EXHIBIT G

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Yehudah L. Buchweitz

BY E-MAIL

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Philip N. Boggia, Esq.
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Re: *Montvale Eruv*

Dear Mr. Boggia:

As you know, we represent the Bergen Rockland Eruv Association ("BREA"), a not-for-profit organization, and a number of members of the Jewish community who have sought to expand an eruv into a small part of the Borough of Montvale. I write in response to your recent suggestion, in your October 3, 2017 email, that Montvale Ordinance No. 58-16 somehow prohibits the completion of the eruv in Montvale. In your email, you also note that this issue will be listed for discussion on the agenda of the meeting of the Borough's Mayor and Council on October 10, 2017.

Montvale Ordinance No. 58-16 (the "Ordinance") states in its entirety:

> **§ 58-16 Posting notices prohibited.**
> No 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.

The Ordinance, which is entitled and concerns "posting notices," and is contained in the Chapter of the Montvale Code that concerns "Litter," is entirely inapplicable for reasons set out below. 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, the pole attachments in question are carefully secured to the utility poles and checked each week, so they do not pose a risk of becoming the type of "litter" contemplated by the ordinance.

For your reference, an eruv is a virtually invisible unbroken demarcation of an area which may be established through various natural and man-made boundaries, including overhead wires and utility poles. Certain poles and wires are valid portions of the eruv without any action (such as most of route

45 in Montvale), and others require the attachment of wooden or plastic strips, called "*lechis*." 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. Absent an eruv, observant Jews are also deprived of the opportunity to participate in mandatory communal prayers and observances. Therefore, hundreds of *eruvin* (the plural of "eruv") have been established throughout the United States, with 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.

We have reviewed the Ordinance and find that *lechis* do not come close to meeting the definition of a "notice, poster or other paper or device calculated to attract the attention of the public." In an analogous case, *East End Eruv Association v. Town of Southampton*, the Town of Southampton, New York contended that the construction of lechis violated the town's sign ordinance. The Southampton Town Code, § 330-200, *et seq.*, stated that "[n]o sign shall be installed or erected within the Town of Southampton," and defined a sign as:

> Any material, device or structure displaying, or intending to display, one or more messages visually and used for the purpose of bringing such messages to the attention of the public, but excluding any lawful display of merchandise. The term "sign" shall also mean and include any display of one or more of the following:
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> 1. Any letter, numeral, figure, emblem, picture, outline, character, spectacle, delineation, announcement, trademark, or logo; and
> 2. Colored bands, stripes, outlines or delineations displayed for the purpose of commercial identification. § 330-201.

The New York State Supreme Court, Suffolk County, held that the Town of Southampton's interpretation that lechis were "signs" under the Southampton ordinance, was not merely incorrect, but, as a matter of law, "arbitrary, capricious and discriminatory." *East End Eruv Ass'n v. Town of Southampton, et al*., No. 14-21124, 2015 WL 4160461, at *2 (Sup. Ct. Suffolk Cty., June 30, 2015) ("[T]he uncontroverted testimony . . . that lechis are not discernable to the community establishes that lechis do not display a message or delineation and, thus, do not come within the ambit of the Sign Ordinance."). Accordingly, the court overruled the Town's interpretation, calling it "contrary to the language of the law, irrational and unreasonable in that it [did] not comport with the Sign Ordinance's intent." *Id*. at * 6. The Court further held that the municipality in that case abused its discretion when it "ignored its affirmative duty to suggest measures to accommodate" creation of an eruv. *Id*.

Here, it is likewise clear that a lechi does not constitute a "notice, poster or other paper or device calculated to attract the attention of the public," and that the lechis do not fall within the definition of items the Ordinance purports to prohibit. An interpretation otherwise would be as "irrational and unreasonable" as the Town of Southampton's interpretation that was rejected by the court, and does not justify the Borough's failure to accommodate the eruv, let alone its discriminatory interference with completion of the eruv.

The Ordinance is further inapplicable on its face because the lechis are not "calculated to attract the attention of the public." On the contrary, the Third Circuit Court of Appeals (governing New Jersey), has already expressly held that lechis do not communicate any message and are not meant to attract the attention of the public. *See Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002). In *Tenafly*, the Third Circuit noted that lechis are "made of the same hard plastic material as, and nearly identical to, the coverings on ordinary ground wires" and that the average person cannot distinguish lechis from ordinary wire coverings. *Id.* at 152.[1] Thus, the Third Circuit held that "there is no evidence that Orthodox Jews intend or understand the eruv to communicate any idea or message." *Id.* at 164. Rather, an eruv "serves the purely functional purpose of delineating an area within which certain activities are permitted." *Id.* 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). The Court in *Southampton* similarly found that the "lechis 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." *East End Eruv Ass'n v. Town of Southampton, et al*., 2015 WL 4160461, at *5-6 ("Neither drivers nor casual observers would be able to differentiate the poles which have lechis attached from the other poles").

Moreover, and even assuming, *arguendo*, the lechis fall within the language of the Ordinance – which they plainly do not – they are "authorized or required by law." We have provided you with the licenses duly issued by Orange & Rockland, and nothing further is required. This is precisely the arrangement in scores of communities throughout the United States. Any legal question regarding *eruvin* has been conclusively settled, as *every* court to have considered the matter has determined that the creation of an eruv is a reasonable accommodation of religious practice under the Free Exercise Clause. *See Tenafly Eruv Ass'n*, 309 F.3d at 176; *ACLU of N.J. v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987); *Smith v. Community Bd. No. 14*, 128 Misc.2d 944, 491 N.Y.S.2d 584, 586 (N.Y.Sup.Ct.1985) aff'd 133 A.D.2d 79 (2d Dept. 1987).

[1] In fact, there are other plastic PVC pipes, indistinguishable from the lechis at issue that have been up on utility poles throughout the Borough for years. *See* Exhibit A (photographs depicting illustrative examples).

Following its successful *pro bono* representation of eruv proponents in Tenafly, this law firm recently 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, 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 Westhampton Beach*, 778 F.3d at 395); that utility companies have the authority under state law to enter into contracts for the attachment of lechis to poles (*see Verizon New York, Inc., et al. v. Vill. of Westhampton Beach, et al*., 11-cv-00252 (E.D.N.Y. Jun. 16, 2014)); and that lechis are not "signs" or "devices" 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). Specifically, the Court in *Southampton* found that "greater flexibility is required in evaluating an application for a religious use and every effort to accommodate the religious use must be made." *Id.* (collecting cases). Even prior to the enactment of RLUIPA, this "greater flexibility" has been mandated by New Jersey's courts as well, which "have provided broad support for the constitutional guarantees of religious freedom, sometimes in a zoning context." *See, e.g.*, *Burlington Assembly of God v. Zoning Bd. of Adjustment Twp, of Florence,* 570 A.D. 495, 497 (Law Div. 1989) (granting summary judgment to church where township's zoning board "impermissibly denied the right of the church to engage in a protected religious activity" without showing an "overriding governmental interest" justifying that frustration).

In the days following the Second Circuit's unanimous *Westhampton Beach* decision in January 2015,[2] former Mayor Roger 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 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."[3]

As noted above, my clients have a privately negotiated agreement in place with Orange & Rockland, and made appropriate arrangements with the Montvale police, to attach lechis to twenty-seven (27) utility poles in Montvale. Despite this, and despite the settled law set forth above, and in violation of my clients' valid contract and constitutional rights, Mayor Ghassali has admitted, in emails obtained through the Open Public Records Act, that he personally issued a stop work order to prevent completion of the eruv. This effort to block attachment of the lechis is plainly discriminatory on its face, and even more so

[2] An eruv has now been up in the Hamptons municipalities for over two years, without further dispute or controversy.

[3] *See* Eruv Statement by Mayor of Montvale, attached hereto as Exhibit B.

when viewed in light of the inapplicability of the Ordinance, and the illegal selective enforcement of the Ordinance.[4]

As a result of the Borough's continued interference with construction of the eruv, observant Jews in the area 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. In most communities, an eruv is seen as a symbol of diversity and community, and it should be here as well. We remind you that municipal intransigence in accommodating sincerely-held religious beliefs of these community-members 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 and 42 U.S.C. § 1983. Each week that you delay completion of the eruv only further compounds the ongoing harm to these families. Additionally, significant funds have already been expended by representatives of the BREA in connection with this project.

If the Borough forces us to file a lawsuit to vindicate our clients' civil rights under 42 U.S.C. § 1983, we will include claims to recover attorneys' fees, 42 U.S.C. § 1988. We remind you that under similar circumstances in *Tenafly Eruv Ass'n v. Borough of Tenafly*, a case that my firm litigated, the Borough of Tenafly paid the local eruv association $325,000 in legal fees to settle the case, on top of the hundreds of thousands of taxpayer dollars expended by the Borough in its discriminatory effort to derail construction of an eruv.

Over the past months, we have repeatedly made ourselves available to amicably resolve this dispute. Unless you indicate that the Borough will immediately stand down and permit the completion of the eruv, we will have no choice but to file a lawsuit and a motion for a preliminary injunction to protect our clients' constitutional rights. We reserve all of our clients' legal rights.

[4] As the illustrative photos (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) attached hereto as Exhibit C demonstrate, this ordinance has not been enforced by the Borough. Indeed, 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. It appears that Mayor Ghassali deleted his post when members of the public responded by questioning the timing and motivations of the "request." A printout of Mayor Ghasalli's now-deleted Facebook "post" is annexed hereto as Exhibit D.

Very truly yours,

Yehudah L. Buchweitz

cc: Mayor Michael Ghassali
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