EXHIBIT J

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Yehudah L. Buchweitz

BY E-MAIL

July 26, 2017

Mayor William C. Laforet
Richard J. Martel Municipal Building Complex
475 Corporate Dr.
Mahwah, NJ 07430
wlaforet@mahwahtwp.org

Re: *Mahwah Eruv, Your File No. MA-75-28*

Dear Mayor Laforet:

We represent a not-for-profit company being incorporated for the purpose of coordinating efforts to expand an eruv in parts of the Township of Mahwah (the "Township"), and surrounding areas. I write in response to the July 21, 2017 letter from Michael J. Kelly, Administrative Officer, Department of Land Use and Property Maintenance, Township of Mahwah, to the South Monsey Eruv Fund, in which the Township threatens to impede my clients' constitutional and contractual rights by demanding the removal of certain lechis – which are improperly deemed to be "signs" in the face of settled law to the contrary – by August 4, 2017.

For your reference, an eruv is a virtually invisible unbroken demarcation of an area which may be established by the attachment of wooden or plastic strips, called "lechis," to telephone or utility poles. Jewish law prohibits the carrying or pushing of objects from a private domain, such as a home, to the public domain on the Sabbath and Yom Kippur. Based on the sincerely-held religious belief of certain observant Jews, without an eruv, they are unable to leave their homes on these days to attend services at synagogue or be with family and friends if they are, for example, pushing a baby stroller or wheelchair, or carrying things such as prayer books, keys, or medications. Thus, absent an eruv, certain observant Jews are deprived of the opportunity to participate in mandatory communal prayers and observances. Accordingly, a multitude of eruvin (the plural of "eruv") have been established statewide and nationwide.[1]

[1] 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, Maplewood, Paramus, Passaic-Clifton, Rutherford, Teaneck, Edison, West Orange, 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,

Any legal question regarding eruvin has been conclusively settled, as *every* court to have considered the matter, including the Third Circuit Court of Appeals (governing New Jersey), 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 Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 176 (3d Cir. 2002); *ACLU of N.J. v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987). Following its successful *pro bono* representation of eruv proponents in *Tenafly*, our law firm represented an eruv association in multi-year litigation against the municipalities of Westhampton Beach, Quogue, and Southampton, NY. There, New York state and federal courts, including the Second Circuit Court of Appeals, repeatedly ruled in favor of the eruv association, finding, among other things, that municipal non-interference with the creation of an eruv is a constitutional exercise of religious freedoms and "[n]eutral accommodation of religious practice," (*see Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, 778 F.3d 390, 395 (2d Cir. 2015); 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 East End Eruv Ass'n v. Town of Southampton, et al*., No. 14-21124, 2015 WL 4160461 (Sup. Ct. Suffolk Cty., June 30, 2015)); and 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)). An eruv has now been up in these municipalities for almost two years, without further dispute or controversy.

In the days following the Second Circuit's unanimous decision in January 2015 in a case that I argued, then-mayor of Montvale, New Jersey, Mayor Fyfe, issued a public statement recognizing that an eruv is constructed "so as to be unobtrusive and nearly invisible to the general public," and that it "has been

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Holliswood, Jamaica Estates, New Rochelle, Scarsdale, White Plains, Albany, and Manhattan, 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, eruvin have been established in Plano and Austin, Texas; Scottsdale, Arizona; and Omaha, Nebraska. On the occasion of the inauguration of the first eruv in Washington, D.C., President George H.W. Bush wrote a letter to the Jewish community of Washington in which he stated: "there is a long tradition linking the establishment of eruvim with the secular authorities in the great political centers where Jewish communities have lived. . . . Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. G-d bless you." *See* 1990 Letter from George Bush to Congregation Kesher Israel, attached hereto as Exhibit A.

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, attached hereto as Exhibit B.

Over the past months, therefore, my clients have sought to expand an existing eruv to parts of Mahwah, Upper Saddle River, and Montvale by attaching lechis to utility poles pursuant to valid licenses negotiated between community members using the eruv and Orange and Rockland Utilities, Inc. ("O&R"). As you may know, Mahwah officials were aware of and voiced no opposition to the Jewish community's efforts to create the eruv, and Mahwah police worked collaboratively with Rabbi Chaim Steinmetz, who in turn complied with all paperwork and safety measures that were requested. Indeed, pursuant to a written Agreement between The Township of Mahwah and the Vaad HaEruv, the Mahwah Police Department issued invoices to Rabbi Steinmetz in the aggregate amount of almost $2,000 for the hours of work that Mahwah Police officers spent supervising the installation of the eruv. As shown in Exhibit C, attached hereto, Mahwah Police have marked these invoices "paid in full."

Indeed, last week, you issued a public statement recognizing that the Board of Public Utilities (BPU) "has granted permission" for my clients to place lechis on O&R utility poles. *See* "Message from the Mayor – Eruv Update" (July 19, 2017), attached hereto as Exhibit D. You explained that "because of several Federal Law suits" – *i.e.*, those described above – "both BPU and O&R are obligated to allow these ERUV markings, but they have NO OBLIGATION to notify the municipality." *Id.* (emphasis in original). And, as you noted, "[a]dvice by our attorney is that we cannot do anything about the installation of these plastic pipes on these utility poles establishing a[n] ERUV." *Id.*

In light of your recent public statement, which acknowledged the settled legal principles outlined above, we were quite surprised and dismayed to receive the Township's July 21, 2017 letter. We have reviewed the sole local ordinance cited in that letter as purportedly restricting my clients' exercise of their civil liberties. It does nothing of the kind.

First, a lechi is not a "device for visual communication" and thus does not constitute a "sign" under Township of Mahwah Zoning Ordinance Section 24-2.2, cited in Mr. Kelly's letter. As the Third Circuit expressly held in *Tenafly,* lechis "serve a purely functional, *non-communicative* purpose." *Tenafly,* 309 F.3d. at 162 (emphasis added). In *Southampton,* a New York state court likewise held that lechis "do not display a message or delineation," and therefore cannot be "signs" for purposes of town sign ordinances. *See* 2015 WL 4160461, at *5. Because a lechi is not a "sign," it is not prohibited by Township of Mahwah Zoning Ordinance Section 24-6.8(F)(3)(c), which solely relates to "signs placed on trees, rocks or utility poles." This is now well-settled law, and any position to the contrary is frivolous.

Second, even if the Ordinance did apply – and it plainly does not – we are already aware that the Township has selectively enforced the Ordinance. *See* Exhibit E (picture of house number "150" sign on a pole at 150 Airmont Ave, Mahwah, NJ, 07430). Such selective enforcement runs headlong into *Tenafly*, which held that the borough's selective, discretionary application of a local ordinance violated the neutrality principle of the Free Exercise Clause, because it "devalue[d] . . . Jewish reasons for posting items on utility poles by judging them to be of lesser import than nonreligious reasons and thus single[d] out the plaintiffs' religiously motivated conduct for discriminatory treatment." 309 F.3d at 168 (citing, *inter alia*, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993).

It is distressingly clear to us that the Township's take-down demand stems from opposition from a vocal minority of the community that is clearly based on rank religious animus. As you are likely aware, a vicious discriminatory campaign against the eruv expansion has been launched by residents in both Mahwah and adjacent towns, including the "Petition to Protect the Quality of Our Community in Mahwah." Illustrative examples of the public comments posted on this "Petition" unfortunately speak for themselves:

- "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 they 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."

These ignorant and wildly anti-Semitic public comments are, of course, extremely troubling, and have no place in civilized society. We are also aware of, and deeply concerned about, news reports that certain lechis in Mahwah have been vandalized.[2] Against this backdrop of hatred, any action taken by the Township will be in response to a religious practice—specifically, a religious practice of observant

[2] *See* http://newjersey.news12.com/story/35960811/fight-brews-between-orthodox-community-and-mahwah-residents ("News 12 New Jersey found some [lechis] that seemed to have been vandalized. Pieces of the pipe were torn from the fittings on the utility poles, while other pieces were strewn on the ground.").

Jews. Here, too, the *Tenafly* decision is instructive, if not dispositive, as the Third Circuit held that where a borough's action is directed against a religious group in a manner that is neither neutral nor generally applicable, it must withstand strict scrutiny review. *Tenafly*, 309 F.3d at 165 (citing *Lukumi*, 508 U.S. at 532, 542).

Finally, Mr. Kelly's letter ignores that observant Jews will suffer practical difficulties and hardships each and every week that passes without an eruv, as the elderly, disabled, and families of young children are confined to their homes and thus separated from family members and the rest of the community during the Sabbath. Municipal intransigence in accommodating sincerely-held religious beliefs by obstructing the creation of an eruv can constitute constitutional injury, and has given rise in other cases to claims for violation of, among other things, individuals' First Amendment Free Exercise Clause rights, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq., as well as 42 U.S.C. § 1983. Section 1983 recognizes a private cause of action against any person who, acting under color of state law, deprives another of "any rights, privileges or immunities secured by the Constitution and laws" of the United States. *Monell v. N.Y.C. Dep't of Social Servs.,* 436 U.S. 658 (1978). Such a claim is proper against a municipality when its policies deprive an individual of his or her federal rights, *id.* at 690, and the prevailing party in such an action is entitled to reasonable attorneys' fees. *See* 42 U.S.C. § 1988; *see also Tenafly Eruv Ass'n v. Borough of Tenafly*, 195 Fed. App'x. 93 (3d Cir. 2006) (granting eruv association's motions for attorneys' fees in the aggregate amount of over $400,000, based on law firm rates from the year 2002, which was followed by a settlement by the borough). Moreover, if the Township persists in the demand contained in the July 21 letter, it will also constitute a tortious interference with my clients' valid licenses with O&R under New Jersey state law. At bottom, proceeding any further in this matter will be a costly and assuredly unsuccessful endeavor for the Township.

We greatly appreciate any efforts on your part to learn more about eruvin and would like to work together to resolve any potential dispute prior to our seeking relief from the courts if possible. For all of the reasons cited above, any legal issues associated with eruvin have been conclusively settled by the courts, and we thus reject the Township's demand to remove the lechis from O&R's utility poles. We are available at the earliest possible convenience for you and the Town Council to discuss any remaining questions or concerns the Township has. We reserve all of our client's legal rights.

Sincerely yours,

/s/ Yehudah L. Buchweitz

Yehudah L. Buchweitz

cc: Michael J. Kelly
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