

# **EXHIBIT 5**

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

-----X Index No.:

The Alliance to End Chickens as Kaporos and  
RINA DEYCH, et al., 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,  
CHRISTOPHER MOSS, CYNTHIA KING,  
DANIEL TUDOR, DAVID ROSENFELD,  
FRANCES EMERIC, DINA DICENSO,  
JOY ASKEW, JULIAN DEYCH,  
LUCY SARNI, KEITH SANDERS,  
KRYSTLE KAPLAN, MICHELLE ARIEH,  
MORDECHAI LERER, RACHEL DENT,  
SHAI LIBERTY, STEVEN DAWSON,  
and VANESSA DAWSON,

**AFFIDAVIT OF  
DR. MICHAEL J.  
McCABE, JR.**

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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, YESHIVA OF MACHZIKAI HADAS, INC.,  
MARTIN GOLD, CONGREGATION BEIS KOSOV MIRIAM LANDYNSKI  
KALMEN RUBENSTEIN, YITSCHOK ROSENGARTEN  
DENA ROSENGARTEN, MENACHIEM BLUMING  
MILLENNIUM MANAGEMENT, ISRAEL ENGLANDER  
LMM GROUP, LLC., ISAAC DEUTCH. LEV TOV  
CHALLENGE, INC., ANTHONY BERKOWITZ,  
YESHIVA SHEARETH HAPLATHA SANZ BNEI  
BEREK INSTITUTE, and KEDUSHAT ZION,

Respondents.

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STATE OF PA  
COUNTY OF Montgomery ss.

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

1. I am a consultant scientist employed by Exigent Global, Inc. where I serve as the Executive Director of Forensic Consulting overseeing the activities of several practice areas including Environmental and Occupational Health and Safety. I also serve 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), and I am currently an Adjunct Faculty member in the Department of Chemistry at Temple University (Philadelphia).

3. I am board certified in toxicology as a *Diplomate* of the American Board of Toxicology. 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. In 2015, 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 submitted two reports and one affidavit back in 2015-2016, after reviewing 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 Rina Deych, Lisa Renz, Michael Tomaz, setting forth in detail what transpires at the event, numerous photographs and

video of the event, an on-site inspection of the event itself during Kaporos 2015. I have also engaged in my own research.

6. My prior affidavit was 25 pages. The last section, entitled "Findings", reads as follows:

### **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, 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.*

[See prior motion, Doc. 005.]

7. Recently, following the COVID-19 quarantine/lockdown, Attorney Marino contacted me and asked my opinion with respect to Kaporos and if the emergence of Covid-19 and if the global repercussions of Covid-19 would have any effect on my prior opinion of Kaporos. It most certainly does; it strengthens my prior opinion, and I believe acts as new evidence in support thereof.

8. The emergence and existence of Covid-19 is unquestionable confirmation of my prior opinion, 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. The emergence and existence of Covid-19 has been connected to a zoonotic cause, and the reckless, unrestrained, unregulated nature of Kaporos, coupled with the fact that it occurs on public streets and public sidewalks in densely populated area, leads me to opine that within a reasonable degree of scientific certainty, Kaporos activities present a significant human health hazard that could trigger widespread bacterial or viral illness.

#### **Take Away Lessons from COVID-19**

9. In late December 2019, health authorities in China reported that a cluster of patients had been hospitalized with an initial diagnosis of "pneumonia of unknown etiology". These patients were epidemiologically linked to a seafood and wet animal wholesale market located in Wuhan, Hubei Province, China. Using an isolate from one of these patients, Chinese researchers in early January

2020 identified a novel coronavirus, now known as SARS-CoV-2 (Severe Acute Respiratory Syndrome, Coronavirus - 2). Shortly thereafter, the World Health Organization (WHO) officially named the disease as coronavirus disease 2019 (COVID-19).

10. The first cases of what we now know as COVID-19 were reported in December 2019 in the central Chinese city of Wuhan (<https://doi.org/10.1038/s41579-020-0332-0>). From December 18, 2019 through December 29, 2019 five patients were hospitalized with acute respiratory distress syndrome; one of the patients died. Within a month's time, by the end of January 2020 approximately 7,700 cases of COVID-19 infection had been confirmed in mainland China, and approximately 90 other cases had been reported in 19 other countries around the globe. The first case of COVID-19 in the United States was diagnosed on January 19, 2020 in a hospital in Washington State where a 35 year old man presented with "pneumonia-like" symptoms after returning from traveling to visit family in Wuhan (Holshue et al., 2020).

11. To date, a mere 6 months after the start of what has come to be known as the COVID-19 global pandemic, which has had unprecedented and devastating health and economic consequences, over ten million million confirmed cases and more than a half million confirmed deaths have been reported globally ([www.who.int/emergencies/diseases/novel-coronavirus-2019](http://www.who.int/emergencies/diseases/novel-coronavirus-2019)). In the United States, 2,573,393 confirmed cases and 126,573 deaths attributable to COVID-19 have been reported as of July 1, 2020 according to the WHO.

Although the exact role of the Wuhan wet market in the origin of this pandemic is debated, COVID-19 unquestionably has a zoonotic<sup>1</sup> link. The COVID-19 pandemic, which has been upon us disrupting lives, wreaking economic havoc and which has had fatal consequences for many, evidences the very real potential for and consequences of careless human – animal interaction to initiate widespread catastrophic rapidly emerging infectious disease. COVID-19 proves that careless human – animal interaction, like that which may occur in an unsanitary wet market, many of which have now been shut down across the United States and elsewhere, carries an enormous risk to public health and a high price to our wellbeing. Our incomplete understanding of the animal origin of certain infectious (usually novel viral) diseases is a poor excuse for failing to mitigate risks by promoting sensible human – animal interactions (or preventing non-sensical interactions).

### **Kaporos is a Careless Human – Animal Interaction**

12. Since 2015, I have been retained by attorney Nora Constance Marino, who represents the Alliance to End Chickens as Kaporos, and residents of the subject neighborhoods, to perform investigations concerning the public health hazard caused by annual Kaporos activities that take place during Yom Kippur in Brooklyn, New York. Kaporos is practiced by ultra-orthodox Jews as part

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<sup>1</sup> Zoonotic: Pertaining to zoonosis – a disease that can be transmitted from animals to humans or more specifically, a disease that normally exists in animals that can infect humans.



of a religious ritual of atonement that involves the sacrificing of live chickens. Minimally, tens of thousands of chickens are carelessly housed, senselessly slaughtered and ineptly disposed of during the Kaporos events. Based on my investigation and analysis, which included a first-hand observation of Kaporos activities and collection of environmental samples in September 2015, I reached a conclusion and opinion that the Kaporos activities taking place in the subject locations constitute a dangerous condition and pose a significant public health hazard<sup>2</sup>. The subject sites are located in Brooklyn, New York – the most populated borough, in the largest city in the United States, which coincidentally has suffered the greatest impact of the COVID-19 pandemic.

13. Based on my analysis and first-hand observation, I have described the Kaporos events as open-aired and unrestricted access makeshift slaughterhouses that are chaotic and large in scale and volume. The Kaporos events take place in care-free and carnival-like atmospheres where people (humans) carelessly interact with chickens (animals) including bio-hazardous materials (including but not limited to widespread chicken blood, feces, feathers and animal carcasses) generated from the wide-scale slaughtering that takes place. The care-free and carnival-like atmosphere of past Kaporos events stand in stark contrast to recent customs undertaken everywhere to control the spread of COVID-19 (e.g., physical distancing, wearing surgical gloves and face masks,

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<sup>2</sup> I authored two expert reports and an affidavit.

attention to hand-washing, sterility and sanitation). This creates a double-layered hazard – one, the hazard exists from the mere nature of slaughtering tens of thousands of live animals on public streets, without any proper protocols in place whatsoever, and two, current-day health precautions due to Covid-19 are impossible to adhere to under these circumstances.

14. In January 2018, two years before the start of the COVID-19 pandemic, the New York City Department of Health and Mental Hygiene then-Commissioner, Mary T. Bassett, MD, MPH wrote a terse letter to Nathan Semmel and Dawn Ladd, wherein she stated, “... *at this time, there remains no evidence that the use<sup>3</sup> of chickens for Kaporos poses a significant risk to human health.*” In other-words, Dr. Bassett advocated for a reactive rather than pro-active approach to zoonotic disease containment. Arguably, Dr. Bassett ignored the evidence detailed in my prior affidavit concerning the unsanitary, and quite frankly, filthy conditions (and, therefore, significant risk to human health) associated with the slaughtering of tens of thousands (perhaps vastly more) of chickens in the bustling streets of the most populated urban center in the country.

15. In addition to the environmental surface samples that I collected at Kaporos 2015 (see below), which evidenced the presence of high levels of coliform bacteria indicative of unsanitary conditions, air monitoring testing

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<sup>3</sup> “use of chickens for Kaporos” appears to be a euphemism for careless housing, senseless slaughtering and inept disposal of chickens accompanied by widespread public exposure to biohazardous materials (e.g., chicken blood, feces, feathers, animal carcasses, etc.) associated with such use of chickens for Kaporos.

performed during Kaporos 2019 on behalf of Nora Constance Marino, Esq., also found high levels of bacteria indicative of unsanitary conditions<sup>4</sup>. These airborne monitoring tests found the presence of human disease causing gram negative rods (e.g., E. Coli and Pseudomonas species). In-other-words, testing supports the actual air borne presence, not just a strong theoretical argument, of respirable biohazardous material associated with Kaporos activities.

#### **New Evidence of Actual Human Infection Associated with Kaporos Activities**

15. In addition to the emergence of the Covid-19 pandemic, and the evidence that has created, supporting the conclusion that health codes should be vehemently enforced, additional new evidence has come to light in this case that warrants consideration. One of the Plaintiffs, Reyna Deych, a resident in one of the subject locations, reportedly was diagnosed with an enteric illness due to Campylobacter infection shortly after having contact with chickens associated with Kaporos 2019<sup>5</sup>. Chickens are known to be vectors for the transmission of Campylobacter, which is a gram negative human pathogen.

16. Based on the incubation time for the disease, Ms. Deych's onset of symptoms and clinical presentation, and ruling out other sources of Ms. Deych's

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<sup>4</sup> To date, I am not aware of any environmental testing performed by the New York City Department of Health aimed at assessing the public health risks posed by Kaporos activities.

<sup>5</sup> I have read the affidavit of Rina Deych dated June 27, 2020, filed in connection with the within motion, and use that, in part, as a basis for my conclusions and opinions herein.

exposure to Campylobacter (see Deych affidavit), her illness is consistent with the Kaporos activities causing a significant risk to human health.

### **The Wearing of Face Masks by NYPD pre-Covid-19**

17. From the vantage point post COVID-19, a disease caused by respirable biohazardous material, the New York City Department of Health might want to reconsider the stance that there is no evidence that Kaporos activities pose a significant risk to humans and take appropriate action to mitigate this significant risk, as it set forth in the Bassett letter to Semmel and Ladd. In addition to the forgoing arguments, the New York City Department of Health should look no further than the numerous pictures attached hereto of members of the New York City Police Department on duty and present at previous Kaporos events wearing face masks.

18. These are the very same types of face masks worn by people the world over to protect themselves from the respirable illness COVID-19; the very same types of face masks recommended by the CDC to control the transmission of a respirable illness (i.e., COVID-19) the etiology of which is incompletely understood; the very same type of face mask one wears when concerned about the risk to their health upon respiring biohazardous material such as that evidenced by the use of chickens for Kaporos.

19. Upon information and belief, these face masks were worn, and these photos were taken, during Kaporos in September-October, 2019. That is pre-

COVID-19, so no police officer is wearing a facemask for fear of COVID-19, as the pandemic had not yet emerged.

### **Conclusion**

20. To be clear, there is no scientific argument being advanced herein that Kaporos caused COVID-19. That argument conceivably could be made if Kaporos 2020 was allowed to proceed in the absence of adopting stringent CDC and WHO safety measures.

21. The occurrence of COVID-19 evidences that careless human-animal interaction and failure to proactively recognize the significant health hazard posed by the presence of respirable biohazardous materials has had unprecedented and devastating health and economic consequences.

22. It is my opinion within a reasonable degree of toxicology, immunology, and environmental health sciences certainty, based on the prior evidence set forth herein, and strengthened by the new evidence recently obtained, specifically, the happening and spread of Covid-19, new air sample testing results, evidence of police officers wearing masks pre-Covid-19 at Kaporos, and plaintiff Rina Deych's *Campylobacter* diagnosis following contact with Kaporos chickens, 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.

### **My Inspection of September 21, 2015**

23. In addition to my opinion based on the new evidence set forth herein, specifically, the emergence of COVID-19, which it is believed originated from a live animal wet market, plus the fact that plaintiff Rina Deych was diagnosed with campylobacter which came from coming into contact with a Kaporos chicken, in conjunction with the fact that there is new evidence that police officers were wearing masks at the Kaporos event in 2019 (pre COVID-19), and any other new evidence set forth herein, I am also reprinting the results from my on-site inspection that took place on September 21, 2015, after the prior decision on the prior motion was issued.

24. The contents of this report from the onsite inspection were not submitted with my original affidavit, because Kaporos had not yet occurred in 2015 when Attorney Marino retained me, and submitted her motion. Thus, there was nothing for me to inspect at that time – Kaporos only takes place once a year. My prior affidavit is dated May 22, 2015. Kaporos was four months away; thus, I based my opinion at that time on photos, video, testimony, and my own research.

25. By September of 2015, Attorney Marino had filed her motion, and it had been decided. Despite that fact, Attorney Marino still asked me to do an onsite inspection during Kaporos 2015, and I did. Samples were collected.

26. Below are my findings from that onsite inspection.

### **Findings from the September 21, 2015 On-Site Inspection**

On Monday September 21<sup>st</sup> 2015, I conducted an investigation of Kaporos activities taking place at five separate representative sites in the Borough Park and Crown Heights districts of Brooklyn, New York. The five sites were located in the vicinity of the following addresses:

- 1) 1725 43<sup>rd</sup> St. near the corner of Dahill Rd.
- 2) 1417 50<sup>th</sup> St. near the corner of 14<sup>th</sup> Ave.
- 3) 1413 45<sup>th</sup> St. between 14<sup>th</sup> Ave. and 15<sup>th</sup> Ave.
- 4) 298 -338 Crown St. (parking lot behind Associated Beth Rivkah Schools on Montgomery St.)
- 5) 1414 President St. near the corner of Kingston Ave.

1. The purpose of my investigation was to observe first-hand and photo document the Kaporos activities and aftermath of Kaporos activities at these sites and to obtain environmental samples for microbial testing.
2. The Hasidic Jewish communities at these locations as well as others throughout Brooklyn practice Kaporos, which involves the sacrificing of live chickens as part of a religious ritual during Yom Kippur – the Jewish Day of Atonement. Notwithstanding the religious intent of Kaporos, the colossal and chaotic slaughtering of thousands of chickens, which I observed

firsthand, occurs on public property in what constitute open-aired and unrestricted access makeshift slaughterhouses. I was retained to determine if the operation of these large-scale, open-aired and unrestricted access makeshift slaughterhouses in the middle of a major urban population center pose a public health hazard. My September 21<sup>st</sup> 2015 investigation and this report supplement my May 6<sup>th</sup> 2015 Expert Report and May 26<sup>th</sup> 2015 Affidavit in this matter. My September 21<sup>st</sup> 2015 investigation and first-hand observation of the Kaporos activities taking place at the five sites listed above strengthens the opinions outlined in my May 26<sup>th</sup> 2015 Affidavit.

3. **Site #1 - 1725 43<sup>rd</sup> St. near the corner of Dahill Rd.** I arrived at this site at approximately 11:30 AM on September 21<sup>st</sup> 2015. It is my understanding that Kaporos activities (e.g., chicken slaughtering) had taken place at this location during the evening hours prior to my arrival. The aftermath of the chicken slaughter activities was evidenced by extensive environmental contamination that included chicken carcasses, feathers, blood mixed with bird excrement and a pungent ammonia-like smell.





Figure 1. Left, Sidewalk on northeast side of 43rd street looking toward Dahill Rd. Note presence of copious amount of feathers on sidewalk. Kaporos site was behind (i.e., to the left of) the fenced area. Right, Garbage bags piled behind fenced area seen in Figure 1. Note presence of dead chicken underneath garbage bags.



**Figure 2. Bloody fluid oozing from garbage bags behind the fence onto the public sidewalk. This fluid was swab sampled (i.e., specimen A) and submitted for microbial analysis. See results below.**



**Figure 3. Left, Refuse piled behind the fence. Notice blood spatter on boxes. Right, a chicken foot collected from the sidewalk on 43<sup>rd</sup> street.**

4. Site #2 - 1417 50<sup>th</sup> St. near the corner of 14<sup>th</sup> Ave. I arrived at this site at approximately 12:00 PM on September 21<sup>st</sup> 2015. It is my understanding that Kaporos activities (i.e., chicken slaughtering) also had taken place at this location during the evening hours prior to my arrival. As a result of these

activities, environmental contamination, as evidenced by the presence of blood runoff into the street and storm drains, was observed. The following photographs document what I observed.



**Figure 4. Bloody runoff into the street at site #2. Note that a delivery truck (tires) is parked in the contaminated substance that is pooled against the curb. Also, note the presence of improperly discarded disposable gloves in the pooled bloody**

runoff. A sample of this bloody runoff was collected (i.e., specimen D) and submitted for microbial analysis. See results below.



Figure 5. Additional photographs of the bloody runoff into the street and other evidence of environmental contamination observed at Site #2.



**Figure 6. A storm drain was located a few yards away from the location where the truck was parked. The bloody fluid flowed toward and into this drain. The foreground of the picture on the left evidences the presence of chicken feathers.**

5. Site #3 - 1413 45<sup>th</sup> St. between 14<sup>th</sup> Ave. and 15<sup>th</sup> Ave. When I arrived at this site, it was evident that members of the Hasidic Jewish Community were making preparations for a Kaporos event. There was a bustle of activity involving the logistics of receiving crates of chickens, offloading them from trucks, and stockpiling them for sacrifice. As a consequence of these activities together with a light breeze, the air was dense with chicken feathers and other particulates resulting from the Kaporos preparation activities. Such airborne contaminants constitute a hazard for inhalation exposure to toxic, infectious or allergenic agents.



**Figure 7. Kaporos preparation at Site #3.**



**Figure 8.** There was an abundance of white feathers (like those seen in this photograph) and particulates in the air at Site #3.

6. Also at site #3, there were garbage bags stacked along the sidewalk that smelled of the stench of rotting chicken carcasses and other debris attributable to Kaporos activities. Some of the garbage bags were leaking fluid onto the public sidewalk. A sample (i.e., specimen #4 below) of one



of these leaking garbage bags was taken and submitted for microbial analysis.

7. **Site #4 298 - 338 Crown St. (parking lot behind Associated Beth Rivkah Schools)**. This location was the site of a children's Kaporos event that had recently taken place. The site was a parking lot located behind a yeshiva school located in the Crown Heights district of Brooklyn. A public school (P.S. 161) was located next door to the east of the Beth Rivkah yeshiva school. When I arrived at the parking lot site, children were playing at recess in the P.S. 161 school yard. There was extensive environmental contamination of the yeshiva school parking lot as evidenced by the prominent presence of chicken feathers on the ground.



**Figure 9. Chicken feather contamination of yeshiva school parking lot at site #4.**

8. **Site #5 - 1414 President St. near the corner of Kingston Ave.** Much of my May 26<sup>th</sup> 2015 Affidavit was based on accounts of Kaporos activities that had taken place at this location (site #5) during previous years. During my September 21<sup>st</sup> 2015 inspection, I visited this site on two occasions; in the afternoon at approximately 1:45 to 2:15 PM and then during the evening hours (i.e., 6 to 10 PM) to witness Kaporos activities firsthand. I can be seen walking through the crowd of participants and protestors in news footage of the Kaporos activities at site #5 from that date (<http://abc7ny.com/pets/demonstrators-protest-jewish-ritual-involving-chickens-in-brooklyn/995717/>).
9. While I was at site #5 in the afternoon, it was evident that preparations were being made for Kaporos activities planned for later that evening at this site. As described in my May 26<sup>th</sup> 2015 affidavit, the Kaporos event requires that numerous chickens are shipped into the practicing neighborhoods and left in semi-truck trailers. I observed this to be the case first-hand during my September 21<sup>st</sup> inspection. As was the case at site #3, there was a bustle of activity on President St. involving the logistics of receiving crates of chickens, offloading them from trucks, and stockpiling them for sacrifice. As a consequence of these activities together with a light breeze, the air was dense with chicken feathers and other particulates resulting from the Kaporos preparation activities. Some of the feathers and particulates were

settling on foodstuffs that had been delivered to a market located across the street from a make-shift slaughtering booth.



**Figure 10. Left, Semi-truck trailer parked on President Street at site #5 loaded with hundreds of chickens designated for Kaporos slaughter. Right, Located across the street from the Kaporos preparation site was a food market that was in the process of receiving produce.**

10. Some of the things that were mentioned in my May 26<sup>th</sup> 2015 affidavit that I observed first-hand during my September 21<sup>st</sup> 2015 inspection are as follows:

- The event takes place on public streets and sidewalks in multiple locations in Brooklyn, New York (i.e., it is extensive in scope).
- The large Hasidic Jewish community that resides in Brooklyn practices the ritual of Kaporos in a carnival like atmosphere (i.e., with inadequate attention to controlling exposure to bio-hazardous materials and preventing cross contamination of other public areas).



- As a consequence of Kaporos activities, chicken blood, feces, and feathers contaminate the public streets and sidewalks.
- There is a strong and pungent ammonia-like stench in the air due to the presence of copious amounts of chicken, feces, blood and decaying carcasses.
- There are inadequate clean up and containment measures.



- The event is in actuality an open-aired and unrestricted access makeshift slaughterhouse that is chaotic and large in scale (i.e., high volume) in the middle of a major urban population center.
- The activities of Kaporos subject the public to bio-hazardous materials associated with and including but not limited to chicken blood, feces, feathers and animal carcasses.

- The community is affected by the activities and events of Kaporos in that unsanitary conditions arise involving, but not limited to, feces, 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, which should be obvious to City public health officials.

11. My presence at site #5 during the evening of September 21<sup>st</sup> 2015 was for the purpose of furthering my investigation of whether Kaporos activities posed a public health hazard and to take environmental samples for microbial testing. The President Street Kaporos site was a crowded, chaotic and emotionally charged area during this time period in that, while Hasidic Jewish families practiced their ritual, there were many protestors on the perimeter vehemently voicing their opposition. In turn many of the Hasidic Jewish participants fervently argued back at the protestors. These were not ideal conditions to be taking environmental samples. I also felt that I had to maintain neutrality (despite having been retained by Counsel representing the protestors) and respectful, in principal, that the Hasidic Jews believed that they were practicing a religious ritual. I managed to collect two samples of feces from the ground area in front of the slaughter booth where for several hours prior I had observed numerous participants holding

chickens aloft (see picture that follows as an example) with no consideration of the environmental fecal contamination introduced by their doing so. Throughout the night participants strolled through such contamination. Additionally, children paraded through on scooters, rollerblades and skateboards. Mothers pushed strollers. Other non-participants (e.g., postal workers, deliverymen) travelled through the area pushing other wheeled equipment (see pictures that follow).



**12. Specimens collected and submitted for microbial analysis.** Five specimens were collected from the various sites that I inspected and observed on September 21<sup>st</sup> 2015. These samples were submitted to EMSL, Analytical for testing for microbes. Testing included the analysis for the presence of total coliform bacteria, E. coli, yeast, mold, staphylococcus aureus, salmonella, campylobacter and total aerobic plate count (see Appendix B for



complete test results). Description of samples and positive test results is as follows:

Sample A – Gauze swipe sample of leaking garbage bags present at site 1 (see Figure 2)

- > 20 million aerobic plate count
- Total coliforms low

Sample D – fluid; bloody runoff into gutter and drain at site #2 (see Figures 4 – 6)

- 5.5 million total plate count
- 370,000 total coliform colonies
- 26,000 E. coli colonies

Sample #4 – Gauze swipe sample of leaking garbage bag from site #3

- 3.8 million total plate count
- 16,000 total coliform colonies
- 9,800 E. coli colonies

Sample #7 – Gauze swipe of fecal sample on President Street

- 6 million total plate count
- > 12 million total coliform
- > 12 million E. coli

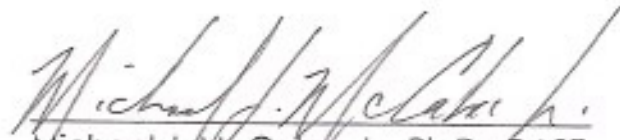
Sample #9 – Gauze swipe of fecal sample on President Street

- 4.7 million total plate count
- 180,000 total coliform
- 110,000 E. coli

13. **Interpretation of Results.** The test results above indicate that there were high levels of bacteria present in these samples. The high levels of total coliform bacteria and E. coli present confirm that the Kaporos activities produce unsanitary conditions in the public spaces from which these samples were collected. The presence of coliform bacteria is a bacterial indicator of unsanitary conditions. Certain coliform bacteria (e.g., E. coli) can be pathogenic for humans.

14. **Conclusion.** Consistent with the findings from my May 26<sup>th</sup> 2015 affidavit, the first-hand observations that I made during my September 21<sup>st</sup> 2015 Kaporos inspection as well as the photographs that I took and test results confirming high bacterial contamination and unsanitary conditions confirm and strengthen my opinion that within a reasonable degree of professional certainty the Kaporos activities taking place in the subject locations constitute a dangerous condition and pose a significant public health hazard.

Dated: 07/03/2020

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

Sworn to before me this  
3<sup>rd</sup> day of July, 2020

  
NOTARY PUBLIC

Commonwealth of Pennsylvania - Notary Seal  
Tamer Twofiles, Notary Public  
Montgomery County  
My commission expires May 14, 2023  
Commission number 1347382  
Member, Pennsylvania Association of Notaries

**Certification**

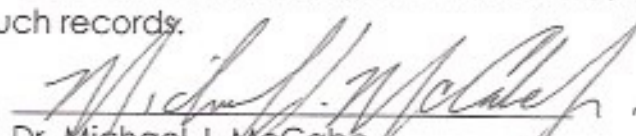
With respect to the lab results referred to in this affidavit that relate to my onsite inspection of September 21, 2015, I certify the following:

1. I am a duly authorized custodian of the records relied on, both with respect to Robson Forensic and Exigent Global, Inc., or an otherwise qualified witness to make this certification on behalf of either of these entities.

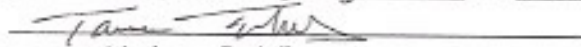
2. To the best of my knowledge, the records of copies that I relied upon to assist in the forming of my opinions are accurate versions of the documents in my possession, custody or control.

3. Any lab results referred to herein are actual and accurate copies of and/or exact replicas of the information obtained from said lab results obtained by or from Robson Forensic and/or Exigent Global, Inc.

4. The records or copies relied upon were made by the personnel or staff of the business office or persons acting under their control, in the regular course of business, at the time of the act, transaction, occurrence or event recorded therein, or within a reasonable time thereafter, and that it was the regular course of business to make such records.

  
Dr. Michael J. McCabe

Sworn to me this  
3<sup>rd</sup> day of July, 2020.

  
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