UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EAST END ERUV ASSOCIATION, INC., MARVIN TENZER, MORRIS TUCHMAN, CLINTON GREENBAUM, ALAN H. SCHECHTER, CAROL SCHECHTER, JEFFREY LEAN, ALEXA LEAN, DEBORAH POLLACK and SIMCHA POLLACK,

Plaintiffs,

-against-

THE VILLAGE OF WESTHAMPTON BEACH, THE VILLAGE OF QUOGUE and THE TOWN OF SOUTHAMPTON,

Defendants.

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CV-11-0213 (LDW)(AKT)

RESPONSE TO PLAINTIFFS' 56.1 STATEMENT OF PURPORTEDLY UNDISPUTED MATERIAL FACTS

Defendant VILLAGE OF WESTHAMPTON BEACH, by its attorneys, Sokoloff Stern LLP, submits the following response to plaintiffs' statement of undisputed material facts.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, Plaintiffs submit the following statement of material facts as to which there is no genuine issue to be tried in support of their motion for partial summary judgment against the Village of Westhampton Beach.

1. An eruv, under Jewish law, is a largely invisible unbroken demarcation of an area. The contemplated eruv would be created by using existing telephone or utility poles and wires, existing natural boundaries, and strips of PVC attached to the sides of certain of the poles ("*lechis*"). *See* Declaration of Robert G. Sugarman ("Sugarman Decl.") Ex. U (Transcript of Proceedings on Plaintiffs' Motion in Support of Preliminary Injunction ("Hr'g Tr.") (June 15, 2011) 12:18-24; 14:13-17; Amended Complaint (hereinafter "Am. Compl.") ¶ 24. The concept

of an eruv originated more than 2000 years ago, and there is a whole tractate of the Talmud devoted to *eruvin*. *See* Sugarman Decl. Ex. U (Hr'g Tr. (June 15, 2011) 8:15-20); Am. Compl. ¶ 24.

Response: Admit, except deny that the eruv is "largely invisible." The eruv will be constructed, in part, by using 15-foot-long strips of PVC piping attached to utility poles in the public rights of way, visible to passersby. See Sokoloff Decl. Ex. N, (June 13, 2011 Pole Attachment Agreement For Miscellaneous Attachments between EEEA and Verizon).

2. An eruv would allow the individual Plaintiffs and other observant Jews who live within the eruv to push or carry objects outside their homes on the Sabbath and Yom Kippur. Without an eruv, persons who are in need of wheelchairs and those with small children or with relatives in need of wheelchairs cannot attend Sabbath and Yom Kippur services or otherwise engage in any activities outside of their own homes. Likewise, they are not permitted to carry items such as books, food, water, house keys, personal identification, prayer shawls, or reading glasses on those days outside of their homes. Declaration of Alan Schechter ("Schechter Decl.") ¶¶ 3-7; Declaration of Marvin Tenzer ("Tenzer Decl.") ¶¶ 4-6; Declaration of Morris Tuchman ("Tuchman Decl.") ¶¶ 3-7, 10; Am. Compl. ¶ 2.

Response: Admit, except deny that persons who are in need of wheelchairs and those with small children or with relatives in need of wheelchairs cannot "engage in any activities outside of their own homes." The cited evidence does not support this contention.

3. There are hundreds of eruvin throughout the United States and scores in New York state alone, including in Nassau, Suffolk, and Westchester Counties. *See generally* Tuchman Decl. ¶ 17; Am. Compl. ¶¶ 2, 34-41; Ex. UU.

Response: Deny; the cited evidence either does not support this proposition or is inadmissible. The Tuchman Declaration states that a "multitude of cities and municipalities statewide, nationwide, and worldwide have established eruvin without controversy." Tuchman Decl. ¶ 17. It says nothing about New York, Nassau, Suffolk, Westchester or "hundreds of eruvin." The Amended Complaint is not admissible evidence and Ex. UU to the Amended Complaint is a letter from Weil Gotshal, plaintiffs' counsel in this case – also not admissible evidence. In addition, the cited evidence does not indicate whether any or all of the other *eruvin* are on purely private property.

4. Plaintiffs have sought for years to establish an eruv in Westhampton Beach and parts of the Village of Quogue ("Quogue") and the Town of Southampton ("Southampton") (collectively, "the Municipalities"). *See* Schechter Decl. ¶ 8; Tenzer Decl. ¶ 7; Tuchman Decl. ¶¶ 7-11; Am. Compl. ¶ 2.

Response: Deny; the cited evidence does not support the proposition that plaintiffs "have sought for years to establish an eruv" anywhere. Instead, the Schechter, Tenzer and Tuchman Decl. state that "in March of 2010," these plaintiffs and others "formed EEEA to work to establish an eruv." Schechter Decl. ¶ 8; Tenzer Decl. ¶ 7; Tuchman Decl. ¶ 7. The Amended Complaint is not admissible evidence.

5. In or about May 2010, Plaintiff East End Eruv Association ("EEEA") and Verizon New York, Inc. ("Verizon") entered into an Eruv-Lechi Stave Agreement. *See* Sugarman Decl. Ex. S (Aug. 16, 2010 Eruv-Lechi Stave Agreement between EEEA and Verizon); Am. Compl. Ex. P (same).

Response: Admit.

6. The agreement, which was fully executed on August 16, 2010, allowed EEEA to affix lechis to certain of Verizon's poles in the Municipalities, including Westhampton Beach, to complete an Eruv. *See* Sugarman Decl. Ex. S (Aug. 16, 2010 Eruv-Lechi Stave Agreement); Am. Compl. Ex. P (same).

Response: Deny; the cited evidence does not indicate when the agreement was "fully executed."

7. On or about July 27, 2010, EEEA and Long Island Lighting Co., d/b/a/ Long Island Power Authority ("LIPA"), entered into a License Agreement, whereby LIPA agreed to allow EEEA to affix lechis to certain of LIPA's poles in the Municipalities, including Westhampton Beach, to complete an Eruv. *See* Sugarman Decl. Ex. T (July 27, 2011 License Agreement between EEEA and LIPA); Am. Compl. Ex. Q (same).

Response: Admit.

8. On or about June 13, 2011, EEEA and Verizon entered into an updated Pole Attachment Agreement For Miscellaneous Attachments in order to provide for the attachment of 5/8" half-round PVC lechis to certain of Verizon's utility poles in the Municipalities, including Westhampton Beach. *See* Sugarman Decl. Ex. R (June 13, 2011 Pole Attachment Agreement For Miscellaneous Attachments between EEEA and Verizon); Am. Compl. Ex. R (same).

Response: Admit.

9. In November 2011, Verizon, and LIPA conducted a "pole walk" with EEEA, pursuant to EEEA's respective license agreements with Verizon and LIPA, to identify those poles on which EEEA would attach lechis pursuant to those agreements for the purpose of creating an eruv in Quogue and Westhampton Beach only. *See* Sugarman Decl. ¶ 9 & Ex. G

(map of planned Quogue-Westhampton Beach eruv that was provided to counsel for Quogue and Westhampton Beach on December 6, 2011).

Response: Deny; the cited material does not support the contention that EEEA, Verizon, and LIPA conducted a pole walk in November 2011. Paragraph 9 of the Sugarman Declaration asserts that Ex. G reflects this pole walk, but Ex. G appears to be nothing more than a map of the Municipalities that does not reflect any activity in November 2011.

10. In May 2012, representatives of EEEA, Verizon, and LIPA conducted a new "pole walk" pursuant to EEEA's respective license agreements with Verizon and LIPA, to identify those poles on which EEEA would attach lechis for the purpose of creating an alternative eruv in Westhampton Beach only. *See* Declaration of William J. Balcerski ("Balcerski Decl.") Ex. D (May 24, 2012 Letter from Michael Wiles to Brian Sokoloff); Balcerski Decl. Ex. I (June 1, 2012 letter from Erica Weisgerber to Brian Sokoloff).

Response: Deny; the cited material does not support the contention that EEEA, Verizon, and LIPA conducted a pole walk in May 2012. Exhibits D and I to the Balcerski Declaration are letters between litigation counsel for Verizon and litigation counsel for Westhampton Beach; this material is hearsay which, in any event, does not make any mention of a May 2012 "pole walk."

11. Upon entering the license agreements with Verizon and LIPA, and the completion of a pole walk in Westhampton Beach pursuant to these agreements, EEEA fulfilled its contractual obligations to establish an eruv in Westhampton Beach. *See* Sugarman Decl. Ex. I (Hr'g Tr. (June 29, 2011) at 558:3-5) (The Court: "[Because] there is no rule or regulation preventing it, [Plaintiffs] have a right to [affix the lechis]."); *id.* 558:12-14 (The Court: "If you tell me there is no rule or regulation, it is not a sign, then you can't prevent it.").

Response: Deny; this assertion is a legal conclusion rather than a statement of fact. It is also not supported by the cited material, which does not speak to EEEA's obligations under its contracts with Verizon and LIPA.

12. The only reason why EEEA is unable to establish an eruv in Westhampton Beach is because of Westhampton Beach's continued opposition to the eruv. *See* Balcerski Decl. ¶¶ 2, 5-6; Sugarman Decl. Ex F ¶¶ 11-12 (Declaration of Michele A. Pincus ("Pincus Decl.")).

Response: Deny; the cited material does not support the claim that Westhampton Beach opposes an eruv. Nor does it support the claim that Westhampton Beach's position on the placement of *lechis* on utility poles is a reason, much less the *only* reason why EEEA is unable to establish an eruv. The Balcerski Declaration makes vague reference to some undisclosed "statements that have led Verizon to believe that were it to issue the licenses, it would be subject to retaliatory action by the Village...." Balcerski Decl. ¶¶ 2. The Pincus Declaration does not even address Westhampton Beach specifically, instead referencing "local municipalities' positions and/or threats to fine LIPA." Sugarman Decl. Ex F ¶¶ 11-12 (Pincus Decl.). Neither declaration outlines the requirements for an *eruv* or the reasons why one cannot be established.

13. Both Verizon and LIPA have acknowledged that the only reason that they have not yet issued licenses to EEEA is because of the threatening conduct and actions of the Defendants directed to Verizon and LIPA. *See* Balcerski Decl. ¶¶ 2, 5-6; Sugarman Decl. Ex F ¶¶ 11-12 (Pincus Decl.).

Response: Deny; the cited material does not support the claim that Defendants' actions are "the only reason" that Verizon and LIPA have not issued licenses. Further, LIPA has not identified any specific conduct by the Village of Westhampton Beach that

has prevented it from issuing licenses, while Verizon merely references unidentified "statements" that made Verizon "believe… it would be subject to retaliatory action by the Village." *See* Balcerski Decl. ¶¶ 2, 5-6; Sugarman Decl. Ex F ¶¶ 11-12 (Pincus Decl.). Regardless, both Verizon and LILPA have agreed to defer the issuance of licenses to allow this Court to litigate the issues raised in the Verizon/LIPA Action, including whether the utilities have statutory authority to issue the licenses and whether issuance of licenses would violate the Establishment Clause of the First Amendment. See July 6, 2012 Stipulation between Verizon and the Village, Docket Entry No. 56, So-Ordered on July 17, 2012; Sugarman Decl. Ex F ¶¶ 11-12 (Pincus Decl.).

14. Verizon and LIPA have filed a separate action, pending before this Court, requesting that a declaration be issued to permit Verizon and LIPA to issue licenses for the installation of lechis on utility poles without incurring fines or other sanctions and without liability to the Defendants, and an injunction preventing Defendants from interfering in any way with, or otherwise restricting or attempting to restrict, the installation of the lechis. *See* Balcerski Decl. ¶ 3; Sugarman Decl. Ex F ¶ 12 (Pincus Decl.); *see also* Complaint, *Verizon New York, Inc.* et al. *v. The Village of Westhampton Beach*, et al., No. 11 Civ. 0252 (LDW) (AKT) (E.D.N.Y. filed Jan. 18, 2011) (the "Verizon/LIPA Action"), ECF No. 1.

Response: Admit.

15. On January 13, 2011, Plaintiffs filed the present action against Westhampton Beach, Quogue, and Southampton. *See* Docket No. 1 (Original Complaint).

Response: Admit.

16. Plaintiffs filed an amended complaint on February 3, 2012, (i) asserting claims under the Free Exercise Clause, RLUIPA, and 42 U.S.C. § 1983; (ii) claiming tortious

interference with contract; and (iii) requesting a declaratory judgment that there is no local, county, or state law or ordinance that prohibit the construction of an eruv in Westhampton Beach and parts of Quogue and Southampton. *See* Am. Compl. ¶¶ 119-157.

Response: Admit.

17. On April 4, 2011, Plaintiffs filed a motion for a preliminary injunction against all Defendants, asking the Court to prohibit Defendants from interfering with EEEA's agreements with Verizon and LIPA or taking any action that would interfere with Plaintiffs' efforts to establish the eruv. *See* Docket No. 42 (PI Motion).

Response: Admit.

18. On November 3, 2011, this Court denied without prejudice Plaintiffs' motion for a preliminary injunction as against the Quogue and Westhampton Beach Defendants. In so holding, the Court stated that:

> . . . the applicability of Quogue's sign ordinance (governing encroachments and projections on its rights-of-way) to the attachment of lechis to utility poles appears questionable. Notwithstanding the questionable applicability of Quogue's code provisions, and that Westhampton Beach does not have an applicable sign ordinance or an application procedure that plaintiffs are required to follow, the Court suggests that plaintiffs propose a revised eruv plan to Quogue and Westhampton Beach for their consideration prior to any conference with the Court.

Docket No. 121 (PI Order at 25).

Response: Admit.

19. On December 6, 2011, Plaintiffs proposed a revised eruv plan to Quogue and Westhampton Beach for their consideration. *See* Sugarman Decl. ¶ 9 and Ex. G.

Response: Deny; the cited material does not support this claim. Exhibit G is nothing more than a map of the Municipalities, and ¶ 9 of the Declaration by Robert G.

Sugarman, counsel for plaintiffs, identifies it as a plan that was "presented" to the Village. There is no evidence that any eruv plan was "proposed" to the Village of Westhampton Beach for its "consideration." Indeed, the EEEA has never brought or presented any eruv proposal to the Westhampton Beach Village Board for its consideration. Ex. K, p. 275 (Hearing Tr. [Teller]).

20. At a court conference held on December 9, 2011, the Court instructed Plaintiffs to move forward with establishing an eruv in Westhampton Beach and to make an application for permission to attach lechis to utility poles in Quogue. *See* Sugarman Decl. Ex. H (Hr'g Tr. (Dec. 9, 2011) 9:4-12).

Response: Deny. This Court issued no such order.

21. Westhampton Beach has acknowledged that it has no local ordinance that bars the attachment of lechis to utility poles, nor an application procedure that must be followed to obtain municipal approval to do so. *See* Sugarman Decl. Ex. I (Hr'g Tr. (June 29, 2011) 557:24-558:2).

Response: Admit.

22. The Court has stated that that the "Westhampton Beach Defendants concede that a lechi is not a 'sign' under Westhampton Beach's sign ordinance and that the village does not have an application procedure that plaintiffs were required to follow." Docket No. 121 (PI Order at 12).

Response: Admit.

23. On June 2, 2011, Verizon sent a letter to Westhampton Beach through counsel, in which Verizon asked Westhampton Beach to clarify whether it was Westhampton Beach's position that Village approval is required "before Verizon may issue licenses to the EEEA and before the lechi staves may actually be installed on Verizon's utility poles."

Balcerski Decl. Ex. A at 3 (attaching June 2, 2011 letter from Michael E. Wiles to Brian S. Sokoloff). Westhampton Beach never responded to this letter.

Response: Deny; the cited material does not support the claim that "On June 2, 2011, Verizon sent a letter to Westhampton Beach through counsel, in which Verizon asked Westhampton Beach …." The June 2, 2011 letter was from Verizon's litigation counsel to litigation counsel for Westhampton Beach, sent in the context of ongoing litigation, and was not directed to the Village Board. Plaintiffs do not cite any evidence for the proposition that "Westhampton Beach never responded to this letter." However, defendant notes that litigation counsel has no obligation to respond to the informal inquiries of opposing counsel.

24. Following the Court's issuance of its preliminary injunction order on November 3, 2011, and the court conference on December 9, 2011, Plaintiffs proposed to Westhampton Beach a modified eruv using only utility poles located in Westhampton Beach. *See* Sugarman Decl. Ex. K at 1-2 (Feb. 29, 2012 letter from Robert Sugarman to Brian Sokoloff).

Response: Deny; the cited material does not support the claim that the December 9, 2011 letter "proposed" anything to Westhampton Beach. By its own terms, the letter from plaintiffs' litigation counsel to Westhampton Beach litigation counsel, sent in the context of ongoing litigation, simply *declared* that "plaintiffs intend to proceed with the affixation of lechis to establish an eruv in the Village of Westhampton Beach."

25. In a January 25, 2012 teleconference and in a March 14, 2012 letter, Verizon followed-up on its request that Westhampton Beach "let [Verizon] know if the Village objects to the issuance of the licenses and, if it so objects, to let [Verizon] know the grounds on which the Village does so." Balcerski Decl. Ex. A at 2 (Mar. 14, 2012 letter from Michael E. Wiles to Brian S. Sokoloff).

Response: Deny; the cited material does not support the claim that the Verizon made any request to Westhampton Beach or the Village Board, but merely reflects communications between litigation counsel for Verizon and litigation counsel for Westhampton Beach, all made in the context of ongoing litigation.

26. Counsel for Westhampton Beach responded by contending that Verizon does not have authority to issue licenses to EEEA. *Id.* Ex. B at 1-2 (March 20, 2012 letter from Brian Sokoloff to Michael Wiles).

Response: Admit.

27. Verizon responded and stated that it disagreed with Westhampton Beach's arguments and that Verizon was prepared to issue the licenses unless Westhampton Beach agreed to submit the issue to the Court for a determination. *Id.* Ex. C at 1-2 (April 5, 2012 letter from Michael Wiles to Brian Sokoloff).

Response: Deny; the cited material does not support the claim that the Westhampton Beach or its Village Board made any arguments, but merely reflects communications between litigation counsel for Verizon and litigation counsel for Westhampton Beach, all made in the context of ongoing litigation.

28. On May 24, 2012, Verizon advised Westhampton Beach that it intended to issue licenses to EEEA pursuant to its agreement and to allow the placement of lechis on Verizon-utility poles located solely in Westhampton Beach. *See id.* Ex. D at 1 (May 24, 2012 letter from Michael Wiles to Brian Sokoloff).

Response: Deny; the cited material does not support the claim that Verizon advised Westhampton Beach or its Village Board of anything, but merely reflects

communications between litigation counsel for Verizon and litigation counsel for Westhampton Beach, all made in the context of ongoing litigation.

29. That same day, Westhampton Beach responded that "[c]ontrary to the implication in [Verizon's] letter, the Village, through its court papers and in correspondence to you, has made clear its deep skepticism about the authority of the utilities to sublicense utility poles on public property for private religious uses." *Id.* Ex. E at 1 (May 24, 2012 letter from Brian Sokoloff to Michael Wiles).

Response: Deny; the cited material does not support the Westhampton Beach or its Village Board "responded" in any way, but merely reflects communications between litigation counsel for Verizon and litigation counsel for Westhampton Beach, all made in the context of ongoing litigation.

30. On May 25, 2012, Verizon responded to Westhampton Beach, observing that even though the Village argued in its courts papers that Verizon's and LIPA's suit should be dismissed as unripe, Westhampton Beach still claimed to have "deep skepticism" about Verizon's authority to issue licenses to EEEA. *See id.* Ex. F at 1 (May 25, 2012 letter from Michael Wiles to Brian Sokoloff). Verizon also noted that Westhampton Beach had not responded to Verizon's offer "to delay the issuance of licenses while the issue is submitted to Judge Wexler for decision." *Id.*

Response: Deny; the cited material does not support the claim that Verizon responded to Westhampton Beach or its Village Board in any way, but merely reflects communications between litigation counsel for Verizon and litigation counsel for Westhampton Beach, all made in the context of ongoing litigation.

31. That same day, Westhampton Beach replied that the issue of Verizon's authority to issue licenses for lechis was already before this Court because Westhampton Beach had raised it in its reply memorandum of law in support of its motion to dismiss the Verizon/LIPA Action. *See id.* Ex. G at 1 (May 25, 012 letter from Brian Sokoloff to Michael Wiles). Westhampton Beach, however, did not agree to withdraw its ripeness arguments to the Verizon/LIPA Action or the above-captioned action (the "EEEA Action") in this reply letter. *See id.*

Response: Deny; the cited material does not support the claim that Westhampton Beach or its Village Board made any reply to Verizon, but merely reflects communications between litigation counsel for Verizon and litigation counsel for Westhampton Beach, all made in the context of ongoing litigation.

32. On May 30, 2012, Verizon wrote to Westhampton Beach enclosing the "list of the poles on which Verizon intends to issue licenses for the attachment of lechis," as requested by Westhampton Beach in its May 24, 2012 letter to Verizon. *See* Balcerski Decl. Ex. H at 1 (May 30, 2012 letter from Michael Wiles to Brian Sokoloff). In this letter, Verizon also noted that it understood from Westhampton Beach's court papers that the Village's "primary contention before Judge Wexler is that the Village of Westhampton Beach has taken no position as to the issuance of the licenses and that there is no issue that is ripe for decision, and therefore that [the Village has] not consented to his resolution of any issues relating to the issuance of the licenses." *Id.* Verizon therefore asked Westhampton Beach to advise it as soon as possible whether the Village had withdrawn its ripeness arguments and wished to obtain a ruling from the Court on the issues Westhampton Beach raised regarding Verizon's authority to issue licenses for lechis. Verizon noted further in this letter that if this was not the case, then it would proceed

with the issuance of licenses for lechis to EEEA. *See id.* Verizon never received a response from Westhampton Beach to this letter.

Response: Deny; the cited material does not support the claim that Verizon wrote to Westhampton Beach or its Village Board, but merely reflects communications between litigation counsel for Verizon and litigation counsel for Westhampton Beach, all made in the context of ongoing litigation.

33. On June 7, 2012, Westhampton Beach wrote to this Court, asking the Court to expedite its adjudication of the Village's motion to dismiss in the Verizon/LIPA Action because of Verizon's stated intention to shortly issue licenses to EEEA. *See* Balcerski Decl. Ex. J at 1 (June 7, 2012 letter from Brian Sokoloff to the Court). Westhampton Beach also claimed in this letter that the Village's position that Verizon lacks the authority to issue licenses to EEEA for the attachment of lechis to Verizon's utility poles in the Village was not inconsistent with the Village's separate argument that the Court lacks jurisdiction over the Verizon/LIPA Action on ripeness grounds. *See id.* at 2.

Response: Deny; the cited material does not support the claim that Westhampton Beach or its Village Board wrote to the Court, but merely reflects communications between litigation counsel for Westhampton Beach and the Court, all made in the context of ongoing litigation.

34. On June 14, 2012, Verizon wrote to this Court in response to Westhampton Beach's June 7, 2012 letter. *See* Balcerski Decl. Ex. K (June 14, 2012 letter from Michael Wiles to the Court). In this letter, Verizon explained that it was willing to go ahead and issue the licenses to EEEA without a court order because of the Village's continued vacillation over whether there is any legal issue to adjudicate in the Verizon/LIPA Action. *See id.* at 2.

Verizon further notified the Court in this letter that, in the absence of a clear objection by Westhampton Beach, "Verizon intends to issue attachment licenses to EEEA on Tuesday, June 19, 2012." *Id.*

Response: Deny; the cited material does not support the claim that Verizon or Westhampton Beach or its Village Board wrote to the Court, but merely reflects communications between litigation counsel for Westhampton Beach and litigation counsel for Verizon and the Court, all made in the context of ongoing litigation.

35. On June 18, 2012—the day before Verizon was to issue the licenses—Westhampton Beach reached out to Verizon through counsel, acknowledged that it was opposed to the issuance of licenses for the placement of lechis, agreed to abandon its arguments that the EEEA Action and the Verizon/LIPA Action should be dismissed on the grounds of ripeness and/or for lack of justiciability, and agreed to file motions for a preliminary injunction and/or summary judgment in order to obtain a prompt ruling as to its objections. *See* Balcerski Decl. ¶ 4.

Response: Deny; the cited material does not support the claim that Westhampton Beach or its Village Board reached out to Verizon, but merely reflects communications between litigation counsel for Verizon and litigation counsel for Westhampton Beach, all made in the context of ongoing litigation.

36. Verizon and Westhampton Beach subsequently memorialized the Village's position in a Stipulation dated July 6, 2012, which provided in relevant part:

> Westhampton Beach withdraws its contentions that the complaints in [the "Verizon/LIPA Action"] and [the "EEEA Action"] should be dismissed on grounds of ripeness and/or for lack of justiciability and agrees that there are issues that are ripe for decision by this Court in those pending cases. . . .

> On or before July 9, 2012 Westhampton Beach will file a request for a pre-motion conference, pursuant to Rule 2(B) of the Amended Rules of Judge Wexler, preparatory to a motion for preliminary injunction and/or summary judgment (and, at its option, for other relief) regarding its affirmative defenses and/or counterclaims objecting to the attachment of lechis. . . .

Sugarman Decl. Ex. A ¶¶ 2, 4 (Verizon/WHB Stip.).

Response: Admit.

37. Westhampton Beach has agreed to abandon its arguments that the EEEA Action and the Verizon/LIPA Action should be dismissed on the grounds of ripeness and/or for lack of justiciability and acknowledges that this Court should decide the issue of the utilities' authority to affix lechis to their utility poles. *Id.*

Response: Admit.

38. In exchange for Westhampton Beach's abandonment of its ripeness objections to the EEEA Action and the Verizon/LIPA Action, Verizon agreed to "defer the issuance of licenses to the EEEA pending a ruling by the Court" on the issue of Verizon's and LIPA's authority to issue such licenses. *See id.* ¶ 7.

Response: Admit.

39. Verizon and LIPA are ready and willing to issue the required licenses to permit Plaintiffs to install the lechis necessary to establish the Eruv, and both have acknowledged that they have no objection to the attachment of lechis to their respective poles. *See* Balcerski Decl. ¶¶ 2, 6; Sugarman Decl. Ex. F ¶¶ 2, 12 (Pincus Decl.); *see also* Am. Compl. Ex. LL ("Verizon does not object to the attachment of lechis to Verizon poles . . . Verizon intends to issue licenses to permit [EEEA] to attach lechis to Verizon's Poles."); Docket No. 57 (Statement By Verizon New York Inc. and Long Island Lighting Company d/b/a LIPA In

Connection With Plaintiffs' Motion For The Issuance Of A Preliminary Injunction ¶¶ 1-5) ("Verizon and LIPA otherwise are ready and willing to issue the required licenses pursuant to the terms of their contracts with the EEEA.").

Response: Admit.

40. To date, however, Verizon has not issued any licenses to EEEA under either the Eruv Lechi-Stave Agreement or the Pole Attachment Agreement For Miscellaneous Attachments. Balcerski Decl. ¶ 5.

Response: Admit.

41. Likewise, LIPA continues to refrain from issuing licenses to EEEA. *See* Sugarman Decl. Ex F ¶ 12 (Pincus Decl.).

Response: Admit.

42. LIPA's general counsel has stated in correspondence with counsel for Jewish People for the Betterment of Westhampton Beach that even though LIPA's position is that it has "the power to allow for the use of its poles" under New York law, LIPA nevertheless "will not allow EEEA to proceed with the [lechi] attachments" because of Defendants' opposition. *See* Sugarman Decl. Ex. L at 1, 2 (Feb. 28, 2012 letter from Lynda Nicolino to Jonathan Sinnreich). LIPA's general counsel noted further that "LIPA and its predecessor have allowed lechis to be affixed to its poles in many communities throughout the service territory and have issued numerous licenses through agreements that, among other things, comply with local law. Until now, neither LIPA nor LILCO before it has ever been advised by a municipality that allowing for the attachment of lechis to its poles constituted a violation of any local ordinance." *Id.* at 1-2.

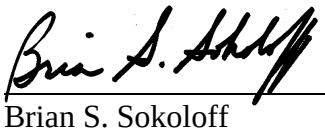
Response: Deny; the letter from LIPA's general counsel does not say that LIPA "will not allow EEEA to proceed with the [lechi] attachments" "*because of Defendants' opposition*." Sugarman Decl. Ex. L at 1, 2.

43. As a result of the above, EEEA has been unable to affix lechis to poles in Westhampton Beach. *See* Balcerski Decl. ¶¶ 2, 4-5; Sugarman Decl. Ex F ¶¶ 11-12 (Pincus Decl.); Sugarman Decl. Ex. A ¶ 7 (Verizon/WHB Stip.).

Response: Deny; it is unclear what is meant by "the above" and the cited material does not support the claim that EEEA has been unable to affix lechis "as a result of the above."

Dated: Westbury, New York
September 5, 2012

SOKOLOFF STERN LLP
Attorneys for Defendant
Westhampton Beach

By: 

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