

Jennifer L. Keller, SBN 84412
jkeller@kelleranderle.com
Nahal Kazemi, SBN 322026
nkazemi@kelleranderle.com
18300 Von Karman Avenue, Suite 930
Irvine, CA 92612
T: (949) 476-8700
F: (949) 476-0900

Attorneys for Plaintiff,
CITY OF COSTA MESA and KATRINA FOLEY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

CITY OF COSTA MESA, and
KATRINA FOLEY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
THE DEPARTMENT OF HEALTH
AND HUMAN SERVICES, THE
UNITED STATES DEPARTMENT OF
DEFENSE, THE UNITED STATES
AIR FORCE, THE CENTERS FOR
DISEASE CONTROL AND
PREVENTION, THE STATE OF
CALIFORNIA, FAIRVIEW
DEVELOPMENTAL CENTER
(FAIRVIEW), THE CALIFORNIA
GOVERNOR’S OFFICE OF
EMERGENCY SERVICES, and THE
CALIFORNIA DEPARTMENT OF
GENERAL SERVICES,

Defendants.

Case No. 8:20-cv-00368-JLS-JDE

**DECLARATION OF LORI ANNE
FARRELL HARRISON IN
SUPPORT OF *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE ISSUANCE OF
PRELIMINARY INJUNCTION**

1 I, Lori Ann Farrell Harrison, declare:

2 1. I am the City Manager for the City of Costa Mesa and have been so
3 employed with the City of Costa Mesa (hereinafter “the City”) since July 2019.

4 2. I am a local government executive with 28 years of experience at both the
5 state and local levels. I hold a Master’s Degree in Public Administration from
6 Columbia University’s School of International and Public Affairs and a Bachelor’s
7 Degree from Barnard College of Columbia University.

8 3. In the course of my 28-year career, I have received extensive training in
9 Federal and State emergency management, procedures and protocols, including the
10 procedures necessary for comprehensive, thorough and effective federal, state and
11 local emergency preparedness, advanced planning and cost recovery as required by
12 numerous Federal and State laws and regulations including the Federal Stafford
13 Emergency Assistance Act, the Federal Public Health Service Act, the Federal
14 Pandemic and All Hazards Preparedness Act, and the Federal National Incident
15 Management System, among others.

16 4. I have served in multiple capacities and government entities requiring
17 knowledge of laws for emergency management in the public sector throughout my
18 career. Most recently, I worked for the City of Huntington Beach as Assistant City
19 Manager from 2017 to 2019. Prior to serving as Assistant City Manager, I served
20 as the Chief Financial Officer for 7 years. Prior to this role, I served as the City
21 Controller and later as the Chief Financial Officer, for the City of Long Beach. I
22 worked for the State of New York in various capacities in the New York State
23 Division of the Budget overseeing a \$2 billion budget, from 1991 to 1996, and for
24 the City of New York, at the Administration for Children’s Services from 1996
25 through 1999. I was appointed to the Board of Harbor Commissioners for the Port
26 of Long Beach, and served for five years, and served as President of the Board for
27 two years. I also served on the Board of Directors for Long Beach Transit, a
28 public transit agency serving the second largest transit operation in Los Angeles

1 County. In all of these roles, having experience in emergency management was
2 central to my duties in order to help these cities receive Federal and State
3 reimbursement for local costs related to an emergency.

4 5. As the City Manager for the City of Costa Mesa and per the Costa Mesa
5 Municipal Code Chapter 1, Sec. 6-5, the City Manager is the City’s Director of
6 Emergency Services (Ord. No. 80-20, § 3, 11-3-80).

7 6. It is the Costa Mesa City Manager’s duty and responsibility to “provide
8 for the preparation and carrying out of plans for the protection of persons and
9 property within this city in the event of an emergency; the direction of the
10 emergency organization; and, the coordination of the emergency functions of this
11 city with all other public agencies, corporations, organizations and affected private
12 persons.” (Ord. No. 80-20, Section 3, 11-3-80). Moreover, the Director of
13 Emergency Services, must “represent the city in all dealings with public or private
14 agencies on matters pertaining to emergencies” as per Municipal Code Chapter 1,
15 Section 6-6.

16 7. Essential to the role of the City Manager and Director of Emergency
17 Services is the knowledge and application of State and Federal laws and policies
18 related to emergencies and disasters in addition to the City’s Municipal Code.

19 8. The City of Costa Mesa is a full-service city in Orange County,
20 California, a county of 34 cities and over 3 million residents. The City of Costa
21 Mesa has a population of 116,000 residents and covers 17 miles and is bordered by
22 the cities of Santa Ana, Newport Beach, Huntington Beach, Fountain Valley, and
23 Irvine. The City of Costa Mesa, when combined with the six cities that it borders,
24 is in the heart of a population center with over one million residents. As such, fire
25 and police mutual aid responses are critical to serve all of the cities in this densely
26 populated region. The City has 492 full time and 137 part-time positions.

27 9. The Costa Mesa Police Department is a full-service department providing
28 police services to the community of Costa Mesa, which includes both the Office of

1 Emergency Service and Communications Center for the City. The department
2 operates from the Police main facility (99 Fair Drive) and two substations (South
3 Coast Plaza Substation at 3333 Bristol Street and the West Side Substation at 567
4 W. 18th Street. The Department's full-time staffing is comprised of 136 sworn
5 police officer and 76 professional staff positions. In 2019, the department
6 responded to 137,384 calls for service. The Communications Center is a public
7 safety answering point (PSAP) responsible for answering calls to an emergency
8 telephone number for police, fire, and ambulance services. In 2019, the
9 Communications Center received 48,476 911 emergency/public safety calls and
10 205,404 telephone calls. The department is a part of the Orange County Mutual
11 Aid Agreement for mutual aid assistance when needed and contracts air support
12 services with the City of Huntington Beach. The FDC is only one mile away from
13 Costa Mesa City Hall and the main Police facility, which included the City's
14 Emergency Operation Center and Communications Center.

15 10. Costa Mesa also has its own Police Department and a Fire and Rescue
16 Department. Costa Mesa also serves as a public safety answering point responsible
17 for answering calls to an emergency telephone number for police, firefighting and
18 ambulance services. The Fire Department has six fire stations and serves the
19 public 24 hours a day, seven days a week and responds to 13,000 calls for service
20 each year including calls for emergency medical services. When the City requires
21 additional police, fire and/or medical mutual aid, it relies on its neighboring cities,
22 as well as the Orange County Sheriff's Department and the Orange County Fire
23 Authority.

24 11. As a full-service city with police and fire operations, the City is subject
25 to compliance with numerous federal and state statutes related to emergency and
26 disaster preparedness and response in order to ensure the protection of the
27 community, as well as the protection of the 220 First Responders and city staff
28 called to participate in the response. Among the many laws the federal, state,

1 county and local governments are subject to is the Robert T. Stafford Disaster
2 Relief and Emergency Assistance Act (Stafford Act).

3 12. The Federal Stafford Act authorizes the delivery of federal emergency
4 technical, financial, logistical, and other assistance to states and localities. The
5 Federal Emergency Management Agency (FEMA) coordinates administration of
6 emergency and disaster relief resources and assistance to states. The President can
7 declare an emergency without first receiving a gubernatorial request if the
8 emergency involves an area of federal primary responsibility. A Stafford Act
9 declaration can be used to trigger other public health emergency response
10 authorities in the case of a national public health emergency such as a pandemic.

11 13. To ensure that all 50 states and all of their localities provide uniform,
12 standardized and coordinated emergency responses consistent with applicable
13 laws, the Federal government created the National Incident Management System
14 (NIMS).

15 14. According to the FEMA website, “NIMS provides a common, nationwide
16 approach to enable the whole community to work together to manage all threats
17 and hazards. NIMS applies to all incidents, regardless of cause, size, location or
18 complexity.” The FEMA website further states “NIMS guides all levels of
19 government, nongovernmental organizations (NGOs), and the private sector to
20 work together to prevent, protect against, mitigate, respond to, and recover from
21 incidents. NIMS provides stakeholders across the whole community with the
22 shared vocabulary, systems, and processes to successfully deliver the capabilities
23 described in the National Preparedness System. NIMS defines operational
24 systems, including the Incident Command System (ICS), Emergency Operations
25 Center (EOC) structures, and Multiagency Groups (MACS) that guide how
26 personnel work together during incidents. NIMS applies to all incidents, from
27 traffic accidents to major disasters.”

28

1 15. On January 7, 2020, the national Centers for Disease Control and
2 Prevention (CDC) announced that it was monitoring an outbreak of a novel
3 coronavirus in Wuhan City, Hubei Province, China that began in December 2019.
4 The CDC established an Incident Management System to coordinate domestic and
5 international public health response. On January 21, 2020, the CDC activated its
6 Emergency Operations Center (EOC) to provide ongoing support to the COVID-19
7 response.

8 16. On January 31, 2020, the Federal Department of Health and Human
9 Services declared a public health emergency for the United States related to
10 COVID-19.

11 17. Subsequently, and over the next few weeks, the Federal government
12 began transferring Americans infected with or exposed to the Coronavirus to
13 military bases throughout the United States, including the State of California.

14 18. The transfers were exclusively to military bases and military installations
15 throughout the nation including military bases in the State of California. No non-
16 military facilities were identified or used for the quarantine, isolation or treatment
17 of Americans exposed to or testing positive for Coronavirus.

18 19. It is unclear whether the Federal Department of Health and Human
19 Services activated its Emergency Operations Center or created an Incident
20 Management System for each state that received patients testing positive for
21 COVID-19, including California, as required by Federal law to ensure proper
22 tracking, coordination, planning and emergency response.

23 20. Additionally, the California Office of Emergency Services (Cal OES),
24 despite having dozens of Americans testing positive for this infectious and
25 contagious disease with no immediate cure, has not declared a public health
26 emergency, activated its Emergency Operations Center, created a robust Incident
27 Management System or otherwise followed its normal protocols for each
28

1 jurisdiction housing COVID-19 positive individuals related to this national public
2 health emergency and event.

3 21. The lack of proper NIMS protocols in this case is startling given the use
4 of NIMS by CAL OES in the past that I myself have participated in for incidents
5 far less serious including floods, winter storms and minor earthquakes.

6 22. On Thursday, February 20, 2020, in the early evening hours, I was
7 contacted by Bryan Glass, the City of Costa Mesa's Acting Chief of Police,
8 regarding a conference call that the California Office of Emergency Services held
9 with City of Costa Mesa Police Captain Keith Davis and Costa Mesa Emergency
10 Services Administrator (ESA) Jason Dempsey.

11 23. The call included state and regional representatives from the California
12 Office of Emergency Services, the Orange County Emergency Management
13 Director, and a representative from the Orange County Health Care Agency
14 relating to preparations being made to potentially utilize Fairview Developmental
15 Center (FDC), a state-owned property located in the heart of Costa Mesa.
16 Specifically, Mr. Dempsey relayed that state officials had indicated that buildings
17 were being readied for the transfer of 30 to 50 persons infected with the 2019-
18 nCoV virus at FDC as early as Sunday, February 23, 2020, or within 72 hours.
19 Upon receiving this information, I arranged emergency conference calls with
20 members of the Costa Mesa City Council to brief them on this information and
21 prepare them for the possibility of an emergency meeting on Friday, February 21,
22 2020.

23 24. On Friday, February 21, 2020, I contacted the City Attorney and City
24 Clerk to arrange for an Emergency Closed Session meeting for the City Council to
25 be scheduled for 1 p.m. to notify them of this significant public health matter. I
26 also directed the Assistant City Manager, Susan Price, to contact the County of
27 Orange regarding their knowledge of the planned transfer of positive tested
28 coronavirus patients to the Fairview site. The County confirmed the only

1 information they had been able to obtain was the same scant information provided
2 on the conference call held by Cal OES the day prior.

3 25. At approximately 12 P.M., Fire Chief Dan Stefano and Acting Chief
4 Bryan Glass conducted a site visit of FDC to identify the location being considered
5 by Federal and State officials for the quarantine.

6 26. On Friday, February 21, 2020, the City Manager directed the CMPD
7 Office of Emergency Management to activate the City of Costa Mesa's Emergency
8 Operation Center in an abundance of caution for the safety of Costa Mesa
9 residents, First Responders, and overall public safety preparedness based on the
10 limited information that had been received and the actions taken by Federal and
11 State officials to prepare FDC to quarantine 2019-nCoV virus patients within as
12 little as 48 hours.

13 27. Also on Friday, February 21, 2020, I requested a conference call with the
14 Director of Cal OES, Mark Ghilarducci, to discuss the planned transfer of patients
15 to FDC and the City's serious concerns regarding the lack of preparation,
16 coordination, transparency and the overall non-compliance with Federally required
17 procedures and protocols for a nationally declared public health emergency such as
18 this. The City's opposition to the use of this site, as it would be the only
19 community-based, non-military facility housing positive testing COVID 19
20 patients in the entire country was also planned to be discussed. We never received
21 a reply to our request for a call.

22 28. I have completed many hours of training through the FEMA Emergency
23 Management Institute and earned several certifications. Federal and State laws and
24 guidelines for emergency management have at their core the coordination,
25 preparation and documentation of plans and protocols at the federal, state and local
26 levels of government related to both potential and actual emergency or disasters,
27 both man made and naturally occurring. I have assisted in the overall management
28 of emergency responses and disaster cost recovery over the course of my career in

1 multiple cities, including functions related to advanced planning, documentation,
2 business continuity and disaster recovery for local floods, winter storms, and
3 power outages of critical city facilities, to name a few. No such preparations were
4 made by Federal or State officials to coordinate with the Orange County Health
5 Agency, the Orange County Emergency Management Services, and City of Costa
6 Mesa First Responders as it relates to this critical public health emergency, despite
7 the close proximity to hundreds of single family residences in one of the most
8 densely populated areas in the country.

9 29. The actions by Federal and State officials as it relates to the preparation
10 of FDC for the quarantine and isolation of patients testing positive for COVID-19
11 are inconsistent with Federal and State practices regarding coordination, assistance,
12 and preparation across all levels of government.

13 30. The National Incident Management System (NIMS)— is a system of
14 incident command developed by the Department of Homeland Security to
15 coordinate emergency response efforts at all levels of government and the private
16 sector. It is a scalable system that can be used for events and incidents of all sizes
17 regardless of whether a federal emergency or disaster is declared under the
18 Stafford Act. The National Response Framework (NRF)—A Department of
19 Homeland Security policy document that uses a national, all-hazards approach to
20 describe and integrate roles for governments at all levels and the private sector in
21 preparing, responding, and recovering from emergencies of all sizes, regardless of
22 whether an emergency is declared. The NRF uses NIMS to coordinate response
23 activities. The NRF includes 15 Emergency Support Function (ESF) supplemental
24 documents that detail the roles and responsibilities of governmental and certain
25 private sector capacities in key areas. Relevant to public health are ESF-8 (public
26 health and medical services) and ESF-6 (mass care, emergency assistance, housing,
27 and human services).

1 31. To my knowledge, neither of these national systems has been used to
2 coordinate the roles of the Centers for Disease Control, Federal Department of
3 Health and Human Services, California Department of Public Health, California
4 Department of General Services, Orange County Emergency Management
5 Services, Orange County Health, and the City of Costa Mesa for the transfer of
6 patients infected with COVID-19 at the Fairview site. Information has been scant,
7 inconsistent and unavailable.

8 32. For a national public health emergency of this magnitude, the acts and
9 omissions of Federal and State officials as it relates to the use of a community-
10 based facility such as Fairview Developmental Center, just 200 yards from single
11 family residences is unfathomable.

12 33. From my perspective, there has not been even a bare minimum effort by
13 the State or Federal government to coordinate with or communicate with the City.
14 We have not received the information we need to communicate to the public to
15 prevent alarm. We were also forced to cancel without notice youth sports that take
16 place on the FDC recreational fields that we lease from the State this weekend
17 because the State and Federal governments' efforts have forced us to give up our
18 right to use that space. We have had to divert substantial staff time to try to
19 understand this process and to educate our first responders on potential risks and
20 mitigation strategies because we received none of that information from our State
21 and Federal counterparts. These are merely the impacts the poor planning process
22 has had on the community. Actually hosting a coronavirus isolation center in our
23 City could have far more significant impacts.

24 34. As of today, 29 elected officials and staff from across the Orange County
25 region support the City of Costa Mesa's injunction.

26 35. As of February 23, 2020, information related to the potential utilization
27 of FDC to quarantine 2019-nCoV virus patients has been limited and only vaguely
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1 specified in both the Federal and State responses to the temporary restraining order
2 obtained by the City.

3 36. As of this date, it is unclear the objective, data-driven and scientific basis
4 for the selection of a community-based, non-military facility within 200 yards of
5 residences for this purpose. Fairview is the only facility of its kind in the nation on
6 the national list of sites for the transfer of COVID-19 patients. A facility located in
7 the middle of a densely populated area bordering six cities with a combined
8 population of one million residents is not appropriate or feasible.

9 37. If called upon, I would and could competently testify to all of the facts
10 contained within this declaration based upon my personal knowledge, except
11 where stated upon information and belief.

12 I declare under penalty of perjury under the laws of the State of California that
13 the foregoing is true and correct. Executed this 24th day of February at Costa
14 Mesa, California.

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17 _____
18 LORI ANN FARRELL HARRISON
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