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November 1, 2021

By ECF

Hon. Valerie E. Caproni
United States District Court
Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square
New York, NY 10007

MEMO ENDORSED

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Re: *Keil, et al., v. The City of New York, et al., No. 21 Civ. 8773*

Re: *Kane, et al., v. Bill de Blasio, et al., No. 21 Civ. 7863*

Dear Judge Caproni:

We represent the plaintiffs in the *Keil* lawsuit, referenced above. I write for the purpose of

- * consenting to a stay of further proceedings in the District Court on the *Keil* case pending appeal, including on the order to show cause on the issue of consolidation of the *Keil* matter with the *Kane* matter, referenced above, but with the exception of a ruling on our Rule 62(d) application below; and
- * requesting an injunction pending appeal pursuant to Rule 62(d).

Consent to Stay Request

By letter dated October 29, 2021, counsel for the Defendants in *Keil* asked this court to stay the matter pending appeal. We agree that the Circuit Court's disposition of Plaintiffs' appellate motion in the *Keil* matter is likely to provide the District Court with guidance that will aid it in deciding the matter on remand, and we therefore consent to the Defendants' request for a stay as expressed in that letter.

While the *Keil* matter has some similarities to the *Kane* matter, it has even more differences. We believe that the briefing, argument and decision in both matters in the Circuit Court will illustrate that the two matters should be considered separately, and judicial efficiency would be served by concentrating all parties' efforts on proceedings in that court for now. If the Court declines to stay proceedings in this Court relating to consolidation, we intend to submit Plaintiffs' reasons for opposition to consolidation in detail to the court on or prior to November 12, 2021, the deadline set forth in the Court's order to show cause filed on October 28, 2021.

NELSON MADDEN BLACK LLPRule 62(d) Application

Pursuant to Rule 62(d), Plaintiffs respectfully request that this Court grant an injunction as requested in our motion papers or, alternatively, a stay of enforcement of Commissioner Chokshi's vaccine mandates dated September 15 and September 28, 2021, pending interlocutory appeal of this Court's October 28, 2021 order denying Plaintiffs' motion for a preliminary injunction. Plaintiffs rely on the papers submitted previously in support of the aforesaid motion, and note that Defendants have clearly shown their intention to fire the Plaintiffs and, on information and belief, thousands of other Department of Education employees who similarly have refused to "elect" either to take voluntary leave without pay or to accept a forced resignation beginning on December 1, 2021.

Respectfully submitted,

/s/ Jonathan R. Nelson

Nelson Madden Black LLP

Counsel for Plaintiffs

By Jonathan Robert Nelson (JN-8796)

cc: All counsel via ECF

21-CV-7863 & 21-CV-8773

The parties' application to stay the matter *Keil, et al. v. The City of New York, et al.*, 21-CV-8773, pending resolution of the appeal before the Second Circuit is GRANTED. All deadlines are adjourned *sine die*. Plaintiffs must notify the Court of any decision by the Second Circuit within one business day of its issuance.

The Court's November 12, 2021 deadline for the parties to show cause why 21-CV-7863 and 21-CV-8773 should not be consolidated pursuant to Rule 42 of the Federal Rules of Civil Procedure, *see* Dkt. 21-CV-7863, Dkt. 71; 21-CV-8773, Dkt. 32, is adjourned *sine die*. The Court will reinstate the deadline upon resolution of the appeals before the Second Circuit in both matters.

Plaintiffs' request in 21-CV-8773 for an injunction or to stay enforcement of the DOE Vaccine Mandate pending resolution of the appeal is DENIED.

The Clerk of Court is respectfully directed to close the open motions at docket entries 37 and 39 in 21-CV-8773.

SO ORDERED.

 Date: November 1, 2021

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE