

Cal/OSHA

Sent via email: DOSHLA@dir.ca.gov

November 16, 2023

Victor Copelan
Los Angeles District Manager
California Division of Occupational Safety and Health
320 West 4th Street, Suite 820
Los Angeles, CA 90013

Re: Employee Health Complaint - Vermin at Sky Terrace Restaurant
at W Hollywood Hotel

Dear Mr. Copelan:

This Complaint is submitted on behalf of UNITE HERE Local 11 (“Union”) and its members who work for Mosaic Hollywood LLC (“Company”) at the Sky Terrace (“Sky Terrace”), a restaurant at the W Hollywood Hotel (“Hotel”), including [REDACTED] Edward Diaz, and Jhobani Hernandez. Complainants have worked as cooks, servers, and receivers at Sky Terrace.

Complainants request that the California Division of Occupational Safety and Health (“Cal/OSHA”) conduct an on-site inspection of the workplace on an expedited basis to investigate the allegations of this complaint, namely that the Company violated sanitation regulations by (1) failing to maintain premises to prevent the entrance or harborage of vermin and (2) failing to institute a continuous and effective extermination program.

Allegations of Cal/OSHA Violations re: Vermin and General Environmental Controls

Cal/OSHA has promulgated standards concerning sanitation in workplaces. Under section 3362(f), which applies to permanent places of employment:¹

Every enclosed workplace and personal service room shall be equipped and maintained, in so far as is practicable, as to prevent the entrance or harborage of insects, rodents, and other vermin. An effective program of extermination shall be instituted whenever their presence is detected.

¹ <https://www.dir.ca.gov/title8/3360.html>.

As described below, Complainants allege that the Company and the Hotel have failed to comply with this requirement. The main kitchen and dining areas for Sky Terrace are currently located on the twelfth floor of the Hotel. The Company maintains a storage area in the basement of the Hotel and an additional kitchen on the first floor of the Hotel. As many as sixty Company and Hotel employees work in the areas in question. In particular, workers have reported the following information based on their experiences:

On or around May 3, 2023, an employee observed what appeared to be a dead rat inside a small box on the floor of Sky Terrace’s storage room. The employee was working alone but took a photo of the apparent rat and, that same day, showed it to Executive Chef Michael Santoro. In response, Chef Santoro said he would contact an exterminator. Complainants are not aware of whether the Company ever did call an exterminator. Below is the photo in question:



Apparent dead rat in box found on storage room floor on May 3, 2023

On the evening of May 20, 2023, an employee observed what appeared to be a rat in the hallway near the storage room. An employee took a video of the apparent rat before it hid from

view, and he showed that video to the chef on duty. The video is attached as **Exhibit A**, and a screengrab from the video is provided below:



Rat in the hallway near the storage room on the evening of May 20, 2023

On or around June 11, 2023, Sous Chef Judith Martinez instructed employee Jhobani Hernandez to bring her a bag of flour from the storage room. After Hernandez delivered the flour, Chef Martinez pointed out to him that the bag was torn and had rat feces. However, Chef Martinez asked Hernandez to only dispose of half the flour because she intended to use the other half. Hernandez took a picture of the torn bag and the apparent rat feces. That picture is provided below:



Apparent rat feces on the torn bag of flour that Hernandez delivered to Chef Martinez on June 11, 2023

On or around July 14, 2023, Jhobani Hernandez and another employee who wishes to remain anonymous were in the storage room. Both employees observed what appeared to be rat feces on top of a box of food. The employees also both saw what appeared to be three rats on top of shelving boards stacked against the storage room wall. The employee took a photo and a video of one of the rats; the other two rats ran away before the employees could take pictures or video. The video is attached as **Exhibit B**, and the photo is provided below. The employee reported this incident to chefs Michael Santoro, Jennifer², and Jason Prendergast. In response, the chefs told the employee that the Company would contract an exterminator.

² Last name is unknown. She previously worked as a chef at the Company.



Photo of what appeared to be a rat in storage room on July 14, 2023

On or around July 28, 2023, an employee observed what appeared to be rat feces on containers located in the storage room. He reported this sighting to Chef Jennifer and took two pictures. The two photos of the apparent rat feces are provided below:



Apparent rat feces on top of containers in storage room on July 28, 2023

On or around July 29, 2023, the Company closed the restaurant early to install sticky traps to eliminate the rats. But as detailed below, the rats continued to appear.

On or around July 30, 2023, [REDACTED] opened the restaurant for breakfast with Manager Isabel Herman. [REDACTED] and Manager Herman uncovered the credenza located on the rooftop portion of the restaurant. A trap that had been placed on top of silverware in the credenza fell out with what appeared to be two mice stuck on the trap.³ One of the mice appeared to be dead and the other alive. Management instructed [REDACTED] to throw the mice in the trash.

Later in the morning, [REDACTED] found what appeared to be a live mouse stuck on a trap placed along the wall of the restaurant. A picture is provided below:

³ [REDACTED] believed the rodents he observed were mice, not rats, because of their small size.



Mouse stuck on trap found inside the restaurant on July 30, 2023

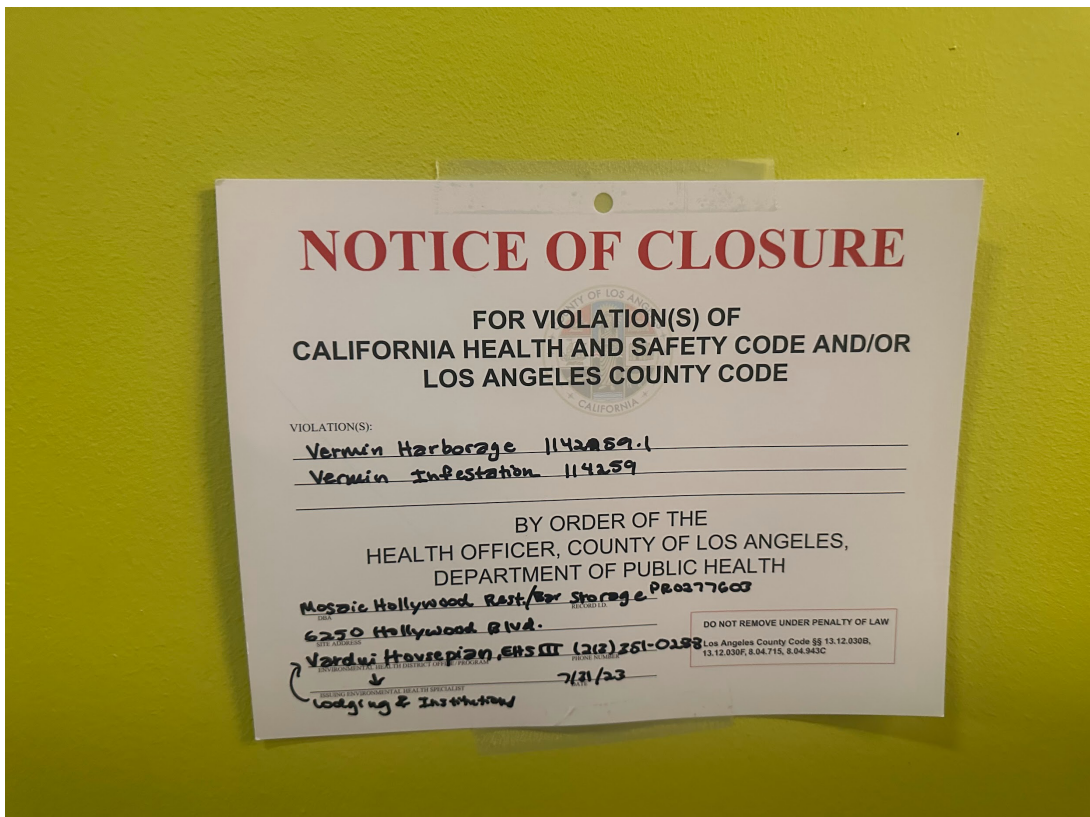
And in the afternoon of July 30, 2023, a guest at the restaurant got their foot stuck on a glue trap that the Company placed under a dining table. This same afternoon, the Company instructed an employee to set traps in the storage room. The Company also instructed the employee to routinely clean the storage room. However, as shown below, the rat traps and cleaning failed to resolve the rodent infestation.

In the morning of July 31, 2023, Edward Diaz found what appeared to be two rats stuck on separate traps in the storage room. One of the rats was still alive while the other appeared to be dead. Diaz also noticed a bag of flour in the storage room that had a hole in it and another bag of flour that was covered with what appeared to be rat feces. Diaz took pictures of the two apparent rats, which are provided below. He also took a video of the apparent rats and the bags of flour. The video is attached as **Exhibit C**.



Left is live rat and right is rat that appears to be dead; both taken on July 31, 2023

That same day, July 31, 2023, the Department of Public Health posted a notice of closure on the storage room door because of vermin infestation and vermin harborage. A photo of the notice is provided below:



Health Department notice of storage room closure, posted 7/31/2023

On or around August 4, 2023, the storage room reopened. However, rats continued to appear in the storage room and elsewhere in the building after the closure.

Several days after the reopening, on or around August 8, 2023, an employee observed what appeared to be rat feces on the floor of the storage room. The employee took two photos of the feces and sent the photos via 7shifts message to Sous Chef Enrie Torres.⁴ In response, Sous Chef Torres instructed the employee to clean the apparent rat feces and said he would speak with the extermination company that he said the Company had contracted to eliminate the rats.

On or around August 9, 2023, an employee found a bag of black rice in the storage room covered with what appeared to be rat feces, pee, and bite marks. He took a photo and video of the bag with apparent rat waste and bite marks. The photo is provided below, and the video is filed as **Exhibit D**. The employee also sent the photo through 7shifts to the supervisor on duty. The supervisor instructed the employee to throw away the bag of black rice.



Black rice bag with apparent rat pee, feces, and bites found on August 9, 2023

On or around August 29, 2023, an employee found what appeared to be rat feces when he swept the storage room. He was alone at the time, but he sent a picture of the apparent rat feces to a 7shifts group chat that included all the Company's supervisors. The photo of the apparent rat feces is provided below. None of the supervisors responded in the chat, but

⁴ 7shifts is a messaging application that Company employees utilize to communicate with co-workers and management.

managers told the employee in person that they were in communication with an extermination company.



Apparent rat feces on floor of storage room on August 29, 2023

On or around September 11, 2023, [REDACTED] noticed what appeared to be a rat in the second-floor kitchen. [REDACTED] spotted the rat because it ran at his co-worker, [REDACTED], after [REDACTED] moved a towel in the kitchen.

On or around September 25, 2023, because the apparent rodent infestation continued, employees reported that the Company promised free meals to at least two employees after they caught a rat and showed it to the managers.

On or around October 12, 2023, Jhobani Hernandez found what appeared to be a dead rat in the sink of the first-floor kitchen. Hernandez took a photo of the apparent dead rat. That photo is provided below:



Apparent dead rat in sink of first floor kitchen on October 12, 2023

Investigation Procedures

As noted above, Complainants request that a thorough site inspection of the Sky Terrace facilities and connected W Hollywood facilities be conducted. Given the health hazards posed to employees by vermin, we ask that this inspection be conducted on an expedited basis. Additionally, we are aware that some of the matters raised here may not be effectively investigated by simply requesting copies of paperwork from the Respondent. Accordingly, Complainants are willing to provide Cal/OSHA with additional information to assist with its investigation, including supplying video recordings and photographs, and arranging for Cal/OSHA to meet privately with the Complainants and additional employees.

As the designated employee representative for the Complainants, we request to be notified of and included in the Opening and Closing Conferences, as well as any post-citation Informal Conference, with Cal/OSHA and affected employees if the Company insists on separate conferences. As the designated employee representative, we also request the right to accompany an inspector on the tour of inspection.

Please contact me with regard to the substance of this complaint, including interviews with the complaining employees, and any resulting citation. I can be reached at ztucker@unitehere11.org or (757) 561-4807.

Thank you for your attention to this important matter.

Sincerely,

/s/

Zoe Tucker
Staff Attorney, UNITE HERE Local 11