



STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
P.O. BOX 087
TRENTON, NJ 08625-0087
PHONE: (609) 984-2830 FAX: (609) 633-6078
WWW.NJ.GOV/OAG/ABC

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

JAMES B. GRAZIANO
Acting Director

July 30, 2020

James B. Graziano, Acting Director
Division of Alcoholic Beverage Control
140 East Front Street
PO Box 087
Trenton, New Jersey 08625-0087

Re: Division of Alcoholic Beverage Control v. 273 Route 130 Enterprise LLC
t/a Il Portico Ristorante Italiano
Covid-19 Expansion Permit No. 82296
Agency Docket # S-19-39232; H-DIVISION

Dear Acting Director Graziano:

Please accept this letter brief in lieu of a more formal brief on behalf of the Division of Alcoholic Beverage Control (“the Division”) in support of its motion for an Order to Show Cause. Regarding the Order to Show Cause, ABC seeks an order directing 273 Route 130 Enterprise LLC t/a Il Portico Ristorante Italiano (hereinafter “Il Portico”) and its owner to show cause on five days’ notice why its temporary COVID -19 Expansion of Premise Permit (“Expansion Permit”), issued pursuant to N.J.S.A. 33:1-74 and SR 2020-10, should not be revoked due to violations of Executive Order 150, SR 2020-10 pendente lite a full hearing on the Notice of Charges related to these violations for which the Division seeks in suspension of Respondent’s license if the Division prevails (see Pa. AA). The Division relies on the attached certifications in support of this application and hereby waives oral argument. Due to the egregiousness of the violations and the



danger which they present to the public health, safety and welfare of the community, the Division requests that the Director issue an Order for an Emergent Hearing in this matter within 5 days, pursuant to N.J.A.C. 13:2-19:4(a) and N.J.S.A. 33:1-31.

PROCEDURAL HISTORY

273 Route 130 Enterprise LLC t/a Il Portico Italian Ristorante (“Il Portico”) holds License No. 0305-33-011-006 (“Il Portico”) and is sited at 273 Route 130 Enterprises LLC (Pa. A, 2016 Person-to-Person Transfer Application). At all relevant times, Il Portico has been owned by Ilyad Shah (Id. at 10). The Division has two separate investigations pending regarding violations by Il Portico. The first was initiated in August of 2019, in response to reports of a shooting and a stabbing in Il Portico’s parking lot during an event hosted by a promoter (Pa. B, Investigation Report S-19-50919). While the Division investigation did not result in sufficient evidence for charges related to the shooting, it revealed that Mr. Shah was leasing out his license to various promoters to run events, was not keeping adequate records, and was not in control of or properly vetting and documenting employees for these events. (Pa. B, supp. Report, pg. 2). Mr. Shah was advised by the Division that this practice was a violation – that he was required to hire all employees himself and to keep adequate records (Id. at 3). Charges for these violations are forthcoming.

On June 19, 2020, Il Portico was issued Temporary COVID-19 Expansion of Premises permit number 82296 (“Subject Permit”) (Pa. C, COVID-19 Expansion Permit Number 82296). This permit allowed Il Portico to expand its license premises and operate for outdoor service, pursuant to the terms of Executive Order 150 and the approved expansion plan laid out in its application, as an exception to the previously ordered suspension of all on-site service and

consumption during the COVID-19 State of Emergency and Public Health Emergency. (Pa. I, Executive Order 150).

On July 7, 2020, a second investigation was initiated after it was reported that Il Portico was operating in violation of the terms of the Subject Permit, in violation of Executive Orders (Pa. G, ABC Investigation Request dated July 7, 2020). This investigation relates to another promoter-run event at Il Portico in which 400-500 patrons were in attendance and licensee failed to comply with mandatory social distancing requirements, to ensure patrons were wearing face masks, or to comply with the prohibition on serving patrons indoors (Ibid.). These Executive Order violations have led to the Division's instant application against the Subject Permit. Charges against the license related to these violations will be issued separately and are forthcoming.

STATEMENT OF FACTS

On March 9, 2020, Governor Philip Murphy declared a concurrent State of Emergency, pursuant to N.J.S.A. App.A.: 9-33 et. seq., and a Public Health Emergency, pursuant to N.J.S.A. 26:13-2 et. seq., in response to the highly contagious and sometimes fatal respiratory Coronavirus disease 2019 ("COVID-19"). Executive Order 103 ("EO 103") (Pa. D, Executive Order 103). The COVID-19 health crisis was declared a pandemic by the World Health Organization on March 11, 2020. (Pa. E, Executive Order 104 ("EO 104")). In an attempt to control the aggressive spread of this devastating disease, Governor Murphy ordered strict social distancing requirements, closed all non-essential businesses and imposed operating guidelines on essential businesses which were permitted to remain open to protect the health and safety of the public. (Pa. E and Pa. F, Executive Order 107 ("EO 107")). As part of these unprecedented restrictions, restaurants, including alcoholic beverage licensees, were prohibited from providing on-site service. (Pas E & F). They were permitted to sell for take-out or delivery only (Pa. F). Additionally, licensees that remained

opened were required to implement frequent sanitization, ensure 6-feet of separation between workers and patrons, and enforce mandatory cloth face coverings for all employees and patrons on premises (Pa. H, Executive Order 125).

As the number of new cases of COVID-19 began to decline in New Jersey, Governor Murphy implemented a “methodical and strategic reopening of businesses and activities.” (Pa I at 2). This gradual reopening plan was structured to reopen the economy in a way that continued to protect the health and safety of the public in the face of the ongoing risks posed by COVID-19. Ibid. As part of this plan, the Governor implemented exceptions to the complete prohibition of on-site service and permitted retail consumption licensees to begin offering service to patrons in outdoor areas only (Id. at 5-6). Licensees operating under this exception are still required to ensure 6 feet of separation between tables and patrons, limit capacity to ensure social distancing and mandate face coverings for all patrons and employees (Id. at 6). To facilitate this gradual reopening, the Director of the Division of Alcoholic Beverage Control created a temporary permit known as the COVID-19 Expansion of Premises Permit (“COVID-19 Expansion Permit”) so licensees could temporarily expand their licensed premises into outdoor areas. (Pa. J, SR 2020-10). Local municipalities, such as Burlington City, also passed resolutions permitting businesses to utilize previously unauthorized outdoor spaces in order to facilitate reopening. In Burlington City, Resolution 166-2020 was passed permitting restaurants to offer outdoor seating to a maximum of 50 patrons (Pa. K, Resolution 166-2020).

On June 17, 2020, Il Portico applied for a COVID-19 Expansion of Premises Permit (Pa. L, COVID-19 Expansion Permit Application for 273 Route 130 Enterprise LLC). Il Portico’s application requested to expand the license premises to an adjacent 100 square-foot outdoor deck (Ibid.). According to its permit application, Il Portico would provide outdoor table service at 11

four-person tables, spaced 6 feet apart (Ibid.). It was noted that no more than 6 guests, that arrived as a group, would be seated together (Ibid.). No bar service was anticipated by the application – as it noted the only bar would be inside and only accessible to employees (Ibid.). Il Portico’s permit application also lists the hours of operation for Permittee’s deck service – with the establishment closing at 11 pm on Friday and Saturday evenings (Ibid.).

On June 19, 2020, Il Portico’s COVID-19 Expansion of Premises Permit was approved, based on the representations of Il Portico as to its operational and security plan, and Il Portico was issued Permit Number 82296 (Pa. C). The permit certificate clearly notes that the Permittee and its employees “are required to conform to *the approved specifications of its permit application*, the COVID-19 outdoor dining guidelines for retail food establishments from the department of health and all applicable Executive and Administrative orders governing indoor and outdoor dining and the sale and consumption of Alcoholic Beverages.” (Ibid. (emphasis added)). This permit certificate also places the Permittee on notice that it “may be cancelled by the Director in his sound discretion at any time without notice, reason or cause.” (Ibid.)

On June 28, 2020, Burlington City Police department received a complaint indicating that Il Portico was serving patrons inside despite the Executive Order prohibiting same (Pa. M, Letter to Det. Anna Czajka RE. 6.28.20 Complaint). This complaint was referred to the county Department of Health for investigation. (Ibid.).

On Friday, July 3, 2020, Il Portico hosted an event called a “quarantine release party.” (Pa. N, Quarantine Release Event Flyer). The event advertisement indicated that it would run from 9 pm – 2 pm (Ibid.). At approximately 12:30 a.m., the Burlington City Police Department began receiving emergency calls for service regarding overcrowding and a fight in the Permittee’s parking lot – an hour and a half after the premises should have been closed. (Pas. O-Q, Emergency Service

Calls recorded on July 4, 2020). Responding officers observed an overcrowded parking lot, patrons congregating and drinking liquor in the parking area, patrons crowded onto an outdoor deck and inside the establishment. (Pa. U, Body Worn Camera, 300004416_200704_043642 at 1:10-2:40). It was estimated that there were approximately 500 patrons in attendance (Pa. Q & Pa S, Burlington City Incident Report 2020-9969 and Narrative). Il Portico had a DJ set up inside the establishment and was allowing patrons inside as well. Due to the excessively large number of people gathered at the licensed premises, the Burlington City Police Department needed to request back up from the New Jersey State Police to effectively control and disburse the crowd (Pa. R, CAD Reports From 9-11 Calls on July 4, 2020). Security staff working at Il Portico were not wearing face masks as required. (Pa. U at 03:50). As responding officers were asking to speak with management about closing the establishment, security staff continued to allow more patrons to enter – noting to officers that they “already got tickets” (Id. at 5:43). The security staff told officers that he “had no idea this was gonna happen” and indicated that “[t]hat was already paid for. That’s a whole situation. The door has already been stopped because I told them to stop the door.” (Id. at 6:20).

Ilyas Shah, the owner of Il Portico, was present during this outrageous event that necessitated a multi-agency police response during a pandemic (Pa. S). Responding officers advised the manager he was in violation of the Executive Orders and noted that he had previously been warned about public nuisance issues at his establishment – such as patrons parking in the grass (Pa. U at 08:51). Mr. Shah closed down the establishment when requested but was belligerent towards responding officers (Pa. V, Burlington City Police Body Worn Camera Video 3000004382_200704_060043). Mr. Shah admitted that patrons were inside his establishment. (Pa. W, Burlington City Police Body Worn Camera Video 3000004416_200704_060312 at 1:55).

An employee confirmed that there were 500 patrons on site (Id. at 2:13). While arguing with the responding officers, Mr. Shah admitted to allowing open alcoholic beverages in his parking lot (Id. at 1:30, Pa. V at 2:35). He indicated that he had security but admitted he could not control the patrons conduct on his premises (Pa. W at 2:10). Mr. Shah repeatedly insisted that his “parties” and manner of operating were legal. (Id. at 1:40, 2:50). He demonstrated no insight into the safety issue he created, asking officers “what the safety issue” was and insisting that his manner of operation “is what the Governor wants.” (Id. at 1:00). At one point, while Mr. Shah is yelling at police security intervened and backs him away from the officers (Pa. V at 1:00). Mr. Shah continued yelling, telling police to “get off his property.” (Pa. V at 1:11).

On the night in question, Il Portico had remained open beyond the time-limits prescribed in its permit, vastly exceeded it’s 49-person capacity limitation, failed to keep tables 6 feet apart, allowed patrons inside the restaurant and had failed to require patrons to wear face coverings (Pa. S). At 3 pm on July 4, 2020, when Burlington City Police returned to Il Portico to serve Mr. Shah with a municipal summons related to these violations, they found Mr. Shah operating the licensed premises without wearing a face covering – again in violation of EO 150 (Id.).

In addition to the above Executive Order violations noted by the Burlington City Police Department, the Division was advised that neighboring Eastampton police department arrested an individual in the early morning hours on July 4, 2020 for driving while intoxicated. This individual had a blood alcohol content of .19 – more than 2x the legal limit and indicated that they had been drinking at Il Portico.¹

¹ The Division is currently investigating the circumstances leading to this arrest. Reports regarding this incident have been requested but have not been received as of yet. Any additional charges against Il Portico’s licenses arising therefrom will be issued separately.

This is not the first time Il Portico has held events at its premises that required police intervention. On August 4, 2019, an event was held at Il Portico during which there was a disturbance in the parking lot to which police were called to respond (Pa. B). The local hospital subsequently reported to police that two separate individuals were brought in reporting that they sustained injuries at Il Portico that night – one had been shot and the other stabbed (Pa. U). On August 23, 2019, Officers responded to Il Portico due to patrons improperly parking on the street (Id.). On September 22, 2019, Police were dispatched to Il Portico to deal with a crowd of disorderly subjects (Id.). The responding officers also noted “numerous city ordinance offenses and multiple vehicles parked in the Kennedy Park grass” causing damage (Id.). On this occasion, the security guard present was uncooperative with officers and refused bring the manager outside to speak with officers (Id.). On 12/6/2019, officers were called to Il Portico to deal with a disorderly intoxicated patron (Id.). On December 12, 2019, Police were again dispatched to Il Portico to check on the welfare of an intoxicated patron (Id.). On December 28, 2019, police again responded to Il Portico due to reports of gunshots, although officers were unable to substantiate this report (Id.). On January 19, 2020, police were dispatched to Il Portico due to a fight at the establishment (Id.).

LEGAL ARGUMENT

I. THE PERMITEE’S BLATANT DISREGARD FOR THE OPERATIONAL RESTRICTIONS SET BY EXECUTIVE ORDER 150, SR 2020-10, RESOLUTION 166-2020 AND THE TERMS OF ITS PERMIT REQUIRE THE IMMEDIATE REVOCATION OF ITS PERMIT PRIVILEGES TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC.

An order to show cause is “a well-established means-with historical provenance ... for bringing a matter expeditiously to the attention of a tribunal, whether that tribunal be an administrative agency, ... or a court.” Matter of A-1 Jersey Mov. & Stor., 309 N.J. Super. 33, 42 (App.

Div. 1998). Furthermore, the regulations governing Alcoholic Beverage Licensees provide for an emergency hearing to be held on five days' notice where the alleged action(s) of a licensee or permittee "present a danger which is an immediate threat to the public health, safety or welfare and contrary to the interest of the community." N.J.A.C. 13:219.4. Here, the Permittee violated narrowly prescribed restrictions designed to safeguard the health, safety and welfare of the public during a global pandemic of a devastating and sometimes fatal respiratory illness. Il Portico's wanton disregard of Executive Orders and administrative restrictions during the pending COVID-19 Public Health Emergency poses an immediate threat to the public health, safety and welfare that must be addressed on an expedited, emergency basis.

The alcoholic beverage industry "is one of the most highly regulated industries of the State..." N.J.S.A. 33:1-23.40. Participation in this industry is strictly controlled and is limited to liquor licensees. N.J.S.A. 33:1-2. Regarding the unique nature of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq., and the regulations promulgated pursuant thereto (collectively the "ABC Act"), New Jersey courts have long recognized the necessity of strictly controlling the alcoholic beverage industry due to its potential and innate danger to the public. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). Consequently, in enacting the ABC Act, the Legislature vested ABC with extensive regulatory power over the liquor industry. Gillhaus Beverage Company Inc. v. Lerner, 78 N.J. 499, 507 (1979). The ABC Act is "intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." N.J.S.A. 33:1-73.

Pursuant to N.J.S.A. 33:1-39, the Director may "make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the...sale...of alcoholic beverages and the enforcement" of the Alcoholic Beverage Control Act (the "ABC Act"). These rules may include: "Limitation of sales..."; "health and sanitary

requirements; standards of cleanliness, orderliness and decency;” and “such other matters whatsoever as are or may become necessary.” One such regulation, adopted pursuant to N.J.S.A. 33:1-39, provides that any licensee may be ordered to close or to cease/modify operations by any State, county or municipal law enforcement authority during a public emergency. N.J.A.C. 13:2-23.3.

On March 9, 2020, Governor Murphy declared a dual State of Emergency and Public Health Emergency (“Public Health Emergency”) (Pa. D). To protect the health and safety of the public during this Public Health Emergency, Governor Murphy ordered all restaurants, including alcoholic beverage licensees, closed for on-site service (Pa. E). Alcoholic beverage licensees were permitted to remain open for take-out package sales only (Pas. E & F).

As new cases of COVID-19 began to decline, Governor Murphy entered a new order permitting retail consumption licensees to begin offering on-site service in outdoor areas only, effective Monday June 15, 2020 (Pa. I). Retail consumption licensees that opted to reopen under EO 150 are required to 1) limit capacity to ensure all patrons are 6 feet apart at all times; 2) ensure that all tables and bar seating are 6-feet apart in all directions; and 3) prohibit patrons from entering the indoor premises, except to access the outdoor area or use the bathroom (Ibid.). The Director, through the authority vested in him by N.J.S.A. 33:1-39, issued Special Ruling SR 2020-10 which created a Temporary COVID-19 Expansion of Premises Permit to enable licensees to expand their licensed premises into outdoor areas that were previously unlicensed (Pa. J). This Temporary COVID-19 Expansion of Premises Permit requires all licensees to comply with local ordinances and site plan requirements (Pa. C). The City of Burlington, where the subject Permittee is sited, issued Resolution No. 166-2020, temporarily lifting restrictions on outdoor seating and permitting restaurants to open an outdoor seating area for a maximum of 50 patrons (Pa. K at ¶ 6).

Il Portico applied for a Temporary COVID-19 Expansion of Premises Permit on June 17, 2020. In its application, Il Portico represented that it would set up 11 four-person tables (seating for 44 patrons) on a 100-square foot outdoor deck that is accessible from the outside of the establishment (Pa. L). According to the application, Il Portico would be open until 11:00 pm at the latest, on Friday and Saturday nights (Ibid.). These operational parameters, proposed by the Permittee and approved by the State and local issuing authorities, fit within the exceptions provided for by ER 150 as well as the Division's Special Ruling and municipal Resolution 166-2020 (Pa. C). Il Portico was required to conform its operations to the approved specifications of its application.

However, Permittee wholly failed to comply with its approved operational plan. On July 3, 2020, Il Portico allowed between 400-500 patrons to gather on its licensed premises – 10 times the number of patrons it was permitted to have (Pa. S). This was a violation of ER 150, SR 2020-10 and Resolution 166-2020. Patrons were packed into the outdoor deck area, in complete disregard for the mandated 6-foot separation between patrons (Pas. S & V). Another violation of ER-150 and SR 2020-10. Il Portico had set up a DJ *INSIDE* the license premises permitted patrons to congregate inside (Pa. S). This was another flagrant violation of ER 150 and SR 2020-10. Additionally, patrons throughout the licensed premises were not wearing required face coverings (Pas. V - X) – an additional violation of ER 150, chargeable for each patron. See N.J.A.C. 13:2-19.11(d).

The Permittee's conduct on July 3-4, 2020 failed to meet the standards set for alcoholic beverage licensees during even normal operation – let alone under the narrowly tailored Executive Orders implemented during this Public Health Emergency. The owner of Il Portico, Ilyad Shah, was present during this entire debacle. He failed to ensure that adequate security was present to

control the mob of people he had permitted onto the licensed premises. As a result, there was a disturbance in the crowded parking lot where overflow patrons were consuming alcohol (Pas. P & Q). This necessitated an emergency police response from three separate agencies to control and dissipate the mob of patrons from the Permittee's premises. Permitting patrons to consume alcohol in the unlicensed parking lot is a violation of N.J.S.A. 33:1-12. Failing to provide adequate security, resulting in a disturbance on the licensed premises and necessitating police intervention is a violation of N.J.A.C. 13:2-23.6(a).

Il Portico failed to comply with Executive Orders and the Director's Special Ruling implemented to safeguard the health, safety and wellbeing of the public during this unprecedented public health crisis. Il Portico's blatant disregard for the limitations set by EO 150, SR 2020-10 and Municipal Resolution 166-2020, placed the health, safety and welfare of the approximately 500 patrons and all of the responding officers from Burlington City and the NJ State Police at extreme risk of COVID-19 exposure – a life threatening illness. Il Portico also, thereby, created an unacceptable and wanton risk of community spread of COVID-19 throughout the entire Burlington community and the state of New Jersey. Il Portico's conduct on the night in question shows a shocking disregard for the health, safety and welfare of its patrons and the public at large. Additionally, Il Portico's conduct on the night in question failed to meet even the minimum standards of reasonable and responsible operation required of an alcoholic beverage licensee. Based on Mr. Shah's belligerent response to responding officers, his complete lack of understanding of the limits placed on his permit and Il Portico's history of nuisance complaints, it is unlikely that Il Portico would conform to permit requirements going forward, if given the opportunity to continue exercising these privileges. Therefore, ABC moves for an order requiring the Permittee to show cause why Permit No. 82296 should not be immediately revoked.

II. IF REVOCATION IS NOT GRANTED, THE SUBJECT PERMIT SHOULD BE IMMEDIATELY INDEFINITELY SUSPENDED PENDING THE RESOLUTION OF CHARGES AGAINST IL PORTICO'S LICENSE DUE TO IL PORTICO'S BLATANT DISREGARD OF EXECUTIVE ORDERS DESIGNED TO PROTECT HEALTH, SAFETY AND WELFARE OF THE PUBLIC.

It is a longstanding practice that temporary relief may be granted pendente lite in order to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Crowe v. De Gioia, 90 N.J. 126, 132 (1982)(citing Thompson ex. Rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (1854)). A preliminary injunction is warranted where the following four factors can be established 1) it is necessary to prevent irreparable harm; 2) the legal right underlying the claim is settled as a matter of law; 3) there is a reasonable probability of ultimate success on the merits; and 4) the balance of equities in the resulting hardship to the parties weighs in favor of granting the injunction. Waste Mgmt. of N.J., Inc. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008). Where public interests are affected, rather than just private rights, “[c]ourts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” Yakus v. United States, 321 U.S. 414, 441 (1944).

1. Irreparable Harm.

Here, the Division requests that Permittee’s temporary COVID-19 Expansion Permit be immediately indefinitely suspend pending the resolution of the Division’s charges against Il Portico’s retail consumption license. This suspension of permit privileges is necessary to prevent community spread of COVID-19 due to Permittee’s demonstrated unwillingness or inability to comply with social distancing requirements at its establishment, as mandated by EO-150 and SR

2020-10. It is well settled that the Director has the authority to make and enforce rules and regulations strictly controlling the alcoholic beverage industry to protect the public health, safety and welfare. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). Typically, harm that is not capable of being sufficiently compensated by a monetary penalty is considered irreparable harm.

Here, the likely harm of maintaining the status quo by allowing Permittee to continue operating is the increased community spread of COVID-19. COVID-19 “continues to spread across New Jersey and an increasing number of individuals require[] medical care or hospitalization” and continues “to present a public health hazard in New Jersey.” (Pa. Z, Executive Order 162 at 1-2). “[A]s of July 1, 2020, there were over 171,000 positive cases of COVID-19 in New Jersey, with at least 13,224 of those cases having resulted in death.” (Id. at 2). In addition to the risk posed to the health and safety of individuals, COVID-19 has “greatly strained the resources and capabilities of county and municipal governments...that provide essential services for containing and mitigating the spread of contagious diseases.” (Id. at 4). As such, continued adherence to strict social distancing requirements is necessary to “reduce additional new infections and save lives.” (Id. at 3). Permittee’s conduct on July 3-4, 2020 placed its patrons, first responders, and the community at large at risk of injury to their health. Continued operation by the Permittee poses both a risk to the health and safety of patrons, first responders, and the community. Additionally, an increase in community spread of COVID-19 caused by Permittee’s operations would have a significant negative impact on community resources by requiring the expenditure of additional resources for contact tracing and contain and mitigate the spread. The impact of licensee’s conduct on public resources, health, safety and wellbeing would be nearly impossible to quantify or compensate with monetary damages ex post facto.

2. Settled Law.

The ability to sell alcoholic beverages is not a right but “a revocable privilege conditioned upon the proper and continued qualification of the licensee.” N.J.S.A. 33:1-12.40. This privilege is revocable even for a first offense. Butler Oak Tavern v. A.B.C., 20 N.J. 373, 381(1956). The purpose of the Alcoholic Beverage Control Act is to “strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this state.” N.J.S.A. 33:1-3.1(1). To safeguard the health, safety and welfare of the public, licensees may be ordered closed entirely or required to restrict operations during a state of emergency. N.J.A.C. 13:2-23.3. Enforcement of Executive Orders, particularly during an ongoing public health emergency, is necessary in order to achieve this goal. Additionally, Permittee’s COVID-19 Expansion of Premise Permit was expressly subject to... “all executive orders issued by the Governor of New Jersey” and “may be cancelled by the Director in his sound discretion at any time without notice, reason or cause.” (Pa. C). Therefore, the Director’s right to revoke this permit is settled law.

2. Probability of Success on the Merits.

As detailed in Section I, supra, the Division has a reasonable probability of success on the underlying charges against Il Portico, pursuant to N.J.A.C. 13:2-23.3, for failure to comply with Executive Orders restricting operations during a State of Emergency. Il Portico has been charged with violating EO 150 by allowing patrons to congregate inside the licensed premises, failing to ensure that patrons maintained 6 feet of separation, failing to ensure that patrons and employees wore face masks (Pa. AA). Il Portico was serving patrons beyond the hours of operation approved in its permit. Additionally, Il Portico was charged with permitting patrons to consume alcohol in its unlicensed parking lot (Ibid.).

The Division is likely to succeed on these charges as video surveillance from the night in question clearly depict these violations occurring (Pas. U-Y). Permittee was required to “conform

to the approved specifications of its permit application” and to ensure that alcoholic beverages served in the expanded premises were consumed “within the confines of the expanded or permanently licensed premises as described in the application.” (Pa. C). Pursuant to its approved plan, Permittee was required to close his establishment at 11 pm on Friday, July 3, 2020 (Pa. L). However, Permittee was admitting patrons when police arrived on site at around 1:15 a.m. on July 4, 2020. Permittee does not dispute this. Permittee advertised that he was running an event until 2:00 a.m. (Pa. N). additionally, Permittee repeatedly accused officers of shutting down his business an hour early (Pa. W at 1:34; Pa. N). Permittee’s employee acknowledged that there were 500 patrons on site (Pa. W at 213) – far in excess of the capacity limit set in his site plan (Pa. L). Permittee admitted to allowing patrons inside his facility on July 3-4, 2020 (Pa. W). Permittee also admitted that he allowed patrons to consume alcohol in his unlicensed parking lot (*Ibid.*). The parking lot was not included in Permittee’s expanded premises (Pa. L). As such, the charges in this matter are based on admissions of the Permittee. Therefore the Division is likely to succeed in establishing these charges.

3. Balancing the Equities.

Finally, in balancing the equities of the parties, the extreme risk of hardship posed to the public by Permittee’s manner of operation weighs strongly in favor of issuing the requested indefinite suspension. COVID-19 spreads most frequently through person-to-person contact and, therefore, “social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease.” (Pa. F at 3). As a result, alcoholic beverage licensees were prohibited from serving alcohol for on-site consumption (*Id.* at ¶ 8). Pursuant to EO 150 and the issuance of Permit 82296, Il Portico was granted the privilege of resume on-site service in outdoor areas only while ensuring patrons followed mandated social distancing measures. Permittee’s

event on July 3-4, 2020 blatantly disregarded its responsibilities under Permit 82296 and the requirements of EO 150. Permittee thereby placed its patrons, responding officers and the community at large at an extreme risk of increased community spread of COVID-19. The need to protect the public against the risk of community spread of COVID-19 during this ongoing and unprecedented pandemic greatly outweighs the hardship caused to Permittee by the suspension of the temporary permit privileges authorizing Il Portico to operate outdoors as an exception to the on-site service prohibition imposed by EO 107.

Therefore, if the Director determines that Permittee's COVID-19 Expansion Permit should not be outright revoked, then said Permit should be immediately indefinitely suspended pending the resolution of the Division's investigation and anticipated charges against Il Portico's retail consumption license.

CONCLUSION

For the foregoing reasons, Your Honor should grant the ABC's motion for an Order to Show Cause in this case.

Respectfully Submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____
Sheena M. Rinkle
Deputy Attorney General
Enforcement Bureau

C: VIA EMAIL AND OVERNIGHT DELIVERY

**Ahmed Suliman, Esquire o/b/o
273 Route 130 Enterprise LLC**

**John J. Fine, Chief of Police
Burlington City Police Department**



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Division of Alcoholic Beverage Control
140 East Front Street
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Re: Division of Alcoholic Beverage Control v. 273 Route 130 Enterprise LLC
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Covid-19 Expansion Permit No. 82296

Dear Acting Director Graziano:

Please accept this letter brief in lieu of a more formal brief on behalf of the Division of Alcoholic Beverage Control (“the Division”) in support of its motion for an Order to Show Cause. Regarding the Order to Show Cause, ABC seeks an order directing 273 Route 130 Enterprise LLC t/a Il Portico Ristorante Italiano (hereinafter “Il Portico”) and its owner to show cause on five days’ notice why its temporary COVID -19 Expansion of Premise Permit (“Expansion Permit”), issued pursuant to N.J.S.A. 33:1-74 and SR 2020-10, should not be revoked due to violations of Executive Order 150, SR 2020-10 pendente lite a full hearing on the Notice of Charges related to these violations for which the Division seeks in suspension of Respondent’s license if the Division prevails (see Pa. AA). The Division relies on the attached certifications in support of this application and hereby waives oral argument. Due to the egregiousness of the violations and the



danger which they present to the public health, safety and welfare of the community, the Division requests that the Director issue an Order for an Emergent Hearing in this matter within 5 days, pursuant to N.J.A.C. 13:2-19:4(a) and N.J.S.A. 33:1-31.

PROCEDURAL HISTORY

273 Route 130 Enterprise LLC t/a Il Portico Italian Ristorante (“Il Portico”) holds License No. 0305-33-011-006 (“Il Portico”) and is sited at 273 Route 130 Enterprises LLC (Pa. A, 2016 Person-to-Person Transfer Application). At all relevant times, Il Portico has been owned by Ilyad Shah (Id. at 10). The Division has two separate investigations pending regarding violations by Il Portico. The first was initiated in August of 2019, in response to reports of a shooting and a stabbing in Il Portico’s parking lot during an event hosted by a promoter (Pa. B, Investigation Report S-19-50919). While the Division investigation did not result in sufficient evidence for charges related to the shooting, it revealed that Mr. Shah was leasing out his license to various promoters to run events, was not keeping adequate records, and was not in control of or properly vetting and documenting employees for these events. (Pa. B, supp. Report, pg. 2). Mr. Shah was advised by the Division that this practice was a violation – that he was required to hire all employees himself and to keep adequate records (Id. at 3). Charges for these violations are forthcoming.

On June 19, 2020, Il Portico was issued Temporary COVID-19 Expansion of Premises permit number 82296 (“Subject Permit”) (Pa. C, COVID-19 Expansion Permit Number 82296). This permit allowed Il Portico to expand its license premises and operate for outdoor service, pursuant to the terms of Executive Order 150 and the approved expansion plan laid out in its application, as an exception to the previously ordered suspension of all on-site service and

consumption during the COVID-19 State of Emergency and Public Health Emergency. (Pa. I, Executive Order 150).

On July 7, 2020, a second investigation was initiated after it was reported that Il Portico was operating in violation of the terms of the Subject Permit, in violation of Executive Orders (Pa. G, ABC Investigation Request dated July 7, 2020). This investigation relates to another promoter-run event at Il Portico in which 400-500 patrons were in attendance and licensee failed to comply with mandatory social distancing requirements, to ensure patrons were wearing face masks, or to comply with the prohibition on serving patrons indoors (Ibid.). These Executive Order violations have led to the Division's instant application against the Subject Permit. Charges against the license related to these violations will be issued separately and are forthcoming.

STATEMENT OF FACTS

On March 9, 2020, Governor Philip Murphy declared a concurrent State of Emergency, pursuant to N.J.S.A. App.A.: 9-33 et. seq., and a Public Health Emergency, pursuant to N.J.S.A. 26:13-2 et. seq., in response to the highly contagious and sometimes fatal respiratory Coronavirus disease 2019 ("COVID-19"). Executive Order 103 ("EO 103") (Pa. D, Executive Order 103). The COVID-19 health crisis was declared a pandemic by the World Health Organization on March 11, 2020. (Pa. E, Executive Order 104 ("EO 104")). In an attempt to control the aggressive spread of this devastating disease, Governor Murphy ordered strict social distancing requirements, closed all non-essential businesses and imposed operating guidelines on essential businesses which were permitted to remain open to protect the health and safety of the public. (Pa. E and Pa. F, Executive Order 107 ("EO 107")). As part of these unprecedented restrictions, restaurants, including alcoholic beverage licensees, were prohibited from providing on-site service. (Pas E & F). They were permitted to sell for take-out or delivery only (Pa. F). Additionally, licensees that remained

opened were required to implement frequent sanitization, ensure 6-feet of separation between workers and patrons, and enforce mandatory cloth face coverings for all employees and patrons on premises (Pa. H, Executive Order 125).

As the number of new cases of COVID-19 began to decline in New Jersey, Governor Murphy implemented a “methodical and strategic reopening of businesses and activities.” (Pa I at 2). This gradual reopening plan was structured to reopen the economy in a way that continued to protect the health and safety of the public in the face of the ongoing risks posed by COVID-19. Ibid. As part of this plan, the Governor implemented exceptions to the complete prohibition of on-site service and permitted retail consumption licensees to begin offering service to patrons in outdoor areas only (Id. at 5-6). Licensees operating under this exception are still required to ensure 6 feet of separation between tables and patrons, limit capacity to ensure social distancing and mandate face coverings for all patrons and employees (Id. at 6). To facilitate this gradual reopening, the Director of the Division of Alcoholic Beverage Control created a temporary permit known as the COVID-19 Expansion of Premises Permit (“COVID-19 Expansion Permit”) so licensees could temporarily expand their licensed premises into outdoor areas. (Pa. J, SR 2020-10). Local municipalities, such as Burlington City, also passed resolutions permitting businesses to utilize previously unauthorized outdoor spaces in order to facilitate reopening. In Burlington City, Resolution 166-2020 was passed permitting restaurants to offer outdoor seating to a maximum of 50 patrons (Pa. K, Resolution 166-2020).

On June 17, 2020, Il Portico applied for a COVID-19 Expansion of Premises Permit (Pa. L, COVID-19 Expansion Permit Application for 273 Route 130 Enterprise LLC). Il Portico’s application requested to expand the license premises to an adjacent 100 square-foot outdoor deck (Ibid.). According to its permit application, Il Portico would provide outdoor table service at 11

four-person tables, spaced 6 feet apart (Ibid.). It was noted that no more than 6 guests, that arrived as a group, would be seated together (Ibid.). No bar service was anticipated by the application – as it noted the only bar would be inside and only accessible to employees (Ibid.). Il Portico’s permit application also lists the hours of operation for Permittee’s deck service – with the establishment closing at 11 pm on Friday and Saturday evenings (Ibid.).

On June 19, 2020, Il Portico’s COVID-19 Expansion of Premises Permit was approved, based on the representations of Il Portico as to its operational and security plan, and Il Portico was issued Permit Number 82296 (Pa. C). The permit certificate clearly notes that the Permittee and its employees “are required to conform to *the approved specifications of its permit application*, the COVID-19 outdoor dining guidelines for retail food establishments from the department of health and all applicable Executive and Administrative orders governing indoor and outdoor dining and the sale and consumption of Alcoholic Beverages.” (Ibid. (emphasis added)). This permit certificate also places the Permittee on notice that it “may be cancelled by the Director in his sound discretion at any time without notice, reason or cause.” (Ibid.)

On June 28, 2020, Burlington City Police department received a complaint indicating that Il Portico was serving patrons inside despite the Executive Order prohibiting same (Pa. M, Letter to Det. Anna Czajka RE. 6.28.20 Complaint). This complaint was referred to the county Department of Health for investigation. (Ibid.).

On Friday, July 3, 2020, Il Portico hosted an event called a “quarantine release party.” (Pa. N, Quarantine Release Event Flyer). The event advertisement indicated that it would run from 9 pm – 2 pm (Ibid.). At approximately 12:30 a.m., the Burlington City Police Department began receiving emergency calls for service regarding overcrowding and a fight in the Permittee’s parking lot – an hour and a half after the premises should have been closed. (Pas. O-Q, Emergency Service

Calls recorded on July 4, 2020). Responding officers observed an overcrowded parking lot, patrons congregating and drinking liquor in the parking area, patrons crowded onto an outdoor deck and inside the establishment. (Pa. U, Body Worn Camera, 300004416_200704_043642 at 1:10-2:40). It was estimated that there were approximately 500 patrons in attendance (Pa. Q & Pa S, Burlington City Incident Report 2020-9969 and Narrative). Il Portico had a DJ set up inside the establishment and was allowing patrons inside as well. Due to the excessively large number of people gathered at the licensed premises, the Burlington City Police Department needed to request back up from the New Jersey State Police to effectively control and disburse the crowd (Pa. R, CAD Reports From 9-11 Calls on July 4, 2020). Security staff working at Il Portico were not wearing face masks as required. (Pa. U at 03:50). As responding officers were asking to speak with management about closing the establishment, security staff continued to allow more patrons to enter – noting to officers that they “already got tickets” (Id. at 5:43). The security staff told officers that he “had no idea this was gonna happen” and indicated that “[t]hat was already paid for. That’s a whole situation. The door has already been stopped because I told them to stop the door.” (Id. at 6:20).

Ilyas Shah, the owner of Il Portico, was present during this outrageous event that necessitated a multi-agency police response during a pandemic (Pa. S). Responding officers advised the manager he was in violation of the Executive Orders and noted that he had previously been warned about public nuisance issues at his establishment – such as patrons parking in the grass (Pa. U at 08:51). Mr. Shah closed down the establishment when requested but was belligerent towards responding officers (Pa. V, Burlington City Police Body Worn Camera Video 3000004382_200704_060043). Mr. Shah admitted that patrons were inside his establishment. (Pa. W, Burlington City Police Body Worn Camera Video 3000004416_200704_060312 at 1:55).

An employee confirmed that there were 500 patrons on site (Id. at 2:13). While arguing with the responding officers, Mr. Shah admitted to allowing open alcoholic beverages in his parking lot (Id. at 1:30, Pa. V at 2:35). He indicated that he had security but admitted he could not control the patrons conduct on his premises (Pa. W at 2:10). Mr. Shah repeatedly insisted that his “parties” and manner of operating were legal. (Id. at 1:40, 2:50). He demonstrated no insight into the safety issue he created, asking officers “what the safety issue” was and insisting that his manner of operation “is what the Governor wants.” (Id. at 1:00). At one point, while Mr. Shah is yelling at police security intervened and backs him away from the officers (Pa. V at 1:00). Mr. Shah continued yelling, telling police to “get off his property.” (Pa. V at 1:11).

On the night in question, Il Portico had remained open beyond the time-limits prescribed in its permit, vastly exceeded it’s 49-person capacity limitation, failed to keep tables 6 feet apart, allowed patrons inside the restaurant and had failed to require patrons to wear face coverings (Pa. S). At 3 pm on July 4, 2020, when Burlington City Police returned to Il Portico to serve Mr. Shah with a municipal summons related to these violations, they found Mr. Shah operating the licensed premises without wearing a face covering – again in violation of EO 150 (Id.).

In addition to the above Executive Order violations noted by the Burlington City Police Department, the Division was advised that neighboring Eastampton police department arrested an individual in the early morning hours on July 4, 2020 for driving while intoxicated. This individual had a blood alcohol content of .19 – more than 2x the legal limit and indicated that they had been drinking at Il Portico.¹

¹ The Division is currently investigating the circumstances leading to this arrest. Reports regarding this incident have been requested but have not been received as of yet. Any additional charges against Il Portico’s licenses arising therefrom will be issued separately.

This is not the first time Il Portico has held events at its premises that required police intervention. On August 4, 2019, an event was held at Il Portico during which there was a disturbance in the parking lot to which police were called to respond (Pa. B). The local hospital subsequently reported to police that two separate individuals were brought in reporting that they sustained injuries at Il Portico that night – one had been shot and the other stabbed (Pa. U). On August 23, 2019, Officers responded to Il Portico due to patrons improperly parking on the street (Id.). On September 22, 2019, Police were dispatched to Il Portico to deal with a crowd of disorderly subjects (Id.). The responding officers also noted “numerous city ordinance offenses and multiple vehicles parked in the Kennedy Park grass” causing damage (Id.). On this occasion, the security guard present was uncooperative with officers and refused bring the manager outside to speak with officers (Id.). On 12/6/2019, officers were called to Il Portico to deal with a disorderly intoxicated patron (Id.). On December 12, 2019, Police were again dispatched to Il Portico to check on the welfare of an intoxicated patron (Id.). On December 28, 2019, police again responded to Il Portico due to reports of gunshots, although officers were unable to substantiate this report (Id.). On January 19, 2020, police were dispatched to Il Portico due to a fight at the establishment (Id.).

LEGAL ARGUMENT

I. THE PERMITEE’S BLATANT DISREGARD FOR THE OPERATIONAL RESTRICTIONS SET BY EXECUTIVE ORDER 150, SR 2020-10, RESOLUTION 166-2020 AND THE TERMS OF ITS PERMIT REQUIRE THE IMMEDIATE REVOCATION OF ITS PERMIT PRIVILEGES TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC.

An order to show cause is “a well-established means-with historical provenance ... for bringing a matter expeditiously to the attention of a tribunal, whether that tribunal be an administrative agency, ... or a court.” Matter of A-1 Jersey Mov. & Stor., 309 N.J. Super. 33, 42 (App.

Div. 1998). Furthermore, the regulations governing Alcoholic Beverage Licensees provide for an emergency hearing to be held on five days' notice where the alleged action(s) of a licensee or permittee "present a danger which is an immediate threat to the public health, safety or welfare and contrary to the interest of the community." N.J.A.C. 13:219.4. Here, the Permittee violated narrowly prescribed restrictions designed to safeguard the health, safety and welfare of the public during a global pandemic of a devastating and sometimes fatal respiratory illness. Il Portico's wanton disregard of Executive Orders and administrative restrictions during the pending COVID-19 Public Health Emergency poses an immediate threat to the public health, safety and welfare that must be addressed on an expedited, emergency basis.

The alcoholic beverage industry "is one of the most highly regulated industries of the State..." N.J.S.A. 33:1-23.40. Participation in this industry is strictly controlled and is limited to liquor licensees. N.J.S.A. 33:1-2. Regarding the unique nature of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq., and the regulations promulgated pursuant thereto (collectively the "ABC Act"), New Jersey courts have long recognized the necessity of strictly controlling the alcoholic beverage industry due to its potential and innate danger to the public. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). Consequently, in enacting the ABC Act, the Legislature vested ABC with extensive regulatory power over the liquor industry. Gillhaus Beverage Company Inc. v. Lerner, 78 N.J. 499, 507 (1979). The ABC Act is "intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." N.J.S.A. 33:1-73.

Pursuant to N.J.S.A. 33:1-39, the Director may "make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the...sale...of alcoholic beverages and the enforcement" of the Alcoholic Beverage Control Act (the "ABC Act"). These rules may include: "Limitation of sales..."; "health and sanitary

requirements; standards of cleanliness, orderliness and decency;” and “such other matters whatsoever as are or may become necessary.” One such regulation, adopted pursuant to N.J.S.A. 33:1-39, provides that any licensee may be ordered to close or to cease/modify operations by any State, county or municipal law enforcement authority during a public emergency. N.J.A.C. 13:2-23.3.

On March 9, 2020, Governor Murphy declared a dual State of Emergency and Public Health Emergency (“Public Health Emergency”) (Pa. D). To protect the health and safety of the public during this Public Health Emergency, Governor Murphy ordered all restaurants, including alcoholic beverage licensees, closed for on-site service (Pa. E). Alcoholic beverage licensees were permitted to remain open for take-out package sales only (Pas. E & F).

As new cases of COVID-19 began to decline, Governor Murphy entered a new order permitting retail consumption licensees to begin offering on-site service in outdoor areas only, effective Monday June 15, 2020 (Pa. I). Retail consumption licensees that opted to reopen under EO 150 are required to 1) limit capacity to ensure all patrons are 6 feet apart at all times; 2) ensure that all tables and bar seating are 6-feet apart in all directions; and 3) prohibit patrons from entering the indoor premises, except to access the outdoor area or use the bathroom (Ibid.). The Director, through the authority vested in him by N.J.S.A. 33:1-39, issued Special Ruling SR 2020-10 which created a Temporary COVID-19 Expansion of Premises Permit to enable licensees to expand their licensed premises into outdoor areas that were previously unlicensed (Pa. J). This Temporary COVID-19 Expansion of Premises Permit requires all licensees to comply with local ordinances and site plan requirements (Pa. C). The City of Burlington, where the subject Permittee is sited, issued Resolution No. 166-2020, temporarily lifting restrictions on outdoor seating and permitting restaurants to open an outdoor seating area for a maximum of 50 patrons (Pa. K at ¶ 6).

Il Portico applied for a Temporary COVID-19 Expansion of Premises Permit on June 17, 2020. In its application, Il Portico represented that it would set up 11 four-person tables (seating for 44 patrons) on a 100-square foot outdoor deck that is accessible from the outside of the establishment (Pa. L). According to the application, Il Portico would be open until 11:00 pm at the latest, on Friday and Saturday nights (Ibid.). These operational parameters, proposed by the Permittee and approved by the State and local issuing authorities, fit within the exceptions provided for by ER 150 as well as the Division's Special Ruling and municipal Resolution 166-2020 (Pa. C). Il Portico was required to conform its operations to the approved specifications of its application.

However, Permittee wholly failed to comply with its approved operational plan. On July 3, 2020, Il Portico allowed between 400-500 patrons to gather on its licensed premises – 10 times the number of patrons it was permitted to have (Pa. S). This was a violation of ER 150, SR 2020-10 and Resolution 166-2020. Patrons were packed into the outdoor deck area, in complete disregard for the mandated 6-foot separation between patrons (Pas. S & V). Another violation of ER-150 and SR 2020-10. Il Portico had set up a DJ *INSIDE* the license premises permitted patrons to congregate inside (Pa. S). This was another flagrant violation of ER 150 and SR 2020-10. Additionally, patrons throughout the licensed premises were not wearing required face coverings (Pas. V - X) – an additional violation of ER 150, chargeable for each patron. See N.J.A.C. 13:2-19.11(d).

The Permittee's conduct on July 3-4, 2020 failed to meet the standards set for alcoholic beverage licensees during even normal operation – let alone under the narrowly tailored Executive Orders implemented during this Public Health Emergency. The owner of Il Portico, Ilyad Shah, was present during this entire debacle. He failed to ensure that adequate security was present to

control the mob of people he had permitted onto the licensed premises. As a result, there was a disturbance in the crowded parking lot where overflow patrons were consuming alcohol (Pas. P & Q). This necessitated an emergency police response from three separate agencies to control and dissipate the mob of patrons from the Permittee's premises. Permitting patrons to consume alcohol in the unlicensed parking lot is a violation of N.J.S.A. 33:1-12. Failing to provide adequate security, resulting in a disturbance on the licensed premises and necessitating police intervention is a violation of N.J.A.C. 13:2-23.6(a).

Il Portico failed to comply with Executive Orders and the Director's Special Ruling implemented to safeguard the health, safety and wellbeing of the public during this unprecedented public health crisis. Il Portico's blatant disregard for the limitations set by EO 150, SR 2020-10 and Municipal Resolution 166-2020, placed the health, safety and welfare of the approximately 500 patrons and all of the responding officers from Burlington City and the NJ State Police at extreme risk of COVID-19 exposure – a life threatening illness. Il Portico also, thereby, created an unacceptable and wanton risk of community spread of COVID-19 throughout the entire Burlington community and the state of New Jersey. Il Portico's conduct on the night in question shows a shocking disregard for the health, safety and welfare of its patrons and the public at large. Additionally, Il Portico's conduct on the night in question failed to meet even the minimum standards of reasonable and responsible operation required of an alcoholic beverage licensee. Based on Mr. Shah's belligerent response to responding officers, his complete lack of understanding of the limits placed on his permit and Il Portico's history of nuisance complaints, it is unlikely that Il Portico would conform to permit requirements going forward, if given the opportunity to continue exercising these privileges. Therefore, ABC moves for an order requiring the Permittee to show cause why Permit No. 82296 should not be immediately revoked.

II. IF REVOCATION IS NOT GRANTED, THE SUBJECT PERMIT SHOULD BE IMMEDIATELY INDEFINITELY SUSPENDED PENDING THE RESOLUTION OF CHARGES AGAINST IL PORTICO'S LICENSE DUE TO IL PORTICO'S BLATANT DISREGARD OF EXECUTIVE ORDERS DESIGNED TO PROTECT HEALTH, SAFETY AND WELFARE OF THE PUBLIC.

It is a longstanding practice that temporary relief may be granted pendente lite in order to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Crowe v. De Gioia, 90 N.J. 126, 132 (1982)(citing Thompson ex. Rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (1854)). A preliminary injunction is warranted where the following four factors can be established 1) it is necessary to prevent irreparable harm; 2) the legal right underlying the claim is settled as a matter of law; 3) there is a reasonable probability of ultimate success on the merits; and 4) the balance of equities in the resulting hardship to the parties weighs in favor of granting the injunction. Waste Mgmt. of N.J., Inc. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008). Where public interests are affected, rather than just private rights, “[c]ourts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” Yakus v. United States, 321 U.S. 414, 441 (1944).

1. Irreparable Harm.

Here, the Division requests that Permittee’s temporary COVID-19 Expansion Permit be immediately indefinitely suspend pending the resolution of the Division’s charges against Il Portico’s retail consumption license. This suspension of permit privileges is necessary to prevent community spread of COVID-19 due to Permittee’s demonstrated unwillingness or inability to comply with social distancing requirements at its establishment, as mandated by EO-150 and SR

2020-10. It is well settled that the Director has the authority to make and enforce rules and regulations strictly controlling the alcoholic beverage industry to protect the public health, safety and welfare. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). Typically, harm that is not capable of being sufficiently compensated by a monetary penalty is considered irreparable harm.

Here, the likely harm of maintaining the status quo by allowing Permittee to continue operating is the increased community spread of COVID-19. COVID-19 “continues to spread across New Jersey and an increasing number of individuals require[] medical care or hospitalization” and continues “to present a public health hazard in New Jersey.” (Pa. Z, Executive Order 162 at 1-2). “[A]s of July 1, 2020, there were over 171,000 positive cases of COVID-19 in New Jersey, with at least 13,224 of those cases having resulted in death.” (Id. at 2). In addition to the risk posed to the health and safety of individuals, COVID-19 has “greatly strained the resources and capabilities of county and municipal governments...that provide essential services for containing and mitigating the spread of contagious diseases.” (Id. at 4). As such, continued adherence to strict social distancing requirements is necessary to “reduce additional new infections and save lives.” (Id. at 3). Permittee’s conduct on July 3-4, 2020 placed its patrons, first responders, and the community at large at risk of injury to their health. Continued operation by the Permittee poses both a risk to the health and safety of patrons, first responders, and the community. Additionally, an increase in community spread of COVID-19 caused by Permittee’s operations would have a significant negative impact on community resources by requiring the expenditure of additional resources for contact tracing and contain and mitigate the spread. The impact of licensee’s conduct on public resources, health, safety and wellbeing would be nearly impossible to quantify or compensate with monetary damages ex post facto.

2. Settled Law.

The ability to sell alcoholic beverages is not a right but “a revocable privilege conditioned upon the proper and continued qualification of the licensee.” N.J.S.A. 33:1-12.40. This privilege is revocable even for a first offense. Butler Oak Tavern v. A.B.C., 20 N.J. 373, 381(1956). The purpose of the Alcoholic Beverage Control Act is to “strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this state.” N.J.S.A. 33:1-3.1(1). To safeguard the health, safety and welfare of the public, licensees may be ordered closed entirely or required to restrict operations during a state of emergency. N.J.A.C. 13:2-23.3. Enforcement of Executive Orders, particularly during an ongoing public health emergency, is necessary in order to achieve this goal. Additionally, Permittee’s COVID-19 Expansion of Premise Permit was expressly subject to... “all executive orders issued by the Governor of New Jersey” and “may be cancelled by the Director in his sound discretion at any time without notice, reason or cause.” (Pa. C). Therefore, the Director’s right to revoke this permit is settled law.

2. Probability of Success on the Merits.

As detailed in Section I, supra, the Division has a reasonable probability of success on the underlying charges against Il Portico, pursuant to N.J.A.C. 13:2-23.3, for failure to comply with Executive Orders restricting operations during a State of Emergency. Il Portico has been charged with violating EO 150 by allowing patrons to congregate inside the licensed premises, failing to ensure that patrons maintained 6 feet of separation, failing to ensure that patrons and employees wore face masks (Pa. AA). Il Portico was serving patrons beyond the hours of operation approved in its permit. Additionally, Il Portico was charged with permitting patrons to consume alcohol in its unlicensed parking lot (Ibid.).

The Division is likely to succeed on these charges as video surveillance from the night in question clearly depict these violations occurring (Pas. U-Y). Permittee was required to “conform

to the approved specifications of its permit application” and to ensure that alcoholic beverages served in the expanded premises were consumed “within the confines of the expanded or permanently licensed premises as described in the application.” (Pa. C). Pursuant to its approved plan, Permittee was required to close his establishment at 11 pm on Friday, July 3, 2020 (Pa. L). However, Permittee was admitting patrons when police arrived on site at around 1:15 a.m. on July 4, 2020. Permittee does not dispute this. Permittee advertised that he was running an event until 2:00 a.m. (Pa. N). additionally, Permittee repeatedly accused officers of shutting down his business an hour early (Pa. W at 1:34; Pa. N). Permittee’s employee acknowledged that there were 500 patrons on site (Pa. W at 213) – far in excess of the capacity limit set in his site plan (Pa. L). Permittee admitted to allowing patrons inside his facility on July 3-4, 2020 (Pa. W). Permittee also admitted that he allowed patrons to consume alcohol in his unlicensed parking lot (Ibid.). The parking lot was not included in Permittee’s expanded premises (Pa. L). As such, the charges in this matter are based on admissions of the Permittee. Therefore the Division is likely to succeed in establishing these charges.

3. Balancing the Equities.

Finally, in balancing the equities of the parties, the extreme risk of hardship posed to the public by Permittee’s manner of operation weighs strongly in favor of issuing the requested indefinite suspension. COVID-19 spreads most frequently through person-to-person contact and, therefore, “social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease.” (Pa. F at 3). As a result, alcoholic beverage licenses were prohibited from serving alcohol for on-site consumption (Id. at ¶ 8). Pursuant to EO 150 and the issuance of Permit 82296, Il Portico was granted the privilege of resume on-site service in outdoor areas only while ensuring patrons followed mandated social distancing measures. Permittee’s

event on July 3-4, 2020 blatantly disregarded its responsibilities under Permit 82296 and the requirements of EO 150. Permittee thereby placed its patrons, responding officers and the community at large at an extreme risk of increased community spread of COVID-19. The need to protect the public against the risk of community spread of COVID-19 during this ongoing and unprecedented pandemic greatly outweighs the hardship caused to Permittee by the suspension of the temporary permit privileges authorizing Il Portico to operate outdoors as an exception to the on-site service prohibition imposed by EO 107.

Therefore, if the Director determines that Permittee's COVID-19 Expansion Permit should not be outright revoked, then said Permit should be immediately indefinitely suspended pending the resolution of the Division's investigation and anticipated charges against Il Portico's retail consumption license.

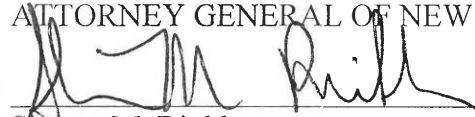
CONCLUSION

For the foregoing reasons, Your Honor should grant the ABC's motion for an Order to Show Cause in this case.

Respectfully Submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By:



Sheena M. Rinkle
Deputy Attorney General
Enforcement Bureau

C: VIA EMAIL AND OVERNIGHT DELIVERY

Ahmed Suliman, Esquire o/b/o
273 Route 130 Enterprise LLC

John J. Fine, Chief of Police
Burlington City Police Department

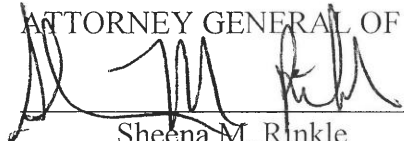
CERTIFICATION

I hereby certify that an original and one copy of the within Letter Brief in Support of Revocation of Permit No. 82296 and Cover Letter were filed with Acting Director James B. Graziano of the Division of Alcoholic Beverage Control. I further certify that copies of these documents were served by email and overnight mail on the following:

Ahmed Soliman, Esquire
Attorney for 273 Route 130 Enterprise LLC
Soliman & Associates, P.C.
923 Haddonfield Rd. Suite 300
Cherry Hill, NJ 08002

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By:

A handwritten signature in black ink, appearing to read 'Sheena M. Rinkle', is written over a horizontal line.

Sheena M. Rinkle
Deputy Attorney General

Dated: July 30, 2020