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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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.

Index No. CV 11-0213

Hon. Leonard D. Wexler

AMENDED COMPLAINT

Plaintiffs East End Eruv Association, Inc. (“EEEE”), Marvin Tenzer, Morris Tuchman, Clinton Greenbaum, Alan Schechter, Carol Schechter, Jeffrey Lean, Alexa Lean, Deborah Pollack, and Simcha Pollack (collectively, “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 Village of Westhampton Beach (“Westhampton Beach”), the Village of Quogue (“Quogue”), and the Town of Southampton (“Southampton”) (collectively, the “Municipalities” or “Defendants”), which constitute intentional deprivation of and interference with Plaintiffs’ rights under the United States Constitution and statutes, and with private contracts entered into between EEEA and independent third parties.

2. For more than two years, Plaintiffs and other Jewish residents of Suffolk County have sought to establish an eruv in parts of Westhampton Beach, Quogue and Southampton that would allow Jews with certain sincerely held religious beliefs to carry or push objects from place to place within a designated unbroken area during the Sabbath and on Yom Kippur (the “Eruv”). There are hundreds of eruvim throughout the United States and scores in New York state alone, including in Nassau, Suffolk, and Westchester Counties.

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, 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, those who hold such beliefs 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. In addition, establishment of an eruv in a community is a “mitzvah” (a commandment) under Jewish law because it fosters observance of the Jewish Sabbath.

4. Defendants unlawfully have prevented Plaintiffs from establishing the Eruv by taking the insupportable and incorrect positions in official written communications to Verizon New York, Inc. (“Verizon”) and the Long Island Power Authority (“LIPA”) and in this litigation that local laws prohibit affixing “lechis,” which are necessary for the establishment of the Eruv, as described below, to utility poles, or that municipal approval is required for such action; by taking similar positions and otherwise publicly opposing the establishment of the Eruv at municipal meetings and in the press; and by unlawfully interfering with EEEA’s private contracts with Verizon and LIPA that were entered into for the purpose of establishing the Eruv.

5. Defendants' positions are unsupported by local, state, or federal law, and constitute an interference with and deprivation of Plaintiffs' constitutional and civil rights. In addition, Defendants' actions constitute, and continue to constitute, a tortious interference with EEEA's contracts.

6. Accordingly, Plaintiffs bring this action to obtain: (a) a declaration that (i) there is no basis for Defendants' positions that local laws prohibit affixing lechis to utility poles or that municipal approval is required for such action, and (ii) that the private third parties should therefore be free and clear to implement the contracts to permit such action; (b) an order permanently enjoining Defendants from taking actions which would prevent the Plaintiffs from establishing and maintaining the Eruv, from continuing to engage in discriminatory practices, and from tortiously interfering with Plaintiffs' contracts; (c) an order awarding compensatory and punitive damages and attorneys' fees to Plaintiffs, in amounts to be established at trial; and (d) for such other relief as the Court deems appropriate.

#### **JURISDICTION AND VENUE**

7. 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.

8. 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 NY CPLR § 302.

9. 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**

10. Plaintiff Marvin Tenzer (“Tenzer”) is an individual residing in Westhampton Beach and New York, New York. He is President of EEEA.

11. Plaintiff Morris Tuchman (“Tuchman”) is an individual residing in Westhampton Beach and Queens, New York. He is President of the Hampton Synagogue.

12. Plaintiff Clinton Greenbaum (“Greenbaum”) is an individual residing in Westhampton Beach, New York.

13. Plaintiff Jeffrey Lean (“Jeffrey Lean”) is an individual residing in Quogue, New York.

14. Plaintiff Alexa Lean (“Alexa Lean”) is an individual residing in Quogue, New York.

15. Plaintiff Deborah Pollack (“Deborah Pollack”) is an individual residing in the Town of Southampton and Jamaica Estates, New York.

16. Plaintiff Simcha Pollack (“Simcha Pollack”) is an individual residing in the Town of Southampton and Jamaica Estates, New York.

17. Plaintiff Alan Schechter (“Alan Schechter”) is an individual residing in Westhampton Beach and Queens, New York.

18. Plaintiff Carol Schechter (“Carol Schechter”) is an individual residing in Westhampton Beach and Queens, New York.

19. Plaintiff EEEA is a not-for-profit corporation duly formed under New York law, with an address at 32 East 57th Street, New York, New York, 10022. EEEA’s members include Plaintiffs Tenzer, Tuchman, Jeffrey Lean, Deborah Pollack, Simcha Pollack, and Alan Schechter.

20. As stated in its Certificate of Incorporation, EEEA was formed for the purpose of “coordinat[ing] efforts toward the promotion and construction of an eruv . . . in certain parts of Suffolk County, New York.” EEEA’s Certificate of Incorporation is attached hereto as Exhibit A.

21. Defendant Westhampton Beach is an incorporated village in Suffolk County, New York.

22. Defendant Quogue is an incorporated village in Suffolk County, New York.

23. Defendant Southampton is a town in Suffolk County, New York.

### **FACTUAL ALLEGATIONS**

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

24. 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 (“lechis”).

25. The lechis proposed to be used in the Eruv at issue are 5/8” half-round strips of PVC that would measure no more than ten to fifteen feet in length and would be affixed vertically to the poles. Each lechi could be painted so that it would blend in with the pole to which it is attached. A photograph of the type of lechi plaintiffs seek to use in the Eruv is attached hereto as Exhibit B.

26. The Eruv boundary here would be made up of certain existing boundaries and landmarks in the Municipalities, such as the many bulkheads on Quantuck Bay (on the southern, western, and eastern frontiers of the Eruv), as well as the fencing that runs alongside the Long Island Rail Road tracks on the Eruv’s northern border. Under Jewish law, there is no

requirement to attach lechis to these existing boundaries in order for them to demarcate the Eruv.

27. 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.

28. Eruvin allow Jews with certain 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. Moreover, establishment of an eruv, where possible under Jewish law, is incumbent upon observant Jews.

29. In the absence of an eruv in the Municipalities, Plaintiffs cannot carry these necessary items with them to the synagogue on the Sabbath and Yom Kippur. Plaintiff Tuchman cannot carry keys, identification, or his prayer book and prayer shawl with him to synagogue on the Sabbath and Yom Kippur without an eruv.

30. Plaintiffs Tenzer, Tuchman, and Alan and Carol Schechter face such circumstances with their young grandchildren. Tenzer has a three-year old granddaughter, who must ride in a stroller for any distances longer than a short walk, and therefore cannot walk to the synagogue on the Sabbath and Yom Kippur. As a result, Tenzer, his wife, or his children cannot fully observe the Sabbath or Yom Kippur when his granddaughter visits because an adult must stay home from synagogue to watch after her. Tuchman has three grandchildren under the age of

three-years old, who similarly cannot walk to synagogue on the Sabbath and Yom Kippur without a stroller; in the absence of an eruv, Tuchman or another adult member of his family must refrain from attending synagogue in order to stay home with these grandchildren.

Likewise, several of Alan Schechter's and Carol Schechter's seven grandchildren cannot walk to synagogue without the use of strollers, with the result being that Alan Schechter, Carol Schechter, or another member of their family cannot fully observe the Sabbath and Yom Kippur because they must stay home from synagogue to watch the children.

31. Plaintiffs Tenzer, Deborah Pollack, and Alan Schechter are similarly harmed by their inability to push wheelchairs on the Sabbath and Yom Kippur in the absence of an eruv. Tenzer's daughter-in-law's father, with whom his family is close, will not stay at Tenzer's home in Westhampton Beach on the Sabbath or Yom Kippur because he is dependent on a wheelchair and would be confined to Tenzer's home for the duration of the Sabbath or Yom Kippur. Deborah Pollack's elderly mother is too weak to walk to the synagogue, or anywhere outside Deborah Pollack's home, without a wheelchair. Because there is no eruv, Deborah Pollack cannot push her mother to synagogue, and her mother must consequently remain home on the Sabbath and Yom Kippur. Likewise, Alan Schechter's father is over eighty years old and experiences trouble walking to the synagogue. If there were an eruv in Westhampton Beach, Alan Schechter could push his father to the synagogue. Without an eruv, however, Alan Schechter's father must choose between struggling to walk to the synagogue on the Sabbath and Yom Kippur, on the one hand, and staying at home, on the other. Plaintiff Jeffrey Lean likewise experiences difficulty walking to synagogue on the Sabbath and Yom Kippur because of injuries he suffered in an automobile accident a few years ago.

32. Plaintiff Alexa Lean lives 2.5 miles away from the synagogue in Westhampton Beach. Nevertheless, without an eruv, she cannot carry basic travel necessities with her during the walk, such as a bottle of water, or even tissues. Likewise, Deborah Pollack lives one mile away from the synagogue in Westhampton Beach. Because her sincerely-held religious beliefs preclude her from carrying in the public domain without an eruv, she—like Plaintiffs Tuchman and Alexa Lean—cannot carry prayer books, keys, identification, and other necessary items with her to synagogue on the Sabbath and Yom Kippur.

33. In the absence of an eruv, Plaintiff Simcha Pollack is unable to carry anything into the streets when he leaves his house on the Sabbath and Yom Kippur. If an eruv existed, he would be able to carry a handkerchief or tissues in his pocket for his seasonal allergies. He would also be able to carry in his pocket or mouth sucking candies or other food to alleviate his headaches. Most significantly, his elderly parents (who are in their mid-80s) would again be able to visit him on the Sabbath and Yom Kippur. Without an eruv, Simcha Pollack cannot push his father to the synagogue in his wheelchair, and without the ability to attend a synagogue, his father—who is an ordained rabbi—refuses to spend the Sabbath or Yom Kippur with him.

34. 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, eruvim have multiplied across the United States, to the point where at least twenty-eight out of the fifty states now contain one or more municipalities with an eruv. These include, among many others: 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;

Cherry Hill, East Brunswick, Englewood, Fort Lee, Maplewood, Paramus, Passaic-Clifton, Rutherford, Teaneck, Edison, West Orange, Long Branch, and Tenafly, New Jersey; Bridgeport, Hartford, Norwalk, Stamford, New Haven, and Waterbury, Connecticut; Boston, Cambridge, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; Berkeley, 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; 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; Dallas and Houston, Texas; Richmond, Virginia; Seattle, Washington; and Washington, D.C. Most recently, eruvim have been established in Plano, Texas, and Omaha, Nebraska.

35. 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* 1990 Letter from George Bush to Congregation Keshet Israel, attached hereto as Exhibit C.

36. 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. *See Town of Oyster Bay Approves Expansion of ERUV for Jewish Community*, PLAINVIEW-OLD BETHPAGE HERALD, Feb. 29, 2009, attached hereto as Exhibit D. 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.” *Id.*

37. 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.” *See Sandy Springs Eruv Proclamation*, attached hereto as Exhibit E.

38. 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.” *See Cook County Proclamation Creating the Glenbrook Community Eruv*, attached hereto as Exhibit F.

39. 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, attached hereto as Exhibit G.

40. 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, attached hereto as Exhibit H.

41. 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: 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, attached hereto as Exhibit I. 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 Eruv on Campus*, THE CORNELL DAILY SUN, Jan. 29, 2010, attached hereto as Exhibit J. Likewise, upon the creation of the Johns Hopkins University eruv, Baltimore Mayor Sheila Dixon declared, “It [the eruv] is a way for the city to reaffirm the commitment to the Jewish community in Baltimore.” *See* Annie Linskey, *City adds 2nd ‘eruv’ religious zone*, THE BALTIMORE SUN, Nov. 6, 2008, attached hereto as Exhibit K.

## **II. PLAINTIFFS SEEK TO ESTABLISH THE ERUV.**

42. On or about March 7, 2008, Rabbi Marc Schneier submitted a petition on behalf of the Hampton Synagogue to the Board of Trustees of Westhampton Beach (“Trustees”) for the establishment of the an Eruv in Westhampton Beach.

43. The issue regarding that eruv petition was discussed during meetings of the Trustees of Westhampton Beach in April 2008 and May 2008. During the May 2008 meeting, public comment was permitted. One community member stated that there was “a fear, whether it was founded or unfounded, that what happened in Lawrence and Cedarhurst [two communities with eruvim, which have significant observant Jewish populations,] could end up happening in Westhampton Beach.” Another stated “the Mayor had allowed this to become much more of a divisive issue than it needed to be.” *See* Minutes of the Village Board of Trustees, at 16, 22 (May 1, 2008), attached hereto as Exhibit L.

44. During the May 2008 meeting, Mayor Conrad Teller made a motion to add to the agenda a resolution to approve the eruv petition. At that hearing, Mr. Teller stated he had spoken with the mayor of Tenafly, New Jersey, where an eruv had already been established, and had learned that no problems had arisen in Tenafly after the litigation against that municipality with

respect to the establishment of an eruv. *Id.* As a result, Mr. Teller stated publicly that he had no reason to oppose the grant of the Hampton Synagogue's application.

45. At the May 2008 meeting, the Board of Trustees ultimately denied the motion on a 3-2 vote, refusing even to put the matter on the agenda for consideration.

46. By letter dated May 23, 2008, Rabbi Schneier informed Teller, the Trustees, and the members of the Westhampton Beach Community that the Hampton Synagogue would suspend its application for the Eruv, citing the controversy that the application had evoked throughout the village, including comments that "this is the beginning of a push by the rabbi to create 'another Lawrence,'" and "just what we need, more Jews." Rabbi Schneier also stated that he would "use this summer to extend the hands of friendship across the faiths and educate all segments of the Westhampton Beach community to precisely what the eruv is." Rabbi Schneier's letter is attached hereto as Exhibit M.

47. Rabbi Schneier's attempt, however, was met largely with further appeals to fear and prejudice expressed by village officials, members of the community, and groups such as Jewish People Opposed to the Eruv, a/k/a Jewish People for the Betterment of Westhampton Beach.

48. Negative sentiment surrounding the eruv grew so strong throughout the community that former Westhampton Beach Deputy Mayor Tim Laube, a long-time resident of Westhampton Beach, moved out of the village in 2008. Mr. Laube cited "threatening phone calls" he had received during his campaign from village residents as the reason for his moving out of the village. In such threatening calls, Westhampton Beach residents "accused [Mr. Laube] of being a 'Jew-lover,' a 'kike-lover,'" and threatened that he would "burn in hell." *See* Karl

Grossman, *Former Deputy Mayor Tired of Anti-Semitism, Leaving Westhampton Beach*, THE SOUTHAMPTON PRESS, August 11, 2008, attached hereto as Exhibit N.

49. As a result of this “firestorm of opposition” that arose in Westhampton Beach, Mr. Teller sharply changed his position on the eruv; it then became quite clear that the mayor would no longer support the application or the establishment of the eruv. For example, in public statements, Mr. Teller made clear that he opposed the eruv, that the issue was dividing the community, and that reasonable people could conclude that the establishment of the eruv would lead to the creation of a Jewish enclave in Westhampton Beach. Several other Trustees of Westhampton Beach similarly made clear in their campaign literature and interviews that they would not approve an eruv.

50. Such sentiment has continued, and residents have stated that the construction of the Eruv “has ramifications similar to what happened in Lawrence, Long Island, where the area was turned into an Orthodox area, public schools were closed and real estate values fell.” Jennifer Barrios, *Nonprofit Gets Preliminary OKs for Hamptons Eruv*, NEWSDAY, October 31, 2010, attached hereto as Exhibit O.

51. Mayor Teller has stated that he believes those who oppose the Eruv are “level-headed, reasonable people,” and that “they just don’t want an area declared an Orthodox Jewish enclave.” *Id.*

52. In 2010, EEEA members approached Verizon and LIPA and requested permission to affix lechis to utility and telephone poles owned by Verizon and LIPA in order to complete the Eruv, which would encompass Westhampton Beach and parts of Quogue and Southampton. This approach was undertaken after research revealed that no local, county, or state law or ordinance prohibits such action. Verizon and LIPA agreed to grant permission.

53. In or about May 2010, EEEA and Verizon entered into an Eruv-Lechi Stave Agreement. The agreement, which was fully executed on August 16, 2010, is attached hereto as Exhibit P, whereby Verizon agreed to allow EEEA to affix lechis to Verizon's poles to complete an Eruv.

54. On or about July 27, 2010, EEEA and LIPA entered into a License Agreement, attached hereto as Exhibit Q, whereby LIPA agreed to allow EEEA to affix lechis to LIPA's poles to complete an Eruv.

55. After entering into these agreements with Verizon and LIPA, Plaintiffs decided to slightly expand the boundaries of the Eruv, and subsequently determined through their rabbinical sources that the attachment of longer lechis than they had originally anticipated would be necessary. Verizon therefore required EEEA to enter into a new standard contract that required the longer lechis to be made of 5/8" PVC. On or about June 13, 2011, EEEA and Verizon entered into an updated Pole Attachment Agreement For Miscellaneous Attachments, attached hereto as Exhibit R, in order to provide for the attachment of 5/8" half-round PVC lechis to Verizon's utility poles within the Municipalities.

56. On July 12, 2011, representatives of EEEA, Verizon, and LIPA conducted a "pole walk," 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. *See* Declaration of Clinton Greenbaum, dated July 25, 2011, attached hereto as Exhibit S.

57. Upon entering the license agreements with Verizon and LIPA, and the completion of a pole walk in each of the three Municipalities pursuant to these agreements, EEEA has fulfilled its legal obligations to establish an Eruv, as there is no legal requirement to obtain the consent of the Municipalities.

58. Plaintiffs therefore seek to move forward with Verizon and LIPA to establish an eruv that encompasses Westhampton Beach, and parts of Quogue and Southampton.

59. Alternatively, and in response to this Court's suggestion in its decision on Plaintiffs' preliminary injunction motion and subsequent conference with the parties, Plaintiffs have devised temporary plans for the establishment of two smaller eruvin. The first of the alternative eruvin would encompass only parts of the Village of Westhampton Beach. As Westhampton Beach officials and its counsel themselves have asserted on numerous occasions that no local laws or ordinances exist that would prohibit Plaintiffs from attaching lechis to poles within the Village or that would require Plaintiffs to obtain Village approval in advance of such attachments, this eruv may be established regardless of the positions taken by officials in Southampton and Quogue.

60. The second alternative eruv would encompass the Village of Westhampton Beach and parts of the Village of Quogue. As set forth below, Quogue has taken the position that Village approval is required to affix lechis to poles within Quogue. Although no local laws or ordinances exist that would require such approval, Plaintiffs submitted an application to the Quogue Board of Trustees on January 16, 2012.

### **III. GOVERNMENT OFFICIALS' INTERFERENCE.**

61. Beginning shortly after, and in some cases even before, the execution of EEEA's agreements with Verizon and LIPA, opposition in the Municipalities mounted, and officials in the Municipalities sought actively to interfere with and obstruct EEEA's ability to construct the Eruv.

#### **A. Westhampton Beach Opposition**

62. As early as October 2008, officials of Westhampton Beach were put on notice of the right to establish an eruv in the Village. On October 19, 2008, counsel to the Hampton

Synagogue at that time sent a letter to the mayor and Trustees of Westhampton Beach, putting them on notice of their civil rights violations in the event they obstructed any efforts to establish the eruv. *See* October 19, 2008 Letter from Robert Sugarman to Westhampton Beach Mayor and Trustees, attached hereto as Exhibit T.

63. Then, beginning in early 2009, the Westhampton Beach Trustees began to assert the insupportable position that village approval was necessary for the attachment of lechis to utility poles. On or about May 18, 2009, Westhampton Beach Trustees sent a letter (“Westhampton Beach Letter”) to Verizon counsel William Balcerski (“Balcerski”), Mayor Teller, and Village Attorney Hermon J. Bishop, which advised Verizon of the village’s position that approval was required for the attachment of lechis to poles. Specifically, it stated:

It’s the Board’s understanding that Verizon has again been discussing with the Hampton Synagogue an agreement that would result in attachments to utility poles owned by Verizon and/or the Long Island Power Authority located within Village limits in order to create an “eruv” under Jewish law. The Board further understands Verizon’s position to be that it will not execute the proposed agreement, and will not take or permit any action with respect to utility pole attachments, unless and until the Village approves the attachments.

Westhampton Beach Letter, attached hereto as Exhibit U. Thus the opposition of Westhampton Beach began even before EEEA entered into its contracts with Verizon and LIPA.

64. Mr. Balcerski understood this letter to be stating that the Village was required to approve an application for the attachment of lechis and that the Village would not permit Verizon to proceed with the attachment of lechis absent such approval.

65. The position of the Trustees of Westhampton Beach was taken despite the previous statements of Westhampton Beach Building Inspector Paul Houlihan that local

ordinances do not prohibit the attachment of lechis to utility poles. See Jessica DiNapoli, *Tenafly Eruv Battle Resonates in Westhampton Beach*, THE SOUTHAMPTON PRESS, August 18, 2008 (stating that “there is no sign ordinance special to the telephone poles,” and that, in any event, the lechis would not qualify as signs), attached hereto as Exhibit V.

66. Moreover, no such local ordinance has been enforced in Westhampton Beach, and officials have permitted the placement of signs and other objects on utility poles throughout the community. These objects are larger and more visible than the lechis would be.

67. For example, Westhampton Beach permits banners and other objects to be affixed to utility poles or to be hung from utility pole wires without requiring municipal approval. Plaintiff Greenbaum took several photographs of utility poles in Westhampton Beach that depict such items attached to the poles that would, under Westhampton Beach’s assertions, require prior Village approval. Specifically, Mr. Greenbaum took a photograph of:

- a utility pole at South Road and Oneck Lane in Westhampton Beach on September 17, 2010, depicting a sign for tag sale scheduled to be held on September 18;
- a utility pole on Mill Road and Sunset Avenue, in Westhampton Beach, on September 17, 2010 bearing a sign advertising the same sale;
- a banner advertising a school play, hanging on pole wires on Main Street between Glovers Lane and Library Avenue, in Westhampton Beach, for at least a week from November 8, 2010;
- a utility pole at 32 Seafield Lane, in Westhampton Beach, on November 17, 2010, depicting a utility pole with black strips, wiring, a reflector, and an American flag; and
- a St. Patrick’s Day parade banner on Main Street between Glover’s Lane and Library Avenue that remained up from at least March 2-10, 2011.

See Selected Westhampton Beach Sign Photos, attached hereto as Exhibit W.

68. From 2005 to 2010, when Mr. Greenbaum was a school board member, the school district put up signs of various sizes (some the size of placards) in Westhampton Beach, and did

not seek permission from the local municipality to do so. These were signs supporting the passage of a bond, put up on non-school property.

69. Moreover, Timothy Laube, former Deputy Mayor of Westhampton Beach, is also President of the Westhampton Beach St. Patrick's Day Committee. Each year, Mr. Laube hangs a banner across Main Street from one telephone pole to another, announcing the date of the parade. Such banners have been hung annually for at least ten years and remain up for two to three weeks. Mr. Laube received permission to hang the banner from Verizon and LIPA. He did not file an application with the Village of Westhampton Beach, and in fact, was told by then-Village clerk Kathy McGuinness that he was not required to do so. Mr. Laube also hung campaign signs on telephone poles during his campaigns for election without seeking Village approval.

70. Westhampton Beach itself entered into pole attachment agreements with Verizon for permission to place holiday banners on Verizon's poles. Exhibit X. One such agreement, signed by Mr. Teller, includes section 28, providing:

Nothing herein contained shall be construed as a grant of any exclusive license, right or privilege to licensee. Licensor shall have the right to grant, renew and extend the rights and privileges to others not parties to this agreement, by contract or otherwise, to use any poles and/or anchors covered by this agreement.

*Id.* Mr. Teller agreed that section 28 was an acknowledgement that Verizon has the power to grant licenses to others besides Westhampton Beach to put material on Verizon poles.

71. Westhampton Beach puts up banners of "winter snowflakes" on utility poles for the "holiday season" leading up to Christmas and the New Year, for approximately three weeks. The banners were taken down only because the Village did not want to continue to pay Verizon to leave them up.

72. The Village's opposition to the Eruv has been further evidenced by the public statements of Village officials. For example, Mayor Teller stated that he is opposed to the establishment of the Eruv because "it was dividing the community, it was disrupting the good quality of community life that we have here, the acceptance of all." Will James, *Bid For an Eruv is Back on the Table*, THE SOUTHAMPTON PRESS, September 2, 2010, attached hereto as Exhibit Y. See also Selim Algar, *Battle 'Lines' in Hamptons*, NEW YORK POST, October 12, 2010, attached hereto as Exhibit Z (noting that Mayor Teller found the Eruv "unsavory" because of its alleged divisiveness).

73. With respect to EEEA's attempts to establish the Eruv, Mayor Teller has also stated that "somebody is trying to say they can circumvent our rules." Rob Hoell, *Orthodox Jews Closer to Getting Controversial Hampton's Boundary*, WPIX, November 1, 2010, attached hereto as Exhibit AA.

74. In June 2010, Trustee Toni-Jo Birk stated that her position with respect to the Eruv had not changed and that she continues to oppose it. See Hallie D. Martin, *Incumbent Birk Seeks Third Term*, THE SOUTHAMPTON PRESS, June 17, 2010, attached hereto as Exhibit BB.

75. Trustee Sue Farrell has stated that she would not support the creation of an Eruv in Westhampton Beach and that "the community has made it clear that it opposes the idea." Hallie D. Martin, *Farrell Making First Bid for Office*, THE SOUTHAMPTON PRESS, June 17, 2010, attached hereto as Exhibit CC.

76. Trustee Joan Levan has stated that "we were elected by the residents of this village, and whatever we do, we do for the best interests of our residents. I think our residents were very clear that [the eruv is] not what they want in the village. Very clear." *Whopper of the Week*, On the Beach Blog, September 2, 2010, attached hereto as Exhibit DD.

77. Trustee Hank Tucker, who ran an unsuccessful mayoral campaign against Mayor Teller in 2010, has stated that “the Eruv will never happen on my watch.” Hallie D. Martin, *Tucker Makes Bid For Top Post*, THE SOUTHAMPTON PRESS, June 17, 2010, attached hereto as Exhibit EE. A June 2009 campaign flyer bearing both Trustee Levan’s and Trustee Tucker’s names stated, “[w]e will vigorously oppose any effort to obtain an eruv proclamation from any government official or entity outside of our Village. We will continue to make certain you have an opportunity to express your views, and will defend your right to oppose the eruv.” Levan and Tucker Campaign Flyer, June 2009, attached hereto as Exhibit FF.

78. Mayor Teller has said that his municipality must still sign off on the Eruv for it to become a reality, stating, “we will be speaking with our attorney,” Will James, *Westhampton Beach Eruv Proposal Moves Forward*, THE SOUTHAMPTON PRESS, October 27, 2010, attached hereto as Exhibit GG, and that “he would abide by the wishes of his constituents and oppose the Eruv.” Jennifer Barrios, *Nonprofit Gets Preliminary OKs For Hamptons Eruv*, NEWSDAY, October 31, 2010, attached hereto as Exhibit O.

79. As recently as May 2011, Mayor Teller stated that the Board of Trustees must go along with public opinion, and that there is a lack of public support in the Village for the eruv.

80. Mr. Tucker explained he opposes the eruv because he did not want the Village to create a religious boundary. When he understood that the Village was in fact not being asked for any proclamation or approval, he indicated his agreement that there was no reason to oppose the Eruv.

81. Finally, Westhampton Beach’s aggressive defense of this litigation further established its opposition to the Eruv.

82. Despite admitting that it has no law that bars the attachment of lechis to utility poles, or requires prior permission from the Board of Trustees, Westhampton Beach has continued to obstruct Plaintiffs' efforts to create an eruv in Westhampton Beach. Westhampton Beach's counsel admitted at a hearing held before this Court on June 29, 2011, that "[t]here is no application procedure" dealing with the affixing of lechis to utility poles, and "[t]here is nothing in the village code that deals with this issue." Nevertheless, counsel for Westhampton Beach has on several occasions refused to respond to Verizon when asked for Westhampton Beach's position if Verizon were to issue licenses for the lechis in Westhampton Beach. *See* June 2, 2011 Letter to Brian Sokoloff, attached hereto as Exhibit HH. At a hearing in this matter held before this Court on December 9, 2011, counsel for Westhampton Beach refused to acknowledge that Westhampton Beach would take no action if EEEA attempted to affix lechis to utility poles in Westhampton Beach. As a result, EEEA has been unable to affix lechis to poles in Westhampton Beach.

83. On February 2, 2012, EEEA's rabbinical advisor identified those poles to which lechis needed to be attached in order to create an eruv in Westhampton Beach alone. EEEA will now conduct a "pole walk" with Verizon and LIPA and be prepared to proceed with its proposed Westhampton Beach-only eruv. The only reason why EEEA is unable to establish this Westhampton Beach-only eruv, as required by its contracts with Verizon and LIPA, is because of Westhampton Beach's continued opposition and interference.

84. Throughout this entire process, Westhampton Beach's behavior has stood in stark contrast to the many other municipalities throughout the United States and the world that have not only permitted the establishment of eruvin in their midst, but also encouraged and offered assistance to facilitate their construction. Had Westhampton Beach learned from these other

municipalities' actions, this litigation would never have ensued. Its position has been especially egregious since there is no ordinance or rule which prohibits the attachment of lechis to poles or requires Village approval of such action.

**B. Quogue Opposition**

85. On or about September 9, 2010, the Quogue Trustees sent a letter ("Quogue Letter") to Balcerski and Lynda Nicolino of LIPA, which stated, in pertinent part:

The purpose of this letter is to advise you that Chapter 158 of the Quogue Village Code, which is available at [www.villageofquogue.com](http://www.villageofquogue.com), prohibits any encroachments or projections (as those terms are defined) in any public right-of-way. Thus, any attachment of a non-utility device to any utility pole located in the right-of-way would be prohibited.

In any event, I understand that the position of Verizon with regard to attachment of a device to any pole (taken in connection with Westhampton Beach) is that local municipal approval is required.

Quogue Letter, attached hereto as Exhibit II.

86. By email dated September 17, 2010, Verizon counsel Balcerski informed EEEA that, because Westhampton Beach and Quogue had sent letters voicing their position that their approval was required for the establishment of the Eruv, Verizon would not license any attachments to its poles in those communities.

87. In response to such claims, EEEA's counsel advised EEEA that such permission is not, in fact, required and set forth Defendants' violations of Plaintiffs' civil rights. *See* October 4, 2010 Letter from Robert Sugarman to EEEA, attached hereto as Exhibit JJ. On information and belief, this letter was received by Mayor Sartorius. That letter establishes that Chapter 158 of the Quogue Village Code does not prohibit the attachment of lechis to the poles, and that, in any event, it is not enforced in the Village and cannot, therefore, be enforced to block the attachment of the lechis to the poles.

88. Quogue permits signs and other objects to be affixed to utility poles in the Village without requiring municipal approval. For example, a “school’s open” flyer has been attached to a pole at Quogue Street and Montauk Highway, a series of 3 light reflectors at Montauk Highway and Foster Road, bulky cable company equipment at Montauk Highway and Quogue Street, and a sign advertising the Quogue Fire Department’s Annual Pancake Breakfast at Montauk Highway and Jessup Lane. *See* Selected Photos of Quogue Signs, attached hereto as Exhibit KK. Quogue Mayor Peter S. Sartorius has acknowledged that the Annual Pancake Breakfast sign was attached to a utility pole at Montauk Highway and Jessup Lane in Quogue, that it remained attached to that pole for an extended period of time, and conceded that it could be a distraction to drivers in the right-of-way. At the same time, Mayor Sartorius could not state that the placing of a 5/8” PVC lechi would have an adverse impact on public safety in the Village.

89. Verizon licenses pole attachments within Quogue without the need for Village approval. For example, other telecommunications or cable companies have applied to Verizon for licenses to attach items to poles owned by Verizon, without approaching the Village for permission to make those attachments.

90. By letter dated October 26, 2010, and sent to Mayor Sartorius, Plaintiff Tenzer, Mayor Teller, and LIPA counsel Michele Pincus, Balcerski stated that Verizon does not object to the attachment of lechis to Verizon’s poles and invited a response from counsel. *See* October 26, 2010 Letter from Balcerski to Sartorius, attached hereto as Exhibit LL.

91. On October 29, 2010, Mayor Sartorius notified Balcerski via email that he understood municipal approval “to be a fundamental principle to the establishment of an eruv,”

and stated that “some additional legal input to the Village will be required, some in areas that are beyond the expertise of our usual counsel.” Sartorius e-mail, attached hereto as Exhibit MM.

92. Thereafter, Quogue hired Special Counsel Marci Hamilton, who, along with Village Attorney Richard DePetris, authored a memorandum sent to Mayor Sartorius, which expressed the opinion that “permission from the Village Board of Trustees is required for the attachment of lechis to utility poles located on Village streets for the purpose of establishing an eruv.” November 19, 2010 Memorandum from Marci Hamilton and Richard DePetris (“Counsel’s Memo”) at 4, attached hereto as Exhibit NN.

93. Moreover, the letter asserted the position that, while Village approval is necessary for the establishment of the Eruv, such permission could not be granted because it would violate the Establishment Clause, *id.*, a position that has been rejected by New York state and federal courts and would invalidate each of the scores of eruvim that already exist in New York State.

94. Mayor Sartorius forwarded Counsel’s Memo to Balcerski, LIPA counsel Michele Pincus, Mayor Teller, Supervisor Throne-Holst, Richard DePetris, and William Esseks. *See* November 22, 2010 Letter from Sartorius to William Balcerski, attached hereto as Exhibit OO.

95. In response to Counsel’s Memo, EEEA’s counsel drafted a letter informing EEEA that the arguments set forth in Counsel’s Memo are without merit, and reiterating the position that village approval is not required for the attachment of lechis to utility poles, which, under New York law, are the personal property of Verizon and LIPA. December 1, 2010 Letter from Robert Sugarman to EEEA, attached hereto as Exhibit PP. The letter reiterated that Quogue’s actions constituted violations of Plaintiffs’ constitutional and civil rights, including their rights under the Free Exercise Clause of the First Amendment to the United States Constitution and the

Religious Land Use and Institutionalized Persons Act (“RLUIPA”). Verizon forwarded a copy of the December 1, 2010 letter to Mayor Sartorius.

96. In a letter dated December 17, 2010, Mayor Sartorius stated that there are laws that prohibit the attachment of lechis to utility poles and that he will “enforce them against Verizon and LIPA as the owners of the poles,” and threatened that such laws provide for fines of up to \$1000 per day. December 17, 2010 Letter from Mayor Sartorius to Balcerski, attached hereto as Exhibit QQ.

97. Verizon interpreted these letters from Quogue as threats that made it very clear that an eruv could not be established without the permission of the Village of Quogue.

98. Despite the absence of any provision of state or local law forbidding the attachment of lechis to utility poles in Quogue, or requiring Village approval to attach lechis to utility poles, at the suggestion of the Court, Plaintiffs nonetheless contacted Quogue’s outside counsel in early December 2011 to request information regarding Quogue’s procedures for making an application to obtain permission to attach lechis to Verizon’s and LIPA’s respective utility poles in Quogue.

99. Despite Quogue’s long-standing position that there was a procedure for making an application for such permission, Quogue’s counsel responded in an e-mail dated December 15, 2011, attached hereto as Exhibit RR, indicating that there was in fact no such approval or application procedure. *See id.* (“This will take a little time because this is the first occasion where an application will be made for private use of portions of the public right of way within the Village of Quogue.”). Quogue’s counsel thereafter submitted a letter to the Court correcting that statement and promising to provide plaintiffs with the requested information regarding Quogue’s application procedures by December 23, 2011. *See* December 19, 2011 Letter from

Jeltje deJong, attached hereto as Exhibit SS. On December 24, 2011, Quogue's counsel forwarded to Plaintiffs a memorandum by Quogue Village Attorney Richard E. DePetris, attached hereto as Exhibit TT, describing the procedure Plaintiffs must follow to apply to the Board of Trustees for permission to attach lechis to utility poles.

100. On January 16, 2012, plaintiff EEEA submitted an application to the Board of Trustees, attached hereto as Exhibit UU, in full compliance with the instructions detailed in the Village Attorney's Memorandum. In that application, EEEA's counsel informed the Board of Trustees that he was available to attend a public hearing on the application during the weeks of February 20 or February 27, 2012. Four days later, however, EEEA's counsel received an e-mail from Quogue Mayor Peter Sartorius (attached hereto as Exhibit VV), stating that although Quogue had received the application and "it was in the process of being reviewed," the public hearing on EEEA's application could not be held any earlier than March 19, 2012—more than two months after EEEA submitted the application. In the event this application is granted and Quogue agrees that it will take no action to prevent or obstruct the establishment or maintenance of the eruv, this action, as to Quogue, will be dismissed.

101. Quogue has continued to oppose the establishment of the Quogue portion of the Eruv in legal proceedings before this Court. Thus, Quogue has demonstrated by its actions that it opposes, and would reject any application for the establishment of, the Eruv in Quogue.

102. Quogue's interference with EEEA's plans to route the Eruv through part of Quogue does not only harm observant Jewish Quogue residents like Plaintiffs Jeffrey Lean and Alexa Lean: it also harms several observant Jewish residents of neighboring Westhampton Beach, including Plaintiff Tuchman, whose homes will not be included within the boundaries of the Eruv unless it is routed through Quogue. Even if EEEA succeeds in its alternative plan to

establish a smaller eruv in Westhampton Beach alone, that eruv could only go as far north as Montauk Highway (rather than the fencing along the Long Island Rail Road train tracks) and as far east as Quantuck Bay. Only by running the Eruv through Quogue can observant Jewish Westhampton Beach residents who live north of Montauk Highway, or east of Quantuck Bay (such as Plaintiff Tuchman), benefit from the Eruv.

103. Throughout this entire process, Quogue's behavior has stood in stark contrast to the many other municipalities throughout the United States and the world that have not only permitted the establishment of eruvim in their midst, but also encouraged and offered assistance to facilitate their construction. Had Quogue learned from these other municipalities' actions, this litigation would never have ensued.

### **C. Southampton Opposition**

104. Southampton Attorney Michael C. Sordi wrote a letter to Balcerski dated November 16, 2010, copying Michele Pincus, Mayor Sartorius, Mayor Teller, and EEEA, advising him of the Town's position that the proposed Eruv would be "in contravention of our local laws." Sordi Letter, attached hereto as Exhibit WW. Citing § 330-203(B) of the Code of the Town of Southampton prohibiting the placement of signs throughout the town, Sordi stated:

Base[d] upon the definitions of our sign law, and based upon the specification you provided to us with your letter, I am compelled to conclude that the lechis constitute a "sign" within the meaning and intentment of our Statute. Accordingly, the same are prohibited.

Sordi Letter at 2. This position contradicted that of the spokeswoman for Southampton, who had previously stated that officials there believe only the utility companies, and not the town, would be involved because the Eruv would be on the utility poles. *See Jennifer Barrios, Nonprofit Gets Preliminary OKs for Hamptons Eruv*, NEWSDAY, October 31, 2010, attached hereto as Exhibit O.

105. In response to the November 2010 letter, Weil drafted a letter to EEEA explaining that affixing lechis to poles as part of the construction of an Eruv presents no violation of this or any provision of the Code of the Town of Southampton. November 18, 2010 Letter from Robert Sugarman to EEEA, attached hereto as Exhibit XX. As a result of their later receipt of this letter, Southampton was put on notice of its violations of Plaintiffs' constitutional and civil rights. There has been no response to this letter.

106. In response to inquiries in late 2010, Supervisor Anna Throne-Holst sent identical e-mails to Plaintiffs Greenbaum and Alan Schechter informing them that "the Town's ability to respond to the [Eruv] proposal thus far has been limited to informing Verizon that issuing license agreements to permit the installation of lechis would be in conflict with the Town of Southampton's sign ordinance." December 16, 2010 Email from Anna Throne-Holst to Clinton Greenbaum, attached hereto as Exhibit YY. Supervisor Throne-Holst attached Michael Sordi's November 16, 2010 letter to her email, and reiterated her belief that "it is the duty of the Town to defend its local laws" and stated that she is "committed to supporting the efforts of our attorneys in this regard." *Id.* Mr. Greenbaum interpreted Ms. Throne-Holst's communication to be an indication that the Town of Southampton opposed the Eruv.

107. Upon information and belief, Southampton has instructed its police department not to permit the attachment of lechis, or to the extent the lechis are attached, to take them down. For example, Lieutenant Lawrence P. Schurek, Jr., Chief of Patrol of the Southampton Town Police Department, has been instructed by Southampton Chief Building Inspector Michael Benincasa, and Senior Building Inspector Mark Viscekas, that a lechi is an illegal "sign" under the Southampton Town Code.

108. Although the Southampton Police Department has removed some signs from poles within the Town, none bears any likeness to the lechis. Each of the signs that Southampton has presented as having been removed bears words or symbols, and each was only removed many months after the filing of this action, after May 2011.

109. According to Southampton's elected representatives, the sign law is designed to protect public health and safety and to facilitate efficient traffic flow. Yet no representative of Southampton has been able to show how lechis would endanger public health and safety or traffic flow, other than to say the ordinance is meant to ensure the "quality of life."

110. The sign law, on its face, is inapplicable to the lechis in question and, in any event, is not enforced with any consistency or regularity. Indeed, signs and objects that are larger and more visible than the lechis have been permitted throughout Southampton. For example, Plaintiff Greenbaum took several photographs of utility poles in Southampton that depict items attached to the poles that would, under the Southampton's definition, qualify as signs. Examples of such signs include:

- a sign advertising "Fall Clean-Ups" on a pole at Apaucuck Point Lane & South Country Road in Southampton on September 17, 2010, November 17, 2010, and May 10, 2011, meaning the sign remained up for at least eight months; the sign was reachable from where Mr. Greenbaum stood on his van;
- a sign advertising "Seasoned Firewood" on a pole on Montauk Highway and Mill Road in Southampton, on November 17, 2010 and again on May 10, 2011, meaning the sign remained up for at least six months;
- a sign advertising a "Kiwanis Club Casino Nite" on a pole at Montauk Highway near Nadine Drive in Southampton on April 27, 2011;
- a sign advertising "Edward Michaels Clean Ups Service" on a pole at South Phillips Ave. and Montauk Highway on May 10 and June 7, 2011;
- a sign advertising a "Bike for Sale" on a utility pole at Mill Road off John Way in Southampton on April 27, 2011;
- signs advertising "Train Masters" and a May 7 Tag Sale on a utility pole at South Country Road and Club Lane in Southampton, on May 10, 2011 – three days after the advertised tag sale; and

- a large red ribbon attached to a utility pole at the intersection of Booker Lane and Sea Breeze Avenue in Southampton, taken on November 17, 2010.

*See* Selected Southampton Sign Photos, attached hereto as Exhibit ZZ.

111. Although neither New York law nor Southampton's local laws bar the attachment of lechis to utility poles within Southampton, EEEA has retained counsel and will make an application to the Southampton Building Department for authorization to attach lechis to certain utility poles in Southampton. In the event this application is granted and Southampton agrees that it will take no action to prevent or obstruct the establishment or maintenance of the eruv, this action, as to Southampton, will be dismissed.

112. Southampton has continued to oppose the Eruv in legal proceedings before this Court. Thus, Southampton has made clear that it opposes, and would reject any application for the establishment of, an eruv in Southampton.

113. Throughout this entire process, Southampton's behavior has stood in stark contrast to the many other municipalities throughout the United States and the world that have not only permitted the establishment of eruv in their midst, but also encouraged and offered assistance to facilitate their construction. Had Southampton learned from these other municipalities' actions, this litigation would never have ensued.

#### **IV. VERIZON AND LIPA HAVE REFUSED TO ISSUE LICENSES TO EEEA SOLELY AS THE RESULT OF DEFENDANTS' CONDUCT**

114. To date, Verizon has not issued any licenses to EEEA under either the Eruv Lechi-Stage Agreement or the Pole Attachment Agreement For Miscellaneous Attachments. Likewise, LIPA has not granted any permissions to EEEA pursuant to the License Agreement.

115. On October 22, 2010, LIPA spokeswoman Vanessa Bard-Streeter stated that LIPA had "been put on notice by some of the affected municipalities that the attachment of the Eruv would violate local zoning codes" and that LIPA is "currently looking into this further."

Jennifer Barrios, *Nonprofit Gets Preliminary OKs For Hamptons Eruv*, NEWSDAY, October 31, 2010, attached hereto as Exhibit O.

116. 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.

117. Both Verizon and LIPA have acknowledged that the only reason why such licenses have not yet been issued is the threatening conduct and actions of the Defendants directed to Verizon and LIPA.

118. 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.

FIRST CLAIM FOR RELIEF

(U.S. Const.)

119. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 118 as if fully set forth herein.

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

121. Without an Eruv in Westhampton Beach and parts of Quogue and Southampton, 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.

122. 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 Westhampton Beach and parts of Quogue and Southampton. 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.

123. The Eruv, which would be made up of existing boundaries, existing overhead telephone wires, and PVC strips affixed to certain telephone poles, presents no aesthetic, safety, traffic, fiscal, or other concern to the Municipalities. There is, therefore, no compelling State interest in prohibiting maintenance of the Eruv.

124. 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.

125. As a result of the actions of the Defendants, plaintiffs will be irreparably harmed and will suffer damages.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 2000cc)

126. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 125 as if fully set forth herein.

127. 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).

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

129. 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.

130. 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.

131. 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.

132. Because Defendants do not enforce any of the laws or ordinances under which they seek to prevent the establishment of the Eruv, Defendants' actions also constitute 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.

133. Defendants actions are in violation of RLUIPA.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment)

134. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 133 as if fully set forth herein.

135. As alleged herein above, EEEA has sought to construct an Eruv in Westhampton Beach and parts of Quogue and Southampton.

136. To that end, EEEA has entered into private contracts with Verizon and LIPA to allow EEEA to affix lechis to Verizon's and LIPA's poles.

137. Defendants have taken the position that local laws prohibit affixing lechis to Verizon's and LIPA's poles and that, in any event, approval of the Municipalities is required for affixing lechis to such poles.

138. EEEA has taken the position that there is no legal or factual basis for Defendants' positions.

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

140. Declaratory relief will settle the legal issues raised by the above listed correspondence and finalize the controversies described in those letters.

141. Plaintiffs thus request a judgment declaring the rights and obligations of the parties under the local laws of the Municipalities, 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 the Municipalities or that requires Municipal approval for such attachments, including a declaration that Chapter 158 of the Quogue Code and § 330-203(B) of the Code of the Town of Southampton are inapplicable to the lechis, and (b) Verizon and LIPA should therefore be free and clear to implement contracts to construct the Eruv.

#### FOURTH CLAIM FOR RELIEF

(42 U.S.C. § 1983)

142. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 141 as if more fully set forth herein.

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

144. Defendants 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.

145. 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.

146. As a result of the actions of Defendants, Plaintiffs will be irreparably harmed and will suffer damages and are entitled to recover their attorney's fees.

FIFTH CLAIM FOR RELIEF

(Tortious Interference with Contract)

147. EEEA repeats and realleges each and every allegation of paragraphs 1 through 146 as if fully set forth herein.

148. As alleged herein above, EEEA has sought to establish an Eruv in Westhampton Beach and parts of Quogue and Southampton.

149. From at least May 2010, EEEA was a party to a valid contract, namely the Eruv-Lechi Stave Agreement, with Verizon. EEEA is also a party to the June 13, 2011 Pole Attachment Agreement For Miscellaneous Attachments with Verizon.

150. From at least July 27, 2010, EEEA was a party to a valid contract, namely the License Agreement, with LIPA.

151. Defendants had knowledge of the Eruv-Lechi Stave Agreement between EEEA and Verizon and the License Agreement between EEEA and LIPA.

152. Defendants intentionally procured the breach of the Eruv-Lechi Stave Agreement and the License Agreement. Specifically, upon learning details related to EEEA's plans to establish an Eruv and to enter into agreement with Verizon and LIPA, Defendants engaged in communications with Verizon and LIPA, respectively, regarding the Eruv-Lechi Stave

Agreement and the License Agreement. Defendants engaged in these communications with the intent ultimately to interfere with EEEA's Eruv-Lechi Stave Agreement and EEEA's License Agreement.

153. Throughout these communications with Verizon and LIPA, and in furtherance of their intent to procure the breach of Plaintiffs' agreements, Defendants took the unsupported position that local laws prohibited affixing lechis to Verizon's and LIPA's utility poles and that, in any event, their approval was required for affixing lechis to such poles.

154. As a result of Defendants' actions, LIPA has not issued licenses to EEEA as provided for in the License Agreement.

155. As a result of Defendants' actions, Verizon has not issued licenses to EEEA as provided for in the Lechi-Stave Agreement.

156. But for Defendants' foregoing actions in furtherance of their scheme to interfere with EEEA's agreements, Verizon and LIPA would have issued licenses to affix lechis to certain poles to Plaintiffs.

157. As a result, EEEA has suffered and will suffer damages and harm, including: loss of their constitutional right to freely practice their religion, losses incurred on pole walks in preparation for the establishment of the Eruv, the procurement of an insurance policy as required under the contract, negotiating with Verizon and LIPA over the agreements, and losses incurred by families who, when permitted, must hire individuals to push their carriages, strollers, or wheelchairs to synagogue on the Sabbath and Yom Kippur due to the absence of an Eruv.

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

A. On the First Claim For Relief, permanently enjoining Defendants from taking any actions which would prevent the plaintiffs from affixing lechis to Verizon's and LIPA's utility poles or otherwise constructing and maintaining the Eruv.

B. On the Second, and Fourth Claims For Relief, (1) permanently enjoining Defendants from continuing to engage in the discriminatory practices alleged therein; (2) permanently enjoining Defendants from taking any actions which would prevent the plaintiffs from affixing lechis to Verizon's and LIPA's utility poles or otherwise constructing and maintaining the Eruv; and (3) awarding compensatory and punitive damages in an amount to be established at trial.

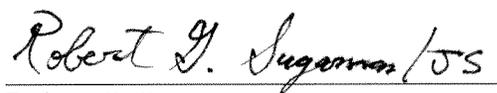
C. On the Third Claim For relief, entering a declaratory judgment, pursuant to 28 U.S.C. § 2201, that (a) there is no local, state, or federal law that either prohibits the affixation of the lechis to certain poles in the Municipalities or that requires municipal approval for such attachments, including a declaration that Chapter 158 of the Quogue Code and § 330-203(B) of the Code of the Town of Southampton are inapplicable to the lechis, and (b) Verizon and LIPA should therefore be free and clear to implement contracts to construct the Eruv.

D. On the Fifth Claim for relief, (1) permanently enjoining Defendants from tortiously interfering with Plaintiffs' contracts; and (2) awarding compensatory and punitive damages in an amount to be established at trial.

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

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

Dated: New York, New York  
February 3, 2012

Handwritten signature of Robert G. Sugarman in cursive, followed by the initials "JS" at the end of the signature.

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