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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EAST END ERUV ASSOCIATION, INC., DEBORAH POLLACK and SIMCHA POLLACK,

Plaintiffs,

-against-

THE TOWN OF SOUTHAMPTON and THE TOWN OF SOUTHAMPTON ZONING BOARD OF APPEALS,

Defendants.

COMPLAINT

Plaintiffs East End Eruv Association, Inc. ("EEEA"), Deborah Pollack, and Simcha Pollack (collectively, "Plaintiffs") by their attorneys, Weil, Gotshal & Manges LLP ("Weil"), allege for their Complaint herein, as follows:

INTRODUCTION

1. This action arises from the actions of the Town of Southampton ("Southampton" or the "Town") and the Town of Southampton Zoning Board of Appeals (the "ZBA") (collectively, "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 three years, Plaintiffs and other Jewish residents of Suffolk County have sought to establish an eruv in parts of Southampton, as well as the Village of Westhampton Beach ("Westhampton Beach"), and parts of the Village of Quogue ("Quogue") (collectively, the

"Municipalities") 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 eruvin 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, and also promotes goodwill and citizenship by allowing such Jews to socialize outside of their homes on the Jewish Sabbath without impediment, including at communal meals, celebrations, and in public parks.

4. All that is required for Plaintiffs to establish the Eruv in Southampton is to attach a total of twenty-eight (28) slim, 5/8-inch wide PVC strips known as "lechis" to fifteen (15) poles within the Town. Towards this end, Plaintiff EEEA entered into binding licensing agreements with Verizon New York, Inc. ("Verizon") and the Long Island Power Authority ("LIPA") in 2010 and 2011, which authorize Verizon and LIPA to issue licenses to EEEA for the attachment of these lechis within the Town. Plaintiffs intend the lechis placed within the Town to eventually become part of a larger eruv that also encompasses the Village of Westhampton Beach and parts of the Village of Quogue.

5. At every opportunity, Defendants have unlawfully prevented Plaintiffs from establishing the Eruv. Beginning in 2010, Southampton took the insupportable and incorrect position in official written communications to Verizon and LIPA, as well as in the federal action *East End Eruv Association, Inc.*, et al. *v. The Village of Westhampton Beach,* et al., Case No. 11-cv-0213 (E.D.N.Y. filed Jan. 13, 2011) (LDW) (AKT) (the "Original EEEA Action"), that local laws prohibit affixing lechis to utility poles, or that municipal approval is required for such action. In the months leading up to the Original EEEA Action, Town representatives and officials (including the Town Supervisor) took the position in the press, public meetings, and correspondence with members of the public, that they opposed the establishment of the Eruv. When Plaintiffs initiated the Original EEEA Action to obtain relief from the interference of Southampton and the other Municipalities, Southampton vigorously opposed Plaintiffs' claims, on the grounds that local municipal approval was required for the Eruv, and that even if EEEA applied for such approval, Southampton would deny its application on the grounds that the Eruv would violate the Establishment Clause of the First Amendment to the U.S. Constitution.

6. In January 2012, following the direction of the Court in the Original EEEA Action, EEEA engaged in Southampton's administrative approval process in order to exhaust its remedies with respect to the Eruv. Rather than facilitating this process, however, the Town's representatives initiated a cycle of delay and misinformation that prevented EEEA from obtaining a final decision from the ZBA for more than a year and a half.

7. First, between March and May of 2012, the Town's litigation counsel and Chief Building Inspector advised EEEA to follow an application procedure that, unbeknownst to EEEA at the time, was in conflict with the provisions of Southampton's Town Code and would not have given the ZBA jurisdiction over EEEA's application. Then, after EEEA began

complying with the Town's recommended procedure—which included the submission of a letter by EEEA to the Chief Building Inspector in April 2012 requesting an interpretation that lechis do not qualify as "signs" under the Town's Sign Ordinance (Town Code § 330-200 *et seq.*)—Southampton argued in the Original EEEA Action that EEEA had failed to abide by required procedures and that its appeal of the Chief Building Inspector's interpretation was untimely, and that EEEA's suit against Southampton should therefore be dismissed. The Court denied Southampton's motion.

8. After EEEA subsequently determined the correct procedure that would enable its application to be reviewed by the ZBA, it submitted twenty-eight sign permit applications and an accompanying $1,400.00 fee to the Town Building Department in September 2012. The applications were denied more than one month later.

9. EEEA filed an appeal and application for use and area variances to the ZBA in November 2012. However, upon receipt of the appeal and variance application, the ZBA's counsel—who also serves as the Assistant Town Attorney—saddled EEEA with burdensome supplemental requests for documentation that delayed the public hearing on EEEA's appeal and application for almost five months, until April 4, 2013.

10. The ZBA, on advice of its counsel, ordered that the hearing be adjourned to June 6, 2013, to enable further opportunity for public comment. Three days before the June 6, 2013 hearing, the ZBA's counsel demanded further documentation from EEEA, and threatened to refrain from issuing a determination until this documentation was received. Despite the fact that this documentation was not required by state or local law, EEEA reluctantly complied with the ZBA's demand.

11. Almost two months later, on August 1, 2013, the ZBA denied EEEA's appeal from the Chief Building Inspector's interpretation that the lechis were signs, as well as EEEA's request for a variance for the lechis. *See* Decision, Zoning Board of Appeals Town of Southampton, In the Matter of the Application of East End Eruv Association, Inc. (Aug. 1, 2013), a true and correct copy of which is attached hereto as Exhibit A.

12. In making this determination, the ZBA noted the presence of various other signs affixed to utility poles in Southampton – including a wooden cross that had been nailed to the base of a utility pole for at least a year undisturbed – but arbitrarily and capriciously determined that these facts were not persuasive. *Id.* at 10.

13. The ZBA determined that EEEA was time-barred from appealing the Chief Building Inspector's finding that lechis are signs. The ZBA did not render any decision as to whether lechis fall within the definition of a "sign" under the Town Code. Even after adopting, by default, the Chief Building Inspector's opinion that lechis are "signs," the ZBA did not render a decision as to whether it is one that is subject to regulation under the Town Code. The ZBA abdicated its responsibility to interpret the Town Code, improperly ceding that interpretive authority to the Chief Building Inspector and adopting his interpretation without any independent analysis.

14. The ZBA further determined that the request for a variance should be denied because the lechis would "alter the essential character of the neighborhood." *Id.* at 13. The ZBA also based its determination on its finding that the relief requested by the EEEA was "motivated by the personal desire of the applicant's members to be freed from the proscriptions of religious law by securing a variance of secular law (the Town's Sign Ordinance)." *Id.* at 14. These

findings were suffused with disparaging views of and constitute discriminatory animus against observant Jews.

15. Defendants' legally erroneous and arbitrary and capricious positions and determinations over the last three years are entirely unsupported by local, state, or federal law, and constitute an interference with and deprivation of Plaintiffs' constitutional and civil rights. Their actions and statements reflect significant hostility exhibited by certain residents, members of the ZBA, and other Town officials toward certain religious practices. In addition, Defendants' actions constitute, and continue to constitute, a tortious interference with EEEA's contracts with Verizon and LIPA.

16. Accordingly, Plaintiffs bring this action to obtain: (a) a declaration that (i) there is no basis for Southampton's determination 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 Southampton from taking actions that 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 compelling the ZBA to issue any necessary approvals and permits to allow the EEEA to construct the Eruv; (d) an order awarding attorneys' fees to Plaintiffs; and (e) such other relief as the Court deems appropriate.

JURISDICTION AND VENUE

17. 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.

18. Personal jurisdiction over this action is conferred upon this Court because Southampton is located in this District, because the acts complained of occurred in this District, and pursuant to NY CPLR § 302.

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

THE PARTIES

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

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

22. 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 Marvin Tenzer, Morris Tuchman, Jeffrey Lean, Deborah Pollack, Simcha Pollack, and Alan Schechter.

23. 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 B.

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

25. Upon information and belief, Defendant ZBA is an instrumentality of the Town of Southampton authorized by the Town to review applications and to issue approvals under the Town Code.

FACTUAL ALLEGATIONS

I. AN ERUV IS NECESSARY FOR OBSERVANT JEWS FREELY TO EXERCISE THEIR RELIGION

26. 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").

27. 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 C.

28. 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 and delineate the Eruv.

29. 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.

30. Eruvin allow Jews with these 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.

31. In the absence of an eruv in Southampton, Plaintiffs cannot carry these necessary items with them to the synagogue, neighbors' homes, or public meeting and recreational areas on the Sabbath and Yom Kippur.

32. Plaintiffs Deborah Pollack and Simcha Pollack are harmed by their inability to push wheelchairs on the Sabbath and Yom Kippur in the absence of an eruv. Deborah Pollack and Simcha Pollack live one mile away from the synagogue in Westhampton Beach. Deborah Pollack's elderly mother is too weak to walk to the synagogue, or anywhere outside Deborah Pollack's home when she visits, 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. Deborah Pollack's mother's inability to attend synagogue on Yom Kippur is especially painful, as she cannot participate in the traditional memorial ("Yizkor") service for her late husband. Plaintiff Simcha Pollack's elderly parents (who are in their mid-80s) are also unable 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.

33. Additionally, because their sincerely-held religious beliefs preclude them from carrying in the public domain without an eruv, Plaintiffs and other observant Jewish residents of the Municipalities cannot carry prayer books, keys, identification, and other necessary items to synagogue, neighbors' homes, or public meeting and recreational areas on the Sabbath and Yom Kippur. 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.

34. Marvin Tenzer, an EEEA member and plaintiff in the Original EEEA Action, 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. 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.

35. Morris Tuchman, another EEEA member and plaintiff in the Original EEEA Action, 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. 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.

36. Likewise, EEEA member and plaintiff in the Original EEEA Action Alan Schechter has a father who is over eighty years old and experiences trouble walking to the synagogue. If there were an eruv in the Municipalities, 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. Several of Alan Schechter's and his wife 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.

37. Jeffrey Lean, an EEEA member and plaintiff in the Original EEEA Action, 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.

38. Alexa Lean, plaintiff in the Original EEEA Action, 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.

39. A multitude of eruvin 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, eruvin 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, Searingtown, 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, Tenafly, and Ventnor, New Jersey; Bridgeport, Hartford, Norwalk, Stamford, New Haven, and Waterbury, Connecticut; Boston, Cambridge, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; Berkeley, La Jolla, Long Beach, Los Angeles, Palo Alto, San Diego, and San Francisco, California; Pittsburgh, Philadelphia, and Lower Merion, Pennsylvania; Chicago, Buffalo Grove, Glenview-Northbrook, and Skokie, Illinois; Ann Arbor, Southfield, Oak Park, and West Bloomfield

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

40. 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 Kesher Israel, attached hereto as Exhibit D.

41. 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, 2008, attached hereto as Exhibit E. 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.* When the Oyster Bay Town Board voted to permit synagogue leaders to expand the eruv in 2012, Supervisor Venditto said, "If every organization conducted themselves like Young Israel [of Plainview], with their culture, their values and their traditions, I think Oyster Bay would be an even better place." *See* Emily Ngo, *Oyster Bay grants Jews larger eruv*, NEWSDAY, Mar. 14, 2012, attached hereto as Exhibit F.

42. 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 with the limits allowed by the law." *See* Sandy Springs Eruv Proclamation, attached hereto as Exhibit G.

43. 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 H.

44. After eight years of public debate, including regarding concerns from eruv opponents that the eruv is a religious symbol that could violate the Establishment Clause, the Jewish community in Palo Alto, California established an eruv in 2007. The Palo Alto eruv was eventually ruled permissible by then-City Attorney Gary Baum, and has had "no important issues

in the last six years" and has even fostered "great cooperation from the Palo Alto police whenever a fix is needed," according to Rabbi Yitzchok Feldman. *See* Emma Silvers, *Eruv Fever: Four Bay Area eruvs, including new one in S.F., are reshaping local Jewish demographics*, JWEEKLY.COM, Aug. 1, 2013, attached hereto as Exhibit I.

45. 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 J.

46. 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 K.

47. The state of Alabama completed its first eruv in Birmingham on February 14, 2012. It took only a year to obtain the required approvals for the eruv, and only because a

neighboring city had recently been affected by a tornado and had to wait until all power lines were permanently replaced before determining where the eruv would be; by contrast, a neighboring city that did not suffer this kind of damage granted its approval immediately. Local Birmingham Rabbi Eytan Yammer has said that the current two-mile eruv is just the first phase, and that other areas will be added to the eruv in the future. *See The Eruv is Now Up in Birmingham*, SOUTHERN JEWISH LIFE MAGAZINE, Mar. 12, 2012, attached hereto as Exhibit L.

48. On June 14, 2012, the Austin, Texas City Council approved a resolution to move forward with the establishment of an eruv. The resolution was co-sponsored by Austin Mayor Lee Leffingwell and several council members. *See* Ken Herman, *Dude, we're getting an eruv!*, STATESMAN.COM, JUNE 28, 2012, attached hereto as Exhibit M. Former Council Member Randi Shade, who started the effort to erect an eruv in Austin, commented, "I have seen what a benefit the creation of eruv districts has been for Jewish families living in North Dallas, where I grew up. . . . So it is my honor and privilege to be able to assist in doing something similar here in Austin." *See* Pamela Cosel, *City to establish Jewish eruv area*, KXAN AUSTIN NEWS, June 14, 2012, attached hereto as Exhibit N. The resolution itself notes that "an eruv is an unobtrusive, and largely invisible, perimeter," and that "more than 100 communities in the U.S. have established an eruv." *See* Austin Eruv Resolution, *available at* http://www.austintexas.gov/edims/document.cfm?id=171517, attached hereto as Exhibit O; Herman, *supra* (Ex. M). The resolution also notes, "[I]n March 2010, the Northwest Austin Civic Association Board of Directors endorsed the creation of an eruv in this area." Austin Eruv Resolution (Ex. O).

49. Following the destruction wrought by Superstorm Sandy in the New York region, communities scrambled to repair damaged eruvin. In Long Beach, New York, the Jewish

community was able to create a temporary smaller eruv following Sandy's aftermath with the assistance and cooperation of city officials. City Public Works Commissioner Jim LaCarrubba has pledged that the new eruv will be welcomed on the soon-to-be-finished new boardwalk "in the same fashion it was on the old boardwalk." *See* Patrick Whittle, *Long Beach Orthodox Jews adjust to Sandy-damaged eruv*, NEWSDAY, Apr. 7, 2013, attached hereto as Exhibit P.

50. 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 Q. 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 Ehruv on Campus*, THE CORNELL DAILY SUN, Jan. 29, 2010, attached hereto as Exhibit R. 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 S.

II. PLAINTIFFS SEEK TO ESTABLISH THE ERUV.

51. 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 an eruv in Westhampton Beach.

52. 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 eruvin, 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 (May 1, 2008), at 16, 22, attached hereto as Exhibit T.

53. During the May 2008 meeting, Westhampton Beach Mayor Conrad Teller made a motion to add to the agenda a resolution to approve the eruv petition. *Id.* at 23. 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. As a result, Mr. Teller stated publicly that he had no reason to oppose the grant of the Hampton Synagogue's application.

54. 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. *Id.*

55. 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 U.

56. 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 ("JPOE").

57. 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 who supported the eruv, 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, Aug. 11, 2008, attached hereto as Exhibit V.

58. As a result of this "firestorm of opposition" that arose in Westhampton Beach, Mr. Teller sharply changed his position on the eruv and it became 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.

59. 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 W.

60. 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 Southampton and Quogue. 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.

61. 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 X, whereby Verizon agreed to allow EEEA to affix lechis to Verizon's poles to complete an Eruv.

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

63. 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-inch PVC. On or about June 13, 2011, EEEA and Verizon entered into an updated Pole Attachment Agreement For Miscellaneous Attachments, attached hereto as Exhibit Z, in order to provide for the attachment of 5/8" half-round PVC lechis to Verizon's utility poles within the Municipalities.

64. 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 AA.

65. 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 had fulfilled its legal obligations to establish an Eruv, as there is no legal requirement to obtain the consent of the Municipalities.

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

III. SOUTHAMPTON GOVERNMENT OFFICIALS' INTERFERENCE.

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

68. After the existence of EEEA's licensing agreements with Verizon and LIPA became known, JPOE and other opponents of the Eruv lobbied Southampton Town officials heavily to interfere with the performance and discharge of those agreements. For example, on October 4, 2010, JPOE president Arnold Sheiffer sent an e-mail to Town Supervisor Anna Throne-Holst that, upon information and belief, urged Southampton to prevent EEEA from

attaching lechis to poles in the Town pursuant to its agreements with Verizon and LIPA. *See* Defendant Town of Southampton Response to Plaintiffs' First Request for Interrogatories ("Southampton Interrogatory Responses"), No. 3(a) (Jan. 3, 2012), Original EEEA Action, a true and correct copy of which is attached hereto as Exhibit BB. Similarly, at a meeting of the Southampton Town Board on November 30, 2010, Westhampton resident Jackie Sprotte and Quogue resident Irene Barrett opposed the Eruv and urged the Town Board to obstruct EEEA's contracts with Verizon and LIPA. *See id.*, Response No. 4.

69. On November 16, 2010, Southampton Attorney Michael C. Sordi wrote a letter to Verizon counsel William Balcerski copying LIPA counsel Michele Pincus, Quogue Mayor Peter S. Sartorius, Mayor Teller, and EEEA, advising him of the Town's position that the proposed Eruv would be "in contravention of our local laws" (the "Sordi Letter"), attached hereto as Exhibit CC. Citing Section 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 intendment 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 Nonprofit gets preliminary OKs*, *supra* ¶ 59 (Ex. W).

70. The position taken in the Sordi Letter also conflicted with prior Town policy governing the attachment of banners to utility poles. Under this policy, the Town Supervisor's office would routinely issue "'no objection' letters to the erection of banners across a State road and a County road [within the Town] secured by roping attached to a pole or poles in four

locations in New York State or Suffolk County owned rights of way." *See* Southampton Interrogatory Responses, No. 7 (Ex. BB). These "no objection" letters were frequently issued between 2008 (or earlier) and 2010 to secular cultural, non-profit, and artistic institutions seeking to advertise events. *See id.* (listing "no objection" letters issued to the Hampton Designer Showcase, Artists and Writers Softball, and Art Hamptons, among others). Indeed, the Town Supervisor's office issued "no objection" letters for banners attached to utility poles as late as May 2010. *See id.*

71. In response to the Sordi 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 DD. 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.

72. In response to inquiries in late 2010, Supervisor Anna Throne-Holst sent identical e-mails to Clinton Greenbaum and Alan Schechter, plaintiffs in the Original EEEA Action, 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 EE. Supervisor Throne-Holst attached the Sordi Letter to her email, and reiterated her belief that "it is the duty of the Town to defend its local laws" and 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.

73. Upon information and belief, Town officials subsequently communicated with governmental officials from neighboring Quogue and Westhampton Beach to develop a coordinated plan of opposition to the Eruv, both in person and via e-mail, including in:

- November 26, 2010 e-mail from Toni Jo-Birk, Deputy Mayor of Westhampton Beach, to Supervisor Throne-Holst, Town Board member Christopher Nuzzi, and Town Clerk Sundy Schermeyer;
- December 2, 2010 e-mail from Quogue Mayor Peter S. Sartorius to Supervisor Throne-Holst and Westhampton Beach Mayor Conrad Teller;
- December 17, 2010 e-mail from Quogue Mayor Sartorius to Supervisor Throne-Holst and Westhampton Beach Mayor Teller;
- January 14, 2011 e-mail from Supervisor Throne-Holst to Mayors Sartorius and Teller; and
- January 26, 2011 meeting at Westhampton Beach Village Hall among Supervisor Throne-Holst, former Town Councilperson Nancy Gaboski, Town Attorney Sordi, Quogue Mayor Sartorius, and Westhampton Beach Mayor Teller.

See Southampton Interrogatory Responses, No. 2 (Ex. BB).

74. 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.

75. 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 the Original EEEA Action.

76. According to Southampton's elected representatives, the Town's Sign Ordinance (Town Code § 330-200 *et seq.*) 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 "quality of life."

77. The Sign Ordinance, 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, Original EEEA Action plaintiff Clinton 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 that 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, photographed 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, photographed on April 27, 2011;
- a sign advertising "Edward Michaels Clean Ups Service" on a pole at South Phillips Avenue and Montauk Highway in Southampton, photographed on May 10 and June 7, 2011. A sign can also be seen on the same pole in a Google Maps image, dated September 2008;
- a sign reading "WANTED!!! Baseball Card Collections" on the same at South Phillips Avenue and Montauk Highway in Southampton, photographed on February 13, March 13, March 29, April 18, May 7, July 2, and August 6, 2012;
- a sign advertising a "Bike for Sale" on a utility pole at Mill Road off John Way in Southampton, photographed 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, photographed on May 10, 2011 – three days after the advertised tag sale;

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

- a sign advertising "Sweetbriar Real Estate" on a pole located on South Country Road, south of Clay Pit Road, in Southampton, photographed on May 10, 2011, March 29, 2012, April 18, 2012, April 11, 2013, and July 31, 2013; this sign is also visible in a Google Maps image dated August 2009. Mr. Greenbaum observed that this sign is only slightly higher than an adjacent traffic sign;

- a sign advertising "Yard Sale, Saturday [May] 19th" on a pole at the intersection of Country Road (Route 104) and Woodleigh Place in Southampton, photographed on May 28, 2012;

- a sign advertising "GARAGE ESTATE SALE . . . Sun, June 3" on a pole at the southeastern corner of Baycrest Avenue and South Road in Southampton, photographed on June 7, 2012;

- a sign advertising "YARD SALE Sat 4/6 & Sun 4/7" on pole no. 2099-45-P (one of the fifteen poles to which Plaintiffs seek to attach lechis) at the southwestern corner of Tanners Neck Lane and Montauk Highway in Southampton, photographed on April 8, 2013;

- a sign advertising "SEASONED FIREWOOD – HALF CORD" at the corner of Montauk Highway and Mill Road in Southampton, photographed on April 12, 2012;

- another signed advertising "SEASONED FIREWOOD – HALF CORD" at the intersection of South Phillips Avenue and Montauk Highway in Southampton, photographed on April 10, 2013;

- a sign advertising "Help Find [a dog]" on a pole near the Speonk Train Station, at North Phillips Avenue and Depot Road in Southampton, photographed on April 10, 2013;

- a sign advertising "YARD SALE 4/6 & 4/7" on a pole at the intersection of Seabreeze Avenue and Old Country Road in Southampton, photographed on April 10, 2013;

- a sign advertising a Tag Sale on May 27, 2013, on a pole at the intersection of Montauk Highway and Summit Boulevard, photographed on June 6, 2013; and

- a wooden cross (surrounded by two stones) nailed to the base of pole no. 22-40-P (another one of the fifteen poles to which Plaintiffs seek to attach lechis) on Summit Blvd. south of Park Street in Southampton, photographed on April 9, 2013 and July 31, 2013; this cross can also be seen in Google Maps images of the pole dated July 2012.[1]

[1] On August 13 and 14, 2013, Plaintiff Greenbaum returned to pole no. 22-40-P and saw that the wooden cross had been removed from the front of the pole (leaving behind the outline of a cross), only to have been moved to the back side of the pole, so that it was no longer visible to

See Selected Southampton Sign Photos, attached hereto as Exhibit FF.

78. Southampton has consistently opposed the Eruv in legal proceedings before the Court in the Original EEEA Action and related federal cases in this District. Indeed, even as Southampton was claiming in the Original EEEA Action that Plaintiffs' claims were not ripe because EEEA never submitted an application to the Town, it simultaneously argued that the Town was justified in continuing to oppose the attachment of lechis to utility poles on the grounds that the Eruv is unconstitutional under the Establishment Clause. *See*, *e.g.*, Mem. of Law in Opp. to Mot. for Prelim. Inj. on behalf of Southampton Defs. 15 (May 9, 2011), Original EEEA Action (Dkt No. 49-4), attached hereto as Exhibit GG ("[T]he requested accommodation to the beliefs of orthodox adherents in this case is all the more troublesome as it would permit a reasonable informed observer to conclude that in permitting the creation of the eruv, the government is acceding to the religious convictions of orthodox believers over non-orthodox."); Mem. of Law in Supp. of Mot. to Dismiss Am. Compl. on behalf of Def. Town of Southampton 16 (Mar. 9, 2012), Original EEEA Action (Dkt No. 142-3), attached hereto as Exhibit HH ("Creation of an Eruv in the Town in Violation of the Prohibition Contained in the Sign Ordinance Would Result in a Violation of the Establishment Clause"). In assuming this litigation stance, Southampton made clear that it opposes, and would reject any application for the establishment of, an eruv in Southampton.

79. 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

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passersby from the street. While the cross, in its new position, did not appear to be nailed to the pole, the Town's Sign Ordinance prohibits signs "resting on . . . telephone poles . . . or otherwise displayed in any manner designed to circumvent the restrictions in this article." *See* Southampton, N.Y., Town Code § 330-203(B)(10). Accordingly, the cross still violates the Sign Ordinance, yet the Town has failed to take action against it.

not only permitted the establishment of eruvin, 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. SOUTHAMPTON OFFICIALS OBSTRUCT AND DENY EEEA'S ATTEMPT TO AVAIL ITSELF OF THE TOWN'S ADMINISTRATIVE REMEDIES

80. Even when Plaintiff EEEA attempted to avail itself of Southampton's local administrative processes to obtain municipal approval for the Eruv, the Town relentlessly threw up roadblock after roadblock in an effort to delay EEEA's application before issuing its inevitable denial. As described in more detail below, when EEEA requested guidance from the Town as to the proper procedure for making a sign application to the Town, Southampton's representatives provided it with contradictory advice. When EEEA fully complied with Southampton's purported procedures, it was met with accusations from Southampton that it had not complied with the limitations period for taking appeals to the ZBA. When EEEA made reasonable and routine requests for a re-issuance of the Town's initial denial so it could appeal to the ZBA, the Town refused. When EEEA submitted sign permit applications for each of the lechis to the Building Department, the applications were likewise predictably denied. EEEA immediately appealed the denial to the ZBA in December of 2012—only to be met with serial dilatory tactics and discriminatory conduct by Southampton leading to the ZBA's August 1, 2013 decision, almost two years after EEEA first engaged in Southampton's administrative process.

81. On November 30, 2011, the Court issued an order in the Original EEEA Action (Dkt No. 121) (the "November 30, 2011 Order"), attached hereto as Exhibit II, which denied Plaintiffs' motion for preliminary injunction as to Southampton. The Court held that while the Town Attorney and Town Supervisor had already determined that lechis constitute "signs" within the meaning of the Sign Ordinance, these decisions "are not decisions of the 'Town' on

the issue, because enforcement of the Sign Ordinance lies with Southampton's Building Department and ZBA." *See* Ex. II, at 17. The Court further held that "New York's Town Law recognizes that a ZBA is a separate entity from a town board," and on this basis, urged Plaintiffs to avail themselves of the Town's purportedly independent ZBA for relief before pressing their claims in federal court. *See id.* at 18.

A. Southampton's Chief Building Inspector and Town Attorney's Office Mislead and Misinform EEEA Regarding the Proper Procedures for Sign Applications

82. In accordance with the November 30, 2011 Order, Plaintiffs retained Paul V. Craco of Craco & Ellsworth, LLP, as local counsel to prosecute their sign application to Southampton.

83. In January 2012, Mr. Craco contacted the Southampton Building Department to open a file for EEEA's forthcoming sign application and obtain a copy of that application form. Over the next two months, Mr. Craco gathered information about the utility poles to which EEEA seeks to attach lechis for the purpose of preparing EEEA's sign application.

84. Based on the fact that, throughout the preliminary injunction proceedings in the Original EEEA Action, Southampton consistently represented that the proper procedure for Plaintiffs to follow was to make a sign permit application to the Town Building Department, EEEA was led to believe that making such applications would be a necessary first step. For example Town Chief Building Inspector Michael Benincasa testified in the Original EEEA Action that "[w]hen an application is made to the building department for a permit for a sign, and it doesn't meet the criteria set forth, we deny the application, and we send a denial letter with a copy of the variance procedure." *See* Hr'g Tr. (June 28, 2011) 413:22-414:1, attached hereto as Exhibit JJ. Southampton counsel introduced the Building Department's Sign Permit Application as an exhibit at the preliminary injunction hearing to demonstrate the procedure that Plaintiffs

purportedly should have followed. *See id.* 414:15-25 (testimony by the Chief Building Inspector that Southampton Exhibit SH-C was "the packet we hand out when someone requests an application for a sign"). In its November 30, 2011 Order, the Court likewise understood Southampton's position to be that the Original EEEA Action was not ripe because "neither plaintiffs nor the utilities applied *for a permit or variance* to attach lechis to poles within the unincorporated areas of Southampton." *See* Ex. II, at 16 (emphasis added); *see also id.* at 8 ("A permit is required for all signs in Southampton, except for 'exempt signs' identified in the Sign Ordinance. An application for a permit must be made to Southampton's Building Department.").

85. Accordingly, Mr. Craco made repeated attempts to consult with Mr. Benincasa regarding the proper process for EEEA's sign application. Unable to reach him by phone, on March 26, 2012, Mr. Craco met Mr. Benincasa in person at Southampton Town Hall, but Mr. Benincasa informed Mr. Craco that he must speak with the Town's legal department before the Town could process EEEA's application, on the grounds that the poles to which EEEA seeks to attach lechis sit on easements that benefit the Town. During this meeting, Mr. Benincasa further stated that he was not certain that EEEA's application should be directed to the Building Department at all (contrary to what he had testified in the Original EEEA Action).

86. Mr. Craco scheduled a meeting with Town Attorney Tiffany Scarlato and Kathleen Murray, a lawyer in the Town's legal department, for Wednesday, March 28, 2012, at 10:30 a.m. Upon his arrival at that meeting on March 28, a secretary informed him that the Town's outside litigation counsel had sent him a letter by overnight mail the prior evening, and that Ms. Scarlato would therefore not meet with him. Mr. Craco, however, had not received this letter by the time of his scheduled meeting, and Ms. Scarlato agreed to meet with him. Ms. Scarlato informed Mr. Craco that EEEA could not submit a sign application yet because EEEA

had taken the position that a lechi is not a sign at all. According to Ms. Scarlato, EEEA was required to first seek an interpretation from the Town that the lechis are not signs. When Mr. Craco requested that EEEA submit a sign permit application without seeking an interpretation, based on the Town's position as stated in the Original EEEA Action, Ms. Scarlato replied that she could not respond to that proposal and would have to confer with the Town's outside litigation counsel.

87. An hour later, Mr. Craco received a copy of the Town's outside litigation counsel's letter via e-mail from the Town's outside litigation counsel's legal secretary. (Maureen Liccione's letter and the transmission e-mail to Mr. Craco are attached hereto as Exhibit KK.) The Town's outside litigation counsel's letter stated that because EEEA had taken the position that lechis are not signs, it would have to make an application to the ZBA for an interpretation as to whether a lechi is a sign. The Town's outside litigation counsel's letter further stated that before EEEA could make such an application to the ZBA, EEEA must send a letter to the Chief Building Inspector requesting an interpretation as to whether a lechi is a sign, which—when denied—could then be appealed to the ZBA. The Town's outside litigation counsel also claimed that EEEA's deadline for mounting an appeal to the ZBA would be sixty days after the filing of the Chief Building Inspector's interpretation, even though—as EEEA later learned—the type of interpretation described by the Town's outside litigation counsel would not have conferred jurisdiction on the ZBA under the Southampton Town Code, and therefore could not trigger any sixty-day limitations period. *Cf.* Ex. KK, at 2.

88. Contrary to the impression given by the Chief Building Inspector during his testimony at the June 2011 preliminary injunction hearing, the Town's outside litigation counsel's letter did not state that EEEA would be allowed to submit a sign permit application to

the Building Department, or that EEEA could bypass the interpretation process by applying directly to the ZBA for a variance from the Sign Ordinance.

89. Mr. Craco pointed out that if EEEA were to follow the Town's outside litigation counsel's special procedure, it would have to (1) submit an interpretation request letter to the Chief Building Inspector; (2) await a response; (3) appeal the denial to the ZBA; (4) await a response; and, if the ZBA were to rule against EEEA on the interpretation issue, (5) return to the Building Department and submit a sign permit application. As Mr. Craco pointed out, this would be a time-consuming process that would delay any possible relief for EEEA by several months, if not years. Nevertheless, in a telephone conference on April 2, 2012, the Town's outside litigation counsel stated that they did not believe the Town would agree to allow EEEA to submit an interpretation request letter and a sign permit application simultaneously, although they indicated that the Town might be able to expedite EEEA's interpretation request.

90. On April 13, 2012, Mr. Craco had another telephone conversation with the Town's outside litigation counsel, in which she confirmed the process that the Town would accept with respect to EEEA's application. The Town's outside litigation counsel summarized this conversation in a letter to Mr. Craco dated April 13, 2012 (attached hereto as Exhibit LL). Specifically, the Town's outside litigation counsel confirmed that the Building Department would accept only an interpretation request letter from EEEA in the first instance, and not a sign permit application. The Town's outside litigation counsel further stated that "[i]n the event the building inspector determines that a lechi is a sign, a sign application must be filed" with the Building Department. The Town's outside litigation counsel agreed that the ZBA would consider the Town's denials of EEEA's interpretation request and sign permit application in the same hearing before the ZBA. Finally, The Town's outside litigation counsel acknowledged that

Mr. Craco could send questions via e-mail with respect to the Town's application process, and could confer with the Town's outside litigation counsel and the Mr. Benincasa (and/or the Town sign inspector) thereafter.

B. The Chief Building Inspector Denies EEEA's Request for an Interpretation that Lechis Are Not "Signs" Under the Town Sign Ordinance

91. Mr. Craco prepared and sent a letter to Mr. Benincasa, dated April 17, 2012 (attached hereto as Exhibit MM), requesting an interpretation that lechis do not constitute "signs" within the meaning of the Sign Ordinance.

92. On April 25, 2012, Mr. Craco sent the Town's outside litigation counsel an e-mail (attached hereto as Exhibit NN) requesting a conference to discuss EEEA's sign application. In her reply e-mail that same day (attached hereto as Exhibit OO), the Town's outside litigation counsel commented: ". . . Southampton's procedures will not require you to make a sign application prior to seeking a variance. So you should just focus on the questions you have with respect to a variance application and an application to appeal an interpretation." Ex. OO.

93. On April 27, 2012, Mr. Craco sent a second e-mail to the Town's outside litigation counsel (attached hereto as Exhibit PP), asking for confirmation of the date and time of the conference. Mr. Craco also noted that EEEA still had not received a denial from the Chief Building Inspector to EEEA's interpretation request letter, and asked when he could expect to receive it. In her reply e-mail that same day (attached hereto as Exhibit QQ), the Town's outside litigation counsel confirmed the conference for April 30, 2012, at 12:15 p.m., and assured Mr. Craco that the Chief Building Inspector's "letter should be forthcoming shortly." The Town's outside litigation counsel further stated: "I have learned that standard Town procedure does not require that you submit a [sign] permit; you can proceed directly to a variance application

simultaneously with your appeal of the interpretation. That should save a great deal of time and effort." Ex. QQ.

94. Later on April 27, 2012, Mr. Benincasa sent Mr. Craco a letter response to EEEA's interpretation request letter via e-mail. (The Chief Building Inspector's letter and the transmission e-mail to Mr. Craco are attached hereto as Exhibit RR (the "Interpretation Letter")).[2] The Interpretation Letter stated that a lechi qualifies as a "sign" within the meaning of the Sign Ordinance because it "is a material, devise [*sic*] or structure displaying or intending to display a message," Ex. RR, at 2, and because "[l]echis and the Eruvim [*sic*] of which they are part are outlines, delineations or emblems." *Id.* The Chief Building Inspector declined to comment on any of the case law that Mr. Craco had cited in his April 17, 2012 letter—despite the fact that this case law was relevant to the question of whether lechis qualify as "signs" under the Sign Ordinance—on the grounds that he is not an attorney. *See id.* at 1. The Interpretation Letter concluded that, "[a]s set forth in Town Code §330-165, this interpretation is subject to an appeal to the Zoning Board of Appeals," and that "[t]he application is available on the Town of Southampton website." *Id.* at 3.

C. Southampton Switches Its Purported Application Process Yet Again

95. On April 30, 2012, Mr. Craco held a teleconference with the Town's outside litigation counsel and Mr. Benincasa in which they stated that EEEA must submit an appeal from the Interpretation Letter. They advised Mr. Craco that the Town Building Department would not accept a sign permit application from EEEA, and that the only recourse for EEEA was to submit a variance application to the ZBA at the time it filed its appeal. In particular, they explained that

[2] On his transmission e-mail to Mr. Craco, the Chief Building Inspector copied not only Town Attorney Tiffany Scarlato and Senior Building Inspector Mark Viseckas, but also the Town's outside litigation counsel. *See* Ex. RR.

filing a sign permit application with the Town Building Department would be futile because the Building Department only accepts sign permit applications for signs posted on private property, not on utility poles located within the public right of way; accordingly, the Building Department would summarily deny any sign permit application from EEEA for the lechis as defective. They confirmed, however, that the interpretation appeal and the variance application could be submitted simultaneously to the ZBA, and that the filing of either item would result in the setting of a hearing date on the ZBA's calendar, at which both items would be considered.

96. The Town's outside litigation counsel and Mr. Benincasa further stated that EEEA would be required to give the public notice of its appeal and variance application by (1) publishing a 1/16-page advertisement in *The Southampton Press*, Western Edition, that describes the nature of EEEA's appeal and application and the date of the ZBA hearing; and (2) post a notice placard containing this information on a pole located on private property owned by EEEA within the unincorporated area of the Town of Southampton. The Town's outside litigation counsel suggested that EEEA post the placard on a pole near the Hampton Synagogue (even though the synagogue is not located within the unincorporated areas of the Town of Southampton, and has no involvement with EEEA or its pending eruv application). They further stated that, following publication, EEEA would be required to supplement its appeal and variance application with affidavits of publication demonstrating that EEEA complied with the ZBA's notice procedures.

97. EEEA would then be required to submit a consolidated variance application to the ZBA that lists the location of each utility pole to which EEEA seeks to attach a lechi within the unincorporated areas of the Town of Southampton. The Town's outside litigation counsel and

Mr. Benincasa stated that EEEA would not be required to submit a separate variance application for each lechi.

98. Notwithstanding these instructions, neither the Town's outside litigation counsel nor Mr. Benincasa cited the particular provisions of the New York Town Law or the Southampton Town Code that purportedly authorized the procedures that they were advising EEEA to follow.

99. On May 8, 2012, the Town's outside litigation counsel sent Mr. Craco a letter (attached hereto as Exhibit SS), which purported to memorialize the instructions given during the April 30, 2013 teleconference. In this letter, the Town's outside litigation counsel qualified the advice originally given regarding the form of public notice to be placed on private property: "We discussed the fact that notices cannot be placed on the poles designated for lechis. Thus, a notice will need to be placed on *any property of East End Eruv Association or a member within the Town of Southampton*, but not within Village boundaries." *See* Ex. SS, at 1 (emphasis added). The Town's outside litigation counsel's letter did not specify that the notice placard must be placed on a utility pole on private property within the Town. Further, the letter did not specify that the filing of either the interpretation appeal or the variance application would trigger the setting of a hearing date on the ZBA's calendar, nor that the ZBA would consider both items in the same hearing. Finally, the letter referenced no requirement that EEEA supplement its appeal and application file with affidavits of publication following the posting of the notice placard on private property and in *The Southampton Press*, Western Edition. The Town's outside litigation counsel's letter provided no supporting authority for the appeal and application process it detailed from either the New York Town Law or the Southampton Town Code.

100. Troubled by the inconsistent—and sometimes conflicting—instructions given by the Town's outside litigation counsel and Mr. Benincasa to Mr. Craco during the course of their meetings and teleconferences between March and April of 2012, EEEA sought counsel with more significant experience in zoning matters in order to confirm that the process Southampton was prescribing for EEEA was lawful and not arbitrary. EEEA had extraordinary difficulty finding a zoning lawyer in Suffolk County who would represent EEEA before the Town Building Department and the ZBA, as several lawyers EEEA approached declined to take the case due to its high-profile and sensitive nature. In late June of 2012, EEEA finally succeeded in retaining a zoning lawyer with the necessary experience to prosecute its interpretation appeal and sign application before the ZBA—Michael L. McCarthy, Esq., of McCarthy & Reynolds, P.C. (Huntington, New York).

101. On Friday, June 29, 2012, the Town's outside litigation counsel filed a letter with the Court in the Original EEEA Action (Dkt No. 155), attached hereto as Exhibit TT, in which he claimed that EEEA was time barred from submitting an interpretation appeal and variance application to the ZBA because it had not filed an appeal with the ZBA within sixty days of April 27, 2012, the date that the Chief Building Inspector e-mailed the Interpretation Letter to Mr. Craco.

102. On Monday, July 2, 2012, Mr. McCarthy called the Town's outside litigation counsel and pointed out that in all of his years of zoning experience, he had never heard of a town building department declining to re-issue an interpretation letter simply because the applicant had not mounted an appeal within sixty days of the filing of the decision. Rather, it was common for town building inspectors to re-date their interpretation letters to allow applicants to submit appeals to the zoning board of appeals within the sixty-day time frame. The

Town's outside litigation counsel did not disagree, but stated that the Town was tired of paying legal fees in connection with this matter. Mr. McCarthy replied that making an issue out of the timeliness of EEEA's appeal would only serve to increase the Town's legal fees, and pointed out that even the Town's outside litigation counsel had to acknowledge, on the basis of his experience in zoning matters, that EEEA would ultimately get the opportunity to submit an appeal to the ZBA. The Town's outside litigation counsel once again did not dispute Mr. McCarthy's assertions; instead, he informed Mr. McCarthy that he would have to confer with the Town as to whether the Town would consent to the ZBA's exercise of jurisdiction over EEEA's appeal and application.

103. On July 3, 2012, the Town's outside litigation counsel contacted Mr. McCarthy to inform him that the Town would not retract its position, and that it was the Town's position that the Interpretation Letter was a final determination that would not be re-issued.

104. On July 5, 2012, EEEA's counsel Robert G. Sugarman filed a letter in the Original EEEA Action (Dkt No. 156), attached hereto as Exhibit UU, responding to the assertions made in the Town's outside litigation counsel's June 29, 2012 letter. Mr. Sugarman pointed out that even if it were true that the Chief Building Inspector's act of e-mailing his interpretation letter to Mr. Craco on April 27, 2012, and filing it in his office triggered the 60-day limitations period provided for in Section 267-a of the Town Law, this was no bar to the Chief Building Inspector simply reissuing the interpretation letter to afford EEEA the opportunity to prosecute its appeal and application before the ZBA. *See* Ex. UU, at 1-2. Mr. Sugarman further explained that the onus for EEEA's delay in submitting its appeal and application to the ZBA lay with the Town, which had vacillated and shifted in the guidance it provided regarding the appropriate procedures EEEA should follow in order to exhaust its administrative remedies at the

Town level. As Mr. Sugarman noted, the Town's frequent change in position had prompted EEEA to retain a zoning law expert to confirm the process the Town had prescribed, which in turn delayed EEEA's ability to file an appeal and application to the ZBA within sixty days after the Interpretation Letter was e-mailed to Mr. Craco. *See id.* at 2-3.

105. On July 6, 2012, the Town's outside litigation counsel filed a response (Dkt No. 157), attached hereto as Exhibit VV, stating that regardless of the facts recited in Mr. Sugarman's letter—which the Town's outside litigation counsel disputed—EEEA was jurisdictionally time barred from taking an appeal to the ZBA. *See* Ex. VV, at 1.

106. Mr. Sugarman responded to the Town's outside litigation counsel's contentions in a letter to the Court dated July 13, 2012 (Dkt No. 162), attached hereto as Exhibit WW, pointing to New York case law demonstrating that the sixty-day limitations period set forth in Section 267-a of the New York Town Law is not jurisdictional, and that the period can be waived to prevent unfairness or where no prejudice to other parties would result from an untimely appeal. *See* Ex. WW, at 1-2. Mr. Sugarman pointed out that the only party that stood to be harmed in this matter was EEEA itself, which would continue to be deprived of relief for the constitutional violations it has suffered unless the ZBA considered its appeal and application. No other parties would suffer any prejudice. *Id.* at 2. Mr. Sugarman also pointed out that it was "puzzling" that the Town's outside litigation counsel seemed to be speaking for the ZBA, which "is meant to be independent." *Id.* at 2 (citing case law).

107. The Town's outside litigation counsel later filed another letter with the Court (Dkt No. 164), attached hereto as Exhibit XX, in which she acknowledged that "the ZBA *is* an entity

separate and distinct from the Town and *is* ably represented by its own counsel,"[3] but failed to address why (or how) she, as the Town's litigation counsel, could purport to speak on the ZBA's behalf in her prior letter. *See* Ex. XX, at 1-2 (emphasis in original).

108. On July 19, 2012, Mr. McCarthy submitted a letter to the Chief Building Inspector on behalf of EEEA (attached hereto as Exhibit YY), in which he requested re-examination of the determination in the Interpretation Letter that lechis are "signs" on the grounds that (1) the lechis do not meet the Sign Ordinance's definition of "signs" because they are virtually invisible; (2) at best, the Town Code's definition of "sign" is ambiguous as applied to the lechis, and this ambiguity must be construed against the Town; and (3) even if a lechi did meet the Town Code's definition of "sign," the Town should treat it as an exempt or unregulated sign given the variety of non-utility pole attachments that it does permit within the public right of way. *Id.* at 1-3. Mr. McCarthy further noted that his letter should be considered as "one of 'intent' for the placement of lechis on the poles in question." *Id.* at 3.

109. On July 30, 2012, Town Attorney Tiffany Scarlato responded in a letter, attached hereto as Exhibit ZZ, denying the relief requested in the July 19, 2012 letter on the basis that "any review of [the Interpretation Letter] would have been made pursuant to Southampton Town Code §330-165 by way of an appeal to the [ZBA, and absent an appeal,] there is no 're-examination' available. . . ." *See* Ex. ZZ.

110. On July 30, 2012, an *in camera* conference was held before the Hon. Leonard D. Wexler in the Original EEEA Action regarding, among other things, the Municipalities' pending motions to dismiss EEEA's Amended Complaint. The Town's outside litigation counsel made

[3] The Town's outside litigation counsel failed to disclose that, as EEEA first learned months later, the ZBA's "own counsel" is the Assistant Town Attorney.

an oral motion for the Court to dismiss Plaintiffs' Amended Complaint based on EEEA's purported failure to comply with the sixty-day limitations period. The Court denied the motion.

D. The Town Prescribed an Incorrect Application Procedure

111. Pursuant to Section 330-165 of the Town Code, the Interpretation Letter did not confer jurisdiction on the ZBA to consider an appeal or application from EEEA. Section 330-165 only provides for ZBA review of "[a]ny matter where the applicant alleges that the Building Inspector . . . was in error *in refusing to issue a permit, building permit or certificate of occupancy or a license for a place of public assembly for the specific use requested by the applicant therefor* as a result of misinterpreting the meaning, intent or application of any section or part of this chapter." Southampton, N.Y., Town Code § 330-165(A) (emphasis added). Section 330-165 does not provide for stand-alone interpretations issued by the Chief Building Inspector. As set forth in the Town Code, therefore, the trigger for ZBA jurisdiction over EEEA's case would be *a denial of a permit* by the Chief Building Inspector based on his interpretation of the Sign Ordinance, not an interpretation by itself.

112. The Town's outside litigation counsel and Mr. Benincasa consistently represented that EEEA *could not* submit a sign permit application to the Building Department, and that the only way EEEA could have its application considered by the ZBA was through the issuance of a stand-alone adverse interpretation by the Chief Building Inspector. However, in the absence of a prior sign permit application by EEEA, the Interpretation Letter did not trigger ZBA jurisdiction under Section 330-165 of the Town Code.

113. To cure this defect in the Town's instructions, EEEA prepared twenty-eight (28) sign permit applications (the "Sign Permit Applications") for submission to the Town Building Department—one for each lechi that it was proposing to attach to a total of fifteen (15) utility poles within the unincorporated area of Southampton. (The Sign Permit Applications, with a

cover letter by Mr. McCarthy, are attached hereto as Exhibit AAA.) Mr. McCarthy's office hand delivered these applications to the Building Department on September 14, 2012.

114. On September 28, 2012, EEEA also submitted an appeal from the Town Attorney's July 30, 2012 denial letter (attached hereto as Exhibit BBB), to preserve EEEA's right to appeal to the ZBA before sixty days elapsed.

115. On October 10, 2012, Mr. McCarthy received a letter dated October 4, 2012, from ZBA Confidential Secretary Kandice Cowell, attached hereto as Exhibit CCC. Ms. Cowell stated that she had received EEEA's appeal, but that "the appeal cannot be processed without the submission of a completed Zoning Board of Appeals Application . . . and requisite fee of $500." *See* Ex. CCC, at 1. Ms. Cowell's letter also copied the Town's outside litigation counsel—notwithstanding the Town's outside litigation counsel's own prior claim that the ZBA is an independent entity represented by separate counsel.

116. In a letter to Mr. McCarthy dated October 25, 2012 (attached hereto as Exhibit DDD), Senior Building Inspector Mark Viseckas, writing on behalf of the Chief Building Inspector, denied all twenty-eight of the Sign Permit Applications. Mr. Viseckas wrote that to install the lechis on the utility poles, EEEA must obtain use variances from the ZBA. *See* Ex. DDD, at 1-2.

E. EEEA Appeals the Adverse Determinations from the Building Department and Town Attorney's Office to the ZBA, and Applies for Variances for the Lechis

117. On December 4, 2012, EEEA appealed the Town's denial of the Sign Permit Applications and the Town's determination that lechis qualify as "signs" within the meaning of the Sign Ordinance.[4] *See* Appeal and Application for Variance, attached hereto as Exhibit EEE.

[4] This appeal supplemented the earlier, timely-made appeal that was submitted on September 28, 2012.

In the alternative, the appeal requested "that the Board grant EEEA area and/or use variances, permitting the attachment of lechis to the utility poles in question located within the Town." *Id.* at 2.

118. In an apparent effort to delay a decision, the ZBA requested various supplemental submissions after receiving EEEA's December 4, 2012 appeal, including a letter acknowledging that EEEA had engaged Mr. McCarthy to represent it before the Board and an original, notarized written confirmation from LIPA that EEEA was authorized to submit the application to the Board. *See* December 24, 2012 Letter from Kandice Cowell to Michael McCarthy, attached hereto as Exhibit FFF. EEEA complied with both of these requests. *See* December 26, 2012 Letter from Marvin Tenzer (EEEA President) to Kandice Cowell, attached hereto as Exhibit GGG; January 14, 2013 Letter from Michael McCarthy to Kandice Cowell, attached hereto as Exhibit HHH.

119. Subsequently, Ms. Cowell and Assistant Town Attorney Kathryn Garvin, counsel for the ZBA, advised that the public hearing before the ZBA regarding EEEA's appeal had been scheduled for April 4, 2013.

120. On March 12, 2013, Mr. McCarthy spoke with Ms. Garvin by telephone to confirm and clarify EEEA's obligations with respect to publication of notice of its appeal and variance application prior to the upcoming hearing. During the course of this conversation, as well as in subsequent e-mail correspondence—attached hereto as Exhibit III—Ms. Garvin suggested that the ZBA might insist on receiving a long form Environmental Assessment Form ("EAF") pursuant to the New York State Environmental Quality Review Act ("SEQRA") from EEEA before it would issue a final determination on EEEA's appeal and application. Mr. McCarthy protested that EEEA's appeal and application likely either fell under SEQRA's "Type

II Action" category (which does not require any sort of EAF) or its "Unlisted Action" category (which presumptively requires, at most, a short-form EAF). While EEEA took—and continues to take—the position that its appeal and application fell within the "Type II Action" category, and therefore required no EAF whatsoever, EEEA nevertheless preemptively prepared and submitted a short form EAF to the ZBA prior to the April 4, 2013 hearing. *See* EEEA Short Form Environmental Assessment Form, with accompanying cover letter from Michael McCarthy to Kandice Cowell, attached hereto as Exhibit JJJ.

121. Pursuant to Southampton Town Code § 330-164H and multiple communications with Ms. Garvin between February and March of 2013, EEEA published notice of its appeal and variance application well in advance of the April 4, 2013 hearing. First, EEEA published a notice of hearing in *The Southampton Press* on March 21, 2013. *See* Proof of Notice of Public Hearing, attached hereto as Exhibit KKK; March 21, 2013 Notice of Public Hearing, attached hereto as Exhibit LLL. EEEA also re-published the same notice of the hearing in *The Southampton Press* on March 28, 2013. *See* March 28, 2013 Notice of Public Hearing, attached hereto as Exhibit MMM; Proof of Notice of Public Hearing (Ex. KKK). Second, as instructed by Ms. Garvin, EEEA posted a sign containing notice of the hearing on the property of Plaintiffs and EEEA members Simcha and Deborah Pollack within the unincorporated area of the Town. *See* Photographs of Sign, a true and correct copy of which is attached hereto as Exhibit NNN; Affidavit of Posting, attached hereto as Exhibit OOO. Finally, based on a list provided by Ms. Cowell, EEEA mailed notice of the public hearing to all property owners whose parcels abutted one or more of the utility poles to which EEEA seeks to attach lechis for the purpose of creating the Eruv. *See* Affidavit of Mailing, attached hereto as Exhibit PPP.

122. On March 29, 2013, EEEA submitted a memorandum of law to the ZBA setting forth the relevant issues. The memorandum articulated the legal basis for why lechis are not "signs" within the meaning of the Sign Ordinance, including that "[t]he twenty-eight (28) 5/8-inch PVC strips that EEEA seeks to affix[ ] to fifteen (15) of Verizon's and LIPA's poles in the Town do not display, nor do they intend to display, any message." *See* Memorandum of Law in Support of East End Eruv Association, Inc.'s Appeal and Application for Variances, at 9, attached hereto as Exhibit QQQ. Since the Town Code's definition of "sign" includes the requirement that it be "used for the purpose of bringing [a] message[ ] to the attention of the public," the proposed lechis cannot be considered signs because "[t]he general public will not only be unaware as to the existence of the lechis, but will also likely be unable to locate this nearly invisible object on the utility poles." *Id.* at 9-10. The memorandum further explained that the lechis do not fall within any of the other definitions of "sign" in the Sign Ordinance because (1) the lechis do not consist of "any letter, number, figure, emblem, picture, outline, character, spectacle, delineation, announcement, trademark, or logo," and (2) are not in any way used for "the purpose of commercial identification." *Id.* at 10. Additionally, "[a] lechi cannot be considered an "outline" or "delineation" because it does not outline or delineate anything; rather, the outline or delineation of the proposed eruv would be the existing overhead utility wires, existing structures, and preexisting natural boundaries, not the lechis." *Id.* Finally, EEEA submitted, in the alternative, "that if the Board determines that lechis are 'signs' that are subject to regulation by the Sign Ordinance, they should nonetheless be exempted from the ban on prohibited signs in Section 330-203(B) of the Southampton Town Code," or EEEA should be granted an area or use variance. *Id.* at 12, 13-18.

F. EEEA Presents its Application Before the ZBA at Two Public Hearings

123. On April 4, 2013, the ZBA held a public hearing to address: (1) whether lechis are "signs" subject to regulation under the Southampton Town Ordinance; (2) whether, irrespective of whether the lechis are "signs," they should be treated as exempt or unregulated signs within the meaning of the Southampton Town Ordinance; and (3) whether, alternatively, EEEA should be granted an area or use variance. *See* April 4, 2013 Transcript of Proceeding (hereinafter "4/4/13 Tr.") at 8:3-19, attached hereto as Exhibit RRR.

124. The first question before the ZBA was the proper interpretation of the Southampton Sign Ordinance and EEEA's ability to place lechis on the utility poles. However, Ms. Garvin began the hearing by claiming outright that placing the lechis on the utility poles "is actually prohibited." *See* 4/4/13 Tr. at 4:15-18, 8:3-19 (Ex. RRR).

125. EEEA's counsel explained that it was "seeking the [B]oard's interpretive authority, and . . . would respectfully argue that the lechis shouldn't even be considered a sign and we shouldn't even be here. . . . But in the alternative, if we advance the legal analysis that it is considered a sign, [EEEA] would advance the argument that it's either an exempt sign or one that is not regulated. And then, lastly, into the variance standards." *See id.* at 8:7-19 (Ex. RRR). EEEA's counsel further explained that a lechi does not outline or delineate a boundary; that the affixation of the lechis is necessary for, and is the least intrusive means of, creating the Eruv; and that, as a matter of law, courts should not involve themselves in the interpretation of religious law. *See id.* at 21:23-25:3, 25:4-26:7, 28:3-8, 38:9-39:8 (Ex. RRR).

126. John Breslin, a local real estate expert, next addressed the variance standards and explained why EEEA is entitled to variances. *See id.* at 52:19-67:19 (Ex. RRR).

127. During the hearing, Assistant Town Attorney Garvin attempted to convince the ZBA that EEEA's appeal from the Chief Building Inspector's interpretation might not be properly before it. *See id.* at 40:6-15, 72:2-73:15 (Ex. RRR).

128. After the hearing was opened to public comment, EEEA President Tenzer addressed the severe impact that the absence of an eruv in the Westhampton area has had on his life. *See id.* at 76:18-77:25 (Ex. RRR). Mr. Tenzer also explained that the lechis do not send any sort of message to the public—"not for Orthodox Jewish public, not for any public. . . . 99 percent of the congregation has no idea whether it's up or down unless they are told, on Friday afternoon, it's up." *See id.* at 78:15-79:3 (Ex. RRR).

129. The ZBA then heard prepared remarks from Jonathan Sinnreich, counsel for the JPOE, who also submitted a Written Statement to the ZBA, attached hereto as Exhibit SSS. *See* 4/4/13 Tr. at 82:3-5 (Ex. RRR). Mr. Sinnreich's remarks focused mostly on whether the eruv as a whole is a sign—an issue not before the ZBA, as EEEA's appeal and application dealt only with the lechis themselves. *See id.* at 81:16-96:20 (Ex. RRR).

130. Several members of the public—some of whom were property owners who had received EEEA's notice by mail because their parcels were adjacent to the utility poles—stated that they believed the lechis would "invariably impact[] on the makeup of our community." *See id.* at 105:25-106:2 (Ex. RRR). One commenter likened EEEA's members to "the Hells Angels," analogizing EEEA members' sincerely-held religious belief to the desire of "Hells Angels" to "put up little signs" to "demark this as in our area." *See id.* at 106:23-107:3 (Ex. RRR).

131. Several non-plaintiff individuals who supported EEEA's appeal and application also spoke and identified the negative and burdensome impact that not having an eruv has had on their family life and the practice of their religion. *See*, *e.g.*, *id.* at 96:25-100:2 (Ex. RRR).

132. Following public comments, ZBA member Mr. Grossman noted that the public hearing was closed and that a decision would be forthcoming. ZBA member Mr. Tuthill, however, responded, "I have got a problem with that," and expressed concern that some members of the public did not receive proper notice of the hearing. *See id.* at 126:5-18 (Ex. RRR). On the basis of Mr. Tuthill's objection (which ZBA member Ms. Nowak echoed),[5] the ZBA scheduled a continued public hearing for June 6, 2013 and ordered a deadline of 4:00pm on May 17, 2013 for written submissions from counsel, and. *See id.* at 126:25-127:2, 128:4-23 (Ex. RRR).

133. EEEA submitted a Supplemental Memorandum of Law in Support of East End Eruv Association, Inc.'s Appeal and Application for Variances, dated May 17, 2013, attached hereto as Exhibit UUU. The memorandum reiterated that the only issue before the ZBA was "whether a lechi—a PVC strip—is a sign and if the Board [were to decide] that it is, whether EEEA is nonetheless entitled to a favorable ruling on its appeal, or, in the alternative, to a variance." *Id.* at 5. The memorandum also refuted several claims presented by JPOE to the ZBA, including JPOE's misrepresentation of the position of the Central Conference of American Rabbis and its misleading use of a translation of a derivative work of the classical sixteenth-century Code of Jewish Law, *Shulhan Arukh*. *Id.* at 8-10.

[5] Ms. Nowak had stated during the April 4, 2013 meeting that the lechi "intuitively, it doesn't feel like a message. It doesn't sound like a message to me." *See* 4/4/13 Tr. at 27:17-20 (Ex. RRR). At the next ZBA meeting discussing EEEA's appeal and application on June 6, 2013, Ms. Nowak recused herself without explanation. *See* June 6, 2013 Transcript of Proceeding (hereinafter "6/6/13 Tr.") at 134:2-4, attached hereto as Exhibit TTT.

134. In an e-mail dated June 3, 2013—only three days before the second hearing—Ms. Garvin advised Mr. McCarthy that the ZBA would require EEEA to submit a full EAF before issuing a decision. *See* June 3, 2013 e-mail from Kathryn Garvin to Michael McCarthy, attached hereto as Exhibit VVV; *see also* June 5, 2013 Letter from Kathryn Garvin to Michael McCarthy, attached hereto as Exhibit WWW. A full EAF was not mandated by SEQRA and would provide no additional probative information beyond that provided in the already-submitted short EAF, but EEEA nevertheless complied in full and submitted a full EAF at significant additional cost following the second hearing. *See, e.g.,* June 5, 2013 Letter from Michael McCarthy to ZBA, attached hereto as Exhibit XXX;[6] June 5, 2013 e-mail from Michael McCarthy to Kathryn Garvin, attached hereto as Exhibit ZZZ; June 19, 2013 Letter from Michael McCarthy to Zoning Board of Appeals, Town of Southampton, with enclosed full EAF, attached hereto as Exhibit AAAA.

135. On June 6, 2013, the ZBA held the continuation of the public hearing, to continue discussion and permit further testimony from counsel and members of the public on the topic of EEEA's appeal and variance application. *See* 6/6/13 Tr. at 135:13-18 (Ex. TTT). Michael McCarthy, counsel for EEEA, addressed the Board. *See id.* at 134:5 (Ex. TTT). At the hearing, EEEA was also represented by Yehudah Buchweitz, counsel for EEEA, and Mr. Breslin, EEEA's local real estate expert. *See id.* at 134:25-135:10 (Ex. TTT).

136. Several members of the ZBA were argumentative and combative. For example, Chairman Herb Phillips repeatedly asked questions in which he referred to the lechi only as "the sign." *See, e.g., id.* at 143:12-15 ("So they're going out to inspect that these signs are up so that

[6] Although Mr. McCarthy transmitted his letter directly to the ZBA, copying only the ZBA clerk, Ms. Garvin, and EEEA co-counsel, Ms. Garvin copied the Town's outside litigation counsel on her e-mail transmitting her reply to Mr. McCarthy. *See* June 5, 2013 e-mail from Kathryn Garvin to Michael McCarthy, a true and correct copy of which attached hereto as Exhibit YYY.

people can recognize that it is in effect."); *id.* at 143:18-20 ("If the sign is missing, the lechi is missing, it's not in effect."); *id.* at 144:10-11 ("The sign is missing."); *id.* at 144:17-18 ("It's a sign because they're looking for something."); *id.* at 190:19-20 ("Whether the sign is there.") (Ex.TTT). When EEEA's counsel attempted to correct Mr. Phillips' characterization of the lechis as signs by explaining that Mr. Phillips "got that half right," Mr. Phillips insisted, "No, it's all right. That's what was testified to." *Id.* at 143:22-144:3 (Ex. TTT). Mr. Phillips, however, mischaracterized testimony from the April 4, 2013 hearing. *See generally* 4/4/13 Tr. (Ex. RRR). Similarly, ZBA member David Reilly interrupted EEEA's counsel early on in his remarks to state, inaccurately, that "at the last meeting [] some of the representatives of the Applicant said that the lechi served to alert people to when the wires change direction." 6/6/13 Tr. at 140:2-6 (Ex. TTT). When Mr. McCarthy attempted to correct him, Mr. Reilly cut him off: "Excuse me, sir. Excuse me, sir. That was what was testified to. And I believe the record will bear me out." *Id.* at 140:6-8 (Ex. TTT). The record, however, does not bear Mr. Reilly out. *See* 4/4/13 Tr. at 81:3-7 (Ex. RRR).

137. Some ZBA members also attempted to delay issuance of their decision on EEEA's appeal and application by suggesting that it be held in abeyance until the Court in the related federal litigation resolves the question of whether Verizon and LIPA have the authority to issue licenses to EEEA for lechis. EEEA counsel noted the continuing harm to EEEA that would result from further delay: "[T]he same harm that my clients have been suffering for the last five years which is that every Friday that they don't have an eruv they are unable to do the things that people are able to do in dozens . . . of other communities throughout Long Island and New York . . . and the people living here in this community, some of whom you'll hear from today,

continue every week without this for no reason other than that we have this matter and we have these other situations." *Id.* at 165:10-166:2 (Ex. TTT).

138. Plaintiff Simcha Pollack spoke about the severe hardship that his elderly mother-in-law suffers as a result of the lack of an eruv. *Id.* at 182:18-24 (Ex. TTT) ("My wife's mother is an 86[-]year[-]old Holocaust survivor who is not ambulatory. She's living with us in Westhampton this summer. On Saturday, a day that she would socialize and enjoy the Victorian music, she is effectively a prisoner in her own house."). Alan Schechter likewise spoke about the hardship his elderly father suffers as a result of the lack of an eruv. *Id.* at 185:13-18 (Ex. TTT) ("I have an 88[-]year[-]old father. He can no longer walk easily. It is very hard for him to walk to synagogue. If he tries to walk, it takes him 45 minutes to walk a little over half a mile. He's exhausted and can't walk home, so he doesn't go.").

139. No member of the public spoke out at the hearing in opposition to the Eruv (with the exception of JPOE's counsel, Mr. Sinnreich, who once again delivered prepared remarks). *See id.* at 167:4-177:16 (Ex. TTT).

140. After counsel and members of the public concluded their remarks, the ZBA closed the hearing and set a deadline of two weeks from the date of the hearing for EEEA to submit its full EAF, and a deadline of 4:00 p.m. on July 18, 2013, for written submissions. *Id.* at 215:8-10, 217:20-218:4 (Ex. TTT). The ZBA also set August 1, 2013 as its deadline for issuing its decision on EEEA's appeal and application. *Id.* at 218:4-6 (Ex. TTT).

141. On June 19, 2013, Mr. McCarthy submitted EEEA's completed, full EAF in compliance with Ms. Garvin's and the ZBA's instructions, noting that he was doing so "under protest." *See* June 19, 2013 Letter from Michael McCarthy to Zoning Board of Appeals, Town of Southampton, with enclosed full EAF (Ex. AAAA).

142. On July 18, 2013, in response to the ZBA's invitation at the close of the June 6, 2013 hearing to submit supplemental materials, EEEA submitted a letter to the ZBA that reiterated that "[t]he proposed lechis, which are 5/8-inch half-round strips of PVC, do not display a message to the public. They are simply functional components of an eruv." July 18, 2013 Letter from Yehudah Buchweitz to Zoning Board of Appeals, Town of Southampton, attached hereto as Exhibit BBBB. The letter also attached multiple cases that establish the legal basis for EEEA's positions that: (1) a lechi is not a sign, and (2) the U.S. Constitution requires the Town's governmental agencies to accommodate EEEA's religious practice by allowing EEEA to attach lechis to Verizon's and LIPA's utility poles pursuant to EEEA's valid licensing agreements with Verizon and LIPA, respectively. *Id.*

143. On July 31, 2013, Ms. Garvin called Mr. McCarthy to inform EEEA that one of the ZBA members would not be present for the vote on the EEEA's appeal, and so only 5 of 7 members would vote.

144. On August 1, 2013, the Town of Southampton Department of Land Management, Planning Division, issued a "determination of non-significance (Negative Declaration)," finding that the proposed lechis "will not have a significant effect on the environment and that a Draft Environmental Impact Statement need not be prepared." *See* August 1, 2013 Memorandum from Janice Scherer to Kathryn Garvin, attached hereto as Exhibit CCCC. The memorandum advised the ZBA that if it "adopts the Negative Declaration as recommended, no further environmental review [would] be required." *Id.*

145. Also on August 1, 2013, the ZBA issued its decision that EEEA was time-barred from appealing the Chief Building Inspector's finding that lechis are signs, and denying EEEA's application for a variance. *See* Aug. 1, 2013 ZBA Decision, at 15 (Ex. A). The ZBA made no

independent determination as to whether a lechi is a sign under the Town Code. Instead, despite the fact that Southampton was the cause of the delay, the ZBA held that the appeal of Chief Building Inspector's finding that lechis are signs was time-barred for failure to initiate the appeal within the sixty days allotted under New York State Town Law § 267-a(5)(b). *Id.* at 8.

146. The ZBA denied EEEA's request for a variance, basing its determination in part on its claims that (i) "the requested variances will alter the essential character of the neighborhood," and that (ii) the unnecessary hardship suffered by the applicants "derives not from the Town's zoning regulations but from Jewish law," which the ZBA described as "motivated by the personal desire of the applicant's members to be freed from the proscriptions of religious law." *Id.* at 13, 14. The ZBA provided no support for these statements or its finding that the lechis would create "clutter." *Id.* at 13. The ZBA's positions were motivated by discriminatory intent, and animus against observant Jews was a significant factor in the positions taken by the ZBA.

147. The ZBA Findings and Determination made several other legally erroneous or arbitrary and capricious findings. For example, it cites correspondence from the public opposing the eruv, but incorrectly includes in that list correspondents whose letters actually *supported* the eruv. *Id.* at 6; *see also* Letter of Irving Ruderman to Southampton ZBA dated July 15, 2013, attached hereto as Exhibit DDDD (writing that he "supports [EEEA's] proposal," and "object[s] to the labeling of this [the eruv] as something Orthodox, which sounds like it is just something for one subgroup"). It also does not list other pro-eruv letters submitted by members of the public.

148. The ZBA Findings and Determinations also made the baseless declaration that granting the requested variance would "create a precedent" for "future applications seeking

similar relief." *See* Aug. 1, 2013 ZBA Decision, at 13 (Ex. A). The ZBA provided no evidence that any application seeking similar relief has ever been submitted before, that any other group or individual exists that would desire such relief in the future, or that any harm would come from granting such relief to future applicants. *Cf.* 6/6/13 Tr. at 164:21-23 (Ex. TTT) (MR. REILLY: "I don't think we've ever made [a ruling on any pole attachment]. This is in all respects a unique application."). Declining to grant a variance on the basis that doing so would open the floodgates for similar applications in the future would require the ZBA to summarily deny all variance applications. Denying EEEA's application on that basis required the ZBA to ignore all of EEEA's evidence—and the ZBA's own stated position—that EEEA's application was unique.

149. The ZBA Findings and Determination also noted the presence of various "signs" on poles in Southampton, including the wooden cross nailed to the base of a pole discussed above, but determined these facts were "not persuasive as a basis to exempt the lechis from regulation under the Town Code but instead is a matter for Code Enforcement." Aug. 1, 2013 ZBA Decision, at 10 (Ex. A). The ZBA thus has taken official action that targets certain religious conduct for treatment distinctive from the treatment of other religious conduct, or other "signs" that remain attached to utility poles in Southampton, as discussed above at paragraph 77.[7]

150. The ZBA Findings and Determinations further claimed that the proper standard under which to assess EEEA's variance application was the use variance standard, on the grounds that "the analysis would be the same were applicant seeking to affix the lechis directly

[7] Though EEEA brought the wooden cross to the Town's attention in its supplemental memorandum to the ZBA dated May 17, 2013 (*see* Ex. UUU, at 8; *id.* Ex. J), the cross remained in the same position until August 1, 2013 (if not later), and even then was not completely removed, but simply re-positioned so that it is no longer visible from the street. *See supra* note 1.

to the pavement of the Town rights-of-way." *Id.* at 12. The Town, however, refrains from enforcing the Sign Ordinance against signs placed by other private entities in the public right of way. For example, Southampton has not stopped private groups from spraying bicycle directional markers on Town streets to accommodate bicyclists. *See* Photographs of Bicycle Directional Signs, attached hereto as Exhibit EEEE. Southampton has thus declined to enforce the Sign Ordinance against one specific group's signs placed in the right of way (in this case, directional markers for bicyclists), but is unwilling to accommodate lechis on utility poles for the benefit of observant Jews—even though lechis are clearly not signs and, as the ZBA itself acknowledged, "religious uses enjoy a preferred status under New York law as well as a presumption that they are in furtherance of the public health, safety and welfare." *See* Aug. 1, 2013 ZBA Decision, at 14 (Ex. A). The ZBA's application of the use variance standard to EEEA's variance application was thus discriminatory, arbitrary, and capricious.

V. VERIZON AND LIPA HAVE REFUSED TO ISSUE LICENSES TO EEEA SOLELY AS THE RESULT OF SOUTHAMPTON'S CONDUCT

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

152. 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." Will James, *Westhampton Beach Eruv Proposal Moves Forward*, THE SOUTHAMPTON PRESS, Oct. 27, 2010, attached hereto as Exhibit FFFF.

153. Subsequently, Verizon and LIPA confirmed in statements filed in the Original EEEA Action that they have refrained from issuing licenses to EEEA because the

Municipalities' representatives "have contended that the attachment of lechis to utility poles either is not permitted at all or requires their prior approval pursuant to local laws," and because these representatives "threatened to impose fines and/or to take other legal action against [Verizon] and LIPA if they permit the installation of lechis." *See* Statement by Verizon & LIPA in Connection with Pls.' Mot. for Prelim. Inj. ¶ 4, Original EEEA Action (Dkt No. 57), attached hereto as Exhibit GGGG. Verizon and LIPA have also asserted that they will continue to refrain from issuing licenses to EEEA—even though they believe they are obligated to issue them under their contracts with EEEA—until the Court rules that "the Municipalities' prior approval is not needed." *See* Post-Hearing Statement by Verizon & LIPA in Connection with Pls.' Mot. for Prelim. Inj. ¶ 7, Original EEEA Action (Dkt No. 102), attached hereto as Exhibit HHHH.

154. In May of 2012, LIPA reaffirmed in private correspondence with Southampton that it had no intention of issuing any licenses to EEEA, even for a smaller eruv that EEEA was proposing for Westhampton Beach only (for which Verizon was considering issuing licenses). *See* May 25, 2012 Letter from Michele Pincus (Associate General Counsel, LIPA) to Maureen Liccione (Litigation Counsel, Southampton), attached hereto as Exhibit IIII ("I would like to clarify that LIPA has no intention of issuing any licenses at this time.").

155. 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.

156. 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 Southampton and the other Municipalities directed to Verizon and LIPA.

157. 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 Southampton, and an injunction preventing Southampton 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.)

158. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 136 as if fully set forth herein.

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

160. Without an Eruv in parts of Southampton, as well as Westhampton Beach and parts of Quogue, 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. As a result, for example, observant Jews who require the assistance of a wheelchair to travel cannot physically attend synagogue on these holy days without violating their religious beliefs.

161. The object, motivation, and effect of the actions of Defendants are to suppress the religious practices of the plaintiffs and certain other Jews who reside in parts of Southampton, as well as Westhampton Beach and parts of Quogue. The Defendants' positions were and are motivated by discriminatory intent, and animus against observant Jews. These actions have specifically targeted Jewish citizens, as the laws that Southampton seeks to invoke to prevent the establishment of the Eruv are not uniformly enforced against citizens of other faiths.

162. 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.

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

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

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 2000cc)

165. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 163 as if fully set forth herein.

166. 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).

167. 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).

168. 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.

169. 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.

170. Defendants' actions were motivated by 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.

171. Because Defendants do not uniformly enforce any of the laws or ordinances under which it seeks 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.

172. Defendants' actions are in violation of RLUIPA.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment)

173. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 171 as if fully set forth herein.

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

175. 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.

176. Southampton has taken the position that local laws prohibit affixing lechis to Verizon's and LIPA's poles, and its ZBA would not accommodate an application for use variances.

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

178. 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 Southampton, which controversy is ripe for adjudication pursuant to 28 U.S.C. § 2201.

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

180. Plaintiffs thus request a judgment declaring the rights and obligations of the parties under the local laws of Southampton 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 Southampton or that requires Municipal approval for such attachments, including a declaration that § 330-203(B) of the Code of the Town of Southampton is 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)

181. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 179 as if more fully set forth herein.

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

183. 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.

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

FIFTH CLAIM FOR RELIEF

(Tortious Interference with Contract)

185. EEEA repeats and realleges each and every allegation of paragraphs 1 through 183 as if fully set forth herein.

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

187. 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.

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

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

190. Southampton 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, Southampton engaged in communications with Verizon and LIPA, respectively, regarding the Eruv-Lechi Stave Agreement and the License Agreement. Southampton engaged in these communications with the intent ultimately to interfere with EEEA's Eruv-Lechi Stave Agreement and EEEA's License Agreement.

191. Throughout these communications with Verizon and LIPA, and in furtherance of their intent to procure the breach of Plaintiffs' agreements, Southampton 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.

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

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

194. But for Southampton's 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.

195. As a result, EEEA has suffered and will suffer harm in the loss of their constitutional right to freely practice their religion.

SIXTH CLAIM FOR RELIEF

(28 U.S.C. § 1367; New York Law)

196. EEEA repeats and realleges each and every allegation of paragraphs 1 through 195 as if fully set forth herein.

197. Supplemental subject matter jurisdiction under 28 U.S.C. § 1367 provides federal district courts with jurisdiction over all nonfederal claims forming part of the same case or controversy.

198. The ZBA's denial of the EEEA's appeal was and is arbitrary and capricious, was not supported by evidence in the record, and was affected by an error of law.

199. The ZBA's denial of the EEEA's application for variances was and is arbitrary and capricious, was not supported by evidence in the record, and was affected by an error of law.

200. Because the ZBA failed to make a reasonable effort to accommodate EEEA's proposed uses, its decision was arbitrary and capricious.

201. By reason of the foregoing, EEEA demands any and all relief available under New York law, including but not limited to the declaratory and other relief specified below.

WHEREFORE, Plaintiffs respectfully demand judgment against Southampton as follows:

A. On the First Claim For Relief, permanently enjoining Southampton 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 Third Claims For Relief, (1) permanently enjoining Southampton from continuing to engage in the discriminatory practices alleged therein; (2) permanently enjoining Southampton 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.

C. On the Fourth Claim For relief, entering a declaratory judgment, pursuant to 28 U.S.C. § 2201, that (a) there is no local, state, or federal law that either prohibits the affixation of the lechis to certain poles in the Municipalities or that requires municipal approval for such attachments, including a declaration that § 330-203(B) of the Code of the Town of Southampton is 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, permanently enjoining Southampton from tortiously interfering with Plaintiffs' contracts.

E. On the Sixth Claim for relief (a) determining and declaring that the ZBA's denial of the EEEA's appeal and variance application was and is arbitrary and capricious and contrary to New York State law; and (b) compelling and directing the ZBA to issue any necessary approvals and permits to allow EEEA to construct the Eruv.

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

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

Dated: New York, New York
August 26, 2013

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