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5 PLAINTIFF, IN PRO PER

8 SUPREME COURT OF THE STATE OF NEW YORK  
9 FOR THE COUNTY OF CHEMUNG

13 DBA: Hamlet Delights, ) Case No.:  
14 Simon's At Horseheads, )  
15 Curly's Chicken House, ) COMPLAINT FOR PRELIMINARY AND  
16 Franco's Good Services ) PERMANENT INJUNCTIONS and Damages  
17 Anne's Pancakes, )  
18 Beefeater Tavern, )  
19 Stoney's Casablanca, )  
20 Jake's )  
21 Julianna's Brickwood BBQ, )  
22 Louie's )  
23 Giuseppe's,

20 Plaintiff,

21 vs.

22 New York Department of Health,  
23 Chemung County Department of Health,  
24 New York State Liquor Authority,  
25 New York State Governor,

26 Defendants

27 Plaintiff alleges:  
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1 1. Plaintiff, collectively above is, and at all times mentioned in this complaint was, an entity  
2 doing business in Chemung County.

3 2. At all times alleged herein, all business owners of small businesses in Chemung County,  
4 designated as the Orange Zone have been ostracized by the state and county and forbidden to do  
5 business.

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7 3. Defendant, New York Department of Health, Chemung County Department of Health, New  
8 York State Liquor Authority, and New York State Governor is, and at all times mentioned in this  
9 complaint was, executor of the orders. These agencies executed orders from the state mandating that  
10 businesses in the Orange Zone close for dine in. The designation of the zones are capricious and  
11 targeted small businesses that are the backbone of this community. Businesses with dine in services  
12 have been most devastated by this designation.  
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14 4. Defendants New York Department of Health, Chemung County Department of Health,  
15 inclusive, are sued in this complaint under fictitious names. Their true names and capacities are  
16 unknown to plaintiff. When their true names and capacities are ascertained, plaintiff will amend this  
17 complaint by inserting their true names and capacities herein. (Plaintiff is informed and believes and  
18 thereon alleges, that each of the fictitiously named defendants is responsible in some manner for the  
19 occurrences alleged in this complaint, and that plaintiff's damages as alleged in this complaint were  
20 proximately caused by those defendants.)  
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22 FIRST CAUSE OF ACTION

23 (For Preliminary and Permanent Injunction Against

24 New York Department of Health, Chemung County Department of Health, New York State Liquor  
25 Authority, and New York State Governor)  
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1           5. Beginning on or about Oct. 23, 2020, defendants, and each of them, wrongfully,  
2 unlawfully, and discriminatorily shutdown small businesses in the Orange Zone of Chemung County,  
3 while others outside the zone can remain open for business. Governor Cuomo’s executive orders are  
4 ineffective in controlling the COVID 19 virus by setting our area as an ORANGE ZONE (Zone  
5 Chart). The people of Chemung County has vehicles for traveling outside the Orange Zone for their  
6 dining needs. Since the closing of the Orange Zone dine in restaurants, the population essentially  
7 drove another 5 minutes to get to the next dine in restaurant that is open. Exhibit A shows that the  
8 infection rate did not decrease by closing the restaurants in the Orange Zone since the end of October.  
9 In fact, the positivity rate continued to rise (see COVID-19 Integrated County View). The  
10 designation of the zones are capricious and targeted small businesses that are the backbone of this  
11 community. Businesses with dine in services have been most devastated by this designation. People  
12 now travel within 5 minutes to go outside of the Orange Zone to dine. As you can see, dine in  
13 restaurants outside the Orange Zone are crowded (Photos). How does that lessen the likelihood of the  
14 viral spread when people are herded toward specific areas in large numbers? The Governor has said  
15 on his own televised broadcast that restaurants only contribute to 1.43% of the infection (see TV  
16 chart). Somehow, schools are allowed to open up in the Orange Zone when their infection rate is  
17 considerably higher, 2.02%, to the ones for the restaurants. Therefore, there is no justification to  
18 close the restaurants in the Orange Zone.

22           The Governor’s order is arbitrary because there is no scientific reason to pick a specific  
23 number for the infection rate to warrant a closure. The Governor has not closed other facilities that  
24 are shown to have positive rates over 4.5%, for example, the jails, churches, and nursing home.  
25 These facilities are what is known as “micro-clusters”. These micro-clusters contributed to the  
26 Chemung County to be over 4.5% positive rates for over 7 day average. These numbers should not  
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1 be a part of the evaluation as to part of Chemung County being placed into the Orange Zone. New  
2 York State's own determination for what are the elements of meeting the Orange Zone designation is  
3 listed here in Exhibit B. Specifically, micro-clusters are to exclude institutions such as penitentiaries,  
4 nursing homes, churches and schools. Back in October, the prison contributed to over 400 cases,  
5 which resulted in closures. Our areas, the Southern Tiers, has one of the lowest infection rates at  
6 0.03% positive rates for over 7 day average (See Exhibit C). Therefore, placing Chemung County  
7 into Orange Zone is in violation of New York State's own guidelines.  
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10 6. Protests and complaints to the state and county did not solicit any response.

11 7. Defendants' wrongful conduct, unless and until enjoined and restrained by order of this  
12 court, will cause great and irreparable injury to plaintiff as the dine in restaurants will die if the order  
13 does not get reversed soon. Most restaurants did not receive any government relief because they are  
14 small mom and pop shops. The businesses are what makes up the village and cities and towns.  
15 Without businesses, there will be no jobs and people will move away. Time is of the essence. These  
16 establishments have been closed going on two months and there is no end in sight. Because of the  
17 holiday travels and group gatherings, the infection rate will rise regardless of the closure of the  
18 restaurants.  
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21 8. Plaintiff has no adequate remedy at law for the injuries currently suffered as an award of  
22 monetary damages would not provide an adequate remedy as businesses and communities will  
23 disappear. The executive order is a hard-handed, nonsensical mandate that is doing more harm than  
24 good. Public interest will not tolerate the unjust and uneven application of the law. We have one of  
25 the lowest infection rates in all of New York State. The dine ins will die out not from the virus but  
26 from stress, depression, and bankruptcy. Since the designation of the restaurants in the Orange Zone  
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1 as no dine in allowed, businesses have suffered. The area that is the Orange Zone is mostly  
 2 composed of small businesses. They are the community of Chemung County. With each day of  
 3 closing, the small businesses die away. Our mom and pop shops did not contribute to the viral spread  
 4 and should not be punished for it. Furthermore, institutions that have many positive Covid 19 cases  
 5 and deaths did not get closed down. Equity requires that the order be lifted and the mom and pop  
 6 shops allowed to operate on equal terms as the ones outside the Orange Zone. Our families,  
 7 neighbors, and friends demand this order be lifted.

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WHEREFORE, plaintiff prays judgment against defendant(s) as follows:

1. For an order requiring defendant(s) to show cause, if any they have, why they should not be enjoined as set forth in this complaint, during the pendency of this action;
2. For a preliminary injunction, and a permanent injunction, all enjoining defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them::
  - a. lift the executive order so Orange Zone dine in businesses can operate with dine ins;
  - b. stop closing businesses;
3. INJUNCTION;
4. For costs of suit incurred in this action; and
5. For such other and further relief as the court deems proper.

DATED: Dec. 21, 2020

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CATHERYNE CHEN,  
Kristi & Mark Mertsock,  
Bobbi & Nellie Nichols,  
Jared & Yolanda Fish,  
Joseph & Stacey White,  
Brad Layton,  
Adam Bruce,  
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In Pro Per