EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x Index No.:

The Alliance to End Chickens as Kaporos,
RINA DEYCH, individually, and RINA DEYCH,
as member of The Alliance to End Chickens as Kaporos,
LISA RENZ, individually and LISA RENZ,
as member of The Alliance to End Chickens as Kaporos,
MICHAL ARIEH, JOY ASKEW, ALEKSANDRA SASHA
BROMBERG, STEVEN DAWSON, VANESSA DAWSON,
RACHEL DENT, JULIAN DEYCH, DINA DICENSO,
FRANCES EMERIC, KRYSTLE KAPLAN, CYNTHIA KING,
MORDECHAI LERER, CHRISTOPHER MARK MOSS,
DAVID ROSENFELD, KEITH SANDERS,
LUCY SARNI, LOUISE SILNIK, DANIEL TUDOR,

Plaintiffs,

AFFIDAVIT OF DR. MICHAEL J. MCCABE, JR.

-against-

THE NEW YORK CITY POLICE DEPARTMENT,
COMMISSIONER WILLIAM BRATTON, in his official
Capacity as Commissioner of the New York City Police
Department, THE CITY OF NEW YORK,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, CENTRAL YESHIVA TOMCHEI
TMIMIM LUBAVITZ, INC., SHLOMIE ZARCHI,
ABRAHAM ROSENFELD, NATIONAL COMMITTEE FOR
THE FURTHERANCE OF JEWISH EDUCATION AND AFFILIATES,
RABBI SHEA HECHT, RABBI SHALOM BER HECHT, RABBI SHLOMA L.
ABROMOVITZ, YESHIVA OF MACHZIKAI HADAS, INC.,
MARTIN GOLD, CONGREGATION BEIS KOSOV MIRIAM LANDYNSKI,
LMM GROUP, LLC., ISAAC DEUTCH, LEV TOV
CHALLENGE, INC., ANTHONY BERKOWITZ,
YESHIVA SHEARETH HAPLETAH SANZ BNEI
BEREK INSTITUTE, MOR MARKOWITZ, NELLIE MARKOWITZ, and BOBOVER
YESHIVA BNEI ZION, INC. d/b/a KEDUSHAT ZION, RABBI HESHIE
DEMBITZER,

Defendants.

STATE OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) ss:

Michael J. McCabe, Jr., Ph.D., DABT, ATS, hereby affirms under the penalties of perjury:

1. I am a consultant scientist employed by Robson Forensic, Inc. where I oversee the activities of several practice groups including Environmental and Occupational Health and Safety. I also serves as an expert on matters involving the investigation of issues involving toxicology, microbiology, and immunology and human disease causation. Risk analysis, risk assessment and risk management in the context of human disease hazards are fundamental issues addressed by scientists in the disciplines of environmental and occupational health.

2. I am an internationally-trained and nationally-recognized scientist with both research and teaching experience. I have a broad-based background in toxicology and immunology and related disciplines (e.g., biochemistry, pharmacology, microbiology, virology). I earned my Ph.D. degree in Biomedical Studies from Albany Medical College (New York), and completed post-doctorate training at the Karolinska Institute (Stockholm). I have held faculty positions in the environmental health science centers at Wayne State University (Detroit) and the University of Rochester (New York) where I am currently an Adjunct Associate Professor of Environmental Medicine.

3. I am board certified in toxicology as a *Diplomate* of the American Board of Toxicology and as a *Fellow* of the Academy of Toxicological Sciences. I am an active member of the Society of Toxicology and have served on numerous national and international advisory committees for the National Institutes of Health (NIH), the National Academy of Sciences, the US Environmental Protection Agency, the Department of Defense and the World Health Organization. I have sat on the editorial board of four toxicology journals, have been widely published, and have received numerous research grants from NIH.

4. Some of my NIH-funded research involved animal experimentation, and that experience also is relevant to the application of my expertise in the present matter. As a member of the research community, I have specialized knowledge concerning animal welfare issues, regulatory compliance with use of animals for experimentation, hazards associated with the operation of animal facilities and animal handling, and policies and procedures employed to mitigate such hazards.

5. I was retained by Nora Constance Marino, Esq. to utilize my expertise in assessing the health risks of an event known as Kaporos. Prior to this retention, I was unfamiliar with this event or what it entailed. I have since become very familiar. I have reviewed the following documents: a draft order to show cause seeking an injunction of the event, and to compel the New York Police Department to enforce laws that are broken and/or violated during the execution of the event; affidavits of petitioners Rina Deych, Lisa Renz, Daniel Tudor and Keith Sanders as well as the affidavit of non-party witness Michael Tomaz, setting forth in detail what transpires at the event. I have also viewed numerous photographs and video of the event. I have also engaged in my own research.

6. Kaporos is a ritual of atonement practiced by ultra-orthodox Jews as part of the Jewish holiday of Yom Kippur. The ritual involves the practitioners grasping live chickens and holding them aloft while waving them three times above their heads, reciting prayers and symbolically asking their God to transfer the practitioners' sins to the birds. The chickens' throats are then slit thereby absolving the observant practitioners of their sins. The ritual is highly controversial; the Hasidic Jewish community maintains that they have a right to practice their religion in any way that they see fit without outside interference, while those who champion animal rights see it as an outrageous practice that is unnecessarily cruel, abusive and tortuous to

the chickens sacrificed in this ritual. Many Jewish people are also offended by this practice and advocate that coins be used in place and instead of live birds.

7. The event takes place on public streets and sidewalks in Brooklyn, New York. The event is viewed as a tremendous nuisance to the residents of the subject locations, as well as to those who must pass through the subject locations for commuting, shopping, or other purposes. (See petitioners' affidavits.) According to the affidavits and photographic evidence, there is chicken blood, feces, urine, and feathers contaminating the public streets and sidewalks; there is an unbearable stench in the air; there are inadequate clean up and containment measures.

8. It is my understanding that The Alliance to End Chickens as Kaporos, Rina Deych, Lisa Renz and multiple other individual petitioners, have joined in filing a petition against The New York City Police Department and several rabbis in the Borough Park and Crown Heights neighborhoods of Brooklyn, New York in an effort to stop the event from taking place, and to compel the NYPD to enforce existing laws, which the practice of Kaporos inherently violates. The petition infers that annually at the time of Yom Kippur, the large Hasidic Jewish community that resides in Brooklyn practices the ritual of Kaporos in a carnival like atmosphere. With all due respect to the Hasidic Jewish community and their rationale that Kaporos as practiced may be a legitimate religious ritual, in the eyes of a beholder from the outside, especially a scientist, the event is in actuality an open-aired and unrestricted access makeshift slaughterhouse that is chaotic and large in scale (i.e., high volume).

9. I was retained to investigate if the operation of a large scale, open-aired and unrestricted access makeshift slaughterhouse in the middle of a major urban population center poses a public health hazard, and to render my opinion.

10. The Kaporos event is not limited to one location. The event takes place at many locations throughout New York City and the country. Two of the most prominent sites where

Kaporos takes place are located in Brooklyn, New York in the Crown Heights and Borough Park neighborhoods (i.e., the subject locations).

11. At these subject locations, public space is taken over and used in the operation of large scale, open-aired and unrestricted access makeshift slaughterhouses. The activities of Kaporos, which take place over several days, subject the public to bio-hazardous materials associated with and including but not limited to chicken blood, feces, urine, feathers and animal carcasses.

12. I have viewed photographs and video footage taken by Petitioner Rina Deych, and non-party witness Michael Tomaz that depicts what transpires at the Kaporos events at the subject locations, and I have relied on these photographs and video footage, in part, in formulating my understanding of what the Kaporos ritual entails and in arriving at my opinion that it constitutes a public health threat.

13. The petition states that the activities engaged in for the Kaporos are a public nuisance, illegal, a health hazard, and illegally abuse animals, violating the state's and/or city's animal welfare laws. Petitioners allege that the community is affected by the activities and events of Kaporos in that unsanitary conditions arise involving, but not limited to, feces, urine, blood, feathers, garbage, trash and debris being strewn all over the streets that are accessed by the public at large. Potential inhalation exposure to toxic or infectious agents due to these bio-hazardous unsanitary conditions is a public health concern.[1]

14. The attachment of these toxic or infectious bio-hazardous agents to shoes and bicycle tires is a public health concern in that it provides pathways for dissemination of the toxic

[1] The potential for toxic or infectious agent exposure is not limited to inhalation. Dermal exposure and ingestion also are relevant, and likely, pathways.

or infectious bio-hazardous agents to private (e.g., homes, automobiles) and public (e.g., subways, markets, schools, etc.) spaces.[2]

MATERIALS AND SWORN TESTIMONY REVIEWED:

15. The following facts were stated in the Deych affidavit: Ms. Deych indicates that for approximately twenty years she has been horrified to witness the Kaporos events using live chickens that take place annually in her Borough Park neighborhood. Deych indicates that during the days preceding the Jewish Day of Atonement, Yom Kippur, thousands of chickens are trucked into the neighborhood where for several days they are kept in stacked crates that are left in alleys, Yeshiva yards, parking lots and other areas of her neighborhood. Deych attests that during and after the event she has seen many chicken carcasses (many still moving) left in black garbage bags left curbside and in dumpsters. Deych further attests that during and after the event she has witnessed increasing amounts of feathers, blood and feces in the public thoroughfares that she frequents.

16. Deych states that she has witnessed thousands of live chickens being crammed into transport crates (12 to 16 birds to a crate), and stacked 5 to 10 crates high, often on public sidewalks. During as much as a four day period, the chickens are not provided any food, water or shelter. Many of the chickens are wilting and dying; they are covered with blood and feces, and Deych indicates that the stench is overwhelming. The crates are handled roughly by inexperienced people. In short, the chickens are stressed due to the chaotic activities characteristic of the Kaporos event. Deych states that she has witnessed

[2] While the petition mentions adherence to shoes and bicycle tires as pathways for dissemination of toxic and infectious agents, the problem is much more extensive in that photographs and video footage reviewed demonstrate that access to the slaughter zone is completely unrestricted as evidenced by extensive pedestrian traffic, the presence of numerous baby strollers, children on scooters, and small vehicles (e.g., forklift truck), all of which are seen tracking through the bio-hazardous conditions associated with chicken blood, feces, urine, feathers, animal carcasses and debris.

thousands of birds in crates dying a slow, tortuous death from dehydration, starvation, heatstroke and exposure. People of all ages from the very young to the very old participate in this ritual and by doing so come in contact with the dangers posed by the slaughter as it is practiced. Deych has documented these events and posted footage on You Tube[3].

17. Deych further indicates that she has witnessed an expansion of the Kaporos events in Borough Park and Crown Heights taking place in alleys and public sites all over her neighborhood. She states, "the smell is awful and for days there are feathers, blood and chicken feces all over the neighborhood".

18. Deych recounts specific instances where she has witnessed the bio-hazardous conditions described above.

19. The following facts were stated in the affidavit of Daniel Tudor. Tudor resides at 1244 President Street, in the Crown Heights neighborhood of Brooklyn; 3 blocks from where the slaughter takes place at President Street and Kingston Avenue; he has witnessed and been affected by the Kaporos events that have taken place during the past 8 years.

20. Tudor corroborated Deych's observations that during the week that precedes Kaporos, chickens are shipped into the neighborhood and left stacked in semi-truck trailers on Eastern Parkway. No food or water is provided for 5 days while the chickens, crammed 10-12 birds into each small pallet, are left baking in the sun. Tudor has witnessed that many of the birds die while being stored on Eastern Parkway prior to the Kaporos rituals.

[3] https://www.youtube.com/watch?v=FXL0tEvmmng&list=PLYu5tRpGlLFfURr3_0kOIXaoy9h3CL21a

21. In item #7 of his affidavit, Tudor states that he has witnessed the entire intersection of Kingston Avenue and President Street being covered with chicken blood during the large-scale slaughter that takes place during the Kaporos ritual. Although blue plastic tarps[4] are put on the streets, in a makeshift effort to limit contamination of the environment with blood, feces, feathers and other hazardous material, the tarps fail to prevent the by-products of a street slaughtering station from making its way to the street.

22. Consistent with Deych's affidavit, Tudor avers that i) the manner in which the chickens are stored is unsanitary (item #8), ii) that the stench due to the conditions in which the chickens are stored in crates stacked one on top of the other is horrific (item #9), iii) that the wind carries the stench throughout the neighborhood (item #10), iv) that the ritual is practiced *en masse* for 5 days and nights at the President Street and Kingston Avenue location and at other places throughout Brooklyn (item #11), and Tudor is concerned about the health risks that the Kaporos events pose to his family (item #13).

23. The following facts were taken from the affidavit of Keith Sanders. Sanders indicates that annually during the past 4 years over the course of 3 to 4 evenings in late September or early October, the smell of dead roosters and chickens is in the air, all around Avenue J in Brooklyn. Sanders corroborates Deych's and Tudor's affidavits by indicating that the smell is uncomfortable, and that the odor emanates from the remnants of the ritual (such as animal waste, feathers, and the like) that are found in trash bags, sidewalks, and in the general vicinity of where the ritual takes place.

24. All of the affidavits of the petitioners are consistent in that the chickens are kept in inhumane conditions, the scene is highly unsanitary, there is blood, feces, urine, and

[4] The use of the blue tarps by the Kaporos participants constitutes an acknowledgement on their part that there is hazardous material present and being generated that must be controlled. However, the controls that are in place are wholly inadequate and thereby fail to protect the public from the hazardous material.

feathers spilled and strewn throughout the areas; a make shift slaughterhouse is erected wherein the chickens' throats are slashed, many times ineffectively, causing substantial amounts of blood to accumulate on the streets, along with contamination by feces, urine, and feathers. Most if not many of the petitioners find the stench to be unbearable. Some petitioners point out the fact that saw dust is used in an inadequate and futile attempt to absorb the blood, urine, and feces that remains following the Kaporos event. Disposal of dead birds' carcasses is also sloppy, inadequate, and dangerous due to the imminent adverse public health consequences posed by these practices.

25. I also reviewed the affidavit of Michael Tomaz, a licensed Private Investigator employed by the MPM Group, Inc [Tomaz Affidavit, Item #1]. He was retained by the Alliance to End Chickens as Kaporos and charged with the surveillance of the vicinity of 792 Eastern Parkway, Brooklyn, New York (i.e., Crown Heights) [Tomaz Affidavit Item #3]. Tomaz began his surveillance on Sunday September 28th 2014. Beginning at 1540 hours Tomaz reported arriving at 1417 50th Street in Brooklyn, whereupon he observed numerous shelves with dead chickens along the sidewalk. He also reported observing feathers and blood along the sidewalk as well as numerous disposable plastic gloves discarded along the sidewalk [Tomaz Affidavit Item #7]. Tomaz also reported observing multiple shelves with dead and live chickens, and chickens with their heads cut off attempting to run on the sidewalk and being caught by children; chicken blood was running onto the sidewalk [Tomaz Affidavit Item #8]. Tomaz observed workers cutting the heads off of chickens, exsanguinating them, removing their skin and separating their insides as if the chickens were being processed for food [Tomaz Affidavit Item #10]. Tomaz noted that there were hundreds, if not thousands, of chickens being slaughtered,

and he observed and video-taped blood from the chickens flowing from a driveway onto the sidewalk and street [Tomaz Affidavit Item #11].

26. Tomaz observed the Kaporos event and related activities over a four day period (September 30th thru October 3rd) [Tomaz Affidavit Items #12 - #52]. Based on this surveillance activity, Tomaz concluded the following;

> In sum, physical surveillance and foot patrols through a five (5) block area revealed the slaughter of thousands of live chickens during the reported time period [Tomaz Affidavit Item #54].
>
> This conclusion is based on the fact that the areas in question (President Street/Eastern Parkway) were used to slaughter chickens in a manner that covered multiple public areas (sidewalks, streets, gutters, and adjacent grassy areas) with chicken feces, dirty surgical gloves, feathers, chicken parts and copious amounts of chicken blood draining into the street and into city drains in apparent violation of numerous Health Codes [Tomaz Affidavit Item #55].

27. Tomaz provided representative photographic documentation as follows:

Exhibit 3A; Tractor trailer with several hundred chicken crates stacked on the trailer. The tractor had Costa Live Poultry printed on the side of the cab.

Exhibit 9A & 10C; several black trash bags with dead chicken carcasses were found. Tomaz noted a strong odor of decomposing flesh detected in the area of Eastern Parkway.

Exhibit 14A & 14B; Additional chickens delivered by Supplier Watkins Poultry, in Brooklyn, New York.

Exhibits 16A, 16B, 16C & 16D depict Kaporos activity on President Street. Exhibit 16C highlights chicken blood spilling onto the sidewalk near the makeshift slaughter booth.

Exhibit 18A depicts discarded gloves and chicken feces on the sidewalk of Eastern Parkway.

Exhibit 18H is captioned "Literally, a river of blood spilling onto the sidewalk and then the city street".

28. I also reviewed photographs taken by Petitioner Lisa Renz of the 2014 Kaporos event held on Eastern Parkway in Brooklyn, which depicted the following:

a. Daytime photo depicting street closure on Eastern Parkway with tractor trailer truck being off-loaded of chickens in crates; note barricades preventing automobile traffic, but foot traffic as evidenced by numerous pedestrians in picture is not limited. Also note presence of forklift truck in foreground.
b. Night time photo depicting numerous stacked crates on the sidewalk of Eastern Parkway; note tree canopy above location of the stacked crates.
c. Photo depicting young children handling chickens in crates on Eastern Parkway; Note, 1) blood-soaked gloves of boy on right; 2) baby stroller behind boy in the center of the picture; 3) bottle of water on top of crate in the foreground.
d. Night time photo depicting barricades and tractor trailer full of chickens. Note barricades provided by the City of New York.
e. Photo depicting the sidewalk of Eastern Parkway the morning after the first night of Kaporos 2014. The photo evidences biohazard (i.e., extensive fecal material, blood and sawdust used to absorb blood much of which is matted due to foot traffic).
f. Photo depicting NYPD cruiser closing off President Street.
g. Photo depicting young children wearing street clothes and standing outside the slaughter booth watching the process. Note, children standing in biohazard.
h. Photo depicting young children outside the slaughter booth tracking through the bio-hazardous material on the ground.
i. Photo depicting a poster advertising chickens for sale. Note, "extra care will be taken to ensure that there will be a sufficient supply of chickens to meet the demand". Note, NYPD information organizing parking.
j. Photo depicting the operation of the slaughter booth. The necks of the chickens are slit, the chickens are thrown into a box located near where the children in photos g and h were seen. Some of the chickens reportedly are thrashing about in the box.
k. Photo depicting the slaughter booth and numerous participants. Note several participants holding live chickens.
l. Photo depicting NYPD van stationed between barricades with slaughter booth in the distance. Note makeshift nature of the slaughter booth (i.e., constructed of wood 2x4s and tarps).

m. Photo depicting women wearing street clothes and standing in line holding live chickens in ungloved hands. Note chicken in a box on the ground.
n. Photo depicting numerous trash bags reportedly containing slaughtered chickens some still moving. Note the pallet of fresh produce on the right a few feet away from the trash bags.
o. Photo depicts wider angle view of scene in h.
p. Photo depicts wider angle view of scene in g.
q. Photo depicts chicken being killed at the slaughter booth. Note, 1) child watching, 2) blood soaked apron of worker, 3) man in line holding live chicken.
r. Picture depicting door panel of the cab of truck of a poultry supplier.
s. Picture depicting numerous crates of chickens being off-loaded from the tractor trailer truck.
t. Close-up photo similar to the scene in n.

29. Based on the evidence before me, I make the following analysis.

Proper Operation of Slaughterhouse Premises and Facilities

30. I compared the descriptions above of the chaotic Kaporos events with descriptions of how proper slaughterhouses are to be operated[5], set forth herein, to that of the requirements of a regulated slaughterhouse, and there are gross deficiencies in the operation of the makeshift slaughterhouses involved in Kaporos. Properly-run, regulated slaughterhouses must meet the following safety requirements:

> The processing plant should be located, constructed, and maintained in accordance with sound sanitary design and hygienic principles. Because pests can be vectors of food-borne pathogens, premises should minimize pest (i.e., rodents, insects, birds) harborages, such as areas of standing water, trees and shrubbery in close proximity to processing plant, bird nesting sites associated with the building, waste collection sites, etc. For this reason, the processing plant site should be well drained, landscaped with minimal shrubbery, and designed to facilitate waste management.

[5] Sams, Alan R., Editor. *Poultry Meat Processing*, CRC Press, New York, p. 146, 2001.

> As overall considerations, facilities should be designed to facilitate product flow and should provide for separation of operations where appropriate. Product should flow from the area of highest microbial load to the area of lowest microbial load (e.g., raw to cooked), and not "back track." Separation of areas and of employee traffic patterns are an important consideration in preventing microorganisms from moving throughout the plant. Overall layout and design of the plant should also provide for adequate ventilation, lighting, and space for equipment and storage. Without these provisions, maintaining sanitary conditions in the plant will be more difficult.

31. There are numerous and major deficiencies with respect to the soundness of the sanitary design and hygienic principles in the operation of the Kaporos activities at the subject locations. The unsoundness of the sanitary design and disregard of hygienic principles that characterize the Kaporos activities pose a significant public health risk, including but not limited to the following:

- The Kaporos activities take place in makeshift, open-aired slaughterhouses.
- The public streets and spaces of Crown Heights and Borough Park are not located and were not designed to be located, constructed or maintained in accordance with sound sanitary design and hygienic principles for the purpose of harboring, slaughtering and disposing of thousands of chickens over the course of several days.
- The landscape within the public spaces of Crown Heights and Borough Park does not facilitate waste management as evidenced by photographs and video footage documenting numerous, trees, shrubs, grassy areas, sloped areas, and uneven or porous surfaces that evidence locations that are unfit for the purpose of harboring, slaughtering and disposing of thousands of chickens in consideration of sound sanitary design and hygienic principles.
- The open-air design and reality of the Kaporos slaughterhouses does not minimize, and likely enhances, the probability that pests (i.e., rodents, insects, birds, squirrels, etc.) may come in contact with and disseminate the toxic and infectious biohazards known to be associated with poultry activities. For example, it is foreseeable that rodents and pigeons, which are rampant in New York City, may come in contact with, and thereby may disseminate, the bio-hazardous materials that are a consequence of the Kaporos activities.
- The open-air design and reality of the Kaporos slaughterhouses does not account for weather factors (e.g., wind, rain) that likely disseminate toxic and infectious biohazards associated with poultry activities. It is well recognized that effluents from poultry slaughterhouses containing lipids, proteins, blood and other organic material can cause environmental damage if discharged into rivers, creeks and

nearby water sources[6]. It, therefore, follows that any run-off due to rain or hosing down of the blood and feces contaminated sidewalks at the subject locations constitutes environmental pollution and a serious public health concern.

- The unrestricted access (meaning foot traffic – pedestrians, baby strollers, bicycles, wheelchairs, scooters, pets, etc.) to the Kaporos event highlights that little, if any, consideration is being given to "product flow" and likelihood of contact with and dissemination of bio-hazardous materials associated with poultry. As evidenced by the video footage and pictures of the Kaporos event, little, if any, consideration is being given to how the traffic patterns and activities of people who are obviously coming in contact with substantial quantities of bio-hazardous material (i.e., live chickens, feathers, feces, blood, animal carcasses, etc.) may be, and likely are, disseminating micro-organisms within the environment that they frequent.

32. It is recognized within the poultry industry that there are bio-hazards associated with handling and processing live birds[7]. In the two passages that follow from "Poultry Meat Processing", CRC Press, New York, simply substituting the words "processing plant" with "Kaporos event" obviates the reality that such a biohazard is unnecessarily being brought upon the residents of Brooklyn, and likely beyond, during the Kaporos events.

> Live birds destined for processing represent the primary entry point into the processing plant for an exceedingly high level of bacteria. Moreover, in the absence of effective control measures during live production, birds arriving at the processing plant should be considered potential sources of the pathogens indicated above. The processing steps to which birds are subjected are designed to produce wholesome and safe final products. Thus, as birds proceed through processing, there is substantial decrease in overall bacterial load. Removal of feathers, feet, heads, and viscera serve to also remove the bulk of the bacterial load. However, given the nature of modern poultry processing, not all bacteria are eliminated. The remaining bacteria can be transferred among carcasses. The extent to which bacteria are removed from carcasses or transferred among carcasses is a function of the specific processing steps and operational conditions. Although live haul (transportation of live birds from production farms to the processing

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[6] Chavez, P., Castillo, R., Dendooven, L. and Escamilla-Silva, E.M. Poultry slaughter wastewater treatment with and up-flow anaerobic sludge blanket (UASB) reactor. Biosource Technol. 96:1730-1736, 2005.

[7] Sams, Alan R., Editor. *Poultry Meat Processing*, CRC Press, New York, p. 142, 2001.

> plant) may not be considered a plant process, cross contamination can be attributed to this step in the process.

33. The passage cited above highlights the likelihood that the influx of thousands of chickens into the subject locations for Kaporos activities likely carries with it the influx of an exceedingly high level of bacteria (e.g., *Salmonella*, *Campylobacter*, etc.) as well as other pathogens, toxins and bio-hazards. The passage above also highlights that cross-contamination and dissemination of the biohazard is influenced by the operational conditions within a processing plant. Again, analogizing between "processing plant" and "Kaporos event", the operational conditions of the Kaporos event are comparatively deficient – in fact, they are deplorable. And, the deficient operational conditions of the Kaporos event enhance the likelihood that cross-contamination and dissemination of biohazards are occurring, or will occur if left unregulated.

34. As indicated in the passage that follows, environmental factors and stressors associated with transporting and harboring live chickens also influence the dissemination of biohazards associated with poultry[8].

> Transportation coops are often contaminated with *Salmonella* even after washing. *Salmonella* from coops can be transferred to birds held in them and to adjacent coops. *Salmonella*-contaminated coops lead to external contamination (feet, feathers, skin) and to cecal and crop carriage. *Salmonella* originating from live haul equipment can contribute significantly to subsequent cross contamination among carcasses during processing. Factors affecting this cross contamination include close crowding, coprophagy, weather, other stressors, and time the birds are off feed, which is an additive effect of feed withdrawal at the farm, transportation distance, and time birds are kept in the holding yard. Because these factors can affect the spread of *Salmonella* during the transportation phase, they subsequently affect the level of pathogens entering the processing plant.

[8] Ibid.

35. As detailed repeatedly throughout the affidavits of the petitioners herein, there are numerous stressors associated with the chickens used during the chaotic activities characteristic of the Kaporos event such as transportation, weather, food and water withdrawal, crowding and coprophagy[9] (likely given that many of the crates are seen to be caked in fecal material), all of which are factors associated with the spread of *Salmonella*. It is well-established that control of *Salmonella* colonization is affected by many factors including physiological status of the chickens, health and disease status of the chickens, and environmental stressors as well as operational conditions of the processing plant. The unsanitary manner in which the chickens are stored prior to the Kaporos ritual and the disregard for animal welfare are substantial contributing factors to the public health threat imposed by the event, and the carnival-like atmosphere of the Kaporos event only enhances the pubic health threat to alarming proportions. Animal welfare and public health concerns are not mutually exclusive. In any reputable, properly-run facility, animals are treated humanely because the stress associated with mistreatment affects the animal's health and their susceptibility to disease and illness, and said disease and illness can then be transmitted. The failure to treat the chickens at Kaporos humanely cannot be dissociated from the threat to the public health.

36. While it may be argued that sound sanitary design and adherence to strict hygienic principles in a poultry processing plant are aimed at preventing food borne illnesses[10], it also is recognized that the biohazards associated with poultry are of concern to workers who come in contact with toxic and infectious animal products (e.g., blood, fecal matter, feathers). Therefore, proper operational conditions within a poultry

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[9] "coprophagy" is the practice of an animal or human consuming their own feces or feeding on dung.
[10] An argument that is completely lost if any of the chickens slaughtered during the Kaporos activities are being donated to the poor for food.

processing plant exist to protect the people who come in contact with bio-hazardous material, because the human health consequences (e.g., respiratory complications, dermatitis, infectious disease) are well known and they are being blatantly ignored by those complicit in allowing the activities associated with Kaporos as described above to proceed.

37. For example, in January 2005 the United States Government Accountability Office published a monograph on Workplace Safety and Health entitled *"Safety in the Meat and Poultry Industry, while Improving Could Be Further Strengthened"*[11]. The scientists who contributed to this monograph were charged by the United States Congress to investigate hazards associated with working in the meat and poultry industry and the injuries and illnesses that these workers incur. The following are excerpts from that monograph.

> Workers are also frequently handling or in close proximity to sources of infectious diseases such as those carried by animal tissues and organs. Pathogens can infect workers through open abrasions or through inhalation.
>
> Furthermore, a recognized hazard within the meat and poultry industry is that workers may also be exposed to viruses, blood, fecal matter and bacteria such as *Salmonella*.
>
> Workers may also suffer injuries and illnesses from contact with animals. Contact with different bacteria can cause fever, headaches, vomiting, diarrhea, and kidney damage (although it is recognized based on USDA accounting that transmission of disease from animals to humans in the poultry industry is uncommon because of sound sanitary design and hygienic principles, which are largely absent in the Kaporos event).

38. Workers in the poultry industry also are subject to dermatitis (i.e., skin rash) from exposure to biological agents or bacteria from animals. Poultry industry workers also are

[11] United States Government Accountability Office; Report to the Ranking Minority Member, Committee on Health, Education, Labor and Pensions, U.S. Senate. Workplace Safety and Health; Safety in the Meat and Poultry Industry, while Improving Could be Further Strengthened. January 2005.

exposed to a variety of respiratory irritants from a variety of sources including feathers, infectious pathogens and infected vapors associated with evisceration during poultry processing[12].

39. The human health hazards, and therefore the public health hazards, associated with poultry are well known. Much research, numerous regulations and sound sanitation and hygienic principles have been adopted to minimize the risk of poultry borne illness in the contexts of food safety and worker health. From a scientist's perspective, it is outrageous and offensive that this dangerous activity is allowed to continue for reasons that can only be attributed to an attempt at political correctness. The Kaporos activities taking place at the subject locations are sanitarily unsound and unhygienic. Consequently, the Kaporos activities at the subject locations place the public at risk to exposure to known toxic and infectious biohazards.

Chicken as a Source of Human Pathogens[13]

40. Poultry is a source of infectious disease for humans. Much of the public health concern with respect to contamination of poultry meat is in the context of food-borne illnesses, which in and of itself raises questions and concerns regarding the ritual of Kaporos and the alleged practice of donating the slaughtered chickens as food for the poor. However, the public health concerns with respect to chickens as vectors for disease transmission are not limited to food borne illnesses. *Salmonalle* and *Campylobacter* species of bacteria are the most important agents numerically; however avian viruses

[12]North Carolina Department of Labor, Occupational Safety and Health Division. A Guide to Safe Work Practices in the Poultry Processing Industry. 2013
[13] Bailey, J.S. Control of Salmonella and Campylobacter in Poultry Production. A Summary of Work at Russell Research Center. Poultry Sci. 72:1169-1173, 1993.

including certain strains of influenza[14] and other bacterial pathogens such as *Archobacter*[15], *Chlamydophila*[16] and *Eschericia*[17] that are found in poultry are important human pathogens.

41. ***Campylobacter***[18]. *Campylobacter*, mainly *Campylobacter jejuni* and *C. coli*, are recognized worldwide as a major cause of bacterial food-borne gastroenteritis. Epidemiological studies have shown that handling or eating of poultry to be significant risk factors for human infections. *Campylobacter* contamination can occur at all stages of a poultry meat production cycle. The most common symptoms of *campylobacter*-induced gastroenteritis include diarrhea, abdominal pain, fever, headache, nausea and vomiting. Symptoms usually start 2–5 days after infection, and last for 3–6 days. Severe complications, such as the debilitating autoimmune disease Guillain-Barré syndrome (GBS), may follow *campylobacter* infection as *campylobacter* infection has been established as a risk factor for GBS[19].

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[14] Wan, X.F., Dong, L., Lan, Y., Long, L.P. et al. Indications that live poultry markets are a major source of human H5N1 influenza virus infection in China. J. Virol. 85:13432-13438, 2011.

[15] Ho, H.T.K., Lipman, L.J.A., Gaastra, W. The introduction of Arcobacter spp. In poultry slaughterhouses. Int. J. Food. Microbiol. 125:223-229, 2008.

[16] Dickx, V., Geens, T. Deschuyffeleer, T., Tyberghien, L. et al. Chlamydophila psittaci zoonotic risk assessment in a chicken and turkey slaughterhouse. J. Clin. Microbiol. 48:3244-3250, 2010.

Lagae, S. Kalmar, I., Laroucau, K., Vorimore, F., and Vanrompay, D. Emerging Chlamydia psittaci infection in chickens and examination of transmission to humans. J. Med. Microbiol. 63:399-407, 2014.

[17] Mbata, T. I. Poultry Meat Pathogens and its Control. Internet. J. Food Safety 7:20-28, 2004.

[18] Newell, D.G. and Fearnley C. Sources of Campylobacter Colonization in Broiler Chickens. Appl. Environ. Microbiol. 69:4343-4351, 2003.

Makela, P.P., Hakkinen, M., Honkanen-Buzalski, T. and Hanninen, M.L. Prevalence of campylobacters in chicken flocks during the summer of 1999 Finland. Epidemiol. Infect. 129:187-192, 2002.

dePerio, M.A., Niemeier, R.T., Levine, S.J., Gruszynski, K. and Gibbins, J.D. Campylobacter infection in Poultry-processing workers Virginia, 2008-2011. Emerging Infectious Dis. 19:286-288, 2013.

[19] Other complications tied to *campylobacter* include reactive arthritis, Miller-Fisher syndrome and Reiter's syndrome.

42. Numerous studies have been undertaken aimed at quantifying the proportion of broiler flocks colonized with *campylobacter* with some studies claiming that a high proportion of flocks in the United States are carriers of this micro-organism. Broiler chickens are commonly regarded as natural hosts for *campylobacters*, and infected birds, which themselves are asymptomatic, carry a very high pathogen load in their gastrointestinal tract, especially the ceca[20]. This source of *campylobacter* can result in poultry meat contamination during processing and survival through the food chain supply constituting a risk to human health. The infection risk is the result of cross-contamination from raw poultry products rather than poultry consumption *per se*. It also is recognized that *campylobacters* are readily detectable in the feces of colonized birds, and *C. jejuni* can be recovered from standing water and soils. Accordingly, the widespread fecal contamination of the subject location sidewalks and adjoining spaces are likely sources of *campylobacter* contamination due to Kaporos activities, and the spread of this fecal contamination constitutes a threat to public health.

43. *Campylobacters* can potentially be carried into and around a processing plant from the external environment via boots, external clothes, and equipment. Therefore biosecurity protocols (e.g., presence of a hygiene barrier, including an anteroom with a walk-over bench and the use of dedicated footwear) are commonly employed operational controls that are implemented to prevent cross-contamination of poultry and environmental dissemination of micro-organisms. The chaotic unrestricted access of the Kaporos event is a marked contrast to the biosecurity protocols that are implemented at

[20] A pouch connected to the junction of the small and large intestines.

sound poultry facilities that are aimed at protecting the health of the animals as well as the people coming in contact with them.

44. ***Salmonella***[21]. *Salmonella* can cause two types of illness: 1) Gastrointestinal illness – characterized by nausea, vomiting, diarrhea, cramps, and fever. Symptoms generally last a couple of days and taper off within a week. In otherwise healthy people, the symptoms usually go away by themselves; however, in the long-term chronic arthritis associated with *Salmonella* infection may develop. 2) Typhoidal illness – characterized by high fever, diarrhea or constipation, aches, headache, and lethargy (drowsiness or sluggishness), and, sometimes, a rash. Typhoid is a very serious condition – approximately 10% of people who don't get treatment may die. In people with compromised immune systems (e.g., children, aged, infirm), *Salmonella* infection can result in a more serious disease.

45. *Salmonella* is frequently associated with contaminated poultry products[22]. Control of *Salmonella* is complicated by the numerous environmental sources that interface with poultry operations, and as discussed above the physiological status of the chickens also affect colonization. Contamination and cross-contamination of poultry can occur throughout the entire production chain and important risk factors for contamination at each of these stages have been identified. Many of these risk factors are brought into focus based on the deplorably unsanitary conditions associated with harboring, slaughtering and disposing of chickens during the Kaporos event.

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[21] Heyndrickx, M., Vandekerchove, D., Herman, L., Rollier, I., Grijspeerdt, K. and De Zutter, L. Routes for salmonella contamination of poultry meat: epidemiological study from hatchery to slaughterhouse. Epidemiol. Infect. 129:253-265, 2002.

Food and Drug Administration. Bad Bug Book. Foodborne Pathogenic Microorganisms and Natural Toxins. Second Edition. 2012.

[22] Federal Register / Vol. 76, No. 54 / Monday, March 21, 2011 / Notices

46. A recent multistate outbreak of human *Salmonella* infections linked to live poultry in backyard flocks has been followed by the U.S. Centers for Disease Control[23]. According to that investigation, "Live poultry, including those kept in backyard flocks, remain an important cause of human *Salmonella* infections in the United States.

According to the CDC, steps that people can take to reduce their risk of infection include:

- Always wash your hands thoroughly with soap and water right after touching live poultry or anything in the area where these birds live and roam.
- People can get sick even if they do not have direct contact with the live poultry, but touch items (e.g., children handling crates) and places that have been contaminated in the poultry's environment.
- These recommendations are important and apply to all live poultry regardless of the age of the birds or where they were purchased.
- There were no hand washing stations evident in any of the pictures or video footage of the Kaporos event. As such, the potential for transmission of *Salmonella* and other poultry borne infectious agents poses a significant public health threat that discounts accepted practice known to minimize this hazard (i.e., hand washing). Furthermore, the photographs reviewed depict people holding live chickens with their bare hands, people including children with blood-stained gloves, and used gloves strewn on the street.[24]

Hazard Analysis

47. Basic safety principles are useful in identifying causes and related conditions. These include that when a responsible party knows about a hazard, the responsible party should eliminate it, guard against it, or warn about it, in that order. This thought process has been a cornerstone of safety product or process design since at least

[23] Centers for Disease Control; Salmonella Infections Linked to Live Poultry, May 2014.

[24] To lay people, the presence of used gloves strewn about the streets may be viewed as unsightly litter – a simple nuisance. To a scientist, it's not simple at all, nor is it a mere nuisance. Presumably, one wears gloves to protect oneself from a hazard. It is grossly negligent to then carelessly subject others to the hazard by improperly discarding the gloves in the City streets. I wear gloves frequently in my laboratory when I'm working with hazardous materials. When I'm done, before I touch anything or anyone else, I remove the gloves by turning them inside-out, and I dispose of them in a biohazard container.

1964. According to the National Safety Council,[25] the basic measures for preventing accidental injury, in order of effectiveness and preference, are:

a. Eliminate the hazard from the machine, method, material, plant structure or activity.

b. Control the hazard by enclosing or guarding it at its source.

c. Train personnel to be aware of the hazard and to follow safe job procedures to avoid it.

d. Prescribe personal protective equipment [PPE] for personnel to shield them against the hazard.

48. The activities associated with the Kaporos event represent a hazardous condition; namely, the operation of a large scale, open-aired and unrestricted access makeshift poultry slaughterhouse in the middle of a major urban population center – Brooklyn, New York. There are inadequate controls in place to enclose or guard against the public health hazard posed by attempting to operate makeshift slaughterhouses at the subject locations, and controlling the hazard by enclosing or guarding against it in that urban location would be impossible to accomplish. Furthermore, the subject personnel who are engaged in the Kaporos activities likely would be reticent to training and procedures necessary to protect themselves and the public at large from the obvious hazards associated with this activity. Accordingly, it is my opinion that based on the hazards to public health posed by the Kaporos activity, the most effective way to prevent the public health emergency that is inevitable by continuing this practice is to eliminate the hazard by preventing Kaporos activities taking place in public places such as the subject locations in Borough Park and Crown Heights.

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[25] McElroy, Frank E., Editor. *Accident Prevention Manual for Industrial Operations, 5th Edition.* National Safety Council, Chicago, IL. 1964. p.. 4-1.

FINDINGS

49. The event known as Kaporos involves incredibly unsafe means of harboring, slaughtering, and disposing of chickens on public streets and sidewalks. There are inadequate methods in place to accommodate the level of unsanitary conditions that result from this practice, and it is my opinion that it would be difficult, if not impossible, to accommodate these conditions even if regulations were to be put into effect, due to the uncontrolled nature of the event and its activities.

50. The fact that this event takes place on public streets and sidewalks is greatly concerning. Pedestrians, people on bicycles, people wheeling strollers, and motor vehicles track through the ground and surfaces that are covered in and contaminated with blood, feces, urine, and feathers. Contaminants can become attached to the bottom of shoes and wheels and are then transported to other areas. The fact that Brooklyn is a borough in the country's largest metropolis that has major mass transportation systems in place such as subway, busses, and airports, increases the likelihood of the threat of a substantial, city-wide, and even nation-wide or world-wide outbreak of the illnesses described herein. The open-air construct of the makeshift slaughterhouses and the activities of Kaporos also permit airborne transmission of contaminants due to weather (e.g., wind, air currents) well outside the immediate area of the Karros events. For example, the feathers from the chickens can be blown through the air, further carrying pathogens, toxins, and allergens throughout the community, potentially impacting the health of millions of people.

51. It is my opinion, with a reasonable degree of toxicology, immunology, and environmental health sciences certainty, based on the evidence set forth herein, and my own research, that the Kaporos activities taking place in the subject locations as described

constitute a dangerous condition and thereby pose a significant public health hazard that could be catastrophic.

Dated: 5/22/2015

Michael J. McCabe, Jr., Ph.D., DABT, ATS

Sworn to before me this
22 day of May, 2015

NOTARY PUBLIC

Commonwealth of Pennsylvania
County of Philadelphia

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
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My Commission Expires Sept. 29, 2018
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