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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

YISROEL FRIEDMAN and S. MOSHE
PINKASOVITS

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER and
JOANNE L. MINICHETTI, individually and in her
official capacity as Mayor of the Borough of Upper
Saddle River

Defendants.

Civ. No. _____

COMPLAINT

Plaintiffs Yisroel Friedman and S. Moshe Pinkasovits (together, “Plaintiffs”) by their attorneys, Weil, Gotshal & Manges LLP, allege for their Complaint herein, as follows:

INTRODUCTION

1. This action arises from the actions of The Borough of Upper Saddle River (“USR”), which constitute intentional deprivation of Plaintiffs’ rights and liberties under the First and Fourteenth Amendments to the United States Constitution and multiple federal statutes.¹

¹ Plaintiff Yisroel Friedman’s address is 2 Eros Drive, Airmont, NY 10952-4114. Plaintiff Moshe S. Pinkasovits’ address is 4 Amanda Court, Airmont, NY 10952-4104. Defendant Borough of Upper Saddle River’s address is 376 W. Saddle River Road, Upper Saddle River, NJ 07458. Defendant Joanne L. Minichetti’s address is 376 W. Saddle River Road, Upper Saddle River, NJ 07458.

2. Plaintiffs and other Jewish residents of Rockland County, New York have sought to establish an eruv in parts of Bergen County, New Jersey that would allow Rockland County Jews with certain sincerely held religious beliefs, and who reside on or near the New York-New Jersey state lines, to carry or push objects from place to place within a designated unbroken area during the Sabbath and on Yom Kippur (the “Eruv”).

3. Many Jews have the sincerely held religious belief that, without an eruv, they are not permitted to push or carry objects outside their homes on the Sabbath and Yom Kippur. As a result, men or women who are confined to wheelchairs or who have small children or relatives confined to wheelchairs cannot attend Sabbath and Yom Kippur services or engage in any other activity outside of their homes unless, in limited circumstances, they choose to hire non-Jewish individuals to push their strollers and wheelchairs. Likewise, those who hold such beliefs are not permitted to carry items such as food, water bottles, house keys, personal identification, books, prayer shawls, or reading glasses on those days outside of their homes.

4. Accordingly, there are hundreds of eruvin (the plural form of eruv) throughout the United States, and scores in the New York-New Jersey area alone—including in Bergen, Essex, Mercer, Middlesex, Monmouth, Morris, Ocean, and Union Counties in New Jersey; in Nassau, Suffolk, Westchester, Rockland, and Albany Counties in New York; and in each of the five boroughs of New York City.

5. In 2015, representatives of the Vaad haEruv – Plaintiffs’ designated agent for the planning, organization, and construction of an Eruv – approached Orange & Rockland Utilities, Inc. (“O&R”) and requested permission to affix thin PVC plastic pipes known as “lechis,” which are necessary for the establishment of the Eruv, to utility poles in USR owned by O&R’s New Jersey utility subsidiary Rockland Electric Company (“REC,” and together with O&R, the

“Utility Company”). The Eruv created by the installation of these lechis would expand an Eruv already in place in Rockland County, such that it would encompass Plaintiffs’ homes. The Utility Company granted express licenses to Vaad haEruv to affix lechis to the Utility Company’s poles in USR.

6. On or about June 1, 2015, the Vaad haEruv and REC entered into a License Agreement. Through the License Agreement, which is attached hereto as Exhibit A, the Utility Company granted an express license to allow the Vaad haEruv to affix lechis to certain of the Utility Company’s poles in Bergen County for the purpose of creating an Eruv.

7. After recently obtaining specific valid licenses from the Utility Company – which owns the utility poles in USR – and under the supervision of the USR Police Department and with the approval of Mayor Minichetti, the Vaad haEruv completed a partial eruv expansion in USR approximately three weeks ago.

8. As a result of the Eruv’s expansion to include parts of USR, for the past three Sabbaths, Plaintiffs have been able to more fully practice their religion. More specifically, over the past three Sabbaths, Plaintiffs have been able to carry items such as prayer shawls and prayer books to their synagogue and have been able to bring food, games, gifts, and books to the homes of fellow community members. Plaintiffs can also push strollers and wheelchairs within the confines of the newly expanded eruv. Plaintiffs have been able to more fully practice their religion, both at their synagogue as well as at communal activities that take place in the homes of fellow community members on the Sabbath.

9. Defendants, however, have now unlawfully threatened Plaintiffs’ constitutional, civil, and contractual rights by demanding the removal of the Eruv. In official written communications to the Utility Company, Defendants have taken the untenable positions that

local laws purportedly “require the removal” of the lechis from the Utility Company’s utility poles, and that municipal approval is required for the affixation of any lechis. Through their actions – which are unsupported by any local, state, or federal law – Defendants have also unlawfully interfered with private contracts with the Utility Company that were entered into for the purpose of establishing the Eruv. If Defendants are allowed to infringe on Plaintiffs’ religious liberty in this manner, Plaintiffs and other members of the observant Jewish community will sustain immediate irreparable injury, as further described below.

10. Plaintiffs and other members of the Jewish community have also sought to further expand the Eruv to cover other portions of USR and a neighboring town, with the goal of including additional community members within the confines of the eruv. Plaintiffs will amend their Complaint to add allegations of municipal interference related to that expansion, but in the interest of time and in light of USR’s unlawful actions, Plaintiffs have commenced the instant action now to protect the existing Eruv.

11. Plaintiffs bring this action to obtain, *inter alia*, (a) a declaration that (i) there is no local, state, or federal law that either prohibits the affixation of the lechis to certain poles in USR or that requires municipal approval for such attachments, and (ii) that the private third parties should therefore be free and clear to implement the contracts to permit such action.

JURISDICTION AND VENUE

12. Subject matter jurisdiction over this action is conferred upon this Court pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343 and 28 U.S.C. § 1367.

13. Personal jurisdiction over this action is conferred upon this Court because Defendants are located in this District, because the acts complained of occurred in this District, and pursuant to NJ Rev Stat § 2A:4-30.68.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because all of the Defendants are located in this District and because the events giving rise to the claim occurred in this District.

THE PARTIES

15. Plaintiff Yisroel Friedman (“Friedman”) is an individual residing in Airmont, New York.

16. Plaintiff S. Moshe Pinkasovits (“Pinkasovits”) is an individual residing in Airmont, New York.

17. Defendant Joanne Minichetti (“Mayor Minichetti”) is an individual residing in Upper Saddle River, New Jersey. Mayor Minichetti is also Mayor of the Borough of Upper Saddle River. Mayor Minichetti’s term of office extends until December 31, 2019.

18. Defendant Upper Saddle River is a Borough in Bergen County, New Jersey.

FACTUAL ALLEGATIONS

I. THE NEED FOR AN ERUV IS AN IMPORTANT RELIGIOUS BELIEF AND PROMOTES PRACTICE OF THE JEWISH FAITH.

19. An eruv, under Jewish law, is a largely invisible unbroken demarcation of an area. Eruvin have existed under Jewish law for more than two thousand years. An eruv is created by, among other things, using existing telephone or utility poles and wires, existing boundaries, and strips of wood or plastic attached to the sides of certain of the poles, known as “lechis.”

20. The lechis used in the Eruv at issue are half-inch thick PVC plastic pipes, and are affixed vertically to the poles. These pipes are unobtrusive and typically unnoticeable to a casual observer. Indeed, lechis have been described by the Second Circuit Court of Appeals as “nearly invisible.”

21. Many Jews hold the sincere religious belief that, without an eruv, they are not permitted to push or carry objects outside their homes on the Sabbath and Yom Kippur. Eruvin

allow Jews with such sincerely held religious beliefs to carry or push objects from place to place within the area on the Sabbath and Yom Kippur. Thus, within the boundaries of an eruv, these people may push baby carriages, strollers, and wheelchairs and may carry books, food, water, house keys, identification, prayer shawls, reading glasses or other items, to synagogue and other locations outside of their own homes. The ability to carry these and other items creates a safer environment and permits observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

22. Plaintiffs live in an area of New York State that directly borders USR. If USR proceeds with its threatened takedown of the lechis that are part of the Eruv, Plaintiffs would immediately lose access to the Eruv, and accordingly would be unable to push or carry any objects, such as those described above, outside their homes on the Sabbath and Yom Kippur. If even one week passes without an eruv, Plaintiffs and other community members will be deprived of the ability to fully and freely practice their religion on the Sabbath, constituting an irreparable injury.

23. Plaintiff Friedman, for example, would be harmed by USR's unlawful takedown of the lechis due to his inability, in the absence of an eruv, to push a stroller on the Sabbath and Yom Kippur. Friedman has two young children—one infant and one toddler—neither of whom are able to walk to the family's synagogue on the Sabbath. As a result of now being able to push a stroller, Friedman and others similarly situated are now able to attend synagogue and spend time on the Sabbath with other community members outside of their homes. Without the eruv, some family members would be forced to stay home for the entirety of the Sabbath to care for their young children.

24. Other members of Plaintiffs' community would be harmed by USR's unlawful takedown of the lechis due to their inability, in the absence of an eruv, to push wheelchairs on the Sabbath and Yom Kippur. One community member, for example, has an elderly, close relative who is dependent on a wheelchair. Within the confines of the Eruv, a wheelchair may be pushed to synagogue. If USR were to remove the lechis that facilitate the Eruv, a wheelchair-dependent individual would be confined to his or her home for the duration of the Sabbath or Yom Kippur.

25. A multitude of eruvim have been established nationwide and worldwide. The first eruv in the United States was established in 1894 in the city of St. Louis, Missouri. Since then at least twenty-eight out of the fifty states now contain one or more municipalities with an eruv. These include, among many others: Cherry Hill, East Brunswick, Englewood, Fort Lee, Maplewood, Paramus, Passaic-Clifton, Rutherford, Teaneck, Edison, West Orange, Long Branch, Tenafly, and Ventnor, New Jersey; Westhampton Beach, Southampton, Quogue, Huntington, Stony Brook, Patchogue, East Northport, Merrick, Mineola, North Bellmore, Plainview, Great Neck, Valley Stream, West Hempstead, Long Beach, Atlantic Beach, Lido Beach, Roslyn, Seasingtown, Forest Hills, Kew Gardens, Belle Harbor, Holliswood, Jamaica Estates, New Rochelle, Scarsdale, White Plains, Albany, and Manhattan, New York; Bridgeport, Hartford, Norwalk, Stamford, New Haven, and Waterbury, Connecticut; Boston, Cambridge, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; Berkeley, La Jolla, Long Beach, Los Angeles, Palo Alto, San Diego, and San Francisco, California; Pittsburgh, Philadelphia, and Lower Merion, Pennsylvania; Chicago, Buffalo Grove, Glenview-Northbrook, and Skokie, Illinois; Ann Arbor, Southfield, Oak Park, and West Bloomfield Township, Michigan; Baltimore, Potomac, and Silver Spring, Maryland; Charleston, South Carolina;

Birmingham, Alabama; Atlanta, Georgia; Las Vegas, Nevada; Miami, Ft. Lauderdale, Boca Raton, Boyton Beach, Deerfield Beach, Delray Beach, and Jacksonville, Florida; Denver, Colorado; Cleveland, Cincinnati, and Columbus, Ohio; Portland, Oregon; Memphis and Nashville, Tennessee; New Orleans, Louisiana; Dallas, Houston, and San Antonio, Texas; Richmond, Virginia; Seattle, Washington; Phoenix, Arizona; and Washington, D.C. Most recently, eruvim have been established in Plano and Austin, Texas; Scottsdale, Arizona; and Omaha, Nebraska.

26. On the occasion of the inauguration of the first eruv in Washington, D.C., President George H.W. Bush wrote a letter to the Jewish community of Washington in which he stated: “there is a long tradition linking the establishment of eruvim with the secular authorities in the great political centers where Jewish communities have lived. . . . Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. G-d bless you.” *See Exhibit B.*

27. On April 4, 2006, the Mayor and City Council of Sandy Springs, Georgia, issued a proclamation in which the Mayor and City Council members declared: “Whereas . . . it is our desire to recognize and support the Congregation’s efforts to maintain an eruv within the vicinity of their synagogue; Now, therefore, be it proclaimed, that the desire of the Congregation . . . to create an eruv within the vicinity of their synagogue upon the public roads, sidewalks, and rights-of-way of Sandy Springs is hereby recognized within the limits allowed by the law.”

28. On September 6, 2007, the President and Board of Commissioners of Cook County, Illinois, passed a resolution creating the Glenview-Northbrook community eruv, which provided in part that an eruv “does not contravene any federal, state, or local law and will not violate any existing property rights.”

29. On February 15, 2008, Town of Oyster Bay Supervisor John Venditto presented a citation, signed by all members of the town board, to Rabbi Ellie Weissman of the Young Israel of Plainview, recognizing the expanded eruv for parts of Plainview, Old Bethpage, and Hicksville. The citation recognized “the important role that The Young Israel of Plainview contributes to the community” and wished “all the members of The Young Israel of Plainview good health and blessings in the future on the expanded ERUV.”

30. When construction to widen the lanes of the 405 Freeway in Los Angeles, California, threatened to interfere with the local eruv in late 2009, the Metropolitan Transportation Authority and the California Department of Transportation worked hand-in-hand with the local eruv administrators to ensure that the Los Angeles eruv would remain up every Sabbath. The level of accommodation was so great that Los Angeles eruv administrator Howard Witkin noted: “The level of help we’ve had, from the Roman Catholic permit people at [the California Department of Transportation] . . . to the Muslim line inspector along the freeways who gave us engineering help. . . . The level of deference and courtesy and kindness—it makes you feel good that you live in America.” See Mitchell Landsberg, *Massive 405 Freeway Project Respects the Boundaries of a Jewish Tradition*, L.A. TIMES, July 4, 2011, available at <http://articles.latimes.com/2011/jul/04/local/la-me-405-eruv-20110704>.

31. In December 2010, Queens Borough President Helen Marshall celebrated the expansion of the eruv in central Queens, New York, to six new neighborhoods. At a ceremony

held at Queens Borough Hall, Borough President Marshall said of the newly-extended eruv: “It speaks to the great multi-ethnic community we have here in Queens. We have the most multi-ethnic community in the United States.” *See* Bob Doda, *Eruv extended to six neighborhoods*, THE QUEENS COURIER, Dec. 6, 2010, *available at* <http://qns.com/story/2010/12/06/eruv-extended-to-six-neighborhoods>.

32. Eruvin have also been created throughout the United States on public and private university campuses, with university administrators and local utility companies providing substantial assistance to campus Jewish communities in their effort to establish an eruv. Thus, special university campus eruvin exist in and around: Rutgers University (New Brunswick, New Jersey); Princeton University (Princeton, New Jersey); Cornell University (Ithaca, New York); the University of Pennsylvania (Philadelphia, Pennsylvania); the University of Maryland (College Park, Maryland); Johns Hopkins University (Baltimore City, Maryland); Brandeis University (Waltham/Boston, Massachusetts); Harvard University (Cambridge, Massachusetts); Yeshiva University (New York, New York); and Yale University (New Haven, Connecticut). *See, e.g.*, Elli Fischer, *JLIC Spearheads Efforts to Enhance Campus Communities*, ORTHODOX UNION. The Cornell University Jewish community worked with the sheriff of Tompkins County, New York, to establish its eruv. *See* Elizabeth Krevsky, *Orthodox Jewish Community Builds Eshuv on Campus*, THE CORNELL DAILY SUN, Jan. 29, 2010, *available at* <https://oujlic.org/the-cornell-daily-sun-orthodox-jewish-community-builds-ehruv-on-campus/>.

33. USR’s neighboring towns have recently recognized the near-invisibility, ubiquity, and constitutionality of eruvin. In January 2015, then-mayor of Montvale, New Jersey, Mayor Fyfe, issued a public statement recognizing that an eruv is constructed “so as to be unobtrusive and nearly invisible to the general public,” and that it “has been universally held that the

construction of an eruv serves ‘the secular purpose of accommodation’ and does not violate the separation of Church and State.” As that statement correctly noted, “[a]bsent any compelling safety concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the eruv.” *See* Eruv Statement by Mayor of Montvale, attached hereto as Exhibit C.

34. Moreover, just last week, on July 19, 2017, Mayor William C. Laforet of Mahwah, New Jersey, issued a public statement recognizing that the Board of Public Utilities (BPU) “has granted permission” for lechis to be placed on O&R utility poles. *See* “Message from the Mayor – Eruv Update” (July 19, 2017), attached hereto as Exhibit D. Mayor Laforet explained that “because of several Federal Law suits,” “both BPU and O&R are obligated to allow these ERUV markings, but they have NO OBLIGATION to notify the municipality.” *Id.* (emphasis in original). And, Mayor Laforet noted that “we cannot do anything about the installation of these plastic pipes on these utility poles establishing a[n] ERUV.” *Id.*

II. PLAINTIFFS SEEK TO ESTABLISH THE ERUV, AND OBTAIN THE APPROVAL OF USR POLICE AND THE MAYOR.

35. Plaintiffs’ community representatives – including Rabbi Chaim Steinmetz – have obtained valid licenses from the Utility Company to attach lechis to utility poles in USR. Shortly after obtaining the licenses from O&R, Rabbi Steinmetz called the USR Police Department to notify them that he would be attaching lechis to utility poles in USR. During that phone call, the police gave their consent, so long as Rabbi Steinmetz agreed to have a “flag man” and to place a sign on the road for traffic safety purposes. Rabbi Steinmetz agreed to these requests.

36. In mid-June 2017, having obtained valid licenses, and with the consent of the USR Police Department, Plaintiffs and Rabbi Steinmetz began the work to expand an existing eruv to parts of USR by attaching lechis to utility poles.

37. A few hours after Plaintiffs and Rabbi Steinmetz began the work, Upper Saddle River Building Department's Director of Code Enforcement James Dougherty, along with Upper Saddle River Police officers, informed Plaintiffs and Rabbi Steinmetz that, by order of Defendant Minichetti, they had to stop their work. Plaintiffs and Rabbi Steinmetz complied with this directive.

38. The next day, Plaintiff Pinkasovits and Rabbi Steinmetz met with Mr. Dougherty and his Building Department colleague Steven Forbes, USR's Property Maintenance Zoning Officer, to better understand why they had been ordered to stop their work and to see what had to be done so that the work could continue. Mr. Dougherty informed Plaintiff Pinkasovits and Rabbi Steinmetz that the Borough was still evaluating whether the lechis violated any local ordinances. In the middle of the meeting, Mr. Dougherty left to discuss the matter with the Mayor's office. Upon his return to the meeting, Mr. Dougherty informed Plaintiff Pinkasovits and Rabbi Steinmetz that the Mayor's office had given its consent for the work on the eruv to continue.

39. Approximately one week after meeting with Mr. Dougherty, Plaintiff Pinkasovits and Rabbi Steinmetz met with Upper Saddle River Police Chief Patrick Rotella in an effort to ensure that all concerns with the eruv expansion project were addressed. At that meeting, Plaintiff Pinkasovits and Rabbi Steinmetz explained the purpose of the eruv and provided some additional information on the proposed eruv.

40. Chief Rotella provided his consent as well, so long as Plaintiff Pinkasovits and Rabbi Steinmetz had a flag man and agreed to place a sign on the road to alleviate any traffic safety concerns. Plaintiff Pinkasovits and Rabbi Steinmetz agreed to these requests.

41. In addition to agreeing to have a flag man at all times when working on the eruv in USR, Plaintiff Pinkasovits and Rabbi Steinmetz also agreed to complete a Contractor Road Construction Information form, providing further detail of when and where the work on the eruv was to be done. In sum, Plaintiff Pinkasovits and Rabbi Steinmetz agreed to each and every request the USR Police Department made of them.

42. With the consent of the Utility Company, the Police Department, and the Mayor, Plaintiffs and Rabbi Steinmetz resumed their work. Approximately four weeks ago, they completed the necessary work to expand an existing eruv into parts of USR. In order to comply with the requests of the Police Department, each time Plaintiffs and Rabbi Steinmetz set out to attach lechis to utility poles in USR, they first notified the police.

43. In several instances, police officers came to check on Plaintiffs and Rabbi Steinmetz to ensure that they were complying with the Police Department's directives. Each time police officers checked on them, they gave their approval, noting that they were complying with each and every one of the Police Department's requests.

44. As a result of Plaintiffs' and Rabbi Steinmetz' work, observant community members who live within this newly enclosed area have been able to more fully practice their religion on the Sabbath for the past three weeks.

45. If any of the lechis that have already been put up in USR are removed, the eruv that covers this portion of USR would become invalid and Plaintiffs and other similarly-situated members of the observant Jewish community will no longer be able to carry their belongings on the Sabbath – or push a wheelchair or a stroller – as they have been able to since the eruv was completed nearly four weeks ago.

46. After the valid eruv covering a portion of USR was completed nearly four weeks ago, Plaintiffs and Rabbi Steinmetz started – but have not yet completed – a further expansion of the eruv that will cover other portions of USR (and elsewhere) so as to include additional community members within the confines of the eruv. These efforts, which came at significant expense, were only undertaken once Plaintiffs and Rabbi Steinmetz had secured the necessary assurances from USR that the work would be allowed to be completed.

III. AFTER PLAINTIFFS ENCOUNTER RANK COMMUNITY HOSTILITY TO THE ERUV, USR BACKTRACKS ON ITS PRIOR APPROVAL AND ENGAGES IN ACTS OF INTERFERENCE AND OPPOSITION

47. Plaintiffs’ attempts to expand the eruv have been met with hostility and rank prejudice. A vicious and discriminatory campaign against the eruv expansion was launched by a vocal minority of residents in both USR and adjacent towns, including through the “Petition to Protect the Quality of Our Community in Mahwah.” Public comments posted on this “Petition” include the following, openly anti-Semitic statements:

- “Get those scum out of here.”
- “They are clearly trying to annex land like they’ve been doing in Occupied Palestine. Look up the satanic verses of the Talmud and tell me what you see.”
- “Our town is such a great place and if these things move in they will ruin it. They think that can do whatever the hell they want and we’ll be known as a dirty town if they move in. Please keep them out...”
- “I don’t want these rude, nasty, dirty people who think they can do what they want in our nice town.”
- “I don’t want my town to be gross and infested with these nasty people.”
- “I do not want these things coming into my town and ruining it.”

48. In the face of a firestorm of opposition to the eruv in USR, Defendant Minichetti has actively interfered with and obstructed Plaintiffs’ ability to construct the Eruv. She reversed her position and revoked her permission for Rabbi Steinmetz to continue work on the lechis.

49. Mayor Minichetti not only refused to allow work on the lechis to go forward, but has threatened to take down the lechis that have already have been erected, even though Plaintiffs and Rabbi Steinmetz received all the necessary approvals, including the approval of the Mayor herself via Mr. Dougherty.

50. On July 18, 2017, counsel for USR sent a letter to O&R stating that the lechis were purportedly in violation of Borough Ordinance No. 16-15, N.J. Stat § 48:3-18 and N.J. Stat § 48:17-10 (the “July 18 Letter”). The July 18 Letter demanded that the lechis be “immediately removed,” and threatened to pursue “all available remedies” to secure their removal. *See* Exhibit E.

51. Borough Ordinance No. 16-15 was approved in October 2015, following the Second Circuit’s decision in *Jewish People for the Betterment of Westhampton Beach v. Vill. Of Westhampton Beach*, 778 F.3d 390 (2d Cir. 2015), and at a time that expansion of the Eruv into USR was a topic of much local discussion. Indeed, the Ordinance was passed *after* several conversations took place between Borough officials and Rabbi Israel Kahan, who advocated on behalf of the eruv expansion project and provided USR with relevant documents and licenses.

52. In addition to enacting Borough Ordinance No. 16-15 with discriminatory intent to harm Plaintiffs, USR has, upon information and belief, not enforced the ordinance with any consistency or regularity. One illustrative example is attached hereto as Exhibit F. (picture of “Lost Dog” sign on a pole at Cherry Lane and West Saddle River Road in the Borough).

53. Upon receiving the July 18 Letter, the Utility Company instructed Rabbi Steinmetz by letter dated July 20, 2017 to refrain from affixing any additional lechis in USR without municipal approval (which USR has now withheld without justification). *See* Exhibit G.

54. USR's counsel continued its acts of interference by sending an email on July 21, 2017 and a letter on July 24, 2017 (and together with the July 18 Letter, the "Threat Letters") informing Rabbi Steinmetz and the Utility Company that if the lechis are not removed by July 26, 2017 at noon, USR would have them removed. *See* Exhibit H.

55. The Utility Company responded to the Threat Letters by email on July 21, 2017, noting that it "fail[ed] to see the need for such an accelerated timeframe, as the eruv facilities plainly present no threat to public safety," and that "a more deliberate schedule will allow the Borough and the eruv association to resolve any and all open issues." *See* Exhibit H.

56. On July 25, 2017, Plaintiffs' counsel sent a response to the Threat Letters, which, *inter alia*, notified USR of Plaintiffs' constitutional and contractual rights, and that eruvim have been universally upheld by the courts (as more fully discussed below). *See* Exhibit I.

57. As a result of USR's unlawful acts of interference and obstruction, Plaintiffs and Rabbi Steinmetz have ceased erecting lechis in USR. If they are unable to resume their work in USR to complete the further expansion of the eruv, with each passing week, community members will be deprived of the ability to fully and freely practice their religion on the Sabbath, constituting an immediate irreparable injury.

IV. ERUVIN HAVE BEEN UNIVERSALLY UPHOLD BY THE COURTS.

58. This is not the first time that the creation of an eruv has been challenged by a township or borough in the face of religious animus. Every court to have considered the matter, including the Third Circuit Court of Appeals, has determined that the creation of an eruv, including through the utilization of public utility poles for the attachment of lechis, is a reasonable accommodation of religious practice under the Free Exercise Clause. *See Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 176 (3d Cir. 2002), *cert. denied* 539 U.S. 942 (2003); *see also ACLU of N.J. v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987);

Smith v. Cmty Bd. No. 14, 128 Misc. 2d 944, 946-48 (Sup. Ct. Queens Cnty. 1985), *aff'd*, 133 A.D.2d 79 (N.Y. App. Div. 2d Dep't 1987).

59. Following *Tenaflly*, there was a multi-year litigation against the municipalities of Westhampton Beach, Quogue, and Southampton, NY. The New York state and federal courts, including the Second Circuit Court of Appeals, repeatedly ruled in favor of the creation of an eruv, finding, among other things, that the creation of an eruv is a constitutional exercise of religious freedoms and a “[n]eutral accommodation of religious practice,” (*see Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, 778 F.3d 390, 395 (2d Cir. 2015)); that utility companies have the authority to enter into contracts for the attachment of lechis to poles (*see Verizon New York, Inc., et al. v. The Village of Westhampton Beach, et al.*, 11-cv-00252, 2014 WL 2711846 (E.D.N.Y. Jun. 16, 2014)); and that lechis are not signs for the purpose of town sign ordinances, and municipalities have affirmative duties to accommodate religious uses of utility poles (*see East End Eruv Ass’n v. Town of Southampton, et al.*, No. 14-21124, 2015 WL 4160461 (Sup. Ct. Suffolk Cty., June 30, 2015)).

FIRST CLAIM FOR RELIEF

(U.S. Const.)

60. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 59 as if fully set forth herein.

61. Plaintiffs have a constitutional right under the First and Fourteenth Amendments to the United States Constitution freely to practice their religion.

62. Without an Eruv in the parts of USR that border Rockland County, New York, plaintiffs and other observant Jews cannot freely practice their religion because they cannot carry objects, or push baby carriages, strollers or wheelchairs to synagogue on the Sabbath and Yom Kippur.

63. The object, motivation, and effect of the actions of the Defendants is to suppress the religious practices of the Plaintiffs and certain other Jews who reside in Airmont and other parts of Rockland County. These actions have specifically targeted Jewish citizens, as the laws that the Defendants seek to invoke to prevent the establishment of the Eruv are not enforced against citizens of other faiths with consistency or regularity.

64. The Eruv presents no aesthetic, safety, traffic, fiscal, or other concern to USR. There is, therefore, no compelling State interest in ordering the removal of the lechis in USR that form the Eruv.

65. The Defendants' actions deny plaintiffs their rights to freely practice their religion in violation of the First and Fourteenth Amendments to the United States Constitution.

66. As a result of the actions of Defendants, and if Defendants proceed with the takedown of lechis that form the Eruv, Plaintiffs will be irreparably harmed.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983)

67. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 66 as if more fully set forth herein.

68. The plaintiffs have a constitutionally protected right under the First and Fourteenth Amendments to the United States Constitution to freely practice their religion.

69. Defendants have acted under color of State Law to deprive plaintiffs of their rights, privileges or immunities secured by the Constitution and the laws of the United States in violation of 42 U.S.C. § 1983.

70. Defendants' actions were motivated by an intent to interfere with Plaintiffs' civil rights, and Defendants were at all times aware that they were acting in violation of federal laws.

71. As a result of the actions of Defendants, and if Defendants proceed with the takedown of lechis that form Plaintiffs' eruv, Plaintiffs will be irreparably harmed.

THIRD CLAIM FOR RELIEF

(42 U.S.C. § 2000cc)

72. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 71 as if fully set forth herein.

73. Defendants' actions in impeding the establishment of the Eruv constitute the imposition or implementation of a land use regulation within the meaning of RLUIPA, 42 U.S.C. § 2000cc(a)(1).

74. The utility poles at issue are undisputedly the personal property of the Utility Company, and licenses to use such property constitute a "property interest" within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(5).

75. Defendants' actions substantially burden the religious exercise of observant Jews who wish to freely practice their religion while observing religious proscriptions against carrying objects, or pushing baby carriages, strollers or wheelchairs to synagogue on the Sabbath and Yom Kippur.

76. Defendants' actions do not further a compelling government interest and, in any event, they are not the least restrictive means of furthering any such interest.

77. Defendants' actions were motivated by an intent to interfere with Plaintiffs' constitutional and civil rights, and Defendants were at all times aware that they were acting in violation of federal laws.

78. Defendants have chosen to selectively enforce the laws or ordinances under which they seek to prevent the establishment of the Eruv, in a way that constitutes the imposition or

implementation of a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

79. Defendants' actions are in violation of RLUIPA.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment)

80. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 79 as if fully set forth herein.

81. Defendants have taken the position that certain local and/or state laws prohibit affixing lechis to the utility poles un USR and that approval of the Municipalities is required for affixing lechis to such poles.

82. Plaintiffs have taken the position that there is no legal or factual basis for Defendants' positions.

83. By virtue of the foregoing, there now exists an actual, justiciable controversy between Plaintiffs and Defendants relating to their respective legal rights, duties, and obligations, which controversy is ripe for adjudication pursuant to 28 U.S.C. § 2201.

84. Declaratory relief will settle the legal issues between the parties set forth in the above-referenced letters, and finalize the controversies described in those letters.

85. Plaintiffs thus request a judgment declaring the rights and obligations of the parties, including a declaration that (a) there is no local, state, or federal law that either prohibits the affixation of the lechis to certain poles in USR, or that requires municipal approval for such attachments, including a declaration that § 16-15 of the Code of the Borough of USR is unconstitutional as a result of its discriminatory passage, approval and implementation, and (b) that the private parties should therefore be free and clear to implement contracts to construct the Eruv.

WHEREFORE, Plaintiffs respectfully demand judgment against all defendants as follows:

A. On the First Claim for Relief, immediately, preliminarily, and permanently enjoining Defendants from removing any lechis that form the Eruv, and also enjoining Defendants from taking any action which would prevent Plaintiffs from affixing further lechis to the Utility Company's utility poles or otherwise constructing and maintaining the Eruv that already exists.

B. On the Second and Third Claims for Relief, (1) permanently enjoining Defendants from continuing to engage in the discriminatory practices alleged therein; (2) and permanently enjoining Defendants from taking any actions which would prevent Plaintiffs from affixing lechis to the Utility Company's utility poles or otherwise constructing and maintaining the Eruv that already exists.

86. On the Fourth Claim For Relief, entering a declaratory judgment, pursuant to 28 U.S.C. § 2201, that (a) there is no local, state, or federal law that either prohibits the affixation of the lechis to certain poles in USR, or that requires municipal approval for such attachments, including a declaration that § 16-15 of the Code of the Borough of USR is unconstitutional as a result of its discriminatory passage, approval and implementation, and (b) that the private parties should therefore be free and clear to implement contracts to construct the Eruv.

C. Awarding the costs of this action, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and

D. Awarding such other and further relief as this Court deems appropriate.

Dated: New York, New York
July 27, 2017

/s/ Diane P. Sullivan
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