



NEW YORK CITY DEPARTMENT OF INVESTIGATION

**ROSE GILL HEARN
COMMISSIONER**

**CHRISTOPHER S. STAACKMANN
INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
CITY OF NEW YORK**

**DOI'S FINDINGS AND RECOMMENDATIONS ON THE DOHMH
INSPECTION OF THE KFC-TACO BELL
ON FEBRUARY 22, 2007**

APRIL 2007

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I. SUMMARY OF DOI'S FINDINGS

The New York City Department of Health and Mental Hygiene ("DOHMH") is responsible for regulating and inspecting food service establishments in New York City, and enforcing the attendant provisions of the New York City Health Code. These inspections are conducted by Public Health Sanitarians ("PHS"), and supervised by senior PHSs and managers of the DOHMH.

On February 23, 2007, a number of television news programs ran stories about a Kentucky Fried Chicken-Taco Bell restaurant ("KFC-Taco Bell") located at 331 Sixth Avenue in Greenwich Village. These news reports included video footage shot in the evening after the restaurant was closed, and showed numerous live rats running throughout the restaurant. The following day, the New York City Department of Investigation ("DOI") commenced an investigation after learning that DOHMH PHS Cemone Thomas had inspected the KFC-Taco Bell the day before the news stories ran, and gave it a passing grade. Dr. Thomas R. Frieden, Commissioner of DOHMH, had also specifically requested that DOI investigate the circumstances surrounding this inspection.

As part of this investigation, DOI reviewed all available records relating to Thomas' inspection of the KFC-Taco Bell. DOI also reviewed other inspection records and documents maintained by the DOHMH and reviewed the applicable provisions of the New York City Health Code. In addition, DOI interviewed 10 witnesses, including Thomas, other DOHMH employees with supervisory responsibility for this inspection and employees of the KFC-Taco Bell.

Based upon this investigation, DOI has found the following: On January 22, 2007, the DOHMH received a referral from the NYC Mayor's Office of City Legislative Affairs concerning a complaint made by a constituent to NYC Councilmember Maria del Carmen Arroyo.¹ According to the referral, the constituent alleged that while eating at the KFC-Taco Bell in Greenwich Village, a rat fell from the ceiling. The address of the KFC-Taco Bell identified in the referral was incorrect, and the DOHMH did not identify the correct location until on or about February 7, 2007. On that day, the complaint was forwarded to Marina Politis. Politis is currently the Director of the Office of Customer Service and Quality Improvement ("OCSQI") of the Bureau of Food Safety and Community Sanitation within the DOHMH. This unit is responsible, among other things, for responding to any complaints about the condition of restaurants. OCSQI did not take any substantive action in connection with this referral until February 22, 2007. In addition, between December 23, 2006 and February 12, 2007, NYC 311 received four calls about the KFC-Taco Bell, including a complaint from an anonymous caller who alleged that an employee of the restaurant had been bitten by a rat. The DOHMH responded to each of these calls by issuing a warning letter to the operator of the KFC-Taco Bell requiring that the alleged conditions -- all of which pertained to complaints about rats -- be remedied.

¹ Councilmember Arroyo represents the 17th Council District (Bronx) and is currently the Chair of the Committee on Aging and a member of the Committees on Education, Health, Juvenile Justice, Land Use, and the subcommittee for Landmarks, Public Sitting, and Maritime Uses.

On February 22, PHS Thomas was given the responsibility of inspecting the KFC-Taco Bell in response to the complaint. The inspection assignment identified the complaint as a “problem with mice, rodents, and dirt.”

PHS Thomas conducted an inspection of the KFC-Taco Bell beginning in the late afternoon hours of February 22, 2007. At the conclusion of her inspection, Thomas reported that she had found a hole, approximately 15 inches in diameter, in the ceiling of the restaurant, and further reported to having observed a total of approximately 87 rat droppings in three separate areas. She reported finding one set of fresh rat droppings directly beneath the hole in the ceiling. The other sets of droppings were located on the main floor under the cash register and on the basement floor under shelves where food was stored. In her final report, Thomas also noted that the hole constituted a condition “conducive to the existence of pest life.” However, as discussed in more detail in this report, DOI has determined that Thomas significantly under-reported her findings.

Before Thomas began the inspection, she was instructed by a senior PHS to phone in her results before finalizing the inspection. Thomas telephoned OCSQI from the restaurant and communicated the findings noted above to Marina Politis via Carol Feracho. However, Thomas admitted to DOI investigators that she failed to inform Politis or include in her final inspection report that she actually observed four, not three, separate areas of rat droppings. By her own admission, this additional set of droppings, which she estimated to contain approximately 20 droppings, would have put the total number of droppings at approximately 107, requiring that Thomas fail the restaurant. She also admitted that she did not report food debris on the floor of the walk-in refrigerator. In addition, two KFC-Taco Bell employees interviewed by DOI who were present with Thomas during the February 22 inspection, including the Food Protection Certificate Holder, each separately testified that Inspector Thomas actually observed between six and eight separate areas of rat droppings. Under DOHMH guidelines and the Inspection Scoring System for Food Service Establishments, which are discussed in further detail in this report, the presence of more than 100 rat droppings requires that the inspector fail the restaurant and could result in the DOHMH closing the restaurant immediately.

After Thomas reported finding rat droppings in three separate areas with a total of 87 droppings to Politis - instead of the six to eight areas that Thomas actually observed - Politis instructed Thomas to give the establishment a passing inspection and issue a notice of violation for the hole in the ceiling and for the three areas of rat droppings. Based on those violations, a follow-up compliance inspection was not required. Despite the combined evidence of potential rat infestation (i.e., numerous rat droppings in three areas in the basement and on the main floors of the restaurant, in conjunction with a large hole beneath which there were fresh droppings), Politis did not instruct Thomas to conduct a full inspection of the establishment to determine if there were other signs of infestation. Such an instruction is routine in cases where preliminary findings suggest infestation and would have been the appropriate instruction here. Politis also failed to correctly interpret DOHMH’s inspection scoring guidelines that could have allowed the DOHMH to fail the restaurant even with the incomplete findings reported by Thomas. Lastly, Politis failed to inform or contact a manager, who was still present in the office, for guidance on how to handle this situation, which is an established practice at the DOHMH.

The next morning, after the media had ran the video footage of rats running throughout the restaurant, the DOHMH conducted a full inspection of the KFC-Taco Bell. That inspection found numerous violations, including 28 points for rodent droppings, and 5 points for conditions conducive to rodent life. In all, the inspector found violations totaling 106 points and ordered that the restaurant be closed. The DOHMH website currently reports the point totals for 762 restaurants that have failed inspection. There are only 8 restaurants reported on the website with a greater number of violations points than the 106 received by the KFC-Taco Bell; and, in general, any point accumulation over 28 is considered significant; any point accumulation over 75 is considered significant enough to prompt a conversation with supervisors about closing the establishment.

In short, DOI's findings support that Thomas failed to report her actual observations to both her DOHMH supervisors and in the notice of violation -- findings that, if truthful, would almost certainly have led to the closing of the KFC-Taco Bell that evening. In addition, Thomas' testimony under oath during the course of DOI's investigation concerning what she observed at the KFC-Taco Bell during her inspection was not credible in a number of material respects. Finally, DOI's investigation revealed that Politis failed to properly supervise the inspection in light of the reported evidence of potential infestation.

This report is organized as follows: Section II provides an overview of the relevant DOHMH rules and regulations. Section III outlines the inspection findings as reported and documented by PHS Thomas on the evening of the inspection. Section IV summarizes the testimony given by PHS Thomas, Politis and other witnesses interviewed as part of this investigation. Finally, Section V outlines DOI's conclusions and recommendations to date.

II. DOHMH REGULATIONS AND INSPECTION SCORING SYSTEM

Pursuant to Chapter 22 of the New York City Charter, the DOHMH has the jurisdiction to regulate all matters affecting the health of New York City residents, including the authority to inspect and regulate food service establishments.

A. Article 81 of the New York City Health Code

Article 81 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, outlines the regulations relating to the operations of food service establishments so as to prevent public health hazards. The Article is consistent with federal guidelines on the control of health hazards and the provisions of the New York State Sanitary Code dealing with food service establishments.

Article 81 requires, among other things, that food service establishments be kept free of rodents and of any condition conducive to rodent life. Furthermore, Article 81 gives the DOHMH the authority to make determinations on whether the operation of a food service establishment may be detrimental to the public health and, if so, to take any and all actions necessary to protect the public health.

B. Chapter 23 of the Rules of the City of New York

Chapter 23 of the Rules of the City of New York (“RCNY”) entitled *Food Service Establishment Inspection Procedures*, sets forth the rules that apply to the conduct of the inspections of food service establishments by employees of the DOHMH. These rather complicated rules require inspectors to use a point system and arrive at a numerical score at the end of each inspection. Each violation is assigned a base point value, which then falls into a certain Condition level, ranging from Condition I, the least serious condition with the lowest (base) point value, through Condition V, the most serious condition with the highest point value. For example, if an inspector finds one improperly stored toxic chemical during an inspection - which is considered a critical violation by the DOHMH, the procedures assign that violation a Condition level I worth 7 points. If two improperly stored toxic chemicals are found, the guidelines define this as a Condition level II for the violation and assign 8 points. In this example, the more improperly stored chemicals that are found, the higher the Condition level and the greater the points. In short, this system defines conditions and adds additional points to an initial base number, when necessary, to reflect the severity of the violation.

Under this point system, a total of 28 points or more is considered a “failed” inspection, which requires a compliance inspection by the DOHMH and can, under certain circumstances, lead to the closing of a food service establishment and/or the commencement of a proceeding to revoke or suspend a permit. For most violations that are classified at a Condition V level, the scoring system automatically assigns 28 points, resulting in an automatic failure of the inspection. A failure of inspection, however, may or may not result in a closure. When an establishment has failed an inspection but is not closed, it is required to remediate the violations and undergo a follow-up inspection known as a compliance inspection.

C. Inspection Scoring System for Food Service Establishments

Chapter 23 of the RCNY also contains scoring grids and a worksheet that set forth the point value and condition severity levels for violations. The grids and worksheet form the basis of and are incorporated into the DOHMH’s *Inspection Scoring System for Food Service Establishments*, a guide issued by the DOHMH’s Bureau of Food Safety and Community Sanitation (“BFSCS”) for use by the public and BFSCS staff, including PHS, supervisors and managers in carrying-out their inspection responsibilities. The guide identifies violation codes, points and condition levels; and, ultimately, is used to ascertain the total number of points at the conclusion of an inspection.

The table below is an example of one such grid taken from the DOHMH's *Inspection Scoring System for Food Service Establishments*.² This portion of the scoring grid sets forth the parameters and findings needed to reach a *Condition V* level for the Critical Violation 4L, which relates to evidence of rats at a food service establishment.

	Violation	Condition V
4L	Evidence of rats or live rats present in facility's food and/or non-food areas	Three or more live rats and/or greater than 100 rat droppings; and/or other conditions exist conducive to infestation of rats, i.e., holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.

Under the *Inspection Scoring Worksheet* insert of the *Inspection Scoring System for Food Service Establishments*, a 4L violation at *Condition V* is assigned 28 points and is considered an automatic failure of the inspection.³ As the above grid makes clear, a *Condition V* violation is met when more than 100 rat droppings are observed; and/or when other conditions exist conducive to infestation of rats, including holes and openings. This grid also makes clear that the presence of these conditions requires the inspector to contact the office to discuss closing the restaurant or pursuing other enforcement measures.

A DOHMH PHS uses a handheld computer to enter information during the course of an inspection. The device, which is referred to as the Food Inspection Handheld Computer Application (FIHCAP), accepts the findings entered by the PHS and tallies points automatically. The total points will obviously be wrong if the PHS does not truthfully input all of his/her findings. Notably, the computer does not automatically identify the condition level of a violation. The condition level must be selected and entered by the PHS. A PHS also has a handheld printer, which is used to print out the violations at the conclusion of inspections, which are then given to the establishment. In order to issue a violation, a PHS must obtain a docket number by calling the DOHMH Administrative Tribunal. The Administrative Tribunal conducts administrative hearings of violations issued by the DOHMH, and docket numbers are assigned and used to track violations through the system. Once a PHS has obtained a docket number, the information is entered into FIHCAP using the handheld computer. A violation can then be printed and issued. When a docket number is needed after regular business hours, the PHS is instructed to telephone the DOHMH office to obtain one of a group of docket numbers that are reserved and available for after-hours violations.

Further, under DOHMH regulations, a person who is charged with supervising the operations of a food service establishment is required to have obtained a Food Protection Certificate issued by the DOHMH after successfully completing a course in food protection, and after passing a written exam administered by the DOHMH. A

² See Exhibit 1 attached hereto.

³ See Exhibit 2 attached hereto.

person holding such a certificate must be on the premises and supervise all food preparation activities during all hours of operation of a food service establishment.

III. INSPECTION REPORT OF PHS CEMONE THOMAS

On February 22, 2007, PHS Thomas prepared an Inspection Report and a Notice of Violation following her inspection of the KFC-Taco Bell.⁴ Both documents reflect that Thomas' inspection began at 4:54 p.m., and that the Notice of Violation was issued at 6:22 p.m. These documents identify ADF Fifth Operating Corp., ("ADF") as the owner of the establishment. The report classified the inspection activity as a "General Complaint," which means that the inspection was conducted in response to a complaint, rather than the result of a full annual inspection or an initial inspection.

According to Thomas' report, the Food Protection Certificate ("FPC") holder present at the time of the inspection was Khaled Elsayed.

The Notice of Violation charged ADF with four violations:

- 1) Facility conditions conducive to the existence of pest life observed in that one large hole approximately 15 inches observed on ceiling above hot water heater in dishwashing area in kitchen;
- 2) Rat activity present in that approximately 25 to 31 fresh rat excreta observed on floor under cash register in front of food prep/service area;
- 3) Rat activity present in that approximately 31 fresh rat excreta observed on floor under canned food storage shelves in basement; and,
- 4) Rat activity present in that approximately 20 to 25 fresh rat excreta observed on floor under hot water heater in dishwashing area in kitchen.

Thomas identified the first violation as an "8A" violation and classified it as a Condition I violation for a facility not being vermin proof and the presence of one or two holes or openings. Under the Inspection Scoring System for Food Service Establishments, this resulted in two violation points. Thomas classified the remaining three violations as "4L" violations and classified those as Condition IV violations for evidence of rats in facility's food and/or non-food areas and the presence of *less than* 100 rat droppings. Under the scoring system, this resulted in a total of 8 violation points. Thus, Thomas' Inspection Report documented a total of 10 violation points and her Notice of Violation reflected that a follow-up compliance inspection was not necessary. Under the applicable regulations, a compliance inspection is only triggered if an inspection results in 28 or more points.

Under the DOHMH's designation system for the results of an inspection, Thomas ultimately designated the result of this inspection as an "Action U," which indicates that a

⁴ See Exhibit 3 attached hereto.

notice of violation was issued; that the establishment passed the inspection; and that a compliance inspection would not be scheduled because the restaurant did not receive a failing score.⁵ Although a compliance inspection is not triggered under these circumstances, the establishment must remediate the violations immediately to be in compliance with the relevant health code and regulations. However, the DOHMH does not require the restaurant to certify that violations have been corrected. As a result, this aspect of the process operates on an honor system. Every establishment is subject to an annual inspection, but depending upon when the violations were identified, there could be a considerable period of time before the restaurant is inspected again.

The DOHMH classifies an inspection as an “Action F” when a restaurant fails an inspection (28 points or more) but is allowed to continue operating after a notice of violation has been served. Under these circumstances, the restaurant must undergo a follow-up Compliance Inspection by DOHMH. The DOHMH makes an effort to complete the Compliance Inspections within 30 days of the failure, although this 30-day period is not required by the relevant regulations. On average, the DOHMH conducts Compliance Inspections within 14 to 15 days of the failing inspection.

When a restaurant inspection results in an “Action F,” there is no posting or other public notice affixed to or posted in the establishment itself alerting the public to the fact that the restaurant has failed inspection. The results of such an inspection appear on the DOHMH website, but only if the underlying inspection was a “full” inspection - such as the annual DOHMH inspection that all food service establishments must undergo. The results of these inspections are updated on a weekly basis on the DOHMH website. Under current DOHMH procedures, if a “complaint” inspection results in an “Action F,” this information is not posted in the establishment or on DOHMH’s website. Accordingly, had Thomas’ inspection of the KFC-Taco Bell resulted in an “Action F,” there would have been neither a public notice nor a posting on the DOHMH website.

If an inspection results in a failing grade (28 points or more), the DOHMH may take action up to and including closing the food service establishment - a step that is referred to as an “Action G.” The DOHMH makes a decision to close a restaurant based on a number of factors, but the determining guide is whether or not the conditions constitute uncorrected or uncorrectable public health hazards. Individual violations that constitute “public health hazards” are specifically identified in the DOHMH Inspection Scoring System; however, even violations not specifically categorized as public health hazards can, when considered in combination with other conditions and/or violations, constitute an overall public health hazard, and the Department can close a restaurant under such circumstances. For example, although the two violations cited in Thomas’ report (8A and 4L) are not, by themselves, identified as “public health hazards” in the DOHMH Inspection Scoring System, the combination of such violations may constitute evidence of infestation of rats and may lead the Department to close a restaurant. Evidence of rat infestation, along with other factors that suggest poor sanitary conditions, would be cause for the DOHMH to consider closing a restaurant on the basis that the continued operation of the establishment would pose an imminent hazard to public health.

⁵ See Exhibit 4 attached hereto.

IV. SUMMARY OF WITNESS INTERVIEWS

DOI interviewed relevant employees of both the DOHMH and the KFC-Taco Bell in connection with this investigation. The following is a summary of those interviews:

A. Public Health Sanitarian Cemone Thomas

DOI interviewed Thomas on February 27, 2007, and again, under oath, on March 13 and 28, 2007. Thomas has been a PHS with the DOHMH since September 2005. She completed a three and a half month training provided by the Department and began inspecting restaurants on her own in June 2006. Since becoming a PHS, Thomas has been assigned to the Initials Unit of the Bureau of Food Safety and Community Sanitation, where she primarily conducts full inspections of restaurants.

Thomas graduated from the College of Staten Island with a Bachelor of Science in Biology in 2003. Before joining the DOHMH, she worked for several years as a quality control inspector for a number of pharmaceutical companies.

In the afternoon of February 22, 2007, Thomas received a call from Laura Gore, a Senior PHS who works in the complaints section of OCSQI, who instructed Thomas to conduct an inspection of the KFC-Taco Bell in response to a complaint of “mice, rodents and dirt” at the restaurant. According to Thomas, Gore told her that the inspection must be conducted that day. Gore also told Thomas to call the office and report the results when she was finished with the inspection. Thomas could not recall whether she was instructed to report her findings to Politis or to Carol Feracho, another senior employee of OCSQI.

Thomas testified that she arrived at the KFC-Taco Bell at approximately 4:45 p.m. and began her inspection. Thomas first met with Khaled Elsayed, the Food Protection Certificate holder, who accompanied Thomas throughout her inspection.

According to Thomas, she began her inspection in the main kitchen and food preparation area of the restaurant on the main floor. In the kitchen, she identified 20 to 25 fresh rat droppings on the floor near a hot water heater that was located under a 15 inch hole in the ceiling. The second area, where she found approximately 31 fresh rat droppings, was near the food preparation/customer service area under the cash register. Thomas testified that she then went downstairs to the basement, where she observed, coincidentally, approximately 31 fresh rat droppings by a storage rack that held juice.

Thomas testified that although she did not observe any live rats during her inspection, Khaled Elsayed told her that rats do come through the hole in the ceiling above the hot water heater, and that they do come out at night. Elsayed told Thomas that once they closed the store at night, the rats come out.

During her first interview with DOI, Thomas was asked whether she had observed any other violations in the basement. In response, Thomas admitted that while coming down the stairs to the basement, she observed approximately 20 additional fresh rat droppings by a carbon dioxide tank, which she did not cite or include in her report. With that additional finding, Thomas observed a total of 107 droppings, not the 87 she reported and cited in her notice of violation. Thomas initially testified that she did not

know why she failed to cite the additional rat droppings, but later in the interview claimed that she was talking with Elsayed during the inspection and may have been “thrown off” and “didn’t remember to document” the droppings. In her second interview with DOI, Thomas changed her testimony, claiming that the rat droppings she saw by the carbon dioxide tank were “stale.” Under the Scoring System, a Condition V violation for rat droppings makes no distinction between fresh or stale droppings. Thomas admitted that she did not previously tell DOHMH about this additional fourth set of droppings, claiming that she had just remembered them for the very first time during her testimony with DOI investigators.

Thomas also admitted that before she went to the basement, she inspected a walk-in refrigerator and noticed a small amount of food debris on the floor of the refrigerator. Thomas stated that she did not cite the condition because “it wasn’t extensive” however, she acknowledged that it was a violation that could be relevant to “vermin activity.”

Thomas testified that when she finished her inspection, she entered her findings into the handheld computer assigned to her by the DOHMH. She then called the DOHMH to obtain a docket number for her violation and report her findings. Based on the information Thomas entered in her computer, the inspection totaled 10 points, and based on the number of total droppings, Thomas assigned the rat dropping violations (“4L”) a condition Level IV. Thomas stated that as a result of her findings she deemed the complaint to be substantiated, but it resulted in an “Action U,” meaning a notice of violation was served, but no re-inspection scheduled.

At approximately 6 p.m., Thomas telephoned OCSQI to report her findings. Carol Feracho answered the phone, and Thomas read Feracho her findings of three areas with approximately 87 droppings. Thomas testified that Feracho was, in turn, relaying the results of the inspection to another staff member, which DOI later determined was Politis. According to Thomas, she had several calls back and forth with Feracho, and at one point, Feracho asked her if there were any other violations in the restaurant. Thomas told her there were not. In another call, Feracho stated, “We need to give them an ‘F’. We need to get back out there, so we can do a follow-up inspection.”⁶ Thomas testified that she told Feracho that she only had 10 points. Thomas claimed that she then asked Feracho if she wanted her to do a full inspection. Thomas stated that Feracho put her on hold, returned to the line and then told her to “print out” her report (issue the violation) and have the operator sign it. In this case, Elsayed, as the Food Protection Certificate holder, signed the violation.

Thomas testified that when Feracho told her that she wanted to “give them an F,” she did not mention the other area of fresh rat droppings that she had observed on the floor near the carbon dioxide tank, or the food debris in the refrigerator that she had seen but had not recorded, claiming she did not recall them at that time. When asked if reporting these other findings would have resulted in a failing grade, Thomas testified, “Maybe it would have.” Thomas later testified that she did not inform Feracho of these two other observations because she was “only concentrating on the complaint.” As previously mentioned, the inspection assignment identified the complaint as a “problem with mice, rodents, and dirt.” Further, Thomas admitted that she did not inform Politis,

⁶ As noted above, an Action “F” is a disposition where the establishment is deemed to have failed the inspection, a notice of violation has been issued and a follow-up re-inspection is to be scheduled.

Feracho or anyone else at DOHMH of the statements made by Elsayed about rats using the hole in the ceiling and coming out at night.

Thomas insisted that she did not receive a bribe or anything of value from anyone at the KFC-Taco Bell for the purpose of influencing the results of her inspection. She further claimed that she did not under-report the findings of her inspection in order to avoid giving the KFC-Taco Bell a failing grade so that she would not be forced to work late closing the restaurant. At her final interview with DOI, Thomas testified under oath that her prior testimony in which she stated that that she had only observed four areas of rat droppings, for a total of approximately 107 droppings, was accurate and truthful.

B. *Khaled Elsayed*

DOI interviewed Khaled Elsayed under oath on March 19 and 22, 2007. Elsayed is both the DOHMH Food Protection Certificate holder and general manger of the KFC-Taco Bell franchise located at 311 Sixth Avenue. Elsayed has worked as a manager in the fast food business for the past 13 years.

Elsayed testified that on February 22, 2007, between 4:30 p.m. and 5:00 p.m., Inspector Thomas came to the restaurant and conducted an inspection. Thomas did not offer an explanation as to what had prompted the inspection. Elsayed did not recall Thomas stating that the inspection had been prompted by a complaint.

Elsayed testified that he was with Thomas during most of the inspection. Elsayed stated that Thomas began on the KFC-side of the restaurant, where she went to the dishwashing area, and pointed out a hole above the dishwasher area behind the sink. According to Elsayed, Thomas told him that he needed to fix the hole. Elsayed told Thomas that they had a person making repairs, and that this person had gone to Home Depot to buy material, including sheetrock, to cover the hole. Elsayed promised Thomas that the hole above the dishwasher would be repaired by the following day.

Elsayed testified that when he accompanied Thomas to the basement, she identified “mouse” droppings. Elsayed accompanied Thomas from the basement to the Taco Bell area, where she went around a machine with the flashlight and stated “you have mouse droppings.”

Elsayed recalls that Thomas issued violations totaling 10 points, and his memory was that the violations were for: (1) the hole above the dishwasher area behind the sink, (2) mouse droppings under the cash register, (3) mouse droppings in the basement, and (4) mouse droppings on the Taco Bell side of the establishment.⁷

Elsayed testified that when he accompanied Thomas down the stairs to the basement, she pointed out a storage area on the right side of the steps leading to the basement, and that she noted rodent droppings underneath a food storage shelf. According to Elsayed, in the basement, there are carbon dioxide tanks on the right-hand side. Elsayed recalled that Thomas pointed out areas in the basement where mouse

⁷ Thomas’ written violation in fact cites “rat” not mouse activity. Furthermore, it should be noted that under the *Inspection Scoring Worksheet* and the *Inspection Scoring System for Food Service Establishments*, the condition parameters and violation point totals for a “mouse” violation (4M) are nearly identical in all respects to those for a “rat” violation (4L).

droppings were evident.

Elsayed testified that Thomas identified six different locations where droppings were evident. On each occasion, Thomas told Elsayed that he needed to clean them up. Elsayed informed DOI that on occasions when Thomas pointed out areas of droppings, he instructed Charlie Rivera, a member of his staff, to sweep and clean the area as they were going through the inspection.

Elsayed testified that he was with Thomas every time she pointed out areas of mouse droppings, and that there were many more areas where she had indicated droppings compared to what was documented on the inspection report. Elsayed did not observe Thomas to be distracted or in a rush.

According to Elsayed, besides the six areas of droppings that Thomas indicated, he did not recall that she pointed out food debris on the floor around the walk-in refrigerator, and does not remember specifically on that day if there was debris.

Elsayed insisted that the problem was mice, not rats, and does not remember telling the inspector that the establishment had a rodent problem. However, Elsayed acknowledged being aware of a rodent problem because he had observed droppings, and stated that he informed his boss about the hole above the dishwasher area and was told to get someone to fix it, which he did. Elsayed also acknowledged having seen small mice prior to the February 22, 2007 inspection.

Elsayed does not recall telling Thomas that he saw rats/mice coming out at night in the store and does not recall telling Thomas that he saw mice coming out of the hole above the dishwasher.

Elsayed testified that Thomas never asked for anything (food, money, anything of value), and he never gave her anything. Before Thomas gave him the inspection report, Elsayed did not know whether the restaurant would fail. When asked by DOI investigators if he thought it was unusual that Thomas only indicated having observed three areas with droppings, when she had actually pointed out six areas during the inspection, Elsayed stated that at the time "it never came to his mind." Elsayed claimed that all he does is read the report, sign it and forward it to his boss.

C. Charlie Rivera

DOI interviewed KFC-Taco Bell employee Charlie Rivera under oath on March 23, 2007. This interview was conducted at the KFC-Taco Bell restaurant.

Rivera testified that he was working at the KFC-Taco Bell restaurant on February 22, 2007, when the restaurant was inspected by Thomas. During the inspection, Khaled Elsayed, the manager and Rivera's boss, instructed Rivera to accompany him and Thomas so that he could clean-up areas identified by Thomas as they went through the inspection.

During the interview, Rivera took DOI investigators around the food service establishment and identified a total of eight areas where the inspector had pointed out rat droppings during the inspection. Rivera testified that the areas included: 1) under the cash register; 2) in between the sink and desk/computer area; 3) behind the railing, near

the stairs; 4) by the carbon dioxide tanks in the basement at the bottom of the stairs; 5) in the basement to the right of the second set of steps when you enter the storage area of the basement; 6) in between the heating cabinet and the stand up refrigerator on the right side of the kitchen; 7) a table located in the dining area of the restaurant; and, 8) another table in the dining area of the restaurant - a table that the inspector sat at to prepare her report.

Rivera testified that Elsayed directed him to clean and sanitize the first six locations after Thomas had pointed out rat droppings to Elsayed.

Rivera testified that toward the end of the inspection, Thomas entered the seating/dining area and sat down to prepare her report. Rivera informed DOI that at that time Thomas pointed out additional rat droppings around two tables (the remaining two areas) and instructed Rivera to clean the areas. Elsayed was not present when Thomas pointed out these two additional areas to Rivera.

D. Carol Feracho

DOI interviewed Feracho on February 28, 2007. Feracho is an Associate Public Health Sanitarian, Level I employed by the DOHMH in the OCSQI. Feracho reports to Marina Politis, the director of OCSQI.

Feracho stated that on February 22, 2007, she was out in the field from approximately 11:00 a.m. until 4:30 p.m. When she returned back to the office, Politis was interviewing a candidate for inspector positions. According to Feracho, at approximately 5:30 p.m., a call came in from a PHS who had inspection results. The call was passed to Feracho. The call was from Thomas, who informed Feracho that she had been given a complaint inspection by PHS Laura Gore and that she had just called her own unit and obtained a docket number for her violation. The inspection was in connection with a complaint about the KFC-Taco Bell.

Feracho told DOI that Thomas reported her findings, stating that she identified 20 to 35 rat droppings under the customer counter, 20 to 35 near the sink area, and 20 to 35 near dry goods storage. According to Feracho, she told Thomas not to leave the area. Feracho then went to Politis and stated something to the effect of, "It looks like we have a possible closing." Politis agreed. Feracho stated that Politis told her to call Thomas back and to get the exact details of the violations. Politis also commented at that time that this was an inter-governmental complaint, which indicated to Feracho that it had come in from City Hall, a councilmember or other elected official. Feracho contacted Thomas and learned that she had also observed a hole in the ceiling approximately 15 inches in diameter. As Thomas reported her findings, Feracho wrote them on the complaint papers, which she handed to Politis during their discussion.⁸ Feracho observed Politis write the results down on a yellow notepad. At or about this time, Feracho again contacted Thomas and informed her that it "looks like it's going to be a closing . . . it looks like a possible G."⁹

⁸ See Exhibit 5 attached hereto. Feracho's notes, which she provided to DOI subsequent to her interview, indicate that Thomas reported the 15" hole and three areas of rat droppings: 1) 20-35 by the counter; 2) 20-25 by the dishwasher; and, 3) 20-35 in the basement. It appears that Thomas' actual report of droppings by the dishwasher was 20-25, rather than 20-35 as indicated by Feracho.

⁹ An Action "G" refers to the closing of a food service establishment by DOHMH.

According to Feracho, Politis then called someone on her own phone line and told whomever she was speaking with about the results. Feracho stated that she heard Politis say, "This doesn't look good; it's an inter-governmental." Feracho claimed that she heard Politis discuss the number of points of the inspection and at one point say, "But I thought it was 100 mice droppings in one area." Feracho observed that Politis was reviewing the DOHMH scoring handbook while she was having this conversation, which Feracho later learned was with another Associate PHS Level III, Wilma Arce, someone at the same level as Politis.

Arce was interviewed by DOI and did confirm having a telephone conversation with Politis. Arce informed DOI that Politis discussed with her the point total and conditions as reported by the inspector.

Feracho told DOI that she heard Politis say to the other person on the telephone, "Maybe we can give it an 'F' and just go back tomorrow." She overheard Politis say that she could not close the restaurant based on "9 points" and a "75 average" of droppings, which made it a Condition IV violation. She further heard Politis say that she felt "uncomfortable" because it was an inter-governmental complaint. According to Feracho, 75 was the average Politis determined based on the three ranges of rat droppings.

Feracho stated that she stayed on the phone with Thomas while Politis continued to speak with Arce. Feracho informed DOI that at Politis's instruction, she contacted Thomas and asked her if there were any other violations, if there was anything else that she had found, and if she had checked the basement. According to Feracho, Thomas told her there were no additional findings.

Feracho stated that Politis never spoke to Thomas directly nor did she ask about adulterated food. Feracho claimed that at one point in the discussion she asked Politis, "Why don't we just have her do a cycle?" Thereafter, Politis ended her conversation with Arce and told Feracho to tell Thomas to "just give the operator the report" - which meant to issue the violation as reported by Thomas. Feracho informed DOI that, in her opinion, there were signs of infestation as reported by Thomas and she felt the restaurant should have failed; and that Politis should have sought the guidance of Beth Torin or Bob Edman, both of whom are managers in the Bureau and have the authority to review and approve the closing of a food service establishment.

E. Marina Politis

DOI interviewed Politis on March 1, 2007, and again, under oath, on March 8, 2007. Politis is the Director of OCSQI under the BFSCS of the DOHMH. Politis has been employed with the DOHMH for approximately seventeen years and has worked for several divisions in the BFSCS. Among other things, Politis, as the Director of OCSQI, is responsible for handling complaints about food service establishments. These complaints come from a number of sources, including the NYC 311 system, the nyc.gov website and those routed through the DOHMH's Bureau of Inter-governmental Affairs.

According to Politis, on or about February 7, 2007, she received an e-mail from John Johnston, of the DOHMH's Bureau of Inter-governmental Affairs, in which Johnston wrote the following:

*Councilmember Arayo [sic] received a complaint about KFC/Taco Bell at 311 6 Avenue, Manhattan. They have a problem with mice, rodents, and dirt.*¹⁰

Politis stated that she forwarded the e-mail to Mirian Martinez, the Associate Director of OCSQI, with a request that she schedule an inspection and provide the results to Johnston.¹¹ Politis informed DOI that she did not hear anything further on the matter until on or about February 21, 2007, at which time Johnston sent her another e-mail indicating that the inspection would need to be done soon.¹²

Martinez was interviewed by DOI, and although she ultimately found the February 7, 2007, e-mail in the “archive” of her DOHMH e-mail system, she testified that she did not remember receiving the e-mail, and she believes that it was sent at or about the time that the DOHMH was migrating from one e-mail system to another.¹³

Politis stated that on February 22, 2007, PHS Thomas was assigned to the inspection of the KFC-Taco Bell in Manhattan, in response to the complaint. According to Politis, the work load of her unit is such that they routinely reach out to other parts of BFSCS to get help from other groups to perform complaint inspections. In this case, Thomas, who was already in the field conducting inspections in Manhattan, was borrowed from the Initials Unit of BFSCS and assigned the complaint by Laura Gore, a Senior PHS in Politis’ group. Gore instructed Thomas to call her results in to Politis when she was done with the inspection.

Politis testified that at or about 5:50 p.m., Thomas called OCSQI to report the results of her inspection at the KFC-Taco Bell. According to Politis, the call was taken by Carol Feracho, who came into Politis’ office while she was on the line with Thomas. Politis stated that she wrote on her notepad the results that Feracho repeated from Thomas: 3 sets of rat droppings, between 20 to 35 droppings each; and a 15” hole in the ceiling of the restaurant.¹⁴ Politis testified that although she initially wrote down “20-35” three times in her notes, she knew one of the ranges was actually 20-25, because that is what Feracho wrote in the notes that she showed her - notes that Feracho took based on what Thomas had reported.

Politis testified that in assessing the results she did not use the higher number of rat droppings reported by Thomas, but rather used her own system of averaging the median. In doing so, she came up with a total of 76 rather than 95, which would have been the total of 35, 35 and 25. Politis admitted that averaging is a system she uses and is not an established DOHMH policy or procedure.

Politis stated that she looked at the scoring book and concluded a score of 8 points for the rat droppings and 1 point for the hole in the ceiling. Politis admitted that at one point she told Feracho, who was still in contact with Thomas by telephone, that she

¹⁰ See Exhibit 6 attached hereto.

¹¹ See Exhibit 7 attached hereto.

¹² See Exhibit 8 attached hereto.

¹³ DOI confirmed that there was such a migration at or about the time of the February 7 e-mail; and although there is a record of the e-mail having been technically sent and received in the system, DOI has been informed that it could have been overlooked due to e-mail migration issues.

¹⁴ See Exhibit 9 attached hereto.

was uncomfortable with the situation and that they should “give it an F and get back at it.” She conceded that at one point she told Feracho that “it looks like a lot of droppings.”

Politis told DOI that at this point, she called Wilma Arce, Director of the Office of Compliance and Code Enforcement, for assistance. According to Politis, Arce told her to ask Feracho to ask Thomas whether there were any other rat droppings, contamination of food, or holes to increase the number of violations. When Feracho did this, Thomas answered “No” to their questions.

Politis testified that she continued to read the scoring book and recalled thinking that it seemed like numerous rat droppings were found, but that Condition V indicated that the droppings had to be in one particular area. During her interview with DOI, Politis was asked to read the parameters for Condition V of a rat dropping violation (4L) in the DOHMH’s *Inspection Scoring System for Food Service Establishments*, which state:

“...greater than 100 rat droppings and/or other conditions exist conducive to infestation of rats, i.e., holes/openings, water...”

Politis admitted she was confused by these conditions and stated that she may have been able to fail the restaurant based on Thomas’s findings of the hole in the ceiling in conjunction with the other conditions.

Politis stated that although she may have been able to fail the restaurant, she feels that Thomas did not search enough for other critical violations. However, she acknowledged that she neither ordered Thomas to conduct a full inspection nor spoke to her directly.

Politis testified that she did not reach out to a manager for an opinion and guidance as to what she should do, and she acknowledged that doing so is an established practice within the Bureau. Politis further admitted that Robert Edman, a DOHMH Assistance Commissioner of BFSCS, was still in the office at the time and had the authority to provide her guidance and make decisions - including whether to fail an inspection and/or close a food service establishment.

Politis testified that she authorized the inspection to pass with the issuance of the violation, but she planned on going back out to the restaurant the following morning. Politis stated that, looking back on the situation now, she would not have given the restaurant an “Action U” (a passing grade).

Politis denied that she failed to take steps to fail or close the restaurant because it could have caused her to stay in the office longer that evening.

At the conclusion of the interview, Politis informed DOI that she, Arce and Edman took the subway from the office together that evening, but she did not mention anything about the inspection to Edman.

Both Edman and Arce were interviewed by DOI, and both stated that the topic of the inspection was not discussed at anytime during their subway ride together. During his interview, Edman informed DOI that he was, in fact, still in the office at the time Politis was apparently making the decision about the inspection; and that had he been contacted by Politis with the findings reported by Thomas, he would have moved

towards closing the establishment by having Thomas conduct a more thorough inspection.

V. CONCLUSIONS AND RECOMMENDATIONS

DOI's investigation has determined that Thomas observed at least four, and perhaps as many as six to eight separate areas of rat droppings during her inspection, but she only reported three areas of droppings. In doing so, Thomas significantly under-reported the approximate number of rat droppings in preparing her inspection report and notice of violation. Furthermore, she compounded her misrepresentation by failing to report and disclose the true conditions she observed when she reported her findings to her supervisors at DOHMH. Even with the one additional area of droppings that Thomas has admitted that she did not report, the total number of rat droppings would have met the parameters for a Condition Level V, resulting in an automatic failure of the inspection and a likely closure of the restaurant.

The combined evidence of the true conditions of the restaurant at the time of Thomas' inspection indicated a significant infestation of rats, and the inspector's failure to take proper action and truthfully report her findings constitute a gross dereliction of her duties as a Public Health Sanitarian.

Furthermore, Thomas repeatedly asserted under oath that, other than the four identified areas, she did not observe any additional areas of rodent droppings. This testimony is directly contradicted by two separate witnesses, Elsayed and Rivera, both of whom have measurable credibility to the extent that their admissions as to the true number of rodent droppings can reasonably be said to have been made against their own interests.

To date, there is no evidence to indicate that Thomas failed to report the true conditions she observed during her inspection as a result of her having received a bribe, gratuity or anything else of value. Rather, the facts and circumstances suggest that Thomas' actions may have been motivated by a desire to conclude the inspection and avoid the additional time that further enforcement steps would necessarily have required.

In light of the findings of this investigation, DOI recommends that Thomas' employment with the DOHMH be terminated.

DOI's investigation also supports that Politis failed to take reasonable supervisory steps to further investigate the findings reported by Thomas. She was certainly hampered by Thomas' failure to fully and truthfully disclose the extent of the conditions, but Politis should have instructed Thomas to conduct a full inspection in light of the fact that the conditions Thomas did report were highly suggestive of an infestation. Furthermore, contrary to long-standing practice, Politis failed to seek the advice and direction of her superior, who was present and available at the time of these events.

In light of these findings, DOI recommends that the DOHMH re-instruct all Public Health Sanitarians of the Bureau of Food Safety and Community Sanitation that they are required to accurately report and cite all violations observed during the course of an inspection - whether incident to a "complaint" or "full" inspection, including but not limited to, all rodent violations.

For inspections that result in the issuance of a notice of violation, but where the restaurant is permitted to continue operating without a scheduled Compliance Inspection (classified as an “Action U” disposition), the Department should consider implementing a system under which restaurant operators are required to submit a certification or other written verification that they have remedied the cited violation. The requirement of a written certification should enhance compliance with a program that presently relies, in part, on an honor system. This requirement should provide restaurant operators with the incentive to remediate violations quickly. This is particularly important in cases where the restaurant’s annual inspection will not be conducted for some time. Furthermore, in the event that the operators do not comply or file false certifications, these actions could form the basis of enforcement actions, including criminal investigations and referrals for prosecution in cases where operators have filed false certifications with the City. Finally, having restaurant operators certify that cited violations have been cured would provide both DOI and the DOHMH with a source of targets for “double-check” inspections to verify compliance, uncover fraud or identify unabated health hazards.

When the uncorrected violations incurred by an establishment total more than enough points to cause it to fail inspection, but permit the restaurant to remain open with a scheduled Compliance Inspection (with a classification of an “Action F”), the Department should assess whether it should provide the public with immediate notice of the fact that the restaurant has failed an inspection due to uncorrected public health hazards. In such cases, the DOHMH should consider affixing a notice of violation in a visible location at the restaurant so that potential customers can decide whether they wish to make a food purchase under those circumstances. DOI recognizes that under the current system, the cumulative effect of a number of relatively minor violations may result in an establishment failing inspection. Accordingly, DOI recommends that a notice of violation be posted only in those cases involving serious violations, but where the restaurant is allowed to remain open. The notice could be removed as soon as the violations are cured. Further, this should also reduce the likelihood that restaurants will allow uncured violations to persist for prolonged periods of time.

The use of the DOHMH website to post violations and inspection results is both comprehensive and useful; however, the DOHMH only posts the results of “full” inspections on its website. Results of inspections conducted in response to complaints - such as the February 22 inspection at the KFC-Taco Bell - do not appear on the website. DOI recommends that the restaurant inspection data on the DOHMH website be expanded to include complaint inspections that result in “Action F” failures.

Finally, DOI recommends that the DOHMH consider reviewing the system that inspectors must use to tally and quantify violations observed during inspections with an eye toward clarifying and simplifying the system where appropriate. Currently, the system calls for the inspector to identify a base point value and condition level for the observed violations and then add points to that initial number to reflect the severity of the violation. In addition, the results are then classified into a variety of Action letters, such as an “Action U” or an “Action G” that have serious implications to the restaurant, but have no obvious meaning, unless someone has seriously studied the DOHMH’s system and scoring guide. In fact, DOI’s investigation revealed that some of DOHMH’s own

employees – employees who are supervising inspections -- do not fully understand the current system and struggled with its application in the case of the KFC-Taco Bell inspection. Given this finding, DOI recommends that the DOHMH provide re-training to its staff on the use and application of this system.

EXHIBITS:

1. **Page 16 of DOHMH's *Inspection Scoring System for Food Service Establishments*.**
2. **Page from *Inspection Scoring Worksheet* insert of DOHMH's *Inspection Scoring System for Food Service Establishments*.**
3. **February 22, 2007 Inspection Report and Notice of Violation prepared by Thomas following her inspection of the KFC-Taco Bell at 331 Sixth Avenue, Greenwich Village.**
4. **List of DOHMH Action Code definitions, and record of "Action U" status of Thomas's inspection of February 22, 2007.**
5. **Carol Feracho's notes.**
6. **February 7, 2007 e-mail from John Johnston to Marina Politis.**
7. **February 7, 2007 e-mail from Marina Politis to Mirian Martinez.**
8. **February 21, 2007 e-mail from John Johnston to Marina Politis.**
9. **Marina Politis' notes.**

CRITICAL VIOLATIONS

Violation		Condition I	Condition II	Condition III	Condition IV	Condition V
4L	Evidence of rats or live rats present in facility's food and/or non-food areas.	Rats present in the facility's food or non-food areas. Example: 1-10 fresh rat droppings in one area.	Rats present in the facility's food or non-food areas. 11-30 fresh rat droppings in one area or 1-10 fresh rat droppings in two areas. Example: 25 fresh rat droppings in the food prep area; or 10 fresh rat droppings in dry food storage area and 10 fresh rat droppings in the basement.	Rats present in the facility's food or non-food areas. 31-70 rat droppings one area; 11-30 fresh rat droppings in two areas; or 1-10 fresh rat droppings in three areas. Example: 55 fresh rat droppings in food prep area; or 14 fresh rat droppings in dry food storage area and 16 in basement; or less than 10 fresh rat droppings in the basement, food prep area and bathroom.	Rats present in the facility's food or non-food areas. 1-2 live rats and/or 71-100 rat droppings in one area; 31-70 fresh rat droppings in two areas; 11-30 fresh rat droppings in three areas; or 1-10 fresh rat droppings in four areas. Example: 80 fresh rat droppings in food prep area; or 30 fresh rat droppings in dry food storage area and 16 in basement; or less than 10 fresh rat droppings in basement, food prep area, bathroom and garbage disposal area.	Three or more live rats and/or greater than 100 rat droppings; and/or other conditions exist conducive to infestation of rats, i.e., holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.
4M	Evidence of mice or live mice present in facility's food and/or non-food areas.	Mice present in the facility's food or non-food areas. 1-10 fresh mice droppings in one area. Example: 8 fresh mice droppings found in pantry.	Mice present in the facility's food or non-food areas. 11-30 fresh mice droppings in one area; or 1-10 in two areas. Example: 25 fresh mice droppings in the food prep area; or 10 fresh mice droppings in dry food storage area and 10 in the basement.	Mice present in the facility's food or non-food areas. 31-70 mice droppings one area, 11-30 in two areas; or 1-10 in three areas. Example: 55 fresh mice droppings in food prep area; 14 fresh mice droppings in dry food storage area and 16 in basement; or less than 10 fresh mice droppings in the basement, food prep area and bathroom.	Mice present in the facility's food or non-food areas. 1-2 live mice and/or 71-100 mice droppings in one area; 31-70 in two areas, 11-30 in three areas; or 1-10 in four areas. Example: 80 fresh mice droppings in food prep area; 30 fresh mice droppings in dry food storage area and 16 in basement; or less than 10 fresh mice droppings in basement, food prep area, bathroom and garbage disposal area.	Two or more live mice and/or greater than 100 fresh mice droppings; and/or other conditions exist conducive to infestation of mice conditions. Example: holes /openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.
4N	Evidence of roaches or live roaches present in facility's food and/or non-food areas.	Roaches present in the facility's food and non-food areas. 1-5 roaches in one area. Example: 2 live roaches in the dry non-food.	Roaches present in the facility's food and non-food areas. 6-10 roaches in one area; or 1-5 in two areas. Example: 7 live roaches in the food prep area; or 2 roaches in the dry food storage area and 1 in the basement.	Roaches present in the facility's food and non-food areas. 11-15 roaches in one area; 6-10 in two areas; or 1-5 in three areas. Example: 12 live roaches in the food prep area; 4 roaches in the dry food storage area and 5 roaches in the basement; or 1 live roach observed in walk-in, food prep area and dry storage.	Roaches present in the facility's food and non-food areas. 16-20 roaches in one area, 11-15 in two areas; 6-10 in three areas; or 1-5 in four areas. Example: 17 live roaches in the food prep area; 10 roaches in the dry food storage area and 5 roach in the basement; or 1 live roach observed in walk-in, food prep area, garbage area and dry storage area.	Greater than 20 live roaches and/or other conditions exist conducive to infestation of roaches. Example: holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.

*Public Health Hazards (PHH) must be corrected immediately

+Pre-permit Serious (PPS) Violations that must be corrected before permit is issued

Bureau of Food Safety and Community Sanitation

Food Service Establishment Inspection Score Worksheet

CRITICAL VIOLATIONS		CONDITIONS					SCORE
		I	II	III	IV	V	
FOOD PROTECTION							
4A	Food Protection Certificate not held by supervisor of food operations.	-	-	-	-	10	
4B*	Food worker prepares food or handles utensil when ill with a disease transmissible by food, or have exposed infected cut or burn on their hand.	-	-	-	10	28	
4C*	Food worker does not use proper utensil to eliminate bare hand contact with food that will <u>not receive</u> adequate additional heat treatment.	7	8	9	10	28	
4D*	Food worker does not wash hands thoroughly after visiting the toilet, coughing, sneezing, smoking, preparing raw foods or otherwise contaminating hands.	-	-	-	10	28	
4E*	Toxic chemical improperly labeled, stored or used so that food contamination may occur.	7	8	9	10	28	
4F*	Food, food preparation area, food storage area, area used by employees or patrons, contaminated by sewage or liquid waste.	-	-	-	10	28	
4G*	Unprotected potentially hazardous food re-served.	-	-	-	10	28	
4H*	Food in contact with utensil, container, or pipe that consist of toxic material.	-	-	-	10	28	
4I*	Food item spoiled, adulterated, contaminated or cross-contaminated.	7	8	9	10	28	
4J	Unprotected food re-served.	5	6	7	8	-	
4K	Appropriately scaled metal stem-type thermometer not provided or used to evaluate temperatures of potentially hazardous foods during cooking, cooling, reheating and holding.	-	-	-	8	-	
4L	Evidence of rats or live rats present in facility's food and/or non-food areas.	5	6	7	8	28	
4M	Evidence of mice or live mice present in facility's food and/or non-food areas.	5	6	7	8	28	
4N	Evidence of roaches or live roaches present in facility's food and/or non-food areas.	5	6	7	8	28	
4O	Evidence of flying insects present in facility's food and/or non-food areas.	5	6	7	8	28	
4P	Other live animal present in facility's food and/or non-food areas.	5	6	7	8	-	
FACILITY DESIGN							
5A*	Sewage disposal system improper or unapproved.	-	-	-	10	28	
5B*	Harmful, noxious gas or vapor detected. CO ≥13 ppm.	-	-	-	10	28	
5C+	Food contact surface improperly constructed or located. Unacceptable material used.	7	8	9	10	28	
5D+	Hand washing facility not provided in or near food preparation area and toilet room. Hot and cold running water at adequate pressure not provided at facility. Soap and an acceptable hand-drying device not provided.	-	-	-	10	28	
5E+	Toilet facility not provided for employees or for patrons when required.	-	-	-	10	28	
5F+	Refrigerated or hot holding equipment to keep potentially hazardous foods at required temperatures not provided.	-	-	-	10	28	
5G+	Sufficient refrigerated or hot holding equipment not provided to meet proper time and temperature requirements for potentially hazardous foods.	-	-	-	10	28	
	Properly enclosed service/maintenance area not provided.	-	-	-	10	28	
	No facilities available to wash, rinse and sanitize utensils and/or equipment.	-	-	-	10	28	
	Nuisance created or allowed to exist. Facility not free from unsafe, hazardous, offensive or annoying condition.	-	-	-	10	28	

EXHIBIT 12

INSPECTION REPORT

Owner: ADF FIFTH OPERATING CORP. D.B.A.: TACO BELL/KFC
CAMIS No.: 40635537 Permit No.:2540-0985692 Addr: 331 6TH AVENUE Boro: Manhattan Zip: 10012
Inspection Date: February 22,2007 Start Time: 04:54 PM Time Issued: 06:22 PM Tel:(212)929-3097
Activity: Initial Inspection (Primary Inspection) General Complaint
Finding: Notice of Violation Served (Reinspection not scheduled)

Inspection Summary:	Total Score:	-10
Violation Code	Condition	Score
04L	4	-08
08A	1	-02

Inspection Complaints:

#RAT DROPPINGS
DROPPINGS

○

Inspection Notes:

FPC HOLDER KHALED ELSAYED(00-08565) WAS PRESENT AT TIME OF INSPECTION.
HOT AND COLD RUNNING WATER PROVIDED WITH GAS FIRED HOT WATER HEATER.
METAL STEM TYPE THERMOMETER PROVIDED.
HOURS OF OPERATION:
SUNDAYS THRU THURSDAYS
11:00AM TO 11:00PM

DOHMH Rep.Sig



DOHMH Rep.Signature:

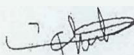
Name:Cemone Thomas Id No.:1367

Name: Id No.:

DEPARTMENT OF HEALTH & MENTAL HYGIENE EMPLOYEES MUST SHOW IDENTIFICATION. FALSIFICATION OF ANY STATEMENT MADE HEREIN IS AN OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN \$500 OR NOT MORE THAN 60 DAYS IMPRISONMENT OR BOTH, NYC ADMIN CODE-SECTION 10.154.

I acknowledge that I have received a copy of this inspection report.

Received by :



Date:February 22,2007

INSPECTION REPORT

Owner: ADF FIFTH OPERATING CORP. D.B.A.: TACO BELL/KFC

CAMIS No.: 40635537 Permit No.:2540-0985692 Addr: 331 6TH AVENUE Boro: Manhattan Zip: 10012

Inspection Date: February 22,2007 Start Time: 04:54 PM Time Issued: 06:22 PM Tel:(212)929-3097

Activity: Initial Inspection (Primary Inspection) General Complaint

Finding: Notice of Violation Served (Reinspection not scheduled)

FRIDAYS

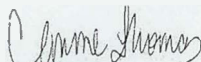
11:00AM TO 3:00AM

OBSERVATION:RAT DROPPINGS OBSERVED IN KITCHEN FOOD PREP AREA, IN FRONT OF FOOD SERVICE AREA UNDER CASH REGISTER. AND N BASEMENT STAORAGE AREA.

HOT TOPICS

Artificial trans fat (2) Artificial trans fat found in partially hydrogenated vegetable oils, shortening and margarine, will be restricted for use for frying or as spreads in NYC food service establishments on July 1, 2007. Its presence in all other foods, including yeast dough and cake batter to be deep fried, will be prohibited on July 1, 2008.

DOHMH Rep.Sig



DOHMH Rep.Signature:

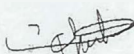
Name:Cemone Thomas Id No.:1367

Name: Id No.:

DEPARTMENT OF HEALTH & MENTAL HYGIENE EMPLOYEES MUST SHOW IDENTIFICATION. FALSIFICATION OF ANY STATEMENT MADE HEREIN IS AN OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN \$500 OR NOT MORE THAN 60 DAYS IMPRISONMENT OR BOTH, NYC ADMIN CODE-SECTION 10.154.

I acknowledge that I have received a copy of this inspection report.

Received by :



Date:February 22,2007

YOU MUST APPEAR FOR AN ADMINISTRATIVE HEARING ON Mar 20, 2007 AT 10:00 AM
AT THE NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE ADMINISTRATIVE TRIBUNAL
66 JOHN STREET, 11TH FLOOR, NEW YORK, NEW YORK 10038, TELEPHONE (212)361-1000

Refer to this number in inquires or correspondence: Docket Number 04757-07F0

Inspection Date: February 22, 2007 Start Time: 04:54 PM Time Issued: 06:22 PM

Activity: Initial Inspection (Primary Inspection) General Complaint

Finding: Notice of Violation Served (Reinspection not scheduled)

NOTICE OF VIOLATION

- 1) 76. NYCHC 81.23(a) Facility conditions conducive to the existence of pest life observed in that one large hole approximately 15 inches observed on ceiling above hot water heater in dishwashing area in kitchen. Condition: 1 (08A)
- 2a) 451. NYCHC 81.23(a) Rat activity present in that approximately 25 to 31 fresh rat excreta observed on floor under cash register in front of food prep/service area. Corrective action: Operator instructed to implement proper pest control measures by removing harborage conditions, such as standing water, closing all entry ways and holes, storing food in vermin proof containers, eliminating breeding conditions, improve overall sanitary conditions, and provide proper extermination, if necessary. All contaminated area and equipment are to be washed, rinsed, and sanitized.. Condition: 4 (04L)
- 2b) 451. NYCHC 81.23(a) Rat activity present in that approximately 31 fresh rat excreta observed on floor under canned food storage shelves in basement. Corrective action: Operator instructed to implement proper pest control measures by removing harborage conditions, such as standing water, closing all entry ways and holes, storing food in vermin proof containers, eliminating breeding conditions, improve overall sanitary conditions, and provide proper extermination, if necessary. All contaminated area and equipment are to be washed, rinsed, and sanitized.. Condition: 4 (04L)
- 2c) 451. NYCHC 81.23(a) Rat activity present in that approximately 20 to 25 fresh rat excreta observed on floor under hot water heater in dishwashing area in kitchen. Corrective action: Operator instructed to implement proper pest control measures by removing harborage conditions, such as standing water, closing all entry ways and holes, storing food in vermin proof containers, eliminating breeding conditions, improve overall sanitary conditions, and provide proper extermination, if necessary. All contaminated area and equipment are to be washed, rinsed, and sanitized.. Condition: 4 (04L)

I, an employee of the Department of Health & Mental Hygiene, affirm that I personally observed the commission of the violation(s) charged above.
DOHMH Rep. Signature:  DOHMH Rep. Signature:

Name: Cemone Thomas Id No.: 1367

Name: Id No.:

Department of Health & Mental Hygiene employee must show identification. Falsification of any statement made herein is an offense punishable by a fine of not more than \$500 or not more than 60 days imprisonment or both, NYC Admin, Code-Section 10-154.

A penalty of not less than \$200 and not more than \$2000 may be imposed for each violation pursuant to the NEW YORK CITY Health Code, Section 3.12.

Proceedings will be held under the authority of the NYC Charter, Section 558, and the Rules of the City of NY, at 24 RCNY vols. 8 and 9, and NYS Public Health Law, Section 1399-t.

I acknowledge that I have received a copy of this Notice of Violation and instructions for responding.

Received By: 

Date: February 22, 2007

INSPECTION/ACTIVITY TYPE

- N Accompanying on a dual inspection
- W Compliance Complaint Inspection (Window Fall Prevention & Smoking; only)
- B Compliance Inspection (Secondary Inspection)
- * End of Day
- C Final Compliance Inspection
- D Final Determination Inspection
- S Hearing/Court
- V Illness Investigation (Day camps)
- I Incident Investigation (Day camps)
- Z Initial Complaint Inspection (Window Fall Prevention & Smoking only)
- A Initial Inspection (Primary Inspection)
- U Interview/Field Consultation
- Q Leave
- E Limited Inspection/QI-Golden Apple Inspection/Emergency Response
- R Meal
- M Monitor
- O Office/Administrative
- J Re-Opening
- H Request
- F Sampling/Evaluation/DOHMQA/Product Recall
- P Security Accompaniment
- Y Service of Commissioner's Order/Re-Service of Notice of Violation
- G Supervisory (Un-accompanied - 198E required)
- K Supervisory (Accompanied - No 198E)
- L Training
- T Travel
- X Other

ACTION

- N Administrative action to terminate inspection sequence, close complaint case file. Action on complaint inspection if complaint is substantiated and cycle inspection is done simultaneously.
- K Change of Owner
- Y Commissioner's Order Served/Notice of Violation Re-Served
- J Could Not Locate/Incorrect Address
- G Establishment Closed by DOHMH
- W Establishment Re-closed by DOHMH
- H Hold for Further Observation
- I Incomplete
- D Minor Violation of Rules and Regulations (Reinspection not scheduled)
- L No Access - First instance
- Z No Access - Second instance
- V No Access - Third instance
- B No violations cited. Action on complaint inspection if complaint is not substantiated and cycle inspection is done simultaneously.
- M No Sanitary Inspection (To be re-scheduled)
- U Notice of Violation Served (Reinspection not scheduled)
- F Notice of Violation Served (Reinspection scheduled)
- A Out of Business
- P Padlocked
- C Previously Cited Violations Corrected and no new violations cited
- R Referral to other Office/Bureau/Agency
- O Reopened
- Q Seizure/Embargo (MFU, Product)
- T Special Enforcement Procedures (City, State, Federal facilities) (Reinspection scheduled)
- S Special Enforcement Procedures (City, State, Federal facilities) (Reinspection not scheduled)

- X Undefined/Other/None
- E Violation of Rules and Regulations (Reinspection scheduled)

PTET

Description of Establishments Permitted by DOHMH

- 2970 Animal - Pet Shop
- 2971 Animal - Grooming
- 2902 Animal - Shelter
- 2970 Animal - Training
- 2970 Animal - Boarding
- 0257 Animal - Horse
- 3457 Animal - Horse Stable
- 4120 Bathing Establishment (Year Round w/o Pool, Indoor)
- 4121 Bathing Establishment (Year Round with Pool, Indoor)
- 4220 Bathing Establishment (Seasonal w/o Pool, Outdoor)
- 4221 Bathing Establishment (Seasonal with Pool, Outdoor)
- 4554 Bathing Beach (Public)
- 4564 Bathing Beach (Private)
- 2773 Barber Shop
- 2775 Beauty Parlor
- 1778 Compressed Air (Sell/Give Away)
- 5034 Day Care Service - Group Day Care
- 5035 Day Care Service - Group Family Day Care
- 5036 Day Care Service - Family Day Care
- 8698 Day Care Service - School Age Child Care
- 7185 Drainage System
- 2532 Food Service Establishment (College, University Cafeteria)
- 2581 Food Service Establishment (Division of Youth Service Facility/Juvenile Justice)
- 2505 Food Service Establishment (Group Home)
- 2543 Shelter - Homeless
- 0303 Food Service Establishment (Mobile Food Unit - Seasonal)
- 0604 Food Service Establishment (Mobile Food Unit - Year-Round)
- 2542 Food Service Establishment (NYC Correctional Facility)
- 2508 Food Service Establishment (NYC Department of Mental Health)
- 2541 Food Service Establishment (NYS Correctional Facility)
- 2531 Food Service Establishment (Private School Cafeteria)
- 2577 Food Service Establishment (Psychiatric Center)
- 2530 Food Service Establishment (Public School Cafeteria)
- 2540 Food Service Establishment (Restaurant)
- 2523 Food Service Establishment (SRO)
- 2509 Food Service Establishment (Senior Day Center)
- 2547 Food Service Establishment (Soup Kitchen)
- 2526 Food Service Establishment (SED Summer Feeding Satellite: None to minimal food preparation. Essentially food service only.)
- 1512 Food Service Establishment (Temporary)
- 0137 Food Vendor License (Seasonal/Temporary)
- 0537 Food Vendor License (Year-Round)
- 2151 Frozen Dessert Manufacturer (Wholesale A)
- 2250 Frozen Dessert Manufacturer (Retail)
- 2351 Frozen Dessert Manufacturer (Wholesale B)
- 4627 Infant Formula
- 0976 Inhalation Therapy
- 2774 Nail Salon
- 2695 NRFPE (Fish/Shellfish Dealer)
- 2638 NRFPE (Mobile Food Unit Commissary/Depot)
- 2624 NRFPE (Other)
- 6387 Outlet From Disposal Facility
- 4849 Pathogens
- 7186 Septic System/Subsoil

- 6459 Solid Waste Transfer Station, Landfill, Incinerator
- 8599 Summer Camp
- 1072 Tattoo Parlor/License
- 8488 Transportation of Butchers Refuse
- 6155 Waste Water Treatment Plant/Sewage Pumping Station - Municipal
- 6156 Waste Water Treatment Plant/Sewage Pumping Station - Private
- 1467 Water - Chemical Treatment
- 2093 Water - Commercial Treatment: Coils, tanks
- 3266 Water - Bottling Plant/Import/Manufacture
- 3368 Water - Non-potable Well
- 3369 Water - Potable Well
- 3958 Water - Import/Transport/Non-potable
- 6260 Water - Treatment Plant
- 6265 Water - Pumping Station
- 7561 Water - Sampling Station
- 7562 Water - Fluoride Sampling Station
- 7563 Water - Potability Inspection Point
- 3845 Weight Reducing Group

PTET

Description of Establishments Not Permitted by DOHMH

- 0006 Adult Home
- 0036 Building (Vacant)
- 0008 Building (Office)
- 0010 Building (Commercial)
- 0016 Building (Government)
- 0079 Building (Private Dwelling, 1-2 Family)
- 0001 Building (Private Dwelling/Commercial)
- 0018 Building (Multiple Dwelling, >2 Family)
- 0022 Building (Multiple Dwelling /Commercial)
- 0007 Building (Single apartment in a building)
- 0082 Building - Religious Use
- 0032 College, University (Non-Food Area)
- 0089 Day Treatment Center
- 0081 Division of Youth Service Facility/Juvenile Justice
- 0025 Food Vending Machine
- 0005 Group Home (Non-Food Area)
- 0048 Miscellaneous [NOT LISTED]
- 0042 NYC Correctional Facility (Housing)
- 0052 NYC Correctional Facility (Medical)
- 0080 NYC Correctional Facility (Court Holding Cell Area)
- 0041 NYS Correctional Facility (Other than Food Service)
- 0015 Parking Lot/Garage
- 0077 Psychiatric Center
- 0014 Public Garden/Park/Playground
- 0030 Public School (Non-Food Area)
- 0031 Private School (Non-Food Area)
- 0009 Senior Day Center (Non-Food Area)
- 0043 Shelter - Homeless
- 0044 Shelter (Specialty)
- 0023 Single Room Occupancy
- 0053 Sports Arena
- 0011 Street Area
- 0013 Street Stairs
- 0046 Supermarket/Grocery Store/Retail Store
- 0039 Tobacco Business
- 0017 Vacant Lot
- 0019 Vacant Lot (Referred to DOHMH by Dept. of Sanitation)

BOROUGH

- 1 Manhattan
- 2 Bronx
- 3 Brooklyn
- 4 Queens
- 5 Staten Island

Entity ID: 40635537 **DBA:** KFC, TACO BELL [Edit](#)

ADDRESS: 331 6 AVENUE MANHATTAN **Floor:** 1,B **ZipCode:** 100

Permit Type: 25-Food Service Establishment **Establishment Type:** 40-Restaurant **Assigned to:** Initial

Permit #: 0985692 **Permit Exp Date:** 5/31/2007 **Seat:** **Safety:** **Status:** ACTIVE

Service: 16-Fast Food **Cuisine:** 02-American **Web:**

Phone: **Fax:** 000-000-0000 **Email:**

[Operations Info](#) |
 [GIS Info](#) |
 [Notes](#) |
 [Activity](#) |
 [Complaints](#) |
 [Other Establishment](#) |
 [Attached Documents](#)

[Add Field Activity](#) [Edit/Delete Field/Office Activity](#) [Add Office Activity](#)

	IMAGE	ACTIVITY_DATE	ID	INSPECTOR	PROGRAM	TYPE	ACTION
▶		2/26/2007	1101	OKORO NKAMA	FS- Food Service	M- Monitor	B- No Violations
		2/23/2007	0940	CAROL FERACHO	FS- Food Service	A- Initial Inspecti	G- Establishment
		2/22/2007	1367	CEMONE THOMA	GC- General Com	A- Initial Inspecti	U- Notice of Viol

Marina Politis

SR

From: John Johnston
Sent: Wednesday, February 21, 2007 6:05 PM
To: Marina Politis
Cc: Robert Edman
Subject: FW: Inspection Request

H-297613650

See below - needs to be soon

John M. Johnston
Legislative Analyst
Bureau of Intergovernmental Affairs
New York City Department of Health and Mental Hygiene
125 Worth Street, CN#331
(p)212-788-5286
(f) 212-349-0040

SR Reference
to be given to PHG

41959

From: John Johnston
Sent: Wednesday, February 07, 2007 10:33 AM
To: Marina Politis
Subject: Inspection Request

Councilmember Arrayo received a complaint about KFC/Taco Bell at 311 6 Avenue, Manhattan. They have problem with mice, rodents, and dirt.

John M. Johnston
Legislative Analyst
Bureau of Intergovernmental Affairs
New York City Department of Health and Mental Hygiene
125 Worth Street, CN#331
(p)212-788-5286
(f) 212-349-0040

KFC/Taco Bell

RAT
20-35 FT SUC counter RAT
20-25 DISH WASH / HOT WATER ^{droppings} _{area}
20-35 HOLE ABOVE IN WALL
11:00 am DISTURBING AREA
11:00 pm 15'

311 6th Avenue
331 Manhattan

Manhattan (B) ^{Cemone} Thomas

Action U

EXHIBIT 5

Subject: Inspection Request

Date: Wed, 7 Feb 2007 10:32:33 -0500

Message-ID: <45C9AADE0200001300139605@health.nyc.gov>

From: "John Johnston" <jjohnsto.First Administrative Group. Exchange>

To: MPOLITIS.PO253BWAY.253bway

Content-Type: text/plain; charset=utf-8

Content-Transfer-Encoding: quoted-printable

Content-Disposition: inline

Councilmember Arrayo received a complaint about KFC/Taco Bell at 311 6 Avenue, Manhattan. They have problem with mice, rodents, and dirt.

John M. Johnston

Legislative Analyst

Bureau of Intergovernmental Affairs

New York City Department of Health and Mental Hygiene

125 Worth Street, CN#33I

(p)212-788-5286

(f) 212-349-0040

EXHIBIT 6

Message forwarded by mpolit@health.nyc.gov---

From: Marina Politis <mpolit@health.nyc.gov>

Sent: Wed 02/07/2007 10:38 AM

To: Mirian Martinez <MMARTINE@health.nyc.gov>

Cc:

Subject: Fwd: Inspection Request

Please schedule an inspection for the attached restaurant and get back to John with results.

Subject: Inspection Request
Date: Wed, 7 Feb 2007 10:32:33 -0500
Message-ID: <45C9AADE0200001300139605@health.nyc.gov>
From: "John Johnston" <jjohnsto.First Administrative Group. Exchange>
To: MPOLITIS.PO253BWAY.253bway
Content-Type: text/plain; charset=utf-8
Content-Transfer-Encoding: quoted-printable
Content-Disposition: inline

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John M. Johnston
Legislative Analyst
Bureau of Intergovernmental Affairs
New York City Department of Health and Mental Hygiene
125 Worth Street, CN#33I
(p)212-788-5286
(f) 212-349-0040

EXHIBIT 7

From: John Johnston
Sent: Wednesday, February 21, 2007 6:05 PM
To: Marina Politis
Cc: Robert Edman
Subject: FW: Inspection Request

See below - needs to be soon

John M. Johnston
Legislative Analyst
Bureau of Intergovernmental Affairs
New York City Department of Health and Mental Hygiene
125 Worth Street, CN#331
(p)212-788-5286
(f) 212-349-0040

From: John Johnston
Sent: Wednesday, February 07, 2007 10:33 AM
To: Marina Politis
Subject: Inspection Request

Councilmember Arrayo received a complaint about KFC/Taco Bell at 311 6 Avenue, Manhattan. They have problem with mice, rodents, and dirt.

John M. Johnston
Legislative Analyst
Bureau of Intergovernmental Affairs
New York City Department of Health and Mental Hygiene
125 Worth Street, CN#331
(p)212-788-5286
(f) 212-349-0040

The New York City Department of Health & Mental Hygiene is now offering information important for the health of all New Yorkers. To sign up for these new and valuable updates, log-on to our website at <http://www.nyc.gov/health/email> and select the NYC DOHMH updates you'd like to receive.

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Marina Politis



1

**Subject
Notebook**



Narrow Ruled
8x5in/20.3x12.7cm
Wirelock Binding
100% Recycled Cover

80 Sheets

Made in Mexico • #25-401



EXHIBIT 9 (1 OF 2)

Semok Thomas

Jacobell/KFC
331 6th Avenue

fat droppings observed
20-35 under front
service counter

20-35 under slip
sink in dishwashing
station but droppings

20-35 throughout
basement but droppings

1 large hole approx. 1.5 inches
in diameter in ~~the~~
kitchen area near
kitchen cabinet
water heater and
five pipe.

JFC
JFC
JFC