UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MATTHEW RIVERA,

Plaintiff,

- against -

CITY OF NEW YORK, et al.,

Defendants.

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MEMORANDUM & ORDER
22-CV-616 (PKC) (PK)

PAMELA K. CHEN, United States District Judge:

Plaintiff Matthew Rivera's ("Plaintiff") request for a temporary restraining order ("TRO") pursuant to Federal Rule of Civil Procedure ("Rule") 65(b) is DENIED for failure to allege irreparable injury. As an initial matter, although the Complaint (Compl., Dkt. 1) attaches a document titled "List of Plaintiffs" (Dkt. 1-3), none of these individuals are named as plaintiffs in the caption of the Complaint, *see* Fed. R. Civ. P. 10, nor did any of these individuals sign the Complaint (*see* Compl., Dkt. 1, at 31 (Verification by Matthew Rivera only)). Furthermore, though styled as a putative class action, no class certification has yet been sought or occurred. Thus, the individuals identified in the "List of Plaintiffs" are not, in fact, parties to this action, and the only Plaintiff and movant is Matthew Rivera. In assessing Plaintiff Rivera's TRO motion, the Court therefore does not consider any allegations in the Complaint or motion for a TRO relating to these other purported "plaintiffs."

"The traditional standards which govern consideration of an application for a TRO are the same as those which govern a [preliminary injunction]." *Coley v. Vannguard Urb. Improvement Ass'n, Inc.*, No. 12-CV-5565 (PKC) (RER), 2016 WL 7217641, at *2 (E.D.N.Y. Dec. 13, 2016) (brackets and ellipses omitted) (quoting *Local 1814, Int'l Longshoremen's Ass'n, AFL–CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1228 (2d Cir. 1992)). "A preliminary injunction

is considered an 'extraordinary' remedy that should not be granted as a routine matter." *See Ahmad v. Long Island Univ.*, 18 F. Supp. 2d 245, 247 (E.D.N.Y. 1998) (citing *JSG Trading Corp. v. Tray-Wrap, Inc.*, 917 F.2d 75, 80 (2d Cir. 1990)); *Joshi v. Trustees of Columbia Univ. in City of New York*, No. 17-CV-4112 (JGK), 2020 WL 5125435, at *4 (S.D.N.Y. Aug. 31, 2020) ("A preliminary injunction 'is one of the most drastic tools in the arsenal of judicial remedies,' and it 'should not be granted unless the movant, by a clear showing, carries the burden of persuasion." (citations omitted) (first quoting *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007), *then quoting Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). The decision to grant or deny a TRO rests in the district court's "sound discretion." *Ahmad*, 18 F. Supp. 2d at 247 To obtain a preliminary injunction, a moving party must show: (1) likelihood of success on the merits; (2) likelihood that the moving party will suffer irreparable harm if a preliminary injunction is not granted; (3) that the balance of hardships tips in the moving party's favor; and (4) that the public interest is not disserved by the requested relief." *JBR, Inc. v. Keurig Green Mountain, Inc.*, 618 Fed. App'x 31, 33 (2d Cir. 2015) (summary order) (citing *Salinger v. Colting*, 607 F.3d 68, 79-80 (2d Cir. 2010)); *Joshi*, 2020 WL 5125435, at *4 ("A party seeking a preliminary injunction must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction is in the public interest." (quoting *N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018)). "A showing of irreparable harm is 'the single most important prerequisite for the issuance of a preliminary injunction.'" *Joshi*, 2020 WL 5125435, at *4 (quoting *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009)).

As applicable here, the Court may issue a TRO "only if . . . specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). In the Complaint, Plaintiff claims, in sum and substance, that, as an employee of Consolidated Edison ("ConEd"), he may be subject to termination because of New York City's Emergency Executive Order No. 317, which states that, "except as provided in subdivision c of this section, a covered entity [such as ConEd] shall not permit a . . . full- or part-time employee . . . to enter a covered premises without displaying proof of [COVID-19] vaccination and identification bearing the same identifying information as the proof of vaccination." (Compl., Dkt. 1, ¶ 8; NYC Exec. Order No. 317, Dkt. 8-3.) Plaintiff alleges that because of Executive Order No. 317, and a subsequent NYC Department of Health and Mental Hygiene ("DOHMH") Order, ConEd has adopted a vaccine policy that requires all ConEd employees to be vaccinated or face termination. Notably, however, Plaintiff's Complaint attaches an email from ConEd explaining its vaccine policy, which states, *inter alia*, that employees who have been granted a medical or religious exemption or are awaiting a decision on an exemption "are not required to be vaccinated at this time," and that employees working remotely need not be vaccinated until March 2022. (Dkt. 1-9.) That is consistent with the DOHMH Order, also submitted by Plaintiff, which states that "[n]othing in this Order shall be construed to prohibit reasonable accommodations for medical or religious reasons." (Dkt. 8-6.)

Plaintiff's Complaint includes many factual allegations about executive orders issued by United States President Joseph Biden and NYC's DOHMH relating to COVID-19 vaccinations, but it alleges almost nothing about Plaintiff or his employment at ConEd, let alone "specific facts" that would "clearly show" that Plaintiff will suffer an irreparable injury if this Court does not enter

a TRO. In his affidavit in support of the present TRO motion, Plaintiff states that he has chosen not to get the COVID-19 vaccine because "[i]t goes against my deeply held practices, violating my observance of purity (soucha)." (Dkt. 8-13 at ECF 11.[1]) Plaintiff further states that he has "received numerous emails from ConEdison and Human Resources threatening [him] with termination if [he] chose not to receive the COVID-19 Vaccine" (*id.*), and, citing a November 16, 2021 email from the company, that he believes that ConEd will begin terminating unvaccinated employees on "January 18, 2021" (which the Court presumes to mean January 18, 2022). (Dkt. 8-1, ¶ 11.[2]) However, nowhere in his TRO motion or affidavit, or in his Complaint, does Plaintiff state whether he has ever attempted to get a religious exemption pursuant to ConEd's vaccine policy and was denied. Plaintiff also does not state in any filing whether he can work, or is working, remotely, which, per ConEd's policy, might provide another basis for exemption from the vaccination requirement. Moreover, the November 16, 2021 email, which was submitted by Plaintiff, does not, in fact, state that unvaccinated employees will be terminated, but that ConEd is "evaluating the disciplinary process for addressing employees who are not in compliance with the

[1] Citations to "ECF" refer to the pagination generated by the Court's CM/ECF docketing system and not the document's internal pagination.

[2] It is unclear whether Plaintiff, in fact, has been terminated by ConEd based on his decision not to get vaccinated. On the one hand, his Complaint, which was filed in February 2022, suggests that Plaintiff is still employed by ConEd (*see* Compl., Dkt. 1, at 31; *id.* ¶ 11 ("Plaintiff, Matthew Rivera, is an employee of ConEd.")); on the other hand, his proposed order to show cause asks the Court to make a finding "that the defendant employer, ConEd, discharged Plaintiff without just cause." (Dkt. 8, ¶ H.) In any event, termination from employment, in itself, does not demonstrate irreparable harm. *Moore v. Consol. Edison Co. of New York*, 409 F.3d 506, 511 (2d Cir. 2005) ("The injuries that generally attend a discharge from employment—loss of reputation, loss of income and difficulty in finding other employment—do not constitute the irreparable harm necessary to obtain a preliminary injunction." (brackets omitted) (quoting *Guitard v. United States Sec'y of Navy*, 967 F.2d 737, 742 (2d Cir. 1992) (citing *Sampson v. Murray*, 415 U.S. 61, 89–92 (1974)))).

mandate after the deadline [of January 18, 2022]. Discussions with the unions are ongoing and we will keep you updated." (Dkt. 8-10.)

For all of the reasons explained above, Plaintiff has failed to allege "specific facts" to "clearly show" that he may suffer "immediate and irreparable injury, loss, or damage," and thus his request for a TRO must be denied. Fed. R. Civ. P. 65(b)(1)(A). For substantially similar reasons, and others, the Court would deny his request for a Preliminary Injunction, and thus his request for a Show Cause hearing is denied. Accordingly, Plaintiff's [8] "Motion for Order to Show Cause with TRO and Preliminary Injunction Request" is DENIED in its entirety.

SO ORDERED.

/s/ Pamela K. Chen
Pamela K. Chen
United States District Judge

Dated: February 4, 2022
Brooklyn, New York