

Robert G. Sugarman
WEIL GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8184

Peter R. Price
24 Library Avenue
Westhampton Beach, NY 11978
(631) 288-3565

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EAST END ERUV ASSOCIATION, INC.,
MARVIN TENZER, MORRIS TUCHMAN,
CLINTON GREENBAUM, ALAN H.
SCHECHTER, and CAROL SCHECHTER

Plaintiffs,

-against-

THE VILLAGE OF WESTHAMPTON BEACH,
CONRAD TELLER, individually and in his official
capacity as Mayor of the Village of Westhampton
Beach, TONI-JO BIRK, LEOLA FARRELL, JOAN
S. LEVAN, HANK TUCKER, each individually and
in their official capacities as Trustees of the Village
of Westhampton Beach, THE VILLAGE OF
QUOGUE, PETER SARTORIUS, individually and
in his official capacity as Mayor of the Village of
Quogue, RANDY CARDO, JEANETTE OBSER,
KIMBERLEY PAYNE, and TED NECARSULMER,
each individually and in their official capacities as
Trustees of the Village of Quogue, THE TOWN OF
SOUTHAMPTON, ANNA THRONE-HOLST,
individually and in her official capacity as Supervisor
of the Town of Southampton, NANCY S.
GRABOSKI, CHRISTOPHER R. NUZZI, JAMES
W. MALONE, BRIDGET FLEMING, each
individually and in their official capacities as
members of the Town Council of the Town of
Southampton

Defendants.

COMPLAINT

Plaintiffs, East End Eruv Association, Inc. (“EEEE”), Marvin Tenzer, Morris Tuchman, Clinton Greenbaum, Alan Schechter, and Carol Schechter (collectively, “Plaintiffs”) by their attorneys, Weil, Gotshal & Manges LLP, allege for their Complaint herein, as follows:

INTRODUCTION

1. This action arises from the actions of The Village of Westhampton Beach, Conrad Teller, Toni-Jo Birk, Leola Farrell, Joan S. Levan, Hank Tucker, the Village of Quogue, Peter Sartorius, Randy Cardo, Jeanette Obser, Kimberley Payne, Ted Necarsulmer, the Town of Southampton, Anna Throne-Holst, Nancy S. Graboski, Christopher R. Nuzzi, James W. Malone, and Bridget Fleming (collectively, the “Defendants”), which constitute intentional deprivation of and interference with Plaintiffs’ rights under the United States Constitution and statutes, and private contracts entered into between EEEA and independent third parties.

2. For two years Plaintiffs and other Jewish residents of Suffolk County have sought to establish an eruv in Westhampton Beach, part of Quogue, and part of Southampton that would allow persons of the Jewish faith with certain sincerely held religious beliefs to carry or push objects from place to place within a symbolic unbroken area during the Sabbath and on Yom Kippur (the “Eruv”). There are hundreds of eruvs 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 in the public domain on the Sabbath and Yom Kippur. As a result, persons who are in need of wheelchairs and men or women with small children or with relatives in need of wheelchairs cannot attend Sabbath services or go to the park or to a friend’s house. Likewise, people are not permitted to carry items such as books, food, house keys, personal identification, or reading glasses on those days outside of their homes. In

addition, establishment of an eruv in a community is a “mitzvah” (a commandment) upon Jews in that it fosters observance of the Jewish Sabbath.

4. Defendants unlawfully have prevented Plaintiffs from establishing the Eruv by taking the insupportable and incorrect positions in official written communications to Verizon New York, Inc. (“Verizon”) and the Long Island Power Authority (“LIPA”) that local laws prohibit the establishment of the Eruv and that, in any event, village approval is required for such an undertaking, by taking similar positions and otherwise publicly opposing the project at village meetings and in the press, and by unlawfully interfering with Plaintiffs’ private contracts with Verizon and LIPA that were entered into for the purpose of establishing the Eruv. Indeed, upon information and belief, Defendants have instructed their police officers to prevent the construction of the Eruv if it is sought to be established.

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

6. Accordingly, Plaintiffs bring this action to obtain: (a) a declaration that (i) there is no basis for Defendants’ positions that local laws prohibit the establishment of the Eruv or that village approval is required for the construction of the Eruv, and (ii) that the private third parties should therefore be free and clear to implement the contracts to permit construction of the Eruv; (b) an order preliminarily and permanently enjoining Defendants from taking actions which would prevent the Plaintiffs from establishing and maintaining the Eruv, from continuing to engage in discriminatory practices, from engaging in their conspiracy to interfere with Plaintiffs’ constitutional and civil rights, and from tortiously interfering with Plaintiffs’

contracts; (c) an order awarding compensatory and punitive damages and attorneys' fees to Plaintiffs, in amounts to be established at trial; and (d) for such other relief as the Court deems appropriate.

JURISDICTION AND VENUE

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

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

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

THE PARTIES

10. Plaintiff EEEA is a not-for-profit corporation duly formed under New York law, with an address at 1775 Broadway, Suite 608, New York, New York, 10019.

11. Plaintiff Marvin Tenzer ("Tenzer") is an individual living in Westhampton Beach and New York, New York. He is President of EEEA.

12. Plaintiff Morris Tuchman ("Tuchman") is an individual living in Westhampton Beach and New York, New York. He is President of the Hampton Synagogue.

13. Plaintiff Clinton Greenbaum ("Greenbaum") is an individual living in Westhampton Beach, New York.

14. Plaintiff Alan Schechter ("Alan Schechter") is an individual living in Westhampton Beach and Queens, New York.

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

16. Defendant Village of Westhampton Beach (“Westhampton Beach”) is an incorporated village in Suffolk County, New York.

17. Defendant Conrad Teller (“Mayor Teller”) is the Mayor of Westhampton Beach.

18. Defendant Toni-Jo Birk (“Trustee Birk”) is a member of the Board of Trustees of the Village of Westhampton Beach.

19. Defendant Leola Farrell (“Trustee Farrell”) is a member of the Board of Trustees of the Village of Westhampton Beach.

20. Defendant Joan S. Levan (“Trustee Levan”) is a member of the Board of Trustees of the Village of Westhampton Beach.

21. Defendant Hank Tucker (“Trustee Tucker”) is a member of the Board of Trustees of the Village of Westhampton Beach. (Westhampton Beach, Mayor Teller, and Trustees Birk, Farrell, Levan, and Tucker are collectively referred to as the “Westhampton Beach Defendants”)

22. Defendant Village of Quogue (“Quogue”) is an incorporated village in Suffolk County, New York.

23. Defendant Peter Sartorius (“Mayor Sartorius”) is the Mayor of Quogue.

24. Defendant Randy Cardo (“Trustee Cardo”) is a member of the Board of Trustees of the Village of Quogue.

25. Defendant Jeanette Obser (“Trustee Obser”) is a member of the Board of Trustees of the Village of Quogue.

26. Defendant Kimberley Payne (“Trustee Payne”) is a member of the Board of Trustees of the Village of Quogue.

27. Defendant Ted Necarsulmer (“Trustee Necarsulmer”) is a member of the Board of Trustees of the Village of Quogue. (Quogue, Mayor Sartorius, and Trustees Cardo, Obser, Payne, and Necarsulmer are collectively referred to as the “Quogue Defendants”)

28. Defendant Town of Southampton (“Southampton,” and together with Westhampton Beach and Quogue, the “municipalities”) is a town in Suffolk County, New York.

29. Defendant Anna Throne-Holst (“Supervisor Throne-Holst”) is the Supervisor of the Town of Southampton.

30. Defendant Nancy S. Graboski (“Councilmember Graboski”) is a member of the Town Council of the Town of Southampton.

31. Defendant Christopher R. Nuzzi (“Councilmember Nuzzi”) is a member of the Town Council of the Town of Southampton.

32. Defendant James W. Malone (“Councilmember Malone”) is a member of the Town Council of the Town of Southampton.

33. Defendant Bridget Fleming (“Councilmember Fleming”) is a member of the Town Council of the Town of Southampton. (Defendants Southampton, Supervisor Throne-Holst, and Councilmembers Graboski, Nuzzi, Malone, and Fleming are collectively referred to as the “Southampton Defendants”)

FACTUAL ALLEGATIONS

I. Plaintiffs Seek to Establish the Eruv

34. An eruv, under Jewish law, is a largely invisible unbroken demarcation of an area. Eruvs have existed under Jewish law for more than two thousand years. The

demarcation of the eruv boundary is created by, among other things, using existing telephone or utility poles and wires and small wooden strips attached to the sides of certain of the poles (“lechis”). The lechis proposed to be used in the Eruv at issue in this community are smooth, sanded, soft wood strips that are no larger than 1’’x4’’x40’’ and would be affixed vertically to the poles. A drawing of a lechi is attached hereto as Exhibit A.

35. The designation of an eruv allows Jews with certain sincerely held religious beliefs to carry or push objects from place to place within the area on the Sabbath and Yom Kippur. Thus, within the boundaries of an eruv, these Jews may carry books, food, house keys, identification, reading glasses or other items, and push baby carriages, strollers and wheelchairs to synagogue, to other homes, or to the park or playground.

36. Many Jews have the sincerely held religious belief that, without an eruv, they are not permitted to push or carry objects in the public domain on the Sabbath and Yom Kippur. As a result, men or women with small children or relatives confined to wheelchairs cannot attend Sabbath services or go to the park or to a friend’s house unless, in limited circumstances, they choose to hire non-Jewish individuals to push their strollers and wheelchairs. Tenzer, and the Schechters face such a dilemma with their young grandchildren. Tuchman faces this dilemma with his ten grandchildren, three of whom are less than two years old, and his elderly father, who is confined to a wheelchair. Moreover, as noted earlier, establishment of an eruv, where possible under Jewish law, is incumbent upon observant Jews.

37. A multitude of eruvs have been established nationwide and worldwide. These include: Huntington, Stony Brook, Patchogue, East Northport, Merrick, North Bellmore, 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; Englewood, Fort Lee, Teaneck, Edison, Long Branch and Tenafly, New Jersey; Hartford, Stamford and New Haven, Connecticut; Beverly Hills, California; Philadelphia, Pennsylvania; Baltimore, Maryland; Charleston, South Carolina; Las Vegas, Nevada; Miami, Ft. Lauderdale and Jacksonville, Florida; and Washington D.C.

38. On the occasion of the inauguration of the first eruv in Washington, DC, President George H.W. Bush wrote a letter to the Jewish community of Washington in which he stated: "... there is a long tradition linking the establishment of eruvim with the secular authorities in the great political centers where Jewish communities have lived. ... Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. G-d bless you." *See* 1990 Letter from George Bush to Congregation Keshet Israel, attached hereto as Exhibit B.

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

40. The issue regarding the 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 eruvs, which have significant Orthodox 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.”

41. During the May 2008 meeting, Mayor Teller made a motion to add to the agenda a resolution to approve the Eruv petition. The motion was defeated by a 3-2 vote of the Trustees.

42. 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.” 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 C.

43. 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.

44. Negative sentiment grew so strong throughout the community that Former Westhampton Beach Deputy Mayor Tim Laube, a long time resident of Westhampton Beach, moved out of the village in 2008, citing “threatening phone calls” he had received during his campaign from village residents who “accused [him] of being a ‘Jew-lover,’ a ‘kike-lover,’” and that he would “burn in hell.” Karl Grossman, Former Deputy Mayor Tired of Anti-Semitism, Leaving Westhampton Beach, The Southampton Press, August 11, 2008, attached hereto as Exhibit D.

45. 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 E.

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

47. Subsequently, the Eruv proponents sought to pursue the establishment of the Eruv in the Municipalities through private contracts with Verizon and LIPA. This pursuit was undertaken after research revealed that no local, county, or state law or ordinance would prohibit the construction of an Eruv in Westhampton Beach and parts of Quogue and Southampton.

48. In 2010, EEEA members approached Verizon and LIPA and requested permission to affix lechis to Verizon’s and LIPA’s poles in order to complete an Eruv that would encompass Westhampton Beach and parts of Quogue and Southampton. Verizon and LIPA agreed to grant permission.

49. In or about May 2010, EEEA and Verizon entered into an Eruv-Lechi Stave Agreement, attached hereto as Exhibit F, whereby Verizon agreed to allow EEEA to affix lechis to Verizon’s poles to complete an Eruv.

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

51. Upon entering the license agreements with Verizon and LIPA, EEEA had fulfilled its legal obligations to establish an Eruv, as there is no legal requirement to obtain the consent of the Municipalities.

II. Government Officials' Interference.

A. Westhampton Beach Opposition

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

53. The opposition of the Westhampton Beach Defendants began even before EEEA entered into its contracts with Verizon and LIPA. Since early 2009, the Westhampton Beach Trustees have asserted the insupportable position that village approval was necessary for the establishment of the Eruv. On or about May 18, 2009, Westhampton Beach Trustees sent a letter ("Westhampton Beach Letter") to Verizon counsel William Balcerski ("Balcerski"), Mayor Teller, and Village Attorney Hermon J. Bishop, which advised Verizon of the village's position that approval was required for the establishment of an Eruv. Specifically, it stated:

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

Westhampton Beach Letter, attached hereto as Exhibit H.

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

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

55. Moreover, no such local ordinance has been enforced in Westhampton Beach, and officials have permitted the placement of signs and other objects on utility poles throughout the community. These objects are larger and more visible than the lechis would be, and include “Tag Sale” signs at various locations such as South Road and Oneck Lane, Tanners Neck and South Country Road, and Mill Road and Sunset Avenue, among others; a “Garage Sale” sign at Tanners Neck and South Country Road; a “Fall Clean-ups” advertisement at South Country Road and Apaucuck Point Lane; and a “Yard Sale” sign at South Country Road and Apaucuck Point Lane. Additionally, Westhampton Beach has allowed large banners to be strung across village streets, including a large St. Patrick’s Day banner over Main Street and several banners advertising the Westhampton Beach High School play “Is He Dead,” also strung across Main Street and on poles at Montauk Highway and Mill Road. *See* Selected Westhampton Beach Sign Photos, attached hereto as Exhibit J.

56. Although Plaintiffs did not receive the May 18, 2009 letter until 2010, on October 19, 2008, a letter from then counsel to the Hampton Synagogue was sent to the Westhampton Beach Defendants, thereby putting them on notice of their violations of Plaintiffs’ civil rights. *See* October 19, 2008 Letter from Robert Sugarman to Westhampton Beach Mayor and Trustees, attached hereto as Exhibit K.

57. Nonetheless, the village’s opposition to the Eruv and its commitment to the insupportable position that village approval was necessary continued, and has been further

evidenced by the public statements of village officials. Recently, Mayor Teller stated that he is opposed to the establishment of the Eruv because “it was dividing the community, it was disrupting the good quality of community life that we have here, the acceptance of all.” Will James, Bid For an Eruv is Back on the Table, The Southampton Press, September 2, 2010, attached hereto as Exhibit L.

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

59. In June 2010, Trustee Birk stated that her position with respect to the Eruv had not changed and that she continues to oppose it. Hallie D. Martin, Toni-Jo Birk Seeks Third Term in Westhampton Beach, The Southampton Press, June 16, 2010.

60. Trustee Farrell has stated that she would not support the creation of an Eruv in Westhampton Beach and that “the community has made it clear that it opposes the idea.” Hallie D. Martin, Sue Farrell Makes First Bid for Public Office in Westhampton Beach, The Southampton Press, June 16, 2010.

61. Trustee Levan has stated that “we were elected by the residents of this village, and whatever we do, we do for the best interests of our residents. I think our residents were very clear that its not what they want in the village. Very clear.” Whopper of the Week, On the Beach Blog, September 2, 2010.

62. Trustee Tucker, who ran an unsuccessful mayoral campaign against Mayor Teller in 2010 has stated that “the Eruv will never happen on my watch.” Hallie D. Martin, Hank Tucker Seeks to Unseat Mayor in Westhampton Beach, The Southampton Press,

June 16, 2010. A June 2009 campaign flyer bearing both Trustee Levan's and Trustee Tucker's names stated, "[w]e will vigorously oppose any effort to obtain an eruv proclamation from any government official or entity outside of our Village. We will continue to make certain you have an opportunity to express your views, and will defend your right to oppose the eruv." Levan and Tucker Campaign Flyer, June 2009, attached hereto as Exhibit N.

63. Mayor Teller has said that his municipality must still sign off on the Eruv for it to become a reality, stating, "we will be speaking with our attorney," Will James, Westhampton Beach Eruv Proposal Moves Forward, The Southampton Press, October 27, 2010, attached hereto as Exhibit O, and that "he would abide by the wishes of his constituents and oppose the Eruv." Jennifer Barrios, Nonprofit Gets Preliminary Oks For Hamptons Eruv, Newsday, October 31, 2010, attached hereto as Exhibit E.

64. Thus, the Westhampton Beach Defendants have made clear that they oppose and would reject any application for the establishment of an Eruv in Westhampton Beach.

B. Quogue Opposition

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

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

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

Quogue Letter, attached hereto as Exhibit P.

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

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

68. Indeed, local officials have permitted signs and other objects to be placed on utility poles throughout Quogue, including a “school’s open” flyer at Quogue Street and Montauk Highway, a series of 3 light reflectors at Montauk Highway and Foster Road, and a sign advertising the Quogue Fire Department’s Annual Pancake Breakfast at Montauk Highway and Jessup Lane. *See* Selected Photos of Quogue Signs, attached hereto as Exhibit R.

69. Thereafter, by letter dated October 26, 2010 and sent to Mayor Sartorius, Plaintiff Marvin Tenzer, Mayor Teller, and LIPA counsel Michele Pincus, Balcerski stated that Verizon does not object to the attachment of lechis to Verizon’s poles and invited a response from counsel.

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

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

71. Thereafter, Quogue hired Special Counsel Marci Hamilton, who, along with Village Attorney Richard DePetris, authored a memorandum sent to Mayor Sartorius, which expressed the opinion that “permission from the Village Board of Trustees is required for the attachment of lechis to utility poles located on Village streets for the purpose of establishing an eruv.” November 19, 2010 Memorandum from Marci Hamilton and Richard DePetris (“Counsel’s Memo”) at 4, attached hereto as Exhibit T.

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

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

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

Constitution and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). On information and belief, this letter was received by Mayor Sartorius.

75. In a recent letter, Mayor Sartorius stated that there are laws that prohibit the attachment of lechis to utility poles and that he will “enforce them against Verizon and LIPA as the owners of the poles,” and that such laws provide for fines of up to \$1000 per day.

December 17, 2010 Letter from Mayor Sartorius to Balcerski, attached hereto as Exhibit W.

76. Thus, the Quogue Defendants have made clear that they oppose, and would reject any application for the establishment of, an Eruv in Quogue.

C. Southampton Opposition

77. Although a spokeswoman for Southampton 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, Jennifer Barrios, Nonprofit Gets Preliminary OKs for Hamptons Eruv, Newsday, October 31, 2010, attached hereto as Exhibit E, Southampton Attorney Michael C. Sordi nevertheless wrote a letter to Balcerski dated November 16, 2010, copying Michele Pincus, Mayor Sartorius, Mayor Teller, and EEEA, advising him of the Town’s position that the proposed Eruv would be “in contravention of our local laws.” Sordi Letter, attached hereto as Exhibit X. Citing § 330-203(B) of the Code of the Town of Southampton prohibiting the placement of signs throughout the town, Sordi stated:

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

Sordi Letter at 2.

78. The sign law, on its face, is inapplicable to the lechis in question and, in any event, is not enforced in Southampton. Indeed, signs and objects that are larger and more

visible than the lechis would be have been permitted throughout Southampton, including a large Santa Claus and reindeer display recently attached to poles and spread across a public street. See Christmas Display Photo, attached hereto as Exhibit Y.

79. In response, 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 Z. As a result of their later receipt of this letter, Defendants were put on notice of their violations of Plaintiffs' constitutional and civil rights. There has been no response to this letter.

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

81. Thus, the Southampton Defendants have made clear that they oppose, and would reject any application for the establishment of, an Eruv in Southampton.

III. Plaintiffs Remain Thwarted in Their Ability to Establish an Eruv

82. Upon information and belief, certain Defendants have instructed their police departments not to permit the attachment of lechis, or to the extent the lechis are attached,

to take them down.

83. Upon information and belief, no similar instruction has been given with respect to any of the other attachments to the various utility poles at issue.

84. On October 22, 2010, LIPA spokeswoman Vanessa Bard-Streeter stated that LIPA had “been put on notice by some of the affected municipalities that the attachment of the Eruv would violate local zoning codes” and that LIPA is “currently looking into this further.” Jennifer Barrios, Nonprofit Gets Preliminary Oks For Hamptons Eruv, Newsday, October 31, 2010. LIPA has not implemented the License Agreement as a result of the unsupported position taken by the Defendants.

85. As a result of the aforementioned correspondence from the villages, Verizon has not issued the required license to EEEA under the Eruv Lechi-Stave Agreement.

86. EEEA has therefore been unable to establish the Eruv in the Municipalities. As a result, Plaintiffs have been and continue to be irreparably harmed.

FIRST CLAIM FOR RELIEF

(U.S. Const.)

By all Plaintiffs against all Defendants

87. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 86 as if fully set forth herein.

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

89. Without an Eruv in Westhampton Beach and parts of Quogue and Southampton, plaintiffs who have small children and other Orthodox 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. Moreover, they cannot comply with the “mitzvah” of establishing an eruv.

90. The object, motivation, and effect of the actions of the Defendants is to suppress the religious practices of the plaintiffs and other Orthodox Jews who reside in Westhampton Beach and parts of Quogue and Southampton. These actions have specifically targeted Jewish citizens, as the laws that the Defendants seek to invoke to prevent the establishment of the Eruv is not enforced against citizens of other faiths.

91. The Eruv, which would be made up of existing overhead telephone wires and wooden 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.

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

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

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 2000cc)

By all Plaintiffs against all Defendants

94. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 93 as if fully set forth herein.

95. 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).

96. Defendants' actions substantially burden the religious exercise of Orthodox Jews who wish freely to 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.

97. 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.

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

99. Because Defendants do not enforce any of the laws or ordinances under which they seek to prevent the establishment of the Eruv, Defendants' actions also constitute the imposition or implementation of a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

100. Defendants actions are in violation of RLUIPA.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment)

By all Plaintiffs against all Defendants

101. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 100 as if fully set forth herein.

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

103. 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.

104. Defendants have taken the position that local laws prohibit the construction of an Eruv and that, in any event, approval of the Municipalities is required for the construction of the Eruv.

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

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

107. As alleged herein above, there is no local, county, or state law or ordinance which would prohibit the construction of an Eruv in Westhampton Beach and parts of Quogue and Southampton.

108. Similarly, there is no local, county, or state law or ordinance which would require the approval of any governmental entity for the placement of Eruv materials on privately owned telephone poles in Westhampton Beach and parts of Quogue and Southampton.

109. Accordingly, the Defendants' position is unfounded and insupportable and was not taken pursuant to any neutral law of general applicability.

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

111. EEEA thus requests a judgment declaring the rights and obligations of the parties under the local laws of the Municipalities, including a declaration that (a) there is no basis for Defendants' legal position that either Chapter 158 of the Quogue Code or §330-203(B) of the Code of the Town of Southampton prohibits the construction of an Eruv, (b) there is no basis for

Defendants' legal position that the approval of the Municipalities is required for the construction of the Eruv, and (c) 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)

By all Plaintiffs against all Defendants

112. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 111 as if more fully set forth herein.

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

114. 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. Section 1983.

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

116. As a result of the actions of the defendants plaintiffs will be irreparably harmed and will suffer damages and are entitled to recover their attorney's fees.

FIFTH CLAIM FOR RELIEF

(42 U.S.C. § 1985)

By all Plaintiffs against all Defendants

117. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 116 as if fully set forth herein.

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

119. Defendants have conspired to discriminate against plaintiffs because of their religion and religious practices for the purpose of depriving plaintiffs of equal privileges and immunities under the Constitution.

120. Defendants have overtly acted under color of state law to prevent the construction of an Eruv in Westhampton Beach and parts of Quogue, and Southampton.

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

122. As a result, plaintiffs have been deprived of exercising their rights under the First and Fourteenth Amendments to the United States Constitution freely to practice their religion.

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

SIXTH CLAIM FOR RELIEF

(Tortious Interference with Contract)

By EEEA against all Defendants

124. EEEA repeats and realleges each and every allegation of paragraphs 1 through 123 as if fully set forth herein.

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

126. From at least May 2010, EEEA was a party to a valid contract, namely the Eruv-Lechi Stave Agreement, with Verizon.

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

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

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

130. Throughout these communications with Verizon and LIPA, and in furtherance of their intent to procure the breach of Plaintiffs' agreements, Defendants took the position that local laws prohibited the construction of the Eruv and that, in any event, their approval was required for the establishment and maintenance of an Eruv.

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

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

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

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

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

A. On the First Claim For Relief, preliminarily and permanently enjoining defendants from taking any actions which would prevent the plaintiffs from constructing and maintaining the Eruv.

B. On the Second, Fourth, and Fifth Claims For Relief, (1) preliminarily and permanently enjoining defendants from continuing to engage in the discriminatory practices alleged therein; (2) preliminarily and permanently enjoining defendants from taking any actions which would prevent the plaintiffs from constructing and maintaining the Eruv; and (3) awarding compensatory and punitive damages in an amount to be established at trial.

C. On the Third Claim For relief, entering a declaratory judgment, pursuant to 28 U.S.C. § 2201, that (1) there is no basis for Defendants' legal position that either Chapter 158 of the Quogue Code or §330-203(B) of the Code of the Town of Southampton prohibits the construction of an Eruv, (2) there is no basis for Defendants' legal position that the approval of

the Trustees is required for the construction of the Eruv, and (3) Verizon and LIPA should therefore be free and clear to enter into contracts to construct the Eruv.

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

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

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

Dated: New York, New York
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Robert G. Sugarman
WEIL GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8184

Attorneys for Plaintiffs

Of Counsel:
Peter R. Price
24 Library Avenue
Westhampton Beach, NY 11978
(631) 288-3565