

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

LJ NEW HAVEN LLC, d/b/a LENNY &  
JOE'S FISH TALE, Individually and on  
Behalf of All Others Similarly Situated,

*Plaintiff,*

v.

AMGUARD INSURANCE COMPANY,

*Defendant.*

Civil Action No. 3:20-cv-00751

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO  
DISMISS THE AMENDED COMPLAINT**

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Defendant AmGUARD Insurance Company (“AmGUARD”) respectfully submits this memorandum of law in support of its motion to dismiss Plaintiff LJ New Haven LLC’s (“Plaintiff”) Amended Complaint (“Complaint” or “AC”) pursuant to Federal Rule of Civil Procedure 12(b)(6).

### **PRELIMINARY STATEMENT**

Plaintiff seeks to recover under its property insurance policy money lost due to the COVID-19 virus and acknowledges its loss was not caused by property damage. The suit must be dismissed because the insurance policy Plaintiff purchased plainly states that it does not cover any loss caused “directly or indirectly” by a virus and does not respond in any event in the absence of physical property damage.

Plaintiff operates several restaurants in New Haven, Connecticut. The Complaint alleges that Plaintiff was forced to “cease operations” as a result of “measures put in place by the civil authorities to stop the spread of COVID-19 among the population.” The Complaint seeks a declaratory judgment that money Plaintiff lost when it decided to close its restaurant is covered under the “Business Income,” “Extra Expense” and “Civil Authority” sections of its property insurance policy, as well as damages for breach of contract arising from AmGUARD’s denial of coverage for such loss. The policy unambiguously does not cover the loss alleged and the Complaint should, therefore, be dismissed.

First, Plaintiff’s policy, Policy Number LJP031708 (the “Policy”), Compl. ¶ 17, insures against a “Covered Cause of Loss” only. The Policy defines “Covered Cause of Loss” to exclude “loss or damage caused directly or indirectly by . . . [a]ny virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” The Policy also states that “[s]uch loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.” The only plain, ordinary and

reasonable reading of these provisions is that the Policy does not cover any loss arising from the COVID-19 virus, including government orders issued “to stop the spread of” the virus. Compl. ¶ 9. Plaintiff’s new allegation that the government orders were the “sole cause” of its loss does not rescue its claim. *Id.* ¶ 44. Because the orders were issued in response to the COVID-19 virus and the COVID-19 virus is therefore part of the chain of causation, there is no “Covered Cause of Loss” and no coverage.

Second, the Complaint concedes the absence of “direct physical loss of or damage to” Plaintiff’s restaurants. Plaintiff, therefore, cannot satisfy a threshold requirement for Business Income or Extra Expense coverage under the Policy. The theory of the Complaint is that Connecticut’s social-distancing orders limited how Plaintiff could utilize its restaurant space, which resulted in a loss of income. The Policy is unambiguous and the law is settled that government orders do not trigger the “direct physical loss or damage” requirement of the Policy. The “direct physical loss or damage” requirement in the Policy is consistent with the common sense proposition that property insurance does not respond any time a government regulation limits a policyholder’s operations in a way that reduces profitability.

Third, the Complaint does not and could not plead any of the elements required for Civil Authority coverage. Specifically, there is no allegation of *property* damage from a Covered Cause of Loss within a mile of Plaintiff’s premises. Connecticut social-distancing orders were not issued “as a result of” property damage. And physical access to Plaintiff’s premises was never prohibited—to the contrary, the Complaint acknowledges that Plaintiff’s restaurants were permitted to remain open with more limited operations.

For these reasons, the Complaint should be dismissed with prejudice.

## **BACKGROUND**

### **A. The Parties and the Insurance Policy**

AmGUARD is a Pennsylvania-based insurance company licensed to write commercial property insurance in Connecticut. According to the Complaint, Plaintiff is a limited liability company with its principal place of business in New Haven, Connecticut. Compl. ¶ 14. Plaintiff purchased commercial property insurance from AmGUARD. *Id.* ¶ 17. The Policy is attached as Exhibit A to the accompanying declaration of Michael Menapace.<sup>1</sup>

### **B. The Complaint**

Plaintiff expressly disavows any loss due to coronavirus being “found in or on Plaintiffs’ insured property.” *Id.* ¶ 44. Rather, the Complaint claims that Plaintiff suffered “business losses and extra expenses, and related losses resulting from actions taken by civil authorities to stop the human to human and surface to human spread of the COVID-19 outbreak.” *Id.* ¶ 10. These actions, as described by the Complaint, permitted restaurants to operate continuously for “take-out and delivery” service, but restricted the extent to which restaurants could accommodate in restaurant dining. *See, e.g., id.* ¶ 31. The Complaint alleges that, as a result of civil authority actions taken in response to COVID-19, Plaintiff has “suffered a direct physical loss of and damage to their property because they have been unable to use their property for its intended purpose.” *Id.* ¶ 41. Based on the foregoing, the Complaint seeks declarations that Plaintiff’s loss is covered under the Business Income, Extra Expense and Civil Authority sections of the Policy, as well as

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<sup>1</sup> Citations to “Ex. \_\_\_” refer to exhibits to the Declaration of Michael Menapace, dated August 10, 2020. Because the Complaint relies upon the Policy, the Court may consider it on a motion to dismiss. *England v. Amica Mut. Ins. Co.*, No. 16-Civ-1951, 2017 WL 3996394, at \*4 (D. Conn. Sept. 11, 2017) (Shea, J.) (“In deciding a Rule 12(b)(6) motion, I may consider documents attached to, integral to, or incorporated by reference in the complaint.”).

monetary damages for breach of contract arising from AmGUARD's denial of coverage. *Id.* ¶¶ 9–10; 49.

### C. The Policy

#### 1. The Covered Cause of Loss Requirement / Virus Exclusion

The relevant coverages only respond to losses that result from a “Covered Cause of Loss.” A Covered Cause of Loss is defined as “risks of direct physical loss unless the loss is . . . [e]xcluded in Paragraph B. Exclusions in Section I[.]” Ex. A at A7. Paragraph B(1)(j) excludes from a Covered Cause of Loss any “loss or damage caused directly or indirectly by . . . [a]ny virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” *Id.* at A19, A22. Further, it provides that “[s]uch loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.” *Id.* at A19.

#### 2. Business Income Coverage

The Policy covers:

the actual loss of Business Income you sustain due to the necessary suspension of your ‘operations’ during the ‘period of restoration’. The suspension must be caused by direct physical loss of or damage to property at the described premises. **The loss or damage must be caused by or result from a Covered Cause of Loss.**

*Id.* at A10 (emphasis added). The “period of restoration” begins “72 hours after the time of direct physical loss or damage,” and ends on the earlier of “[t]he date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or . . . [t]he date when business is resumed at a new permanent location.” *Id.* at A34.

#### 3. Extra Expense Coverage

The Policy covers “necessary Extra Expense you incur during the ‘period of restoration’ that you would not have incurred if there had been no direct physical loss or damage to property



at the described premises. **The loss or damage must be caused by or result from a Covered Cause of Loss.**” *Id.* at A12 (emphasis added). For Extra Expense coverage, the “period of restoration” begins “[i]mmediately after the time of direct physical loss or damage” and is otherwise defined as for Business Income. *Id.* at A34.

4. Civil Authority Coverage

The Policy also provides that:

**[w]hen a Covered Cause of Loss** causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

*Id.* at A12–13 (emphasis added). Civil Authority coverage for lost Business Income begins “72 hours after the time of the first action of civil authority that prohibits access to the described premises[.]” *Id.* at A13. For Extra Expense, it begins “immediately after the first action of civil authority that prohibits access to the described premises[.]” *Id.* In both cases, the policyholder is only entitled to coverage for 4 consecutive weeks after the date of such first action prohibiting access. *Id.*

**ARGUMENT**

Under Connecticut law, “[c]onstruction of a contract of insurance presents a question of law for the court.” *Metro. Dist. Comm’n v. QBE Americas, Inc.*, 416 F. Supp. 3d 66, 68 (D. Conn. 2019). The Complaint should be dismissed pursuant to Rule 12(b)(6) if the unambiguous terms

of the Policy do not cover the loss alleged in the Complaint. *Cockill v. Nationwide Prop. & Cas. Ins. Co.*, No. 18-Civ-254, 2018 WL 6182422, at \*2 (D. Conn. Nov. 27, 2018) (Shea, J.) (dismissing claims where an unambiguous policy, accorded its “natural and ordinary meaning,” did not provide coverage); *accord England v. Amica Mut. Ins. Co.*, No. 16-Civ-1951, 2017 WL 3996394, at \*4 (D. Conn. Sept. 11, 2017) (Shea, J.) (“If the terms of the policy are clear and unambiguous, then the language, from which the intention of the parties is to be deduced, must be accorded its natural and ordinary meaning[.]”) (quoting *Conn. Med. Ins. Co. v. Kulikowski*, 286 Conn. 1, 5 (2008)).

**I. COVERAGE IS NOT AVAILABLE BECAUSE A VIRUS IS NOT A “COVERED CAUSE OF LOSS”**

Plaintiff cannot claim coverage under the Business Interruption, Extra Expense or Civil Authority sections of the Policy unless it alleges a “Covered Cause of Loss.”<sup>2</sup> “Covered Cause of Loss” is specifically defined to exclude “loss or damage caused directly or indirectly by . . . [a]ny virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” Ex. A at A19, A22. Virus-related losses are not covered “regardless of any other cause or event that contributes concurrently or in any sequence to the loss.” *Id.* at A19. Accordingly, Plaintiff’s claims under the Business Interruption, Extra Expense and Civil Authority sections of the Policy all fail and the Complaint should be dismissed.

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<sup>2</sup> Ex. A at A10 (providing Business Income coverage for losses due to a necessary suspension “caused by direct physical loss of or damage to property. . . . *caused by or result[ing] from a Covered Cause of Loss*”) (emphasis added); *id.* at A12 (providing Extra Expense coverage for expenses “that [Plaintiff] would not have incurred if there had been no direct physical loss or damage to property . . . *caused by or result[ing] from a Covered Cause of Loss*”) (emphasis added); *id.* at A12 (providing Civil Authority coverage “[w]hen a Covered Cause of Loss causes damage to property . . .”) (emphasis added).

The AC alleges that the government orders were issued to “stop the spread of” the virus and prompted Plaintiff to “cease operations.” Compl. ¶¶ 9, 15.<sup>3</sup> By acknowledging that COVID-19, a virus, led to Plaintiff’s alleged loss, the Complaint concedes the absence of a Covered Cause of Loss. This is the only reasonable application of the “natural and ordinary meaning” of the terms of the insurance contract to the facts alleged. *England*, 2017 WL 3996394, at \*5 (Rule 12(b)(6) dismissal); *Adams v. Allstate Ins. Co.*, 276 F. Supp. 3d 1, 2 (D. Conn. 2017) (same). “Because plaintiffs do not identify any grounds for loss that are separate and independent from the exclusions that apply in this case, they are not entitled to coverage[.]” *Dumas v. USAA Gen. Indem. Co.*, No. 17-Civ-1083, 2019 WL 3574920, at \*4 (D. Conn. Aug. 6, 2019); *see also Corteau v. Teachers Ins. Co.*, 338 F. Supp. 3d 88, 96 (D. Conn. 2018) (Shea, J.) (rejecting claim because it “falls within the exclusions” in the policy).

The Complaint contends that Plaintiff’s losses were incurred “from measures put into place by the civil authorities to stop the spread of COVID-19 among the population.” Compl. ¶ 9. By acknowledging that the measures were taken in response to the COVID-19 virus, the Complaint concedes that a virus contributed to Plaintiff’s loss and thus concedes the non-existence of a Covered Cause of Loss. The Policy clearly states that a virus is not a Covered Cause of Loss whether the “loss or damage is caused directly or indirectly” and “regardless of any other cause or event that contributes concurrently or in any sequence to the loss,” Ex. A at A19, and such language governs the causation analysis under Connecticut law. *See Lombardi v. Universal N. Am. Ins. Co.*, No. NNHCV136036542S, 2015 WL 600823, at \*15 (Ct. Sup. Jan. 21, 2015) (holding that identical

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<sup>3</sup> While the AC states that the orders are the “sole cause” of the loss, Plaintiff’s original complaint stated that the orders were the “efficient proximate cause” of the loss. *Compare* Compl. filed June 1, 2020 ¶ 44 *with* AC ¶ 44. This change is immaterial because the Policy bars coverage for losses “directly or indirectly” caused by the COVID-19 virus, including losses attributable to the orders. Ex. A at A19.

anti-concurrent cause language unambiguously controlled the causation analysis for excluded causes); *see also Union St. Furniture & Carpet, Inc. v. Peerless Indem. Ins. Co.*, No. FSTCV085008699S, 2013 WL 3871395, at \*5 (Ct. Sup. July 3, 2013) (holding that identical language “is clear” and “essentially acknowledges that situations may arise where a loss or damage has more than one cause . . . . [and] if one of the causes is an excluded cause the insurer will not pay”).

## **II. THE ABSENCE OF DIRECT PHYSICAL LOSS OR DAMAGE TO PLAINTIFF’S RESTAURANTS ALSO PRECLUDES BUSINESS INCOME OR EXTRA EXPENSE COVERAGE**

To establish a “Covered Cause of Loss,” Plaintiff must also allege a “risk of *direct physical loss*.” *See* Ex. A at A7 (emphasis added). Further, for Business Income coverage, Plaintiff’s lost income must be caused by “direct physical loss of or damage” to Plaintiff’s restaurants. *See* Ex. A at A10 (requiring, for Business Income coverage, that “[t]he suspension must be caused by *direct physical loss of or damage to property*”) (emphasis added). Extra Expense coverage similarly requires “direct physical loss or damage” to Plaintiff’s premises. *Id.* at A12 (covering Extra Expense “that you would not have incurred if there had been no *direct physical loss or damage to property*,” during the “period of restoration,” which is defined as the period needed to repair or restore such “direct physical loss or damage”) (emphasis added).

The Complaint does not allege loss of income or extra expense caused by direct physical loss or damage to Plaintiff’s premises. It argues that Plaintiff suffered direct physical loss or damage when government directives limited Plaintiff’s operations and thereby reduced its profitability. Compl. ¶ 41 (alleging that Plaintiff has “suffered a direct physical loss of and damage to their property because they have been unable to use their property for its intended purpose”); *accord* ¶ 76 (alleging Plaintiff’s “suspension of operations” due to closure orders constituted “direct physical loss and damage”). But a government directive does not constitute *direct physical*

loss or damage for purposes of triggering property insurance coverages. *Mazzarella v. Amica Mut. Ins. Co.*, No. 17-Civ-598, 2018 WL 780217, at \*3 (D. Conn. Feb. 8, 2018) (“A ‘direct physical loss’ has been interpreted to mean a ‘*physical, tangible alteration to any property.*’”) (quoting *England*, 2017 WL 3996394, at \*7) (emphasis added); *Liston-Smith v. CSAA Fire & Cas. Ins. Co.*, 287 F. Supp. 3d 153, 162 (D. Conn. 2017) (holding that Plaintiff failed to show covered damage had occurred, as is its burden); *Zamichiei v. CSAA Fire & Cas. Ins. Co.*, No. 16-Civ-739, 2018 WL 950116, at \*9 (same); *see also Port Auth. of N.Y. & N.J. v. Affiliated FM Ins.*, 311 F.3d 226, 235–36 (3d Cir. 2002) (rejecting claim for business income coverage for presence of asbestos where plaintiff could not allege any “distinct, demonstrable, and physical alteration” of the insured premises); *Source Food Tech., Inc. v. U.S. Fid. & Guar. Co.*, 465 F.3d 834, 838 (8th Cir. 2006) (rejecting claim for business income and civil authority coverage after the government closed the U.S.-Canada border in response to Mad Cow Disease, preventing policyholder’s delivery of beef from arriving, because there was no evidence the covered property, the beef, was physically damaged or contaminated). Each of the three known court decisions that have addressed this issue have found lost income due to COVID-19 related business closures does not meet the direct physical loss or damage requirement. *See* Ex. B (Transcript of Decision), at 15, *Social Life Magazine, Inc. v. Sentinel Ins. Co. Ltd.*, No. 20-Civ-3311 (VEC) (S.D.N.Y. May 14, 2020) (denying policyholder’s motion for preliminary injunction because claim seeking coverage for loss caused by COVID-19 orders would likely fail since “this kind of business interruption needs some damage to the property to prohibit you from going . . . . [T]he virus damages lungs. It doesn’t damage printing presses.”); Ex. C (Transcript of Decision), at 18–19, *Gavrilides Mgmt. Co. vs. Michigan Ins. Co.*, Case No. 20-258-CB-C30 (Ingham Cty., Mich. Cir. Ct. Jul. 1, 2020) (the requirement of “direct physical loss of or damage to” property requires physical alteration to the

integrity of the property or tangible physical damage and here there was none); Ex. D, *Rose's I, LLC v. Erie Ins. Exch.*, No. 2020 CA 002424 B, at 5 (D.C. Sup. Ct. August 6, 2020) (denying a claim for business interruption because COVID-19 stay-at-home orders were not “a direct physical intrusion on to the insured property” as required by the policy term “direct physical loss”).<sup>4</sup> Otherwise, anything that limits how businesses use their space—government directives, private contracts, deeds, court orders—could be said to cause direct physical loss or damage to the business and thus give rise to property insurance claims, which plainly is not the case.

### III. THE COMPLAINT ALSO CONCEDES THE ABSENCE OF BASIC REQUIREMENTS FOR CIVIL AUTHORITY COVERAGE

Civil Authority coverage requires (1) a “Covered Cause of Loss” caused damage to another’s “property” within one mile of Plaintiff’s restaurants, (2) “as a result of the damage,” a civil authority took action “in response to dangerous physical conditions” resulting from the property damage or a continuation of the Covered Cause of Loss that caused the damage; and (3) the civil authority’s action “prohibited access” to Plaintiff’s restaurants. *See* Ex. A at A12–13. For example, civil authority coverage applies to lost income when property adjacent to the policyholder’s business is destroyed by fire and the fire department closes down the insured’s

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<sup>4</sup> *Accord Roundabout Theatre Co., Inc. v. Cont'l Cas. Co.*, 302 A.D. 2d 1, 3 (N.Y. App. Div. 2002) (where scaffolding collapse outside the insured theater rendered it inaccessible, business interruption coverage was not available because there was no direct physical loss or damage to the theater itself); *Harry's Cadillac-Pontiac-GMC Truck Co., Inc. v. Motors Ins. Corp.*, 126 N.C. App. 698, 702 (N.C. App. 1997) (where a snowstorm made a property inaccessible but did not damage it, business interruption coverage was unavailable because there was no direct physical loss or damage to the property); *Mama Jo's, Inc. v. Sparta Ins. Co.*, No. 17-Civ-23362, 2018 WL 3412974, at \*10 (S.D. Fla. June 11, 2018) (denying claim for business income coverage where plaintiff failed to show dust and debris on the premises had caused physical loss or damage); *see generally Handbook on Insurance Coverage Disputes*, Ostrager & Newman § 21.02 (19th Ed. 2018) (“The direct physical loss requirement operates to exclude coverage for intangible and economic losses suffered by the insured.”) (citing cases).

business pending clean-up. *Insurance Coverage Disputes* § 11.01 (Law Journal Press 2020) (“‘Civil Authority Coverage’ reimburses the policyholder for loss of business income when the policyholder or others are prohibited by the government from accessing the policyholder's business due to damage to someone else's property.”).

The Complaint not only fails to allege a Covered Cause of Loss (*see* Points I and II), but it also does not allege “damage” to any “property,” which is fatal to Plaintiff’s claim. *See, e.g., Source Food*, 465 F.3d at 838; *Dickie Brennan & Co., Inc. v. Lexington Ins. Co.*, 636 F.3d 683, 686–87 (5th Cir. 2011) (“Civil authority coverage is intended to apply to situations where access to an insured’s property is prevented or prohibited by an order of civil authority issued as a direct result of physical damage to other premises in the proximity of the insured’s property.”); *Syufy Enters. v. Home Ins. Co. of Ind.*, No. 94-Civ-756, 1995 WL 129229, at \*2 (N.D. Cal. Mar. 21, 1995) (rejecting claim for civil authority coverage where a government-ordered curfew during riots caused a business loss because “[t]he requisite causal link between damage to adjacent property and denial of access to” plaintiff’s premises was “absent”).

Nor does the Complaint allege that the Connecticut orders<sup>5</sup> limiting restaurant activity were issued “as a result of” any property damage, whether “in response to” dangerous physical conditions arising from the property damage or a continuation of the Covered Cause of Loss that caused the damage. *United Air Lines, Inc. v. Ins. Co. of State of Pa.*, 439 F.3d 128, 129 (2d Cir. 2006) (finding no civil authority coverage for airline losses arising from Washington D.C. airport shutdown on September 11 because the shutdown was not “a result of” property damage at the

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<sup>5</sup> Plaintiff fails to allege any specific executive orders that affected Plaintiff’s restaurant, instead stating generally that a variety of disparate responses have been taken by different states. *See* Compl. ¶ 31. The relevant Connecticut orders are attached as Exhibits E and F to the accompanying declaration of Michael Menapace (the “Orders”), and are appropriately considered on this motion to dismiss. *England*, 2017 WL 3996394, at \*4.

Pentagon, but rather was prompted by fear of future terrorist attacks). Indeed, as the Complaint acknowledges in Paragraph 9, the Connecticut orders—by their own terms—were “community mitigation strategies” implemented to “reduce spread of COVID-19.” *See* Ex. E (Executive Order No. 7D, Mar. 16, 2020) (placing limits on restaurant, bar and private club operations to “mitigate the spread of COVID-19 infections”); Ex. F (Executive Order No. 7H, Mar. 20, 2020) (restricting non-essential business activity “to reduce spread of COVID-19”). None reference damage to property caused by COVID-19. *See* Exs. E–F.

Finally, the Orders, as characterized in the Complaint and as apparent on their face, did not “prohibit access” to Plaintiff’s premises. As the Complaint acknowledges and the applicable Orders confirm, as of the date of filing, Connecticut allowed restaurants to offer “take-out and delivery” services and remain open as an essential business. Compl. ¶ 31; *see also* Ex. E (allowing restaurants to remain open for curbside pick-up and delivery service); Ex. F (declaring restaurants essential businesses that may remain open, “provided they comply with previous and future executive orders”). Accordingly, a claim for Civil Authority coverage under the Policy fails. *See 54th St. Ltd. Partners, L.P. v. Fid. & Guar. Ins. Co.*, 306 A.D.2d 67, 67 (N.Y. App. Div. 2003) (“Plaintiff’s claim for coverage under the “civil authority” provision of the policy was properly limited to plaintiff’s loss of income while access to its premises was denied by an act of civil authority, which occurred only on December 7 and 8, 1997. Thereafter, although vehicular and pedestrian traffic in the area was diverted, access to the restaurant was not denied; the restaurant was accessible to the public, plaintiff’s employees and its vendors.”); *730 Bienville Partners, Ltd. v. Assurance Co. of Am.*, 67 F. App’x 248, 250 (5th Cir. 2003) (affirming dismissal of civil authority claim because access to plaintiff’s hotel was not “prohibited” by an FAA restriction on air travel following the events of September 11, 2001).



**CONCLUSION**

Based on the foregoing, Defendant respectfully requests that the Court dismiss the Complaint in its entirety and with prejudice.

Respectfully submitted,



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Dated: August 10, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of August, 2020, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

By:           /s/ Michael Menapace            
Michael Menapace