

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

-----X Index No.: 156730/2015

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,

**AFFIRMATION  
IN SUPPORT**

Petitioners,

-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,

Respondents.

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STATE OF NEW YORK)  
COUNTY OF NASSAU ) ss.

Nora Constance Marino, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following under penalties of perjury:

1. I am the attorney of record for Petitioners herein and as such am fully familiar with the facts and circumstances set forth.

**I. INTRODUCTION**

2. This motion to renew is only directed to the defendants THE NEW YORK CITY POLICE DEPARTMENT, [then] 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 (collectively "the city defendants").

3. The relief sought in the original motion, as against any and all defendants other than the city defendants as identified herein, is not sought to be renewed.

4. What is sought to be renewed is petitioners' request for this Court to issue a writ of judicial mandamus, to compel the city defendants herein to enforce certain laws, and most importantly at this point, the health code, with respect to an event known as Kaporos, which involved animal slaughter on a

massive scale, taking place in public streets and sidewalks, and posing a significant health risk.

5. Petitioners now seek to renew that prior motion, based on new evidence that was not available at the time the prior motion was filed, pursuant to CPLR §2221(e),

## **II. PRIOR MOTION PAPERS NEED NOT BE ATTACHED IF EFILED CASE**

6. Petitioner only seeks to renew prior arguments with respect to the city defendants (Motions 001 and 004). Petitioner only seeks to reargue that portion of the prior decision which stated that the city defendants have discretion with respect to what laws they choose to enforce (specifically, and including, the New York City health code).

7. The subject decision/order is annexed hereto as Exhibit 1<sup>1</sup>. It is not necessary to reattach the underlying motion papers in a motion to renew or reargue. In *Biscone v. JetBlue Airways Corp.*, 103 A.D.3d 158, 957 N.Y.S.2d 361 (2d Dep't 2012), *appeal dismissed*, 20 N.Y.3d 1084, 965 N.Y.S.2d 72, 987 N.E.2d 632 (2013), the Second Department concluded that the moving papers on a motion for reargument/renewal were insufficient because petitioner failed to furnish a complete set of the papers relied upon in making the original motion, as required by CPLR 2214(c).

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<sup>1</sup> The decision combined Motions 001 and 004 into one decision.

8. However, the *Biscone* decision prompted an amendment to CPLR 2214, which took effect on July 22, 2014. A new sentence was added to CPLR 2214(c):

Except when the rules of the court provide otherwise, in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system.

N.Y. C.P.L.R. 2221 (McKinney).

9. McKinney's Commentaries note, "A party moving for reargument or renewal should also be sure to furnish a copy of the underlying order. See *Kalir v. Ottinger*, 2011 WL 6968334 (Sup. Ct., N.Y. County 2011) has herein complied with these provisions. See Exhibit 1, annexed hereto. Petitioners have complied with this provision.

10. The efile document numbers pertaining to the underlying motion are as follows:

- Doc. 001: summons and complaint;
- Doc. 002: RJI re order to show cause;
- Doc. 003: proposed order for order to show cause;
- Doc. 004: petitioner attorney affirmation in support;
- Doc. 005: expert affidavit, Dr. McCabe (and CV) (toxicologist);
- Doc. 006: expert affidavit, Dr. Hynes (veterinarian);
- Doc. 007: expert affidavit, Rabbi Yanklowitz (rabbi);



-Doc. 008: affidavit of ArieH;  
-Doc. 009: affidavit of Askew;  
-Doc. 010: affidavit of Bromberg;  
-Doc. 011: affidavit of Davis;  
-Doc. 012: affidavit of Dawson, S;  
-Doc. 013: affidavit of Dawson;  
-Doc. 014: affidavit of Dent;  
-Doc. 015: affidavit of Deych, J;  
-Doc. 016: affidavit of Deych, R;  
-Doc. 017: affidavit of Dicenso;  
-Doc. 018: affidavit of Emeric;  
-Doc. 019: affidavit of Kaplan;  
-Doc. 020: affidavit of King;  
-Doc. 021: affidavit of Ladd;  
-Doc. 022: affidavit of Lerner;  
-Doc. 023: affidavit of Moss;  
-Doc. 024: affidavit of Renz;  
-Doc. 025: affidavit of Rosenfeld;  
-Doc. 026: affidavit of Sanders;  
-Doc. 027: affidavit of Sarni;  
-Doc. 028: affidavit of Silnik;

- Doc. 029: affidavit of Tamaz;
- Doc. 030: affidavit of Tudor;
- Doc. 031: Ex. 1-3, copies of news articles; Ex. 4, copy of proof of ownership;
- Doc. 032: Exs. 5-35, photos;
- Doc. 033: Exs. 36-71, photos;
- Doc. 034: order to show cause accompanying commencement documents (corrected document with respect to Doc. 003);
- Doc. 035: order to show cause (signed by Hon. James);
- Doc. 094: notice of (cross) motion by city defendants;
- Doc. 095: affirmation in support (city defendants);
- Doc. 096: exhibit to cross motion (amended complaint);
- Doc. 097: memorandum of law (city defendants);
- Doc. 101: affirmation in opposition to city defendants cross motion;
- Doc. 034: order to show cause accompanying commencement documents (corrected document with respect to Doc. 003);
- Doc. 035: order to show cause (signed by Hon. James);
- Doc. 094: notice of (cross) motion by city defendants;
- Doc. 095: affirmation in support (city defendants);
- Doc. 096: exhibit to cross motion (amended complaint);

-Doc. 097: memorandum of law (city defendants);

-Doc. 101: affirmation in opposition to city defendants cross motion;

-Doc. 102: memorandum of law in opposition to city defendants cross motion;

-Doc. 108: affirmation in reply to cross motion;

-Doc. 112: decision and order on motion 004 (and 001 with respect thereto). [Also attached hereto as Exhibit 1.]

### **III. PROCEDURAL AND APPELLATE HISTORY AND THE RIGHT TO MOVE TO RENEW**

11. On July 2, 2015, petitioners filed an order to show cause ("OTSC") (corrected proposed order filed July 6, 2015) seeking a writ of judicial mandamus against the city defendants, requesting that the city defendants be compelled to enforce certain laws.<sup>22</sup> Doc. 003, 004, 034.

12. The city defendants filed a cross motion to dismiss, Doc. 094, arguing that the city defendants had discretion with respect to what laws they choose to enforce.

13. The prior decision granted the city defendant's cross motion, and dismissed the complaint. Exhibit 1.

14. In the prior action, petitioners appealed that portion of the decision

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<sup>22</sup> Note, this matter was initially brought as a plenary action, but the court, sua sponte, converted it into an Article 78. This procedural alteration was inconsequential, for all practical purposes.

that related to the city defendants to the App. Div., First Department, who affirmed the prior decision, but with a split decision (3/2), with a separate dissenting decision, giving way, as a matter of right, to have this matter heard in the Court of Appeals. The Court of Appeals also affirmed. It is submitted, that had the appellate courts also been aware of the new evidence presented herein, including but not limited to Covid-19, the lower court decision would not have been affirmed. While not required, the First Department majority and dissent decisions are annexed, as well as the Court of Appeals decision, collectively, as Exhibit 2.

15. While the initial holding may have seemed reasonable to this Court when it was heard at that time in 2015, it is respectfully submitted, such a holding can no longer be perceived as reasonable in 2020, in light of recent world events and new evidence.

16. Since the prior decision was issued, new evidence has emerged.

17. A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination” (CPLR 2221[e][2]). “

18. “A court of original jurisdiction may entertain a motion for leave to renew or to vacate a prior order or judgment on the ground of newly discovered evidence **even after an appellate court has affirmed the original**

**order or judgment.** (See *Estate of Essig v 5670 58 St. Holding Corp.*, 66 AD3d 822, 822-823 [2009]; see also *Sealey v Westend Gardens Hous. Dev. Fund Co., Inc.*, 97 AD3d 653, 654-655 [2012]; *Andrews v New York City Hous. Auth.*, 90 AD3d 962, 963 [2011]; *Levitt v County of Suffolk*, 166 AD2d 421, 422-423 [1990])."

*Specialized Realty Servs., LLC v. Town of Tuxedo*, 106 A.D.3d 987, 966 N.Y.S.2d 148 (2013)." [Emphasis added.]

19. Pursuant to CPLR 2221 (e), a motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination . . . and shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221 [e] [2], [3]; see *Estate of Essig v 5670 58 St. Holding Corp.*, 66 AD3d 822, 822 [2009]). Furthermore, on a post-appeal motion to renew, the movant bears a "heavy burden of showing due diligence in presenting the new evidence to the Supreme Court" in order to imbue the appellate decision with a degree of certainty (*Levitt v County of Suffolk*, 166 AD2d 421, 423 [1990]; see *Abrams v Berelson*, 94 AD3d 782, 787 [2012]; *Andrews v New York City Hous. Auth.*, 90 AD3d 962, 963 [2011]; *Estate of Essig v 5670 58 St. Holding Corp.*, 66 AD3d at 823; see also *Specialized Realty Servs., LLC v Town of Tuxedo*, 106 AD3d 987, 987 [2013]; *Sealey v Westend Gardens Hous. Dev. Fund Co., Inc.*, 97 AD3d 653, 654-655 [2012]).

*Derby v. Bitan*, 112 A.D.3d 881, 882, 977 N.Y.S.2d 405 (2013).

20. Herein, petitioners meet that burden. None of the new evidence existed at the time of the original prior motion; thus, it could not have been brought to court's attention at that time. More on this below.

21. See, also, Derby v. Bitan, 112 A.D.3d 881, 882, 977 N.Y.S.2d 405 (2013), "Here, the Supreme Court providently exercised its discretion in granting the defendant leave to renew his prior motion for summary judgment dismissing the complaint. **The defendant's submissions included new factual material that 'would change the prior determination'** (CPLR 2221 [e] [2]), and the defendant demonstrated a 'reasonable justification' for his failure to present such evidence in support of his prior motion (CPLR 2221 [e] [3])... (compare *Abrams v Berelson*, 94 AD3d at 787; *Levitt v County of Suffolk*, 166 AD2d at 422-423)." [Emphasis added.]

22. See, also, Quiroz v. Zottola, 96 A.D.3d 1035, 1036, 948 N.Y.S.2d 87 (2012), "Thereafter, the plaintiffs moved for leave to renew their opposition to the defendants' motion, submitting new evidence, including deposition testimony... and documents from [defendant's] employment file **which the plaintiffs did not have in their possession at the time the defendants initially moved**. The Supreme Court granted that branch of the plaintiffs' motion which was for leave to renew..." [Emphasis added.]

23. Here, too petitioners' submissions include evidence which petitioners did not have in their possession at the time of defendants' cross

motion; here, too, petitioners submit and include new factual material that did not exist at the time of the prior motion, that we believe would have changed the prior determination.

24. See, also, McKinney's Practice Commentaries re: "CPLR 2221(e)(3), "As we note in the main practice commentary, while a renewal motion may be based on "new facts not offered on the prior motion," CPLR 2221(e)(2), there is no requirement in the statute that the facts be "newly discovered," as some of the decisions indicate.

25. Here, the new evidence is in fact newly discovered, and newly existing.

26. Briefly, it is:

1) that a worldwide pandemic has occurred and it is believed to have originated from a live animal wet market, and that Covid-19 is a zoonotic disease;

2) that a petitioner herein has taken ill with campylobacter, and was infected after coming into contact with chickens from Kaporos in September of 2019;

3) that newly taken air samples (samples obtained following Kaporos 2019, on October 8, 2019) reveal harmful pathogens in the air;

4) that NYPD officers wore masks and gloves during Kaporos 2019 (pre-Covid-19), indicating that the city defendants themselves do not believe the air was safe to breathe or that items were safe to touch, without protection;

5) that toxicologist Dr. Michael J. McCabe's onsite inspection following Kaporos 2015 involved the taking of samples and specimens taken from the subject locations, and such samples and specimens revealed harmful pathogens.

27. All of this new evidence will be discussed below in detail, and warrants renewing and reconsidering the prior motion and cross motion.

#### **IV. THE PRIOR MOTION AND CROSS MOTION**

28. The prior motion involved a religious ritual known as Kaporos.

29. Kaporos is allegedly a ritual of atonement practiced by Hasidic Jews as part of the Jewish holiday of Yom Kippur, wherein thousands of birds [currently estimated between 50,000 and 300,000<sup>3</sup>] are slaughtered by having their throats slit, on public streets and sidewalks, causing significant and dangerous New York City health code violations. It occurs in certain areas of Brooklyn, and also in Queens and Manhattan.

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<sup>3</sup> An attorney for a Kaporos practitioner, then defendant/respondent, stated in open court in 2015 that his client had already purchased 50,000 chickens for Kaporos 2015. This was just ONE practitioner; there are believed to be several. Moreover, the event has grown in size every year, and continues to do so. See Exhibit 1, footnote 2 on page 4; see also affidavit of Rina Deych, Doc. 016.



30. The ritual involves practitioners grasping live chickens by their wings and swinging them above the practitioner's heads. See *Exhibit 66 and 67 [Doc. 033]*. The purpose of this act is allegedly to transfer the practitioners' sins to the birds. After violently swinging the birds, the chickens' throats are then slit, allegedly absolving the participants of their sins. See *Silnik, R. Deych, Renz, Sarni, Ladd, Kaplan, Tamez, affidavits [Docs. 028, 016, 024, 027, 021, 019, 029 respectively]*. See also, *Exhibits 22, 26, 27 [Docs. 032]*.

31. The chickens' throats are slit in make-shift slaughterhouses that are erected on the public streets and sidewalks. Dead chickens, chicken blood, chicken feathers, chicken urine, chicken feces, other toxins, and garbage such as used latex gloves and filthy tarps consume the public streets. See *Sanders, Tamez, Kaplan, Deych, Tudor, Ladd affidavits. [Docs. 026, 029, 019, 016, 030, 021, respectively]*.

32. According to testimony 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. See *Renz, R. Deych, J. Deych, Sanders, Arie, Dent affidavits [Docs. 024, 016, 015, 026, 008, 014, respectively]*; see also *Exhibits 15, 18, 64 [Docs 032, 033]*.

33. The City Defendants not only fail to enforce the countless laws that are being violated in the carrying out of Kaporos, but they actually assist in

facilitating this event, by providing materials such as generators, police barricades, police cones, street closures, and no parking signs. See *Renz, Deych, Tamez affidavit* [Docs. 024, 016, 029, respectively]. As such, the city defendants aid and abet in the violation of the health codes and other laws, rules, and regulations that are violated.

34. The prior application was submitted to compel the city defendants to cease aiding and abetting in the event, and instead to enforce the numerous laws, including numerous health codes, that are violated during Kaporos. At the time of the filing of the prior motion (July of 2015), Kaporos was taking place in the fall of 2015.

35. The lower court denied petitioners' prior application, and granted the city defendant's cross motion, agreeing with the city defendants, stating that the city defendants (specifically, the NYPD) have "discretion" with respect to what laws they choose to enforce. See Exhibit 1, lower court prior decision.

36. When this action was brought in 2015, it brought to the court's attention what "could" happen, with respect to a global pandemic, which was something we could only imagine. Now, what was once speculation is now reality. A zoonotic disease emerged from a live animal wet market in Wuhan, China, with globally devastating results. The new reality is not just disturbing – it is deadly and economically destructive. Thus, the necessity to bring this motion to renew is academic.

37. In the prior motion, petitioners attached an affidavit of Michael J. McCabe, Jr., Ph.D., DABT, ATS, an expert on matters involving toxicology, microbiology, immunology, human disease causation, and environmental health sciences. Dr. McCabe is a nationally-recognized scientist with a broad-based background in toxicology and immunology and related disciplines (e.g., biochemistry, pharmacology, microbiology, virology). He has held faculty positions in the environmental health science centers at Wayne State University (Detroit) and the University of Rochester (New York) where he is currently an Adjunct Associate Professor of Environmental Medicine. Dr. McCabe is board certified in toxicology as a *Diplomate* of the American Board of Toxicology and as a *Fellow* of the Academy of Toxicological Sciences. He is an active member of the Society of Toxicology and has 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. See *Dr. McCabe's CV, attached to his affidavit, Doc. 005.*

38. In his prior affidavit, Dr. McCabe opined that the events involved in Kaporos constitute a substantial public health risk that could have catastrophic consequences. See Doc. 005.

39. The health codes that are violated during Kaporos include, but are most likely not limited to (abbreviated – for full version, see Doc. 004, Section VII, page 40):

**NYC HEALTH CODE:**

**VIOLATION OF NYC Health Code section 153.09**

*No person shall throw or put any blood, swill, brine, offensive animal matter, noxious liquid, dead animals, offal, putrid or stinking vegetable or animal matter or other filthy matter of any kind, and no person shall allow any such matter to run or fall into any street, public place, sewer. . .*

**VIOLATION OF NYC Health Code section 153.21(a):**

*Every person who has contracted or undertaken to remove any diseased or dead animal . . . or who is engaged in such removal shall do so promptly... in a clean and sanitary manner and shall not create any hazard to life or health. The offensive matter shall not lie piled up or partially raked together in any street or place before its removal . . .*

**VIOLATION OF NYC Health Code Section 161.09**

*A permit shall not be issued for the sale or keeping for sale of live rabbits or poultry on the same lot as a multiple dwelling as defined in section 4 of the Multiple Dwelling Law or, unless the consent of the occupants is obtained, on the same lot as a two-family home...*

**VIOLATION OF NYC Health Code § 161.11**

*(a) A permit required by § 161.09 shall not be issued unless the applicant proves to the... Commissioner that the place for which the application is made does not constitute a nuisance because of its proximity to a residential, business, commercial or public building... (b) The... person in charge of any place where animals are kept pursuant to a permit required by § 161.09, shall... conduct such place so as not to create a nuisance by reason of the noise of the animals, the escape of offensive odors, or the maintenance of any condition dangerous or prejudicial to public health. (c) Every place where animals are kept pursuant to a permit required by § 161.09 shall have implements and materials, such as brooms, hoses, hose-connections, vacuum cleaners where dusty conditions are found, covered metal receptacles, brushes, disinfectants*

and detergents, as may be required to maintain sanitary conditions. Such places shall have regularly assigned personnel to maintain sanitary conditions

**VIOLATION OF NYC Health Code § 161.19**

Keeping of live poultry and rabbits. (a) No person shall keep a live rooster, duck, goose or turkey in a built-up portion of the City.

**VIOLATION OF NYC Health Code section 161.19(b)**

Sellers of live poultry must keep the areas of slaughter and the surrounding areas clean and free of animal nuisances: person who is authorized by applicable law to keep for sale or sell livestock, live rabbits or poultry shall keep the premises in which such animals are held and slaughtered and the surrounding areas clean and free of animal nuisances. [Note, the Kaporos practitioners are not authorized to keep for sale or sell poultry, but even if they were, they are violating this statute.]

**NYC ADM CODE, RCNY, & NYCRR (related to health code)**

**VIOLATION OF 24 RCNY Section 161.03(a)**

Blood and feces from animals and animal parts are prohibited on a public sidewalk and "pervasive odors" from animals are prohibited; a person who owns, possesses or controls a[n] animal shall not permit the animal to commit a nuisance on a sidewalk of any public place... used in common by the public (includes, but is not limited to "animal feces, urine, blood, body parts, carcasses, vomit and pervasive odors; animals that carry or are ill with contagious diseases communicable to persons or other animals).

**VIOLATION OF 1 NYCRR 45.4:**

All persons entering any premises containing live poultry within the State of New York with any poultry truck, feed delivery and/or other service vehicle shall take every sanitary precaution possible to prevent the introduction or spread of avian influenza into or within the State, include[ing] the disinfecting of all footwear before entering and after leaving any premises containing live poultry... all sales outlets and distribution facilities containing live poultry shall be maintained in a clean and sanitary manner.

## **V. THE NEW EVIDENCE**

### **A. COVID-19**

40. There already has been, since 2015, overwhelming evidence that the use of chickens for Kaporos did, and does in fact pose a significant risk to human health. See McCabe affidavit from prior motion, doc. 005.

41. In addition to his initial assessment in 2015 (Doc. 005), Dr. McCabe has written another new affidavit with respect to Kaporos, Covid-19, and the unquestionable health risk associated therewith. This affidavit is referred to herein as the “new” McCabe affidavit, and is annexed hereto as Exhibit 5.

42. McCabe's new affidavit sets forth, in detail, how Covid-19 acts as new evidence herein.

43. With respect to Covid-19 and a global pandemic outbreak, and with respect to Kaporos, an unregulated, illegal, and dangerous live animal market that exists on public streets and sidewalks in densely populated neighborhoods, we are confronted with a question: should we be proactive or reactive. In light of the devastating effects on lives, families, and the world economy, the answer to that should be elementary and obvious – we need, undoubtedly, to be proactive.

44. In 2017, two years after the prior motion was filed, and two years before the world was struck by the Covid-19 pandemic, an attorney (unrelated to representation in this matter) and two others arranged for and participated in

a meeting with then- New York City Health Commissioner Dr. Mary Bassett, to voice their concerns about the disgusting, filthy, and dangerous conditions caused by Kaporos. See non-party witness affidavits of Nathan Semmel and Dawn Ladd, collectively attached hereto as Exhibit 3.

45. By that time, Bassett was, or should have been, fully aware of this litigation, as the Department of Health was served with the prior OTSC, as well as the 25-page affidavit of Dr. McCabe, which clearly and scientifically set forth the health risks and dangers of Kaporos. See Doc. 042, affidavit of service; see Doc. 005, McCabe affidavit.

46. Following the meeting with Semmel and Ladd, Bassett sent a letter to Semmel and Ladd, stating, "*at this time, there remains no evidence that the use of chickens for Kaporos poses a significant risk to human health.*" See Exhibit 4, then- Health Commissioner Mary Basset letter dated January 26, 2018.

47. The irresponsibility of this remark cannot be understated. What the New York City Department of Health Commissioner is saying, is that the only evidence that will matter or be convincing to her of a potential health threat would be an actual outbreak of a disease or pandemic. With Bassett's reasoning, only after dozens, hundred, thousands, tens of thousands, hundreds of thousands, or millions of people, become infected with a disease, as they did with Covid-19, will this health department find "evidence" that there is a significant risk to human health. This reactive approach is a flagrant disregard of



the health department's moral, ethical, legal, and municipal responsibility. It is negligent, reckless, irresponsible, unacceptable, and dangerous.

48. The emergence of Covid-19 has created clear and convincing evidence that supports and demands that a proactive response to pandemics and other health issues be put into place, and specifically, the health codes violated by the illegal street-slaughter known as Kaporos must be enforced.

49. In light of the Covid-19 disaster, we now have unquestionable proof that failure to be proactive can result in worldwide catastrophic consequences. The emergence of Covid-19 has created this new evidence, that supports the notion that the city defendants cannot be reactive.

50. This Covid-19 new evidence makes it clear that the city defendants, and New York City Department of Health Commissioner, can no longer take the approach that "we don't have any data or evidence of disease – yet." This is a careless, even reckless approach, in that it specifically waits for, and even allows for, the occurrence of a pandemic. This approach and flies in the face of the responsibilities of the New York City Department of Health, which has a moral and legal obligation to protect the health of the citizens of this city, proactively.

51. This new evidence is that a pandemic-causing virus, such as Covid-19, can be caused by a live animal wet market, which involves uncontrolled and poorly understood interactions between humans and intensely confined filthy, sick, and diseased animals, which is what Kaporos is and does. Pandemics



are caused by human behaviors that in hindsight are highly questionable coupled with a flawed public health approach and social policies.

52. Looking at the unregulated, reckless, not inspected, law violating event known as Kaporos, wherein an estimated 50,000 to 300,000 live animals are slaughtered on public streets and sidewalks, in densely populated neighborhoods, with no proper or accepted protocols before, during, or after the event, and taking a "what can possibly go wrong" attitude is beyond disturbing and preposterous, now that we have this new evidence, and have seen, first hand, the devastation that a live animal market derived virus can cause, worldwide.

53. The health codes must be enforced. The health codes are already mandatory as they are written (by way of the New York City Charter), and this Court, it is respectfully submitted, must reconsider its prior ruling in deeming that these laws are "discretionary". They cannot be, in light of what is at stake.

54. It is respectfully submitted, in a post Covid-19 world, the reasoning of the prior decision must be revisited; it is submitted, this Court must renew and reconsider its prior decision, and issue a writ of mandamus, immediately, compelling the city defendants to enforce the health codes and other critical laws designed to protect the public health, laws that are blatantly violated during Kaporos, in light of the world wide pandemic that has erupted from Covid-19. Notably, New York City is and was the world's epicenter of the

pandemic.

55. In addition to Dr. McCabe's opinion (see new affidavit, Exhibit 5), it is the well-accepted general consensus in the scientific community that Covid-19 originated from a live animal wet market in Wuhan China. Since the pandemic has infected the world wide population globally, killed hundreds of thousands of people, and decimated economies, there has been a call to end all live animal wet markets, and even slaughterhouses, in general.

**See:**

<https://www.nytimes.com/2020/06/17/magazine/animal-disease-covid.html>

<https://www.dailysabah.com/world/asia-pacific/china-aims-to-phase-out-sale-of-live-animals-at-food-markets>

<https://abc7ny.com/nyc-slaughterhouses-live-markets-coronavirus-update/6105833/>

<https://thehill.com/changing-america/enrichment/arts-culture/494004-celeb-activists-call-for-america-to-close-live>

<https://www.cbsnews.com/video/calls-to-close-global-wet-markets-amid-coronavirus-pandemic/>

**<https://www.npr.org/2020/04/19/838073215/calls-to-ban-wildlife-markets-worldwide-gain-steam-amid-pandemic>**

See, also,

**<https://www.plantbasednews.org/lifestyle/-doctors-demand-public-health-director-close-slaughterhouse>**

56. After the Covid-19 worldwide health disaster, new threats are now being recognized regarding live animal slaughter. See,

**<https://www.bbc.com/news/health-53218704>**

57. On June 30, 2020, renowned epidemiologist Dr. Anthony Fauci declared that a new virus in China has traits of the 2009 swine flu and 1918 pandemic flu.

**<https://www.cnbc.com/2020/06/30/dr-anthony-fauci-says-new-virus-in-china-has-traits-of-2009-h1n1-and-1918-pandemic-flu.html>**

58. All of these massive health threats have one thing in common – the use and slaughter of intensely confined animals.

59. What makes Kaporos so exceptionally unsafe and dangerous, more so than all other animal-slaughter-facilities referenced in these links, is that Kaporos is not only a live animal wet market, it is a totally illegal live animal wet market, taking place without permits, without inspections, without any regulation

or adherence to any safety protocols whatsoever, and, even more egregious, it takes place outside on public streets and sidewalks in densely populated neighborhoods.

60. The city defendants should not have "discretion" with respect to enforcing the health codes on public streets, seeing how Covid-19 infected people globally at a light speed rate. (See new affidavit of Dr. McCabe, Exhibit 5.) Enforcement of the health code must be deemed of the utmost importance and must take precedence and priority over all other considerations, such as politics, discretion, "religious freedom<sup>4</sup>", or any other consideration. The city defendants must be ordered to enforce the health code.

## **B. AIR SAMPLES**

61. On or about October 7, 2019, which was the last day of Kaporos 2019, your affirmant retained TRC Companies ("TRC"), a well-respected and highly utilized air-testing company, to conduct air sample testing in the subject locations following Kaporos 2019.

62. On October 8, 2019, I met with Anthony Sigona of TRC and petitioner Rina Deych, and we went to several Kaporos sites throughout

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<sup>4</sup> The prior decision acknowledged that religious freedom does not apply to these arguments. The health codes are not being challenged as unconstitutional; they are not targeted and apply to everyone equally. Moreover, religious freedom is freedom of belief, not freedom to act. Religious acts must lie within the confines of the law. This argument was addressed at length in the prior motion and other supporting papers, wherein several US Supreme Court cases are cited, inter alia. See Doc. 004, page 59-70, Section IX, Kaporos is Not a Matter of Religious Freedom.

Brooklyn. Sigona took air samples from each one. Sigona subsequently had the samples analyzed. See Exhibit 6, subpoena duces tecum, certification, and records from TRC documenting all air sample locations, testing, procedures, etc., regarding air sampling following Kaporos 2019.

63. Toxicologist Dr. McCabe then evaluated the results of the air sample testing results. It was found that there were dangerous air borne pathogens in the outdoor air following the Kaporos 2019 event, and, it can be safely assumed, following the Kaporos event of every year. See Exhibit 5, new affidavit of Dr. McCabe.

64. This new evidence in the form of air sample testing, that was not before the Court in 2015, is more proof that Kaporos creates an extraordinary health risk and hazard, and supports the argument herein that the health codes must be enforced, and that the prior motion must be renewed and reconsidered..

### **C. PETITIONER RINA DEYCH CONTRACTED CAMPYLOBACTER**

65. Following Kaporos 2019, petitioner Rina Deych came into contact with several Kaporos chickens. She was later taken ill and diagnosed with campylobacter. See Exhibit 7, new affidavit of petitioner Rina Deych.

66. Based on the incubation period, and ruling out all other causes, it was determined that Deych contracted campylobacter from exposure to the

Kaporos chickens.

67. This new evidence, this animal to human infection and illness, proves that the dangers of Kaporos to the citizens of this city are real and must be addressed. It is further evidence that the health codes must be enforced.

68. Toxicologist Dr. McCabe discusses this new evidence, as well. See Exhibit 5, new affidavit of Dr. McCabe.

#### **D. PHOTOGRAPHS OF POLICE OFFICERS WEARING MASKS PRE-COVID-19**

69. New photographic evidence depicts that NYPD personnel were wearing facial masks and gloves at Kaporos 2019. See second new affidavit from Rina Deych, memorializing her personal observations, and authenticating the photos of masked and gloved police officers, collectively annexed hereto as Exhibit 8.

70. Kaporos 2019 took place prior to the Covid-19 outbreak, which begs the question, why were these city defendant agents wearing protective gear at the Kaporos event. It is submitted, the wearing by agents of the city defendants themselves, of protective facial masks and gloves, is additional new evidence that the air is not safe during and after Kaporos (as is evidenced by the air samples, as well).

71. The fact that agents and/or employees of the city defendants are

wearing masks during Kaporos is evidence in and of itself that Kaporos is dangerous.

72. Toxicologist Dr. McCabe discusses the police wearing protective gear, and renders an expert opinion on this topic, as well. See Exhibit 5.

**E. THE ON-SITE INSPECTION FOLLOWING KAPOROS 2015**

72. McCabe's new affidavit also includes results from an onsite inspection conducted on September 21, 2015, during Kaporos 2015, wherein samples of blood, body parts, and other materials were collected and analyzed.

73. McCabe discusses the results of those analysis, and the dangers they pose.

74. These results are also new evidence for purposes of this motion, as they were not before the Court in 2015, as Kaporos 2015 had not taken place yet at the time the prior motion was submitted and decided.

**F. SOCIAL DISTANCING ALSO POSES A NEW PROBLEM  
AND ALSO QUALIFIES AS NEW EVIDENCE**

75. In addition to the usual and customary risks posed by Kaporos on a yearly basis, this year, in particular, in light of required social distancing and other sanitation requirements due to the Covid-19 pandemic, it would be

impossible to hold the Kaporos event and adhere to the strict social distancing safety requirements. Thus, Kaporos not only poses its own threat to be a starting point for its own epidemic, but it will also contribute widely to the further spread of the existing pandemic of Covid-19. There is no way to hold this event and adhere to required social distancing policies.

76. The decision that just came down in Soos. V. Cuomo, United States District Court Northern District of New York, 1:20-cv-651, is worth mentioning.

See,

[https://www.nydailynews.com/coronavirus/ny-coronavirus-religious-gatherings-ruling-20200626-nr47atrdfrdbnfbkxaejoomji-story.html?utm\\_medium=notification&utm\\_source=onesignal&fbclid=IwAR2vtcLyw74TnpUsxH2hKcRZS8nJqAxWlwLrecypxwVXm4h\\_qwh2riAntKw;](https://www.nydailynews.com/coronavirus/ny-coronavirus-religious-gatherings-ruling-20200626-nr47atrdfrdbnfbkxaejoomji-story.html?utm_medium=notification&utm_source=onesignal&fbclid=IwAR2vtcLyw74TnpUsxH2hKcRZS8nJqAxWlwLrecypxwVXm4h_qwh2riAntKw;)

See also, for copy of decision,

<https://www.thomasmoresociety.org/wp-content/uploads/2020/06/Dist.-Ct.-Memo-and-Order-June-26-2020.pdf>

77. In that recent case, a federal court judge blocked New York State's governor and New York City's mayor from enforcing Covid-19 restrictions on religious gatherings. (See links, above.) However, it must be noted, Kaporos is not the benign religious gathering imagined, or as set forth, in the decision.



Kaporos is not an event where fifty or a hundred people gather in a synagogue, mosque, or church, and listen to a service.

78. Kaporos, on the other hand, involves the slaughtering of tens of thousands of birds, in make shift slaughterhouse erected on public streets, violating countless health codes. Most religious gatherings do not involve slaughtering live animals. Indoor gatherings do not violate health codes outside of possible social distancing rules; Kaporos violates health codes, sanitation regulations, and numerous other laws, rules, and regulations.

79. Moreover, people who attend a religious service, inside a religious building, do so voluntarily, and are willingly entering said building of their own accord. Since Kaporos takes place on public streets, anyone who lives or works in those neighborhoods, or is just passing through, will be forced to endure an overwhelming lack of social distancing, in addition to the slaughterhouse remnants all around them, and will be unwillingly subjected to a dangerous condition caused by major health code violations that can and most likely will contribute to an unrestrained spread of Covid-19, possible e-coli or campylobacter, and even a possible new strain of a zoonotic disease or virus.

#### **G. DOH'S FAILURE TO CONDUCT ANY INVESTIGATION OF ITS OWN**

80. As state above, Department of Health then-Commissioner Mary Basset told Nathan Semmel and Dawn Ladd via letter dated January 26, 2018,

that "there remains no evidence that the use of chickens for Kaporos poses a significant risk to human health". (See Exhibit 4.)

81. It is curious how exactly, the DOH came to that conclusion, considering that they have presented no evidence that they have ever conducted any studies, or had a third party conduct any studies on their behalf, to make such a determination.

82. On January 31, 2019, I served a Freedom of Information Request on the New York City Department of Health, wherein I requested, inter alia, "any and all studies conducted, or relied upon by the DOH regarding this event and the public health and/or safety, whether conducted by the government, on behalf of the government, or on behalf of any other individual, entity, or third party, that is in the possession of your governmental agency." See Exhibit 9, my FOIA request and the last communication regarding same.

83. On March 7, 2019, I received an email response stating that they needed until May 10, 2019, to comply with my request.

84. I never received a response.

85. That said, it can be assumed that there have never been any studies conducted by the city defendants to ascertain the safety, or dangers, of Kaporos.

**VI. PETITIONERS HAVE A REASONABLE EXCUSE FOR NOT PRESENTING THIS EVIDENCE ON THE PRIOR MOTION, IN THAT THIS EVIDENCE DID NOT YET EXIST AND WAS NOT YET AVAILABLE**

86. When petitioners filed this action back in 2015, it was under the premise that a pandemic “could” occur due to the reckless health risks that are inherent during the Kaporos event. Up until that point, a pandemic had not occurred, due to a live animal wet market, despite the fact that petitioners, their attorney, and their expert renowned toxicologist Dr. Michael McCabe, warned that such a pandemic could occur.

87. Petitioners have a reasonable excuse for not presenting, on the prior motion, any of the new evidence presented herein.

88. **Covid-19:** Covid-19 had not yet occurred. In 2015, we could not compare another situation that involved a live animal wet market wherein a deadly virus is believed to have originated, to the live animal wet market of Kaporos.

89. It is petitions' position that the emergence of Covid-19, which it is believed by the scientific community originated from a live animal wet market, constitutes new evidence of the grave risks of allowing Kaporos to continue to take place unfettered, that did not exist at the time of the prior motion.

90. **Air Samples:** The air samples did not exist when this matter was heard in 2015; they came into being in 2019. Thus, they could not have been submitted with the prior motion.

91. **Deych infected with Campylobacter:** Petitioner Deych was not diagnosed with Campylobacter until 2019. Thus, this evidence could not have been submitted on the prior motion.

92. **Police Wearing Masks and Gloves:** photographic evidence of police officers wearing protective gear such as masks and gloves did not exist when the prior motion was heard. Petitioners were unaware of this fact until Kaporos 2019.

93. **Social Distancing:** the concept of social distancing did not exist until 2020.

94. **DOH's Failure to Conduct an Investigation:** The failure to respond to or comply with the request for any and all studies conducted, or relied upon by the DOH regarding this event and the public health and/or safety, whether conducted by the government, on behalf of the government, or on behalf of any other individual, entity, or third party, that is in the possession of your governmental agency, did not exist when the prior motion was heard.

95. **McCabe's onsite inspection:** When we filed this matter in July of 2015, we sought to affect Kaporos 2015, which was scheduled to occur that September. When Dr. McCabe was retained, in May of 2015, Kaporos 2015 had not yet occurred. Thus, there was nothing for him to inspect.

96. By the time Dr. McCabe conducted his onsite inspection during Kaporos of 2015, this matter had been already argued, fully submitted, and decided. It should be noted, the air samples referred to herein were taken just recently, following Kaporos 2019.

97. It is respectfully submitted, all lab results, and Dr. McCabe's findings from his onsite inspection also constitute new evidence.

## **VII. CONCLUSION**

98. It is respectfully submitted, the Court's initial conclusion, specifically, that the city defendants should have, and do in fact, have "discretion" with respect to enforcement of the health codes, in light of this new evidence, cannot stand. This issue must be revisited in light of Covid-19 and its suspected origins of stemming from a live animal wet market in Wuhan, China.

99. In light of the health, economic, and financial devastation caused Covid-19, in light of how this pandemic how caused our lives to come to a grinding halt, in light of the hundreds of thousand of lives lost worldwide, and in light of the fact that Covid-19 originated from a live animal wet market, we cannot allow our police department to pick and choose what laws to enforce when it comes to the health code. Too much is at stake, which we all so painfully are currently aware of.

100. Likewise, the matter should be renewed and reconsidered in light of the fact that Deych contracted *Campylobacter*.

101. These two main points, plus the air samples, plus the police officer wearing masks and gloves (pre-Covid-19), plus the sample results following Kaporos 2015, plus new social distancing rule, plus evidence that DOH has done no investigations or testing of its own, all warrant that this matter be renewed and reconsidered.

102. Kaporos was dangerous enough to begin with – but now, in 2020, in a post-pandemic, post-Covid-19 world, its dangers cannot be underestimated. Operating such illegal public slaughterhouses causes and creates an enormous public health hazard that could lead to another Covid-19-like pandemic.

103. It is incumbent on the health commissioner to be proactive, not reactive. It is incumbent on the health commissioner to **prevent** a disease or outbreak – not to recklessly and negligently wait until one occurs.

104. The judicial branch of government must step in. Too much is at stake.

105. We ask, beg, that this Honorable Court reconsider this matter, vacate its prior decision, renew and reconsider, and render a new decision, in favor of petitioners, and denying the city defendant's motion to dismiss.

**WHEREFORE**, petitioners respectfully request that the prior motion and cross motion be renewed and reconsidered, in light of the plethora of new evidence, and the global importance of this matter; petitioners further request that the prior Decision and Order dated September 14, 2015 (entered September 16, 2015) be vacated and that petitioner's complaint be reinstated; that the city defendants herein be ordered and compelled to enforce the health codes (by way of a writ of judicial mandamus) during the event known as Kaporos, as enforcement discretion cannot lie with respect to the public health; together with such other relief as this Court deems just and proper.

Dated: New York County, NY  
July 6, 2020

6.

Yours etc.,



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THE ALLIANCE TO END CHICKENS AS KAPOROS, ET AL.,

*Plaintiff(s),*

*- against -*

NEW YORK CITY POLICE DEPARTMENT, ET AL.

*Defendant(s).*

**ORDER TO SHOW CAUSE AND MOTION TO RENEW**

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*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
*Nora Constance Marino*

**To :**

*Service of a copy of the within  
is hereby admitted.*

Dated: \_\_\_\_\_ 20\_\_

**Attorney(s) for:**

**PLEASE TAKE NOTICE :**

☐ NOTICE that the within is a (certified) true copy of a

OF ENTRY: duly entered in the office of the clerk of the within named court on \_\_\_\_\_ 20\_\_

☐ NOTICE OF that an order of which the within is a true copy will be presented for settlement to the

SETTLEMENT: HON. \_\_\_\_\_  
on \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ M. One of the judges of the within named Court, at

Dated: \_\_\_\_\_, 20\_\_

Yours, etc.

**Law Offices Of  
NORA CONSTANCE MARINO**