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July 24, 2007

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July 25, 2007

Via Facsimile (212) 805-7948

Honorable Richard J. Holwell
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: New York State Rest. Ass'n v. New York City Bd. of Health, et al.
United States District Court for the Southern District of New York
(07 Civ. 05710) (RJH)

Dear Judge Holwell:

Pursuant to Paragraphs 1.A and 1.D of your Individual Practices, Wendy's International, Inc. ("Wendy's") respectfully submits this letter to correct an erroneous and misleading implication in the Declaration of Dr. Margo Wootan filed in this case on July 16, 2007 by *amicus curiae* The Center for Science in the Public Interest (CSPI) and which Wendy's learned of yesterday. Specifically, paragraph 22 of Dr. Wootan's declaration states "See Appendix C for model Starbucks and Wendy's menus. These model menus demonstrate that providing calories on the menu can be done without being confusing, difficult to read, or cluttering the menu."

The direct implication of Dr. Wootan's assertion is that the "model menus" attached to her Declaration are reproductions of menu boards created, used or adopted by Wendy's. This is misleading and inaccurate because Wendy's did not prepare the menu boards depicted in Appendix C to Dr. Wootan's Declaration.

We faxed a letter to CSPI yesterday asking that CSPI promptly correct this misleading implication in the Declaration and so advise this Court promptly. Subsequent discussions with CSPI failed to resolve how best to notify the Court of CSPI's acknowledgement that the "model menu" is not an actual Wendy's menu and was instead "doctored." Given the hearing we understand is scheduled for this afternoon, Wendy's believes it necessary to submit this letter immediately.

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it. If the Court requires any additional information on this matter, we stand ready to provide

Sincerely,


Joseph P. Esposito

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