EXHIBIT K

Weil, Gotshal & Manges LLP

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

Yehudah L. Buchweitz

BY E-MAIL

July 25, 2017

Robert T. Regan, Esq.
345 Kinderkamack Road
PO Box 214
Westwood, NJ 07675
rtregan@rtreganlaw.com

Re: *Upper Saddle River Eruv*

Dear Mr. Regan:

We represent a not-for-profit company being incorporated for the purpose of coordinating efforts to expand an eruv in parts of the Borough of Upper Saddle River, and the surrounding area. I write in response to your July 18, 2017 letter to Orange and Rockland Utilities, Inc. ("O&R") and your follow-on correspondence of July 21 and 24, 2017 to John L. Carley of Rockland Electric Company ("REC") and Rabbi Chaim Steinmetz, in which you threaten to impede my clients' constitutional and contractual rights by as early as tomorrow at 12 noon.

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, Holliswood, Jamaica Estates, New Rochelle, Scarsdale, White Plains, Albany, and Manhattan, New York; Bridgeport,

Although notably absent from your recent correspondence, we presume you know that any legal question regarding eruvin has been conclusively settled, as *every* court to have considered the matter, including the Third Circuit Court of Appeals, 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), *cert denied* 539 U.S. 942 (2003).[2] 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 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 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 East End Eruv Ass'n v. Town of Southampton, et al*., No. 14-21124, 2015 WL 4160461 (Sup. Ct. Suffolk Cty., June 30, 2015)). An eruv has now been up in these municipalities for almost two years, without further dispute or controversy.

In fact, in the days following the Second Circuit's unanimous decision in January 2015 in a case that I argued, the then-Mayor of Montvale, New Jersey 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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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.

[2] *See also ACLU of N.J. v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987).

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 Upper Saddle River, Mahwah, and Montvale by attaching lechis to utility poles pursuant to valid licenses negotiated between community members using the eruv and O&R. We understand that Rabbi Steinmetz worked collaboratively with Upper Saddle River Police in this regard, and complied with all paperwork and safety measures that were requested of him. Moreover, the Borough of Upper Saddle River *expressly approved* of the eruv expansion in a recent meeting attended by, among others, Upper Saddle River's Director of Code Enforcement, James Dougherty. It is our understanding that Mr. Dougherty left the meeting to discuss the issue with Mayor Minichetti's office, and returned with approval to proceed so long as a certified flagman and police were present during the work. Again, my clients complied with these directives.

In light of the settled legal principles outlined above, as well as the Borough's prior approval of the lechis, we were both surprised and dismayed by your recent correspondence, which purports to rely on inapplicable and/or unconstitutional state and local laws as restricting my clients' exercise of their civil liberties. They do not. We have reviewed Borough Ordinance No. 16-15 attached to your letter, and find it deeply flawed as applied to lechis.

First, the Ordinance was approved in October 2015, following the Second Circuit's decision in *Westhampton Beach* and at a time that expansion of the eruv to the Borough was a topic of much local discussion. Indeed, it is our understanding that the Ordinance was passed *after* several conversations took place between Borough officials and Rabbi Israel Kahan, who advocated on behalf of the eruv expansion project and provided the Borough with relevant documents and licenses. If, as it appears, the Borough then passed the Ordinance with the intent to discriminate against a particular religious group, or even with religious affiliation in mind, it will be struck down as unconstitutional. This is true even "absent allegations of overt hostility and prejudice." *See Hassan v. City of New York*, 804 F.3d 277, 301, 309 (3d Cir. 2015); *Hunter v. Underwood*, 471 U.S. 222 (1985) (holding that a facially neutral state constitutional provision was discriminatorily enacted); *see also Shrum v. City of Coweta,* 449 F.3d 1132, 1144–45 (10th Cir. 2006) (McConnell, J.) ("Proof of hostility or discriminatory motivation may be sufficient to prove that a challenged governmental action is not neutral, but the Free Exercise Clause is not confined to actions based on animus.").[3]

[3] It does not appear to us coincidental that Allendale, located just three miles from Upper Saddle River, adopted an *identical* ordinance just six months later. *See* Borough of Allendale, § 233-31 (Adopted April 28, 2016).

Second, we are already aware that the Borough has selectively enforced the Ordinance, contrary to the representations of your letter. *See* Exhibit C (picture of "Lost Dog" sign on a pole at Cherry Lane and West Saddle River Road in the Borough). Such selective enforcement runs headlong into *Tenafly*, which held that the borough's selective, discretionary application of a similar 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)).

Third, even assuming that the *lechis* – which are merely 1/2-inch strips of PVC plastic – fall within the scope of the Ordinance (and we make no such concession), the Ordinance expressly contemplates exceptions "as may be authorized or required by law." In the context of an eruv specifically, it is now settled law that "while religious institutions are not exempt from local zoning laws, greater flexibility is required in evaluating an application for a religious use and every effort to accommodate the religious use must be made." *See Southampton*, 2015 WL 4160461 at *6 (finding that the Southampton Zoning Board's application of local ordinance to lechis was "improper and constituted an abuse of the [Zoning Board's] discretion as it ignored its affirmative duty to suggest measures to accommodate the [eruv association's] variance applications.").[4]

What has become distressingly clear is that the Borough's recent about-face and take-down demand does not stem from any feigned concern over inapplicable and unenforced local ordinances, but from rank religious animus. As you are likely aware, a vicious and discriminatory campaign against the eruv expansion has been launched by residents in both Upper Saddle River and adjacent towns, including the Facebook Group "Citizens for a Better Upper Saddle River," and the "Petition to Protect the Quality of Our Community in Mahwah." Councilman Ditkoff correctly noted that the former "contains posts and comments that are anti-Semitic," capturing the attention of the Anti-Defamation League. Illustrative examples of the public comments to the latter unfortunately speak for themselves:

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[4] Neither N.J. Stat § 48:3-18 nor N.J. Stat § 48:17-10 appears to have ever been enforced against an entity affixing material to a utility pole pursuant to a valid contract with a utility company. Indeed, under the plain text of N.J. Stat. § 48:3-19 (which was passed in 1962 as part of a series of laws meant to encourage the joint use of poles by the still-growing population of electric, telephone, and telegraph companies), nothing prevents a "person," such as a utility company that "has a lawful right to maintain poles," from licensing the use of the pole to another "person" by contract without municipal consent. N.J. Stat § 48:17-10 dates back to the late 1800s, during the advent of the first telecommunications revolution, and concerns the use of a "local line," which is obviously different than the lechis at issue. This statute was passed at a time when each utility company had its own pole lines, and it was not uncommon to find electric companies with individual utility poles (or "local lines") located next to multiple telephone and telegraph companies who also had their own utility poles. *See* James H. Laskey, *Lost in the Cloud Municipal Regulation of the Internet's Backbone*, N.J. Law., October 2012, at 43; John Brooks, *Telephone – The First Hundred Years* 86-87 (Harper & Row 1975). Neither statute, then, has any applicability to, let alone bars, my clients' valid agreements with O&R. We note that in *Westhampton*, the Eastern District of New York federal court interpreted the similar New York Transportation Corporations Law as providing no limitation on a "corporation's ability to enter into private contracts for the use of its poles." *Westhampton Beach,* 2014 WL 2711846, at *15.

- "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."

These ignorant and wildly anti-Semitic public comments are, of course, extremely troubling, and have no place in civilized society. But they also confirm that any action taken by the Borough will be in response to a religious practice – specifically, a religious practice of observant Jews. Here, too, the *Tenafly* decision is instructive, if not dispositive, as the Third Circuit held that where a borough takes action 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); *see also Lukumi*, 508 U.S. at 540-42 (citing public statements surrounding passage of local ordinances as evidence they were "enacted because of, not merely in spite of . . . religious practice").

Finally, your 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. We remind you that 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.Appx. 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 Borough follows through on the threats contained in your letters, it will also constitute a tortious interference with my clients' valid licenses with O&R. At bottom, proceeding in the manner described in your letters will be a costly and assuredly unsuccessful endeavor for the Borough.

For all of these reasons, we reject your demand to remove the lechis from REC's utility poles. We agree with counsel for REC, who noted that there is no basis or need for the accelerated timeframe contained in your letters, as the lechis "plainly present no threat to public safety," and that a "more deliberate schedule will allow the Borough and the eruv association to resolve any and all open issues." To that end, although we believe any legal issues associated with eruvin to have been conclusively settled by the courts, we are available to discuss any questions or concerns with either you or the Borough. We reserve all of our clients' legal rights.

Very truly yours,

/s/ Yehudah L. Buchweitz

Yehudah L. Buchweitz

cc: John L. Carley, Esq.
Yitzchok Altman
Jay Friedman
Moshe Pinkasovitz
Abraham Rosenwasser
Rabbi Chaim Steinmetz
Robert G. Sugarman, Esq.
David Yolkut, Esq.
Jessie B. Mishkin, Esq.