23. Worse, Plaintiff could be arrested and fined if he does not comply with the unconstitutional mandate. The likelihood of irreparable harm resulting from the Emergency Order's enforcement is significant not only for the Plaintiff, but also for Orange County's other 1,380,000 residents.

21. A temporary injunction of the Emergency Order will serve the public interest. The citizens of the Orange County public are burdened by the over-reach of their local government unprecedented in Florida history. The mask requirement violates both the Plaintiff's and the public's fundamental Florida Constitutional rights. It unduly burdens 1,380,000 Orange County residents. The public has a strong interest in protecting their rights and their ability to control their own bodies 'in public'.

**COUNT I**  
**INJUNCTIVE RELIEF**

22. Plaintiff realleges and incorporates herein paragraphs 1 – 21.

23. Plaintiff seeks injunctive relief enjoining Orange County from enforcing the Emergency Order 2020-23.

**COUNT II**  
**DECLARATORY JUDGMENT**

24. Plaintiff realleges and incorporates herein paragraphs 1 – 21.

25. Plaintiff seeks declaratory judgment declaring Emergency Order 2020-23, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 2, 9, and 23 of the Florida Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter:



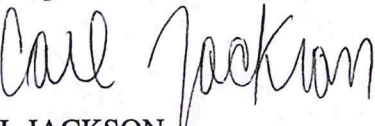
(a) a declaration that Emergency Order 2020-23 violates Article I Sections 2, 3, 9, and 23 of the Florida Constitution.

(b) a temporary injunction enjoining Orange County from enforcing Emergency Order 2020-23

(c) and any other further relief as this Court deems just and proper.

**VERIFICATION**

I, Carl Jackson, declare under penalty of perjury pursuant to the laws of Florida that the foregoing is true and correct,

By:   
CARL JACKSON

**DATED** this 21st day of June, 2020.

*/s/ Anthony F. Sabatini*  
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