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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,  
INC., SARAH BERGER, MOSES BERGER,  
CHAIM BREUER, JOEL FRIEDMAN, ARYA  
RABINOVITS, YOSEF ROSEN, and TZVI  
SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF MONTVALE

Defendant.

Civ. No. \_\_\_\_\_

COMPLAINT

Plaintiffs Bergen Rockland Eruv Association, Inc. (“BRE”), Sarah Berger, Moses Berger, Chaim Breuer, Joel Friedman, Arya Rabinovits, Yosef Rosen, and Tzvi Schonfeld (collectively, “Plaintiffs”) by their attorneys, Weil, Gotshal & Manges LLP, allege for their Complaint herein, as follows:

**INTRODUCTION**

1. This action arises from the actions of The Borough of Montvale (“Montvale” or “Defendant”), which constitute intentional deprivation of Plaintiffs’ rights and liberties under the

First and Fourteenth Amendments to the United States Constitution and multiple federal statutes.<sup>1</sup>

2. BREA, Sarah Berger, Moses Berger, Chaim Breuer, Joel Friedman, Arya Rabinovits, Yosef Rosen, and Tzvi Schonfeld and other Jewish residents of Rockland County, New York have sought to establish an eruv in parts of Bergen County, New Jersey that would allow Rockland County Jews with certain sincerely held religious beliefs, and who reside on or near the New York-New Jersey state lines, to carry or push objects from place to place within a designated unbroken area during the Sabbath and on Yom Kippur (the “Eruv”).<sup>2</sup>

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

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<sup>1</sup> Plaintiff BREA’s principal office address is P.O. Box 488, Monsey, New York 10952. Plaintiff Sarah Berger’s address is 9 Jacqueline Road, Monsey, NY, 10952. Plaintiff Moses Berger’s address is 9 Jacqueline Road, Monsey, NY, 10952. Plaintiff Chaim Breuer’s address is 9 Hillside Avenue, Airmont, NY 10952. Plaintiff Joel Friedman’s address is 11 Fox Hill Road, Spring Valley, NY, 10952. Plaintiff Arya Rabinovits’s address is 60 Gottlieb Drive, Pearl River, NY 10965. Plaintiff Yosef Rosen’s address is 26 Jean Lane, Monsey, NY 10952. Plaintiff Tzvi Schonfeld’s address is 7 Hillside Avenue, Airmont, NY 10952. Defendant Borough of Montvale’s address is 12 Mercedes Drive, Montvale, NJ 07645.

<sup>2</sup> Pursuant to Local Civil Rule 40.1(c), this case is related to *Friedman et al. v. The Borough of Upper Saddle River et al.*, 2:17-cv-05512-JMV-CLW, and *Bergen Rockland Eruv Association, Inc. et al. v. The Township of Mahwah*, 2:17-cv-06054-JMV-CLW, both pending before District Judge John M. Vasquez and Magistrate Judge Cathy L. Waldor. These cases involve overlapping Plaintiffs, overlapping facts, and overlapping applicable law.

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

5. In 2015, representatives of the Vaad haEruv – Plaintiffs’ designated agent for the planning, organization, and construction of an eruv – approached Orange & Rockland Utilities, Inc. (“O&R”) and requested permission to affix thin PVC plastic pipes known as “lechis,” which are necessary for the establishment of the Eruv, to utility poles in Montvale owned or used by O&R’s New Jersey utility subsidiary Rockland Electric Company (“REC,” and together with O&R, the “Utility Company”). The Eruv created by the installation of these lechis would expand an eruv already in place in Rockland County, such that it would encompass the homes of many observant Jews, including those of Plaintiffs Sarah and Moses Berger, Breuer, Friedman, Rabinovits, Rosen, and Schonfeld. The Utility Company granted express licenses to Vaad haEruv to affix lechis to the poles owned or used by the Utility Company in Montvale.

6. Also in 2015, the then-mayor of Montvale, Roger Fyfe, issued a public statement on Montvale’s website, [www.montvale.org](http://www.montvale.org), recognizing that an eruv is constructed “so as to be unobtrusive and nearly invisible to the general public,” and that it “has been universally held that the construction of an eruv serves ‘the secular purpose of accommodation’ and does not violate the separation of Church and State.” Mayor Fyfe properly recognized that “[a]bsent any compelling safety concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the eruv.” Mayor Fyfe further noted that eruvin “are located all throughout Manhattan, and I personally have never

noticed one in all my time in the City.” See Eruv Statement by Mayor of Montvale, annexed hereto as Exhibit A.

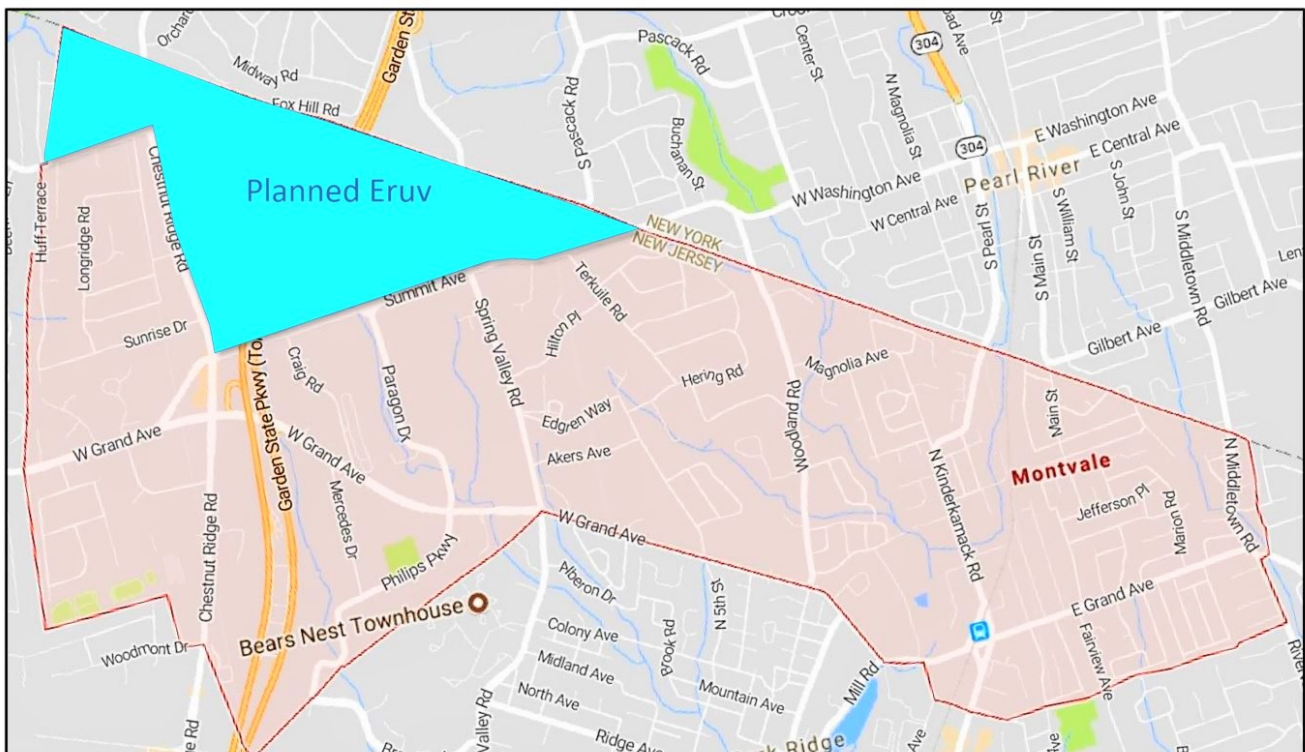
7. On or about June 1, 2015, the Vaad haEruv and the Utility Company entered into a License Agreement. Through the License Agreement, which is annexed hereto as Exhibit B, the Utility Company granted an express license that allows the Vaad haEruv to affix lechis to certain of the poles owned or used by the Utility Company in Bergen County for the purpose of creating an eruv.

8. Over the past three months, an Eruv has been created in parts of the neighboring towns of Mahwah and Upper Saddle River, New Jersey, by attaching lechis to utility poles pursuant to licenses negotiated between community members using the Eruv and the Utility Company. The Eruv in Mahwah and Upper Saddle River is an extension of an eruv that already exists in Rockland County, New York. In each of Mahwah and Upper Saddle River, the municipalities were aware of and initially voiced no opposition to the Jewish community’s efforts to create the Eruv, and worked collaboratively with Rabbi Chaim Steinmetz, who in turn complied with all requested measures, including but not limited to obtaining specific valid licenses from the Utility Company and working under the supervision of the local police departments. Regrettably, both Mahwah and Upper Saddle River now oppose the Eruv, which encompasses only a *de minimis* portion of their towns, having succumbed to a campaign of fear, xenophobia, and anti-Semitism.

9. As a result of the Eruv’s expansion to include parts of Mahwah and Upper Saddle River, for over two months, hundreds of families living along the New York/New Jersey border have been able to more fully practice their religion. More specifically, during the Sabbath over the past two months, these observant Jewish residents have been able to carry items such as

prayer shawls and prayer books to their synagogue and have been able to bring food, games, gifts, and books to the homes of fellow community members. Because Plaintiffs Yisroel Friedman and Moshe Pinkasovits, and other members of BREA and people that BREA represents can carry these items, as well as push strollers and wheelchairs within the confines of the newly expanded Eruv, they are able to more fully practice their religion on the Sabbath.

10. Without further expansion of the Eruv into a corner of Montvale, however, a significant number of residents living along the New York/New Jersey border – including Plaintiffs Sarah and Moses Berger, Breuer, Friedman, Rabinovits, Rosen, and Schonfeld – will continue to fall outside of the Eruv, even though they all stand benefit from the Eruv. As depicted below, the expansion covers only a small portion of Montvale:



11. In an effort to expand the existing Eruv to cover these and many other individuals, Rabbi Steinmetz met with Montvale police officers to discuss plans to expand the existing Eruv by attaching 27 unobtrusive lechis to utility poles within Montvale. Rabbi

Steinmetz spoke multiple times to Montvale police officers, including Captain Joseph Sanfilippo, regarding the work, and he was advised that he should retain a certified flagman and hire police officers to supervise work on utility poles at busy intersections (specifically, Chestnut Ridge Road and Upper Saddle River Road, and Chestnut Ridge Road and Summit Avenue).

12. At the instruction of Captain Sanfilippo, Rabbi Steinmetz and members of BREA invested in obtaining certification for a flagman, paid for the police presence, and rented the necessary equipment, only to learn on the afternoon of July 10, 2017, that Montvale Mayor Michael Ghassali ordered Captain Sanfilippo to cease any work on the project. On July 24, 2017, Mayor Ghassali confirmed to a reporter from the Daily Voice newspaper that he personally issued a stop work order to prevent completion of the eruv. Despite multiple attempts, by Rabbi Steinmetz and members of BREA, to discuss rescinding the stop-work order, the Mayor continues to obstruct the construction of the Eruv, and no lechis have gone up in Montvale to date. Montvale has now taken the position that lechis are prohibited under Montvale Ordinance § 58-16, a facially inapplicable part of the local code that concerns “litter.” Montvale has thus unlawfully threatened Plaintiffs’ constitutional, civil, and contractual rights by obstructing the further expansion of the Eruv.

13. By infringing on Plaintiffs’ rights in this manner, Plaintiffs and other members of the observant Jewish community are sustaining ongoing, irreparable injuries. As further described below, Plaintiffs and other members of the observant Jewish community face practical difficulties and hardships each and every week that passes without an eruv, as the elderly, disabled, and families with young children are confined to their homes, and thus separated from family members and the rest of the community.

14. Through its actions – which are unsupported by any local, state, or federal law – Montvale has also unlawfully interfered with private contracts with the Utility Company that were entered into for the purpose of establishing the Eruv.

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

### **JURISDICTION AND VENUE**

16. 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.

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

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

### **THE PARTIES**

19. Plaintiff BREA is an association organized as a charitable corporation under New York State's Not-for-Profit Corporation Law. Its principal office is located in Rockland County, New York.

20. Plaintiff Sarah Berger (together with Moses Berger, the "Berger Plaintiffs") is an individual residing in Monsey, New York.

21. Plaintiff Moses Berger (together with Sarah Berger, the "Berger Plaintiffs") is an individual residing in Monsey, New York.



22. Plaintiff Chaim Breuer is an individual residing in Airmont, New York.
23. Plaintiff Joel Friedman is an individual residing in Spring Valley, New York.
24. Plaintiff Arya Rabinovits is an individual residing in Pearl River, New York.
25. Plaintiff Yosef Rosen is an individual residing in Monsey, New York.
26. Plaintiff Tzvi Schonfeld is an individual residing in Airmont, New York.
27. Defendant Montvale is a Borough in Bergen County, New Jersey.

### **FACTUAL ALLEGATIONS**

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

28. 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 utility poles and wires, existing boundaries, and strips of wood or plastic attached to the sides of certain of the poles, known as “lechis.”

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

30. Many Jews hold the sincere religious belief that, without an eruv, they are not permitted to push or carry objects outside their homes on the Sabbath and Yom Kippur. Eruvin allow Jews with such sincerely held religious beliefs to carry or push objects from place to place within the area on the Sabbath and Yom Kippur. Thus, within the boundaries of an eruv, these people may push baby carriages, strollers, and wheelchairs and may carry books, food, water, house keys, identification, prayer shawls, reading glasses and other items to synagogue and other locations outside of their own homes. The ability to carry these and other items creates a safer



environment and permits observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

31. Plaintiffs Sarah Berger and Moses Berger live in an area of New York that is very close to Montvale. Montvale's obstruction of the planned Eruv has harmed the Berger Plaintiffs because they cannot push or carry any objects, such as those described above, outside their home on the Sabbath and Yom Kippur. For example, the Berger Plaintiffs cannot push their eight-month-old baby in a stroller to their Synagogue or anywhere else outside the home on the Sabbath and Yom Kippur. Nor can the Berger Plaintiffs' family travel all together on the Sabbath to the houses of other community members for meals or to socialize, which negatively impacts their sense of community and camaraderie. Indeed, they cannot even borrow a simple item from a neighbor absent an eruv.

32. Plaintiff Breuer lives in an area of New York that is very close to Montvale. Montvale's obstruction of the planned expansion of the Eruv has harmed Plaintiff Breuer because he cannot push or carry any objects, such as those described above, outside his home on the Sabbath and Yom Kippur. Because of Montvale's actions, Plaintiff Breuer and his wife cannot push their six-month-old baby in a stroller to their Synagogue on the Sabbath. Further, Plaintiff Breuer's brother-in-law, who uses a wheelchair, cannot travel to or visit Plaintiff Breuer and his family on the Sabbath because there is no eruv surrounding Plaintiff Breuer's house. As a result of Montvale's actions, Plaintiff Breuer and his wife (who have three young children) are harmed because they cannot push strollers and/or wheelchairs outside their house on the Sabbath. Without the Eruv, Plaintiff Breuer's family cannot attend Synagogue together, and cannot travel together to the houses of family and other community members.

33. Plaintiff Friedman lives in an area of New York State that directly borders Montvale. If Montvale continues to obstruct the expansion of the Eruv to Montvale, Plaintiff Friedman will continue to be unable to push or carry any objects, such as those described above, outside his home on the Sabbath and Yom Kippur. Specifically, Plaintiff Friedman has been harmed by Montvale's unlawful stop-work order due to his inability, in the absence of an eruv, to push his young children in a stroller on the Sabbath and on Yom Kippur. This inability to push a stroller on the Sabbath and Yom Kippur is not limited to Plaintiff Friedman. He is aware of at least two families that live on his street that are similarly impacted. Without the Eruv, these families cannot attend Synagogue together and are unable to travel to the houses of family and other community members.

34. Plaintiff Rabinovits's home is very close to the New York-New Jersey boundary in an area of New York that directly borders Montvale. So long as Montvale continues to prevent the planned Eruv expansion, Plaintiff Rabinovits is harmed because he cannot push or carry any objects, such as those described above, outside his home on the Sabbath and Yom Kippur. Without an eruv, Plaintiff Rabinovits and his wife cannot take their two young children outside the house because they cannot push strollers or carry other objects necessary to travel with small children. Although his wife's parents live nearby in Chestnut Ridge, Plaintiff Rabinovits and his family have been unable to visit them on the Sabbath because they cannot walk the thirty-five minutes it would take them without the ability to carry or push a stroller. As a result of Montvale's actions, someone in the Rabinovits family is forced to stay in the home for the entirety of the Sabbath to care for their young children.

35. Plaintiff Rosen lives in an area of New York that is very close to Montvale and is right on the New York/New Jersey border. Montvale's obstruction of the planned Eruv has

harmed Plaintiff Rosen because he cannot push or carry any objects, such as those described above, outside his home on the Sabbath and Yom Kippur. Plaintiff Rosen has a three-year old son who cannot make the walk to Synagogue on the Sabbath without the use of a stroller. Moreover, Plaintiff Rosen's wife has a grandmother who has visited them many times, including weekends. Without an eruv, however, she is unable to go outside on the Sabbath because she requires a wheelchair or a walker. Nor can Plaintiff Rosen's family easily travel together to the houses of family and other community members, which negatively impacts their sense of community and camaraderie. And, Plaintiff Rosen has a brother-in-law who lives nearby, but in an area of New York that is within an eruv. Due to the absence of the planned Eruv, Plaintiff Rosen's brother-in-law avoids walking to Plaintiff Rosen's house on the Sabbath, because he has to leave his child's stroller within the existing eruv and continue on without it. The last time he did so, the stroller was stolen.

36. Plaintiff Schonfeld lives in an area of New York that is very close to Montvale. Montvale's obstruction of the planned expansion of the Eruv has harmed Plaintiff Schonfeld because he cannot carry various items (such as raingear) outside the home on the Sabbath and Yom Kippur. Montvale's actions have also directly impacted Plaintiff Schonfeld's sense of community and camaraderie, as families in his neighborhood, and particularly those with young children who cannot yet walk by themselves, are less likely to socialize outside the home on the Sabbath in the absence of an eruv.

37. Montvale's obstruction of the planned Eruv has also harmed many other members of the observant Jewish community who live in areas of New York that border or that are close to Montvale. Like other observant Jews, these additional members of the community cannot push or carry any objects, such as those described above, outside the home on the Sabbath and

Yom Kippur. One such member of the community cannot push his infant in a stroller outside of his home on the Sabbath and Yom Kippur. As a result, he and his family cannot attend Synagogue together, and cannot travel together to the houses of family and other community members. He and his family also cannot easily entertain or socialize on the Sabbath in their own backyard, which negatively impacts their sense of community and camaraderie. Further, this member of the community is affiliated with a non-profit organization that provides health and human services for children and other individuals with special needs. Although he has plans to host children who receive such care at his home for the Sabbath, without an eruv, he is unable to extend an invitation to children who are wheelchair-bound.

38. As each week passes without an eruv, the Berger Plaintiffs and Plaintiffs Breuer, Friedman, Rabinovits, Rosen, and Schonfeld, along with their families and many other similarly-situated community members, are being deprived of the ability to fully and freely practice their religion, constituting an irreparable injury.

39. Recent press coverage provides additional examples of individuals to whom eruvim are absolutely critical. For instance, one recent article tells the story of Tenafly resident “Barry Honig, who is visually impaired and needs his seeing-eye dog and cane to get to synagogue,” and therefore depends on an eruv to carry these objects and attend synagogue.<sup>3</sup>

40. A multitude of eruvim have been established nationwide and worldwide. The first eruv in the United States was established in 1894 in the city of St. Louis, Missouri. Since then at least twenty-eight out of the fifty states now contain one or more municipalities with an eruv.

These include, among many others: Cherry Hill, East Brunswick, Englewood, Fort Lee, Linden,

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<sup>3</sup>See Tom Nobile, *Attorney: Mahwah PD Supervised Eruv Installation*, THE BERGEN RECORD, July 29, 2017, *available at* <http://www.northjersey.com/story/news/bergen/mahwah/2017/07/28/attorney-mahwah-pd-supervised-eruv-installation/521157001/>.

Maplewood, Marlboro Township, Paramus, Passaic-Clifton, Rutherford, Teaneck, Bergenfield, New Milford, Edison, Highland Park, Parsippany, Elizabeth, West Orange, Livingston, Long Branch, Tenafly, and Ventnor, New Jersey; Westhampton Beach, Southampton, Quogue, Huntington, Stony Brook, Patchogue, East Northport, Merrick, Mineola, North Bellmore, Plainview, Great Neck, Valley Stream, West Hempstead, Long Beach, Atlantic Beach, Lido Beach, Roslyn, Searingtown, Forest Hills, Kew Gardens, Belle Harbor, Holliswood, Jamaica Estates, New Rochelle, Scarsdale, White Plains, Albany, Manhattan, and Poughkeepsie, New York; Bridgeport, Hartford, Norwalk, Stamford, New Haven, and Waterbury, Connecticut; Boston, Cambridge, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; Berkeley, La Jolla, Long Beach, Los Angeles, Palo Alto, San Diego, and San Francisco, California; Pittsburgh, Philadelphia, and Lower Merion, Pennsylvania; Chicago, Buffalo Grove, Glenview-Northbrook, and Skokie, Illinois; Ann Arbor, Southfield, Oak Park, and West Bloomfield Township, Michigan; Baltimore, Potomac, and Silver Spring, Maryland; Charleston, South Carolina; Birmingham, Alabama; Atlanta, Georgia; Las Vegas, Nevada; Miami, Ft. Lauderdale, Boca Raton, Boyton Beach, Deerfield Beach, Delray Beach, and Jacksonville, Florida; Denver, Colorado; Cleveland, Cincinnati, and Columbus, Ohio; Portland, Oregon; Memphis and Nashville, Tennessee; New Orleans, Louisiana; Dallas, Houston, and San Antonio, Texas; Richmond, Virginia; Seattle, Washington; Phoenix, Arizona; and Washington, D.C. Most recently, eruvim have been established in Plano and Austin, Texas; Scottsdale, Arizona; and Omaha, Nebraska.

41. On the occasion of the inauguration of the first eruv in Washington, D.C., President George H.W. Bush wrote a letter to the Jewish community of Washington in which he stated: “there is a long tradition linking the establishment of eruvim with the secular authorities

in the great political centers where Jewish communities have lived. . . . Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. G-d bless you.” See Exhibit C.

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 within the limits allowed by the law.”

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.”

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

45. 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.”<sup>4</sup>

46. 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.”<sup>5</sup>

47. 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 efforts to establish eruvim. Thus, special university campus eruvim exist in and around: Rutgers University (New Brunswick, New Jersey); Princeton University (Princeton, New Jersey); Cornell University (Ithaca, New York); the University of Pennsylvania (Philadelphia, Pennsylvania); the University of Maryland

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<sup>4</sup> See Mitchell Landsberg, *Massive 405 Freeway Project Respects the Boundaries of a Jewish Tradition*, L.A. TIMES, July 4, 2011, available at <http://articles.latimes.com/2011/jul/04/local/la-me-405-eruv-20110704>.

<sup>5</sup> See Bob Doda, *Eruv extended to six neighborhoods*, THE QUEENS COURIER, Dec. 6, 2010, available at <http://qns.com/story/2010/12/06/eruv-extended-to-six-neighborhoods>.



(College Park, Maryland); Johns Hopkins University (Baltimore City, Maryland); Brandeis University (Waltham/Boston, Massachusetts); Harvard University (Cambridge, Massachusetts); Yeshiva University (New York, New York); and Yale University (New Haven, Connecticut). *See, e.g.,* Elli Fischer, *JLIC Spearheads Efforts to Enhance Campus Communities*, ORTHODOX UNION. The Cornell University Jewish community worked with the sheriff of Tompkins County, New York, to establish its eruv.<sup>6</sup>

48. The latest college campus to welcome an eruv is the University of Illinois at Urbana-Champaign, which was established in August 2017. In heralding the Eruv – which was a collaborative effort between the University, the city of Urbana, the city of Ameren, and the city of Champaign, among others – Champaign Mayor Deborah Frank Feinen remarked: “I am so grateful that we live in a community where the creation of an eruv is possible. I applaud Ameren Illinois for easily approving the use of its power poles for the work that Hillel was doing to create the eruv. The eruv represents what is best about our inclusive community of Champaign-Urbana and is a small step toward making our citizens more comfortable and attracting new people to the area.”<sup>7</sup>

49. Montvale has previously recognized the near-invisibility, ubiquity, and constitutionality of eruvin. In January 2015, then-mayor of Montvale Roger Fyfe – a two term mayor serving for eight years and narrowly defeated by current Mayor Ghassali – issued a public statement recognizing that an eruv is constructed “so as to be unobtrusive and nearly invisible to

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<sup>6</sup> See Elizabeth Krevsky, *Orthodox Jewish Community Builds Eruv on Campus*, THE CORNELL DAILY SUN, Jan. 29, 2010, available at <https://oujlic.org/the-cornell-daily-sun-orthodox-jewish-community-builds-ehruv-on-campus/>.

<sup>7</sup> See OU Staff, *UIUC Hillel and Orthodox Union Establish Eruv in Champaign Area*, ORTHODOX UNION, September 7, 2017, available at <https://www.ou.org/news/uiuc-hillel-orthodox-union-establish-eruv-champaign-area/>.

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

50. Moreover, the current Mayor of the nearby Township of Mahwah, New Jersey also recently recognized the validity of eruvin, before his Township reversed course in the face of fear, xenophobia, and religious animus. On July 19, 2017, Mayor William C. Laforet issued a public statement on the Township’s website recognizing that “because of several Federal Law suits,” “[the Utility Company is] obligated to allow these ERUV markings, but they have NO OBLIGATION to notify the municipality” (emphasis in original). Mayor Laforet further noted that “[Mahwah] cannot do anything about the installation of these plastic pipes on these utility poles establishing a[n] ERUV.” *Id.* In fact, Mayor Laforet’s statement links to *Tenaflly Eruv Ass’n v. Borough of Tenaflly*, 309 F.3d 144 (3d Cir. 2002), governing precedent establishing Plaintiffs’ constitutional right to the Eruv. Mayor Laforet’s statement is annexed hereto as Exhibit D.

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

51. Plaintiffs’ community representatives – including the Vaad haEruv and Rabbi Chaim Steinmetz – have obtained valid licenses from the Utility Company to attach 27 unobtrusive lechis to utility poles in Montvale. Shortly after obtaining the licenses, Rabbi Steinmetz called the Montvale Police Department to notify them that he would be working on the utility poles in Montvale. Captain Joseph Sanfilippo informed Rabbi Steinmetz that it was necessary to have a certified flagman perform the work on the utility poles. Following the

instructions received from the Montvale police, Rabbi Steinmetz and members of BREA invested resources in obtaining certification for a flagman.

52. After Rabbi Steinmetz emailed Captain Sanfilippo to confirm that they had obtained certification for a flagman, as reflected in the email annexed hereto as Exhibit E, Captain Sanfilippo called Rabbi Steinmetz to schedule an in-person meeting.

53. During the in-person meeting with Captain Sanfilippo, on the morning of July 10, 2017, Rabbi Steinmetz explained the nature of the work required to complete installation of the Eruv. Captain Sanfilippo gave his consent for the work, as long as Rabbi Steinmetz agreed to hire police officers to supervise work at certain busy intersections where lechis were being attached (*i.e.*, Chestnut Ridge Road and Upper Saddle River Road, and Chestnut Ridge Road and Summit Avenue). Captain Sanfilippo spoke with the code enforcer about the installation of the Eruv and the code enforcer gave his consent for the work to proceed as well.

54. After receiving all necessary approvals, the Montvale police department completed a “Request Form for Private Police Services” to formalize the arrangement to provide supervision for the Eruv installation, scheduled to take place on July 13, 2017. To complete the transaction, Rabbi Steinmetz gave a check to the police department from the Vaad HaEruv to pay for the estimated cost of police supervision. That check was later canceled. The “Request Form for Private Police Services” and the check for the estimated cost of police supervision are annexed hereto as Exhibit F.

55. After the work on the Eruv was scheduled and ready to begin, Captain Sanfilippo called Rabbi Steinmetz on the afternoon of July 10, 2017 to inform him that Mayor Ghassali had personally ordered the Montvale Police Department to cease any work on the Eruv project. At that point, Rabbi Steinmetz and members of BREA had already invested in obtaining

certification for a flagman, paid for the police presence, and rented the necessary equipment, spending thousands of dollars in the process.

56. After learning about the stop work order, Rabbi Steinmetz spoke with the code enforcer to make sure all requirements had been met. Although, the code enforcer confirmed that he had given approval for the project to proceed, he stated that the issue was now “out of his hands” because the Mayor was responsible for the stop work order. The code enforcer instructed Rabbi Steinmetz to direct further inquiries to the Mayor.

57. When Rabbi Steinmetz requested a meeting with the Mayor to discuss the stop work order, he was initially told the Mayor was not available, and only after reiterating the importance of the Eruv to the hundreds of families that are currently not covered by the Eruv was a meeting granted. Plaintiffs are informed and believe that the Mayor ended that meeting by stating that he would consider – but not commit to – bringing the issue up at the next Borough Council meeting on July 25.

58. Minutes from the Borough Council meeting on July 25 indicate that “Anticipated Litigation/ Eruv” was discussed during executive closed session, but the Borough neither lifted the stop work order nor allowed Plaintiffs to complete installation of the Eruv.

59. In response to Mayor Ghassali’s directive to Montvale police officers to stop any work related to the Eruv, Plaintiffs’ counsel sent a letter to Mayor Ghassali on July 19, 2017, annexed hereto as Exhibit G, requesting that the Mayor immediately rescind the stop-work order and permit the Montvale police to reengage with Rabbi Steinmetz and Plaintiffs. Mayor Ghassali never responded to that letter.

60. On July 24, 2017, Mayor Ghassali confirmed to Lauren Kidd Ferguson, a reporter from the Daily Voice newspaper, by email that he personally issued a stop work order to prevent completion of the Eruv.

61. On October 9, 2017, Plaintiffs' counsel once again sent a letter to Mayor Ghassali and the Borough's attorney, annexed hereto as Exhibit H, detailing the inapplicability of Montvale Ordinance § 58-16 and requesting that Plaintiffs be permitted to complete installation of the Eruv.

62. On October 10, 2017, the agenda for the Montvale Borough Mayor and Council meeting listed the Eruv for discussion during closed session. Again, however, the Borough neither lifted the stop work order nor allowed Plaintiffs to complete installation of the Eruv.

63. Based on Montvale's unlawful acts of obstruction, no lechis have been installed in Montvale and no eruv has been completed.

### **III. THE SURROUNDING CONTEXT OF FEAR AND RANK ANTI-SEMITISM.**

64. Plaintiffs' attempts to expand the Eruv have been met with hostility and rank prejudice. A vicious and discriminatory campaign against the Eruv expansion was launched by a vocal minority of residents in both Montvale and adjacent towns, including through various social media outlets, such as the Facebook group "Citizens for a Better Upper Saddle River" as well as the "Petition to Protect the Quality of Our Community in Mahwah." Upon information and belief, the former contains posts and comments that are vile in their sheer antagonism towards Orthodox Jews, such that it has captured the attention of the Anti-Defamation League. Public comments posted on the latter include the following, openly anti-Semitic statements:

- "Get those scum out of here."
- "They are clearly trying to annex land like they've been doing in Occupied Palestine. Look up the satanic verses of the Talmud and tell me what you see."

- “Our town is such a great place and if these things move in they will ruin it. They think that can do whatever the hell they want and we’ll be known as a dirty town if they move in. Please keep them out...”
- “I don’t want these rude, nasty, dirty people who think they can do what they want in our nice town.”
- “I don’t want my town to be gross and infested with these nasty people.”
- “I do not want these things coming into my town and ruining it.”

65. At the Borough Council meeting on August 8, 2017, the Eruv was not discussed by the Mayor or Councilmembers, but during open discussion, one Montvale resident expressed his opposition to the planned Eruv, stating “one only needs to look at what’s happened in East Ramapo or Lakewood, New Jersey, and you can see that our concerns are very real on this issue.” Although the resident claimed he was not motivated by religious animus, these comments were a clear and unambiguous reference to controversies related to the growth of the Orthodox Jewish communities in those locations.

66. In the face of a firestorm of opposition to the Eruv expansion, Montvale has actively interfered with and obstructed Plaintiffs’ ability to construct the Eruv. Among other things, Mayor Ghassali reversed the position of the Mayor’s office with respect to the Eruv and revoked the permission for Rabbi Steinmetz to put up lechis in Montvale.

67. Mayor Ghassali has stated that “lechis are properly considered devices and are therefore not allowed to be installed on utility poles in Montvale,” under Montvale Ordinance § 58-16 (the “Ordinance”). The Ordinance, entitled “posting notices prohibited,” which is contained in the Chapter of the Montvale Code that is titled and concerns “Litter,” states that “[n]o person shall post or affix any notice, poster or other paper or device calculated to attract the attention of the public to any lamp post, public-utility pole or shade tree, or upon any public structure or building, except as may be authorized or required by law.”

68. Despite Mayor Ghassali's contention otherwise, the Ordinance is facially inapplicable to lechis – which are narrow, plastic PVC pipes affixed to utility poles. The pole attachments at issue here are not a “notice, poster or other paper or device,” are not “calculated to attract the attention of the public,” and are, in any event, “authorized or required by law.” Furthermore, lechis are carefully secured to utility poles and checked each week, so they do not pose a risk of becoming the type of “litter” contemplated by the Ordinance.

69. As a matter of law, neither the Eruv nor the lechis constitute a “notice, poster or other paper or device calculated to attract the attention of the public.” As the Third Circuit Court of Appeals has held, “the eruv serves a purely functional, non-communicative purpose,” and does not “communicate any idea or message.” *See Tenaflly Eruv Ass’n v. Borough of Tenaflly*, 309 F.3d 144, 162, 164 (3d Cir. 2002), *cert. denied* 539 U.S. 942 (2003); *see also East End Eruv Ass’n v. Town of Southampton, et al.*, No. 14-21124, 2015 WL 4160461 (Sup. Ct. Suffolk Cty., June 30, 2015) (holding, *inter alia*, that lechis are not “signs” for purposes of township sign ordinances, as they “are not discernable to the community, [which] establishes that lechis do not display a message or delineation, and, thus, do not come within the ambit of the Sign Ordinance.”). The Second Circuit Court of Appeals, in accord, found that lechis are “nearly invisible” and contain no “overtly religious features that would distinguish them to a casual observer as any different from strips of material that might be attached to utility poles for secular purposes.” *Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, 778 F.3d 390, 395 (2d Cir. 2015).

70. In fact, there are other plastic PVC and metal pipes, indistinguishable from the lechis at issue that have been up on utility poles throughout the Borough for years. Several



illustrative examples of plastic PVC and metal pipes on Montvale's utility poles are annexed hereto as Exhibit I.

71. Additionally, Montvale has, upon information and belief, not enforced the inapplicable "posting" or "device" ordinance with any consistency or regularity. Several illustrative examples—including an advertisement affixed to a utility pole in Montvale, a parking sign attached to a utility pole in Montvale, and a mailbox attached to a utility pole in Montvale—are annexed hereto as Exhibit J.

72. In a transparent effort to address this selective enforcement after the fact, Mayor Ghassali issued a public plea to Montvale residents on Facebook that "no Garage Sale signs [are] allowed on utility poles" in Montvale. On information and belief, Mayor Ghassali deleted his post when members of the public – including an 18-year resident of Montvale – responded by questioning the timing and motivations of the "request," as follows:

- *"Really? In the past 18 years that I have lived in town, a plethora of garage sale signs have always been posted on utility poles. Now, all of a sudden they are either not allowed or a code is being enforced that never was in the past. Interesting."*
- "Bottom line - 2 words - religious intolerance."
- "It's selective enforcement all of a sudden because people are afraid of Hasidic Jews buying property here in town. It IS obvious, despite what people are claiming to be simple 'code enforcement.'"
- "I am curious why Montvale is now seeking to enforce its no sign ordinance so 'religiously'. Has Montvale always done this or is it coincidentally timed with the express concerns of Montvale and Mahwah residents about orthodox Jews moving into the community and attaching eruvs to the utility poles[?]"

A printout of Mayor Ghasalli's now-deleted Facebook "post" is annexed hereto as Exhibit K.

73. As a result of Montvale's unlawful acts of interference and obstruction, Plaintiffs have not been able to install any lechis in Montvale. If they are unable to complete the further expansion of the Eruv, with each passing week, community members are being deprived of the ability to fully and freely practice their religion on the Sabbath, constituting an ongoing, irreparable injury.

#### IV. ERUVIN HAVE BEEN UNIVERSALLY UPHOLD BY THE COURTS.

74. This is not the first time that the creation of an eruv has been challenged by a township or borough in the face of religious animus. Every court to have considered the matter, including the Third Circuit, has determined that the creation of an eruv, including through the utilization of public utility poles for the attachment of lechis, is a reasonable accommodation of religious practice under the Free Exercise Clause. *See Tenaflly Eruv Ass'n*, 309 F.3d at 176; *see also ACLU of N.J. v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987); *Smith v. Cmty Bd. No. 14*, 128 Misc. 2d 944, 946-48 (Sup. Ct. Queens Cnty. 1985), *aff'd*, 133 A.D.2d 79 (N.Y. App. Div. 2d Dep't 1987).

75. Following *Tenaflly*, there was a multi-year litigation against the municipalities of Westhampton Beach, Quogue, and Southampton, NY. The New York state and federal courts, including the Second Circuit Court of Appeals, repeatedly ruled in favor of the creation of an eruv, finding, among other things, that the creation of an eruv is a constitutional exercise of religious freedoms and a "[n]eutral accommodation of religious practice," (*see Westhampton Beach*, 778 F.3d at 395); that utility companies have the authority to enter into contracts for the attachment of lechis to poles (*see Verizon New York, Inc., et al. v. The Village of Westhampton Beach, et al.*, 11-cv-00252, 2014 WL 2711846 (E.D.N.Y. Jun. 16, 2014)); and that lechis are not signs for the purpose of town sign ordinances, and municipalities have affirmative duties to accommodate religious uses of utility poles (*see Town of Southampton*, 2015 WL 4160461).

FIRST CLAIM FOR RELIEF

(U.S. Const.)

76. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 75 as if fully set forth herein.

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

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

79. The object, motivation, and effect of the actions of Montvale is to suppress the religious practices of the Plaintiffs and certain other Jews who reside in parts of Rockland County, New York. These actions have specifically targeted Jewish citizens, as the inapplicable ordinance that Montvale seeks to invoke to prevent the establishment of the Eruv is not enforced with consistency or regularity.

80. The Eruv presents no aesthetic, safety, traffic, fiscal, or other concern to Montvale. There is, therefore, no compelling State interest in preventing the attachment of lechis to utility poles in Montvale that would form the Eruv.

81. Montvale's actions deny Plaintiffs their rights to freely practice their religion in violation of the First and Fourteenth Amendments to the United States Constitution.

82. As a result of Montvale's actions, Plaintiffs are being irreparably harmed.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983)

83. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 82 as if fully set forth herein.

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

85. Montvale has 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.

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

87. As a result of Montvale's actions, Plaintiffs are being irreparably harmed.

### THIRD CLAIM FOR RELIEF

(42 U.S.C. § 2000cc)

88. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 87 as if fully set forth herein.

89. Montvale's 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).

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

91. Montvale's 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.

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

93. Montvale's actions were motivated by an intent to interfere with Plaintiffs' constitutional and civil rights, and Defendant was at all times aware that it was acting in violation of federal laws.

94. Montvale has chosen to selectively enforce the laws or ordinances under which it seeks to prevent the establishment of the Eruv, in a way that constitutes the imposition or implementation of a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

95. Montvale's actions are in violation of RLUIPA.

#### FOURTH CLAIM FOR RELIEF

(Declaratory Judgment)

96. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 95 as if fully set forth herein.

97. Montvale has taken the position that lechis are a prohibited "device calculated to attract the attention of the public" under Montvale Ordinance § 58-16, a part of the local code that concerns "litter." On that basis, Montvale refuses to lift the Mayor's stop work order and allow completion of the Eruv.

98. Plaintiffs have taken the position that there is no legal or factual basis for Montvale's position.

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

100. Declaratory relief will settle the legal issues between the parties set forth in this Complaint.

101. Plaintiffs thus request a judgment declaring the rights and obligations of the parties, including a declaration that (a) there is no local, state, or federal law that either prohibits the affixation of the lechis to certain utility poles in Montvale, or that requires municipal approval for such attachments, and (b) that the private parties should therefore be free and clear to implement contracts to construct the Eruv.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant as follows:

A. On the First Claim for Relief, permanently enjoining Defendant from taking any actions which would prevent Plaintiffs from affixing lechis to the Utility Company's utility poles or otherwise constructing an Eruv.

B. On the Second and Third Claims for Relief, (1) permanently enjoining Defendant from continuing to engage in the discriminatory practices alleged therein; (2) and permanently enjoining Defendant from taking any actions which would prevent Plaintiffs from affixing lechis to the Utility Company's utility poles or otherwise constructing an 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 Montvale, or that requires municipal approval for such attachments, including a declaration that Montvale Ordinance § 58-16 is unconstitutional as a result of its discriminatory enforcement, and (b) that the private parties should therefore be free and clear to implement contracts to construct the Eruv.

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

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

Dated: New York, New York  
October 18, 2017

/s/ Diane P. Sullivan

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