

**NEW YORK STATE SUPREME
COURTCOUNTY OF NEW YORK**

ROCCO GENEROSO, individually, ROCCO’S BROOKLYN
BAKERY, INC., PASTICCERIA ROCCO, INC., and all other
individuals and businesses similarly situated,

AFFIRMATION
NOTICE TRO 202.7

INDEX NO. _____

Petitioners/Plaintiffs,

-against-

BILL DE BLASIO, MAYOR OF THE CITY OF NEW YORK,
in his official capacity; and THE CITY OF NEW YORK,

Respondents\Defendants.

X

I, PATRICIA FINN, Esq., an attorney duly admitted to practice before the Courts of the State of New York, and not a party to the above-captioned action, affirm I am fully familiar with the facts and circumstances of this case, and submit this Affirmation in support of Petitioners\Plaintiffs (“Petitioners”) hybrid Article 78\42 U.S.C.1983 action/proceeding, and to affirm a 202.7(f) Notice of the application for a temporary restraining order within the Order to Show Cause was provided to Respondents/Defendants through their attorneys Corporation Counsel, and to place the below exhibits on the record which the undersigned affirms are true and correct copies of the originals:

EXHIBITS:

- 1) Attached hereto as Exhibit 1 are copies of New York State Senate Bill No. S7919, and New York State Assembly Bill No. A09953.
- 2) Attached hereto as Exhibit 2 are copies of EMERGENCY EXECUTIVE ORDER NO. 225, EMERGENCY EXECUTIVE ORDER NO. 226, EMERGENCY EXECUTIVE ORDER NO. 228, and EMERGENCY EXECUTIVE ORDER NO.

280.

3) Attached hereto as Exhibit 3 is a copy of the Decision and Order of the Hon.

Lizette Colon, J.S.C. in *Independent Restaurants Owners Assoc et al v. Bill*

DeBlasio Mayor et al., Index No.: 85155/2021, NYS ECF Doc. # 13.

Contemporaneous with the filing of this affirmation, Petitioner also files the Verified Petition/Complaint seeking a temporary restraining order, a preliminary injunction, and ultimately a Judgment and Order striking down Respondent\Defendant Bill deBlasio's ("Mayor") Emergency Executive Order(s) identified in the Petition/Complaint, containing what are referred to as "vaccine passports" restricting access to certain businesses ("covered premises") by non-vaccinated individuals without the local health department first obtaining a quarantine\isolation Judicial order required under state law PHB §2120, *communicable diseases*. Counsel hereby affirms the following to be true, under penalty of perjury, pursuant to CPLR §2106.

For reasons set forth in the memorandum of law supporting the Petitioners' application for an order to show cause and Temporary Restraining Order, Petitioners have a strong likelihood of success on the merits of their claims. Furthermore, every day the vaccine passports are imposed on Petitioners they are suffering irreparable harm. The vaccine passports are preempted by state and federal law, violate the Separation of Powers, Pre-emption, and Informed Consent doctrines, and\or *ultra virus*, and were thus void *ab initio* warranting the emergency relief.

Defendant\Respondents received the notice required by Section 202.7 (f) by phone and email more than 48 hours prior to Petitioners seeking the instant temporary restraining order. Appended hereto is a true and correct copy of the Section 202.7(f) notice provided to

New York City Law Department, Office of Corporation Counsel, Attorney for Respondents, 100 Church Street, New York, New York 10007-2601, at an email address ServiceECF@law.nyc.gov. Petitioners advised Corporation Counsel that the undersigned would coordinate with all parties, at the convenience of the Court, to schedule Oral Argument on the TRO, if permitted, but intended on appearing via Webex on Friday, at 2pm on 11/12/21, at the Kings County Supreme Court. The undersigned is requesting that she be permitted to provide Oral Argument via Webex on the TRO, if permitted before this Court, or any other digital\remote method available, due to the fact she is not Covid 19 vaccinated, has not been PCR or antibody tested due to religious beliefs, and cannot wear a face mask for health purposes.

Petitioner ROCCO'S BROOKLYN BAKERY d/b/a PASTICCERIA ROCCO, was a party to a previously filed Article 78 Proceeding in the New York State Supreme Court for the County of Richmond, under Index number 85155/2021, bearing the caption *Independent Restaurants Owners Assoc et al v. Bill DeBlasio Mayor et al.*, commenced by petition and Order to Show Cause requesting, inter alia, that a Temporary Restraining Order be granted against enforcement of NYC Emergency Executive Order 225, to prevent severe and irreprovable harm to Plaintiffs/Petitioners, pending determination of the motion brought on by Order to Show Cause.

On September 10, 2021, the Hon. Lizette Colon, J.S.C. issued a Decision and Order that “the Article 78 proceeding commenced by petitioners is denied and dismissed in its entirety without prejudice.” (Decision and Order, Index No.: 85155/2021, NYS ECF Doc. # 13, **EXHIBIT 3**.) In the fifteen-page Decision and Order, the Hon. Lizette Colon seemed to express sympathy for Petitioner’s position, stating that, “It therefore appears, but is not argued,

that petitioners seek to challenge the improper use of local Executive power and not a regulation promulgated by a New York City administrative agency. This Court lacks the authority to rule on controversies not argued by the litigants, nor is it imbued with the power to divine the intentions of the advocates before it.”

J. Colon concluded, “The Mayor of New York City's actions during this pandemic raise many questions. This includes, but in no way is limited to, whether the mayor of a local government may exercise a state's unacknowledged police power to motivate, compel, coerce, or whatever other adjective may exist, a population to receive a vaccination not mandated by its state government. Yet it, like so many other arguments, was not argued here.” J. Colon then dismissed the Article 78 Petition without prejudice.

Accordingly, Petitioners bring the present Petition/Complaint, as authorized by the Court’s dismissal without prejudice, addressing the deficiencies in Petitioner’s previous petition, and noting the recent decision of the Fifth Circuit Court of Appeals in *Bst Holdings v. OSHA*, Nos. 21-60845, 21-50353, 2021 U.S. App. LEXIS 33117, at *1 (5th Cir. Nov. 5, 2021), granting a STAY of the federal vaccine mandate promulgated by OSHA: “Because the petitions give cause to believe there are grave statutory and constitutional issues with the Mandate, the Mandate is hereby STAYED pending further action by this court.”

Dated 11/10/2021

s/Patricia Finn, Esq.
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November 10, 2021

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RE: *Rocco, et al. v. Bill de Blasio, et al.*
Notice 202.7(f), Order to Show Cause\TRO
Preliminary Injunction Request, *vaccine passport* case.

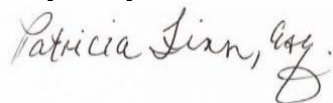
Dear Ms. Kurland:

This letter is sent in furtherance to our telephone conversation yesterday regarding the above captioned Petition\Complaint being filed in Kings County Supreme Court today via ECF, and the request for a Temporary Restraining Order and Preliminary Injunction. In compliance with *NYCC 202.7(f)*, please be advised that an order to show cause with a temporary restraining order shall be filed on November 9, 2021, via ECF at the Kings County Supreme Court located at 360 Adams St, Brooklyn, NY 11201 against the Defendant\Respondent Bill de Blasio, as Mayor of the City of New York, in his official capacity, and the City of New York, seeking to restrain as preempted by state and federal laws the Mayor's *vaccine passport*. Plaintiff\Petitioners *Rocco, et al.*, are individuals and business owners being adversely affected by the Mayor's Emergency Executive Orders (EEOs) enacting the vaccine passports as specified in the Petition\Complaint.

This is an Article 78\42 U.S.C. 1983 hybrid action seeking declaratory and injunctive relief. The only relief that is being sought in the Order to Show Cause at this time is temporary and preliminary relief restraining the *vaccine passport* pending the outcome of the case. Ultimately, the Petition\Complaint seeks a permanent injunction striking the Mayor's *vaccine passport*. The undersigned is requesting the Court hear oral argument on the Temporary Restraining Order in 48 hours on Friday, at 2pm on November 12, 2021, via webex (virtual), or any other time as directed by the Court. The undersigned is requesting to appear virtually via Webex for any Oral Argument permitted on the TRO, due to an inability to comply with masking, testing or the Covid 19 vaccine mandate(s) with permission of the Court.

Please call me at the below number at any time to discuss this matter. The sooner the better.

Very Truly Yours,



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