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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV  
ASSOCIATION, YISROEL FRIEDMAN, S.  
MOSHE PINKASOVITS, SARAH BERGER,  
MOSES BERGER, CHAIM BREUER, YOSEF  
ROSEN, and TZVI SCHONFELD,

Plaintiffs,

v.

THE BOROUGH OF UPPER SADDLE RIVER,

Defendant.

Civil No.: 2:17-CV-05512-JMV-CLW

Civil Action

**SUPPLEMENTAL DECLARATION  
OF  
THEODORE PREUSCH**

I, Theodore Preusch, declare under penalty of perjury:

1. I am Administrator of the Borough of Upper Saddle River (USR).

**USR'S PROHIBITION OF  
POSTING SIGNS AND DEVICES TO UTILITY POLES**

2. The USR Code prohibits the attachment of signs to trees, poles, buildings, or structures. See Declaration of Theodore Preusch ("Preusch Decl."), Ex. A.
3. USR Code §150-21 prohibits affixing signs to both utility poles and standalone poles within USR's right of way in certain zoning districts. Id.

4. USR Code §76-46 prohibits posting garage sale signs on utility poles regardless of zoning districts. Preusch Decl., Ex. C. This code provision does not regulate political signs.

5. It is my understanding that the USR Code did not regulate posting political signs to utility poles throughout USR. Therefore, the enactment of Ordinance 16-15 was required to address this gap in regulation. Supplemental Declaration of Robert Regan, Esq., ¶¶ 5-9.

**2014 AND 2015 ATTEMPTS BY THE  
VAAD HAERUV TO INSTALL *LECHIS***

6. It is confounding that Plaintiffs have alleged that they were not on notice that they were required to seek municipal approval for the installation of *lechis*.

7. On December 23, 2014, Oscar M. Fried and Harry Lorenz, employees of the Eruv of Rockland County, NY, were stopped on East Saddle River Road in Upper Saddle River while installing white PVC pipes (*lechis*) to utility poles. Upon information and belief, the Eruv of Rockland County, NY is the Vaad HaEruv of Rockland. When Mr. Fried was asked for a work order or permit, he could only produce an agreement between Orange and Rockland Electric (“O & R”) for the installation of PVC pipes on certain poles in Rockland County, NY. Because Mr. Fried could not provide proof he was authorized to conduct this work in USR he was asked to stop work and he complied. See attached as **Exhibit “S”** a true and correct copy of USR Police Report 2014-007210, dated December 30, 2014, memorializing Officer Vincent Siracusa’s interaction with the Vaad HaEruv on December 23, 2014.

8. Despite being aware that the Vaad HaEruv had to obtain permission for the installation of *lechis* in USR, the Vaad HaEruv disregarded the need for municipal consent and again attempted to install *lechis* in USR.

9. On September 10, 2015, Officer Kyle Zyskowski responded to a call regarding a suspicious vehicle and came upon a contractor hanging religious items on telephone poles (*lechis*).

After consulting with the Chief of Police it was determined that the contractor did not have municipal permission to perform the work or obstruct traffic. See attached as **Exhibit “T”** a true and correct copy of USR Police Report 2015-005702, dated September 15, 2015, memorializing Officer Kyle Zyskowski’s interaction with the Vaad HaEruv on September 10, 2015. Upon information and belief, the vehicle stopped by Officer Zyskowski belonged to the Vaad HaEruv.

**RESPONSE TO RABBI STEINMETZ’S REPLY DECLARATION**

10. Plaintiffs repeatedly misinterpret and conflate what occurred between Mr. Dougherty and me on June 15, 2017. What occurred was nothing more than a misunderstanding. As explained in my November 2, 2017 declaration (see ¶¶ 54-7), I intended my statements to Mr. Dougherty to be nothing more than instructions for Mr. Dougherty to advise the members of the Vaad HaEruv that the USR Police Department was the enforcement agency for Ordinance 16-15 and that the USR Police Department would be in the best position to direct the Vaad HaEruv to the appropriate authority for granting leave or exception from Ordinance 16-15.

11. Neither Mr. Dougherty nor I then had (or now have) authority to grant leave or exception from Ordinance 16-15 and it would be unreasonable for the Plaintiffs to make such an assumption.

12. Further, although my direction was for the Vaad HaEruv to speak to the USR Police Department, it is my experience as the former USR Chief of Police (and it is common sense) that a police officer does not have authority to grant leave or exception from law. It is irrational for Plaintiffs to believe the USR Police Department had any authority to authorize exceptions to a valid municipal ordinance.

13. Any claims Plaintiffs might have regarding apparent authority are easily dispelled by reading Ordinance 16-15, which does not identify the Borough Administrator or the Building Department as possessing authority to permit the use of utility poles.

14. The Borough Administrator and Building Department are not responsible for making policy regarding USR rights of way or public utility poles. Accordingly, the permission sought by Plaintiffs was not in our wheelhouse.

15. Moreover, had I or the Building Department possessed the authority to convey permission surely there would have been a method by which one of these departments would have been capable of memorializing grants of authority. It is standard municipal practice that conveyances of permission are memorialized in writing because it would be otherwise impossible to track what permission has been granted and to what extent.

16. In response to Rabbi Steinmetz's representations about USR's safety concerns, it is worth noting that although he and O & R believe the *lechis* pose no safety concerns, USR is not required to accept these assertions. Rather, the purpose of municipal consent is to provide USR the opportunity to make its own safety determinations based on a complete record. By attempting to do an end-around the standard approval procedures, Plaintiffs have deprived USR of that opportunity.

17. Inspections conducted by Steven Forbes of the Building Department and Chief Patrick Rotella have revealed that Plaintiffs have strung wires from *lechis* without O & R, Verizon, and municipal approval. See Supplemental Declaration of Steven Forbes, ¶¶ 2-4, Ex. C; Declaration of Patrick Rotella ("Rotella Decl."), Exs. S – T, ¶¶ 48, 45(c). Although Rabbi Steinmetz states the wire identified by Chief Rotella near Hillside Avenue and Castle Hill Court

is rubber-coated, it is impossible for us to make such an observation, given that the wire is several feet in the air. Steinmetz Reply Decl., ¶ 16.

18. Although Rabbi Steinmetz alleges this wire poses no safety concern, his declaration is completely devoid of any evidence that he is an expert in electrical conductivity and specific information regarding the *eruv*'s materials. See generally Steinmetz Reply Decl. Moreover, had Plaintiffs sought municipal approval, USR would have been privy to information regarding materials and been able to analyze potential safety concerns. Coincidentally, Rabbi Steinmetz makes no mention of the wire located by Mr. Forbes on West Saddle River Road, accordingly, the safety of this wire remains in question. See Supplemental Declaration of Steven Forbes, ¶¶ 2-4, Ex. C; see generally Steinmetz Reply Decl. Plaintiffs' assurances about safety in declarations attached to a preliminary injunction brief ring hollow and miss the point. USR's safety concerns should not be addressed through hastily put-together briefs attached to motion papers seeking immediate relief filed on an expedited basis. By bypassing the standard procedures for addressing safety concerns, Plaintiffs have deprived the citizens of USR of the standard procedures set up to address such concerns in a thorough and considered manner.

19. Plaintiffs' allegations that USR employees performed inspections of the Vaad HaEruv's work are without merit. Steinmetz Reply Decl., ¶¶ 14-5. The USR PD and Building Department are not authorized to conduct inspections of work being performed on utility poles. Steinmetz Reply Decl., ¶¶ 14-5; Rotella Decl.; Declaration of James Dougherty; Declaration of Steven Forbes. It is clear from the declarations of municipal employees that no such inspections occurred and inspection of work being performed on utility poles is not within their respective job descriptions and/or expertise. See generally, Rotella Decl.; Declaration of James Dougherty; Declaration of Steven Forbes.

20. Rabbi Steinmetz states that the Vaad HaEruv would have never incurred the cost of installing *lechis* had its representatives been given qualified permission or if the *lechis* might be considered devices under local law. Steinmetz Reply Decl., ¶¶ 8-10. Rabbi Steinmetz's declaration is internally contradictory, however, because the Vaad HaEruv attempted to install *lechis* in 2014, 2015, and before the June 15, 2017 meeting, despite having no municipal permission and despite the fact that the question of whether *lechis* were prohibited devices was not resolved. See supra, ¶¶ 6-10; Steinmetz Reply Decl. ¶¶ 8-10. Further, Rabbi Steinmetz admits that Mr. Forbes stated at the June 15, 2017 meeting that he was undecided as to whether *lechis* were prohibited devices. Steinmetz Reply Decl. ¶ 10. As the *lechis* were installed nevertheless, Rabbi Steinmetz's claim that the Vaad HaEruv would not have installed *lechis* had there been a question about *lechis* being devices rings hollow.

21. It is curious that Rabbi Steinmetz states *lechis* are not communicative although, unlike the *lechis* in Tenaflly, these *lechis* are prominent white PVC pipes. Rotella Decl., ¶¶ 33-45, Exs. O-Y.

**THE VAAD HAERUV'S FAILURE TO  
LICENSE ALL OF THE *LECHIS* INSTALLED**

22. Paragraphs 5–6 of Mr. Sullivan's declaration states that O & R gave the Vaad HaEruv permission to install *lechis* to 16 utility poles in 2015 and approximately 80 utility poles since. However, Plaintiffs have only provided proof that O & R endorsed the use of 53 utility poles in USR despite there being 109 utility pole with *lechis*. See supra, ¶¶ 6-11; Declaration Kenneth Sullivan Pursuant to 28 U.S.C. § 1746 in Support of Plaintiffs' Motion for a Preliminary Injunction ("Sullivan Decl."), ¶¶ 5-6.

23. Paragraphs 9-12 of Mr. Sullivan's declaration states that O & R attempted to contact Verizon about the O & R license (see Steinmetz Decl., Ex. A) from 2015 through 2017,

however, Verizon states O & R attempted to contact it only in July of 2017. Compare Sullivan Decl., ¶¶ 9-12 with Declaration of David Gudino, Esq. Pursuant to 28 U.S.C. § 1746 (“Gudino Reply Decl.”) ¶ 2. Accordingly, Plaintiffs have presented conflicting declarations about whether O & R sought Verizon’s consent prior to entering into a license with the Vaad HaEruv and the Vaad HaEruv installing *lechis* without municipal consent.

24. A review of the Steinmetz Reply Decl. reveals Rabbi Steinmetz has provided additional endorsements. See Steinmetz Reply Decl., Ex. J (“Endorsement J”).

25. Endorsement J comprises 113 utility poles owned by O & R or jointly used by O & R and Verizon on which O & R has allegedly authorized the installation of *lechis*. Consistent with all of Plaintiffs’ papers, Endorsement J is nothing more than an exercise in slide of hand and misdirection.

26. Of the 113 utility poles identified in Endorsement J, 94 of these utility poles are not within USR.

27. Accordingly, Plaintiffs have supplemented their papers with only 19 USR utility poles located exclusively in the active *eruv* (the active *eruv* consists of 64 utility poles with *lechis*, 50 of which are only on West Saddle River Road and Sparrowbush Avenue) on which *lechis* may be installed pursuant to the terms of the O & R license. Therefore, Rabbi Steinmetz is incorrect in alleging “more than 25 poles that currently have *lechis* attached to them fall within the USR borough limits,” because only 19 utility poles have been endorsed.

28. Endorsement J, notably dated March 2, 2017 several months before Verizon recalls any effort by O & R to seek consent (see Declaration of David Gudino, Esq., Ex. A and B; Gudino Reply Decl., ¶ 2 (“O & R reached out to a member of Verizon’s engineering staff in July of this year.”))), only provides endorsements for the installation of utility poles within the active *eruv*.

However, of the 64 utility poles with *lechis* in the active *eruv* there still remains 45 utility poles in the active *eruv* for which there exists no endorsement. The question remains, where is the proof that the license extends to the other 45 utility poles in the active *eruv*? Further, even if we include 16 utility poles Mr. Sullivan and Rabbi Steinmetz state were installed in 2015, the question remains, where is the proof of endorsement for these 29 utility poles?

29. Further, Plaintiffs still haven't accounted for 34 utility poles in the inactive *eruv* that have *lechis* but no accompanying endorsement. See Declaration of Bruce Rosen, Esq., Ex. H; Declaration of Steve Forbes, Ex. B.

**I declare under penalty of perjury that the foregoing is true and correct.**

By: 

Theodore Preusch  
Borough Administrator  
Borough of Upper Saddle  
River

Executed on: December 11, 2017



# EXHIBIT S



# UPPER SADDLE RIVER POLICE DEPARTMENT OPERATIONS REPORT

1. ORI # NJ0026300	2. Incident #(P#) 2014-007210	3. PD Case # 2014-007210	4. Report Date & Time 12/23/2014 11:57	5. Agency Incident/Actual CFS Type SUSPICIOUS ACTIVITY
6. Party Type OTHER		7. Name FRIED, OSCAR M		7A. DOB [REDACTED]
8. Address (Street, Bldg /Apt/Suite, City, State, Zip) [REDACTED]			8A. Phone # [REDACTED]	
9. Location of Incident E SADDLE RIVER RD, UPPER SADDLE RIVER, NJ 07458			9A. Municipality UPPER SADDLE RIVER BOR.	9B. County BERGEN
10. Vehicle Information				
Make FORD	Model	Plate # GMG9375	State NY	Year 1997
				Color WHITE
				VIN # 3FELF47G3VMA71419
Code [OTHER]	Name LORENZ, HARRY	Address [REDACTED]	Age 67	Sex M
				Race [REDACTED]
				Eth [REDACTED]
				DOB [REDACTED]
11. Narrative				
<p>On 23 December 2014 at approximately 1157 hours, I was in Upper Saddle River Patrol unit 903 conducting a traffic enforcement detail on West Saddle River Rd. I was approached by a civilian in a pickup truck who stated there was a crew working on Weiss Rd. in what looked like a old "Verizon" bucket truck obstructing the flow of traffic working on the poles. He further stated the workers were putting white PVC pipe around telephone poles and requested I investigate.</p> <p>I observed a white vehicle matching the description of the vehicle given to me on East Saddle River Road, parked on the North bound side of the road. Next to the vehicle was a worker in a traffic vest with a stop/yield flag in his hand. I further noticed white PVC pipe affixed to the telephone pole next to the vehicle. I initiated a motor vehicle stop. NY Registration GMG-9375. I noticed what looked like new silver in color screws attaching the PVC to the pole. I questioned the worker, identified as Oscar Fried what he was doing. He stated he was contracted by Orange and Rockland to do work on the telephone poles and he stated he works for Eruv of Rockland County, NY.</p> <p>I requested to see the work order or permit for the work to be done. Fried handed me a contract between Orange and Rockland Electric and Eruv of Rockland County. After review of the contract, It stated on the front page Eruv was authorized to place the PVC pipe on "Certain" poles in and around "Rockland County" NY. I advised Fried and the Driver of the vehicle, Harry Lorenz that the contract was specific to Rockland County, NY and nowhere in the contract did it state Upper Saddle River, New Jersey, Bergen County, New Jersey or New Jersey in general.</p> <p>I asked Fried if he knew anywhere in the contract where it said Upper Saddle River or Bergen County New Jersey and he was unable to provide me with that information. With the information I had in the contract, Mr. Fried's inability to prove to me he was authorized to conduct this work in Upper Saddle River or Bergen County, I requested he stop work until he had the proper authorization. Fried and Lorenz complied and left without incident.</p> <p>Ptl. Siracusa #139</p>				
Print Officer Name SIRACUSA, VINCENT <i>Vincent Siracusa</i>		Badge No. 139	Page No. 1 Of 1	Report Date 12/30/2014
Reviewed By FARROW, JOSEPH <i>Joseph Farrow</i>		Supervisor Signature		

Case No. 2014-007210

# EXHIBIT T



## UPPER SADDLE RIVER POLICE DEPARTMENT OPERATIONS REPORT

1. ORI # NJ0026300	2. Incident #(P#) 2015-005702	3. PD Case # 2015-005702	4. Report Date & Time 09/10/2015 13:36	5. Agency Incident/Actual CFS Type SUSPICIOUS AUTO GENERAL POLICE		
6. Party Type		7. Name			7A. DOB	
8. Address (Street, Bldg /Apt/Suite, City, State, Zip)				8A. Phone #		
9. Location of Incident HILLSIDE AVE , UPPER SADDLE RIVER, NJ 07458				9A. Municipality UPPER SADDLE RIVER BOR.		9B. County BERGEN
10. Vehicle Information						
Make FORD	Model	Plate # 31601JZ	State NY	Year 2002	Color WHITE	VIN # 1FDAF57F02ED68724
Code	Name	Address	Age	Sex	Race	Eth DOB

### 11. Narrative

Responded to call of a suspicious vehicle. Upon arrival found contractor hanging religious items on telephone poles. Contacted Police chief and he advised that they were not approved to do any work in the roadways and they needed to contact town for a permit as well as meet with Police Chief and Traffic Commander to approve a traffic safety plan.

Case No. 2015-005702

Print Officer Name <b>PATROLMAN KYLE ZYSKOWSKI</b>	Page No.	Report Date	Reviewed By <b>SERGEANT DONALD HAUSCH</b>
Signature	146	1 Of 1	09/15/2015 Supervisor Signature