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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHRISTOPHER S. PORRINO,
ATTORNEY GENERAL OF NEW
JERSEY, CRAIG SASHIHARA,
DIRECTOR OF THE NEW JERSEY
DIVISION ON CIVIL RIGHTS,
AND BOB MARTIN, COMMISSIONER
OF THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Plaintiffs,

V.

TOWNSHIP OF MAHWAH AND
MAHWAH TOWNSHIP COUNCIL

Defendants.

CIVIL ACTION NO: 2:17-cv-11988-JMV-
JBC

**ANSWER, JURY DEMAND, SEPARATE
DEFENSES, AND CERTIFICATION**

Defendant, Mahwah Township Council, (hereinafter referred to as "Defendant"), by way of Answer to the Complaint filed by the Plaintiffs, Christopher S. Porrino, Attorneys General of New Jersey, Craig Sashihara, Director of the New Jersey Division on Civil Rights, and Bob Martin, Commissioner of the Department of Environmental Protection, (hereinafter referred to collectively as "Plaintiffs"), say as follows:

As to INTRODUCTION

1. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 1 of the Complaint, but rather leaves Plaintiffs to their proofs.

2. Defendant is without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of Plaintiffs' Complaint, but rather leaves Plaintiffs to their proofs.

3. All but one of the allegations contained in Paragraph 3 are directed towards third persons, namely members of the public, and therefore Defendant is under no obligation to deny or admit those allegations. As to the remainder of the allegations concerning Defendant's actions, it is denied that Defendant took any unlawful actions to remove the eruv, and/or which were designed to prevent and discourage use of the public parks located in the Township by Orthodox Jews.

4. Defendant denies that it took any steps in response to any alleged fear of "infiltration" by Orthodox Jews. Defendant denies that it encouraged residents to take actions that interfere with the ability of any protected class of individuals to access and enjoy the public parks in Mahwah. Otherwise denied.

5. Defendant is without sufficient knowledge or information upon which to form an opinion or belief as to the truth or falsity of the allegations contained in paragraph 5 of Plaintiffs' Complaint, but rather leaves Plaintiffs to their proofs as the results of the Attorney General's investigation and findings. Otherwise denied.

6. Defendant denies that the Mahwah Township Council has violated the Constitution of the United States, the Constitution of the State of New Jersey, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49 (the "LAD"), the New Jersey Green Acres Land Acquisition and Recreational Opportunities Act, N.J.S.A. 18:8A-35 to -54 (the "Green Acres Act"); and potentially other state and federal laws governing civil rights and nondiscriminatory land use.

7. Defendant is without sufficient knowledge or information upon which to form an opinion or belief as to the truth or falsity of the allegations contained in paragraph 7 of Plaintiffs' Complaint, but rather leaves Plaintiffs to their proofs as to whether they are entitled to the relief they seek.

As to JURISDICTION AND PARTIES

8. Paragraph 8 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same.

9. Paragraph 9 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no any obligation to admit or deny same.

10. Paragraph 10 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same.

11. Paragraph 11 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same. Defendant denies that the Mahwah Township Council acted in furtherance of depriving other persons of their equal protection and free exercise rights and privileges under the United States Constitution, the New Jersey State Constitution, the LAD, and the Green Acres Act.

12. Admitted.

13. Defendant is without sufficient knowledge or information upon which to form an opinion or belief as to the

truth or falsity of the allegations contained in paragraph 13 of Plaintiffs' Complaint, but rather leaves Plaintiffs to their proofs.

As to FACTUAL ALLEGATIONS

Eruv Association and Placement of Lechis

14. The allegations contained in Paragraph 14 are not directed at the Township Council but are directed towards third persons, namely the Bergen Rockland Eruv Association and/or their agents, and the Orange and Rockland Utilities, and therefore Defendant makes no response to those allegations in Paragraph 14.

15. The allegations contained in Paragraph 15 are not directed at the Township Council but are directed towards third persons, namely the Bergen Rockland Eruv Association and/or their agents, and the Orange and Rockland Utilities, and therefore Defendant makes no response to those allegations in Paragraph 15.

16. Admitted.

17. Admitted.

18. Admitted insofar as Township administration had discussions with the Eruv Association regarding the installation of lechis. Otherwise denied.

19. Admitted.

20. The allegations contained in Paragraph 20 are not directed at the Township Council but are directed towards third persons, namely the Bergen Rockland Eruv Association, and therefore Defendant makes no response to those allegations. Defendant does admit that Co-Defendant Mahwah Township did appropriately provide an invoice to Bergen Rockland Eruv Association for police supervision services.

ORDINANCE 1806

21. Admitted.

22. Paragraph 22 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same.

23. Plaintiffs are left to their proofs as to the allegations in Paragraph 23 of the Complaint as the project agreements and acquisition grant contracts referenced therein speak for themselves.

24. Admitted.

25. Admitted.

26. The allegations contained in Paragraph 26 are denied except insofar as the Chief of Police advised certain public officials in attendance at an agenda meeting - specifically the Mayor, Council President Hermanson, Councilman Wong, and the Business Administrator - that the Police Department had given a

tour of the police station to a Hasidic family, which the Chief explained was not out of the ordinary. Otherwise denied.

27. Defendant denies the allegations contained in Paragraph 27. No such comments from the public were made at the hearing held on June 29, 2017. Additionally, no such commentary from residents by way of email or social media were received on or prior to June 29, 2017.

28. Defendant denies the allegations in Paragraph 28 of the complaint. As outlined in Paragraph 27 above, no public commentary that was of "anti-Semitic nature" was heard and/or considered at the public hearing on June 29, 2017.

29. The majority of the allegations contained in Paragraph 29 are not directed at the Township Council, but are directed at third persons, namely unidentified "Mahwah residents" over whom the Township Council has no control, and therefore Defendant makes no response to those allegations contained in Paragraph 29. Defendants admit only that the Township police had received phone calls from residents concerning persons utilizing the parks, and as to the remainder of the allegations in Paragraph 29, Plaintiffs are left to their proofs.

30. The allegations contained in Paragraph 30 are not directed at the Mahwah Township Council but are directed solely at the Co-Defendant Mahwah Township. Defendant denies that the Township enacted Ordinance 1806 to target Orthodox Jews, and

denies that any Orthodox Jews suffered any injury with respect to use of the parks in the Township of Mahwah. Otherwise denied. **Further, Ordinance 1806 was repealed in its entirety on December 28, 2017.**

31. Admitted that a Mahwah resident emailed the Council President to express concern that her mother in law would not be able to take her grandchildren to Mahwah parks, and that the Council President accurately responded that Ordinance 1806 would not apply to this situation. **Further, Ordinance 1806 was repealed in its entirety on December 28, 2017.**

32. The allegations contained in Paragraph 32 are not directed at the Township but are directed towards the private actions of third persons, namely unidentified "Mahwah residents," and/or their postings on private social medial forums and platforms over which the Township Council does not exercise any control, and therefore Defendant makes no response to those allegations in Paragraph 32.

Discovery and Reaction to Lechis

33. Admitted insofar as Township resident Brett Coplin posted on social media a photograph of a utility pole to which PVC piping was attached with a rhetorical question as to what they were. However, the meeting scheduled by Councilman May to address concerns of residents had been scheduled prior to this post. Otherwise denied.

34. The allegations contained in Paragraph 34 are not directed at the Township Council but are directed towards the private actions of third persons, namely unidentified "Mahwah residents," and therefore Defendant makes no response to those allegations in Paragraph 34.

35. The allegations contained in Paragraph 35 are not directed at the Township Council but are directed towards the private actions of third persons, namely unidentified "individuals supporting the petition," on a private website forum and/or platform over which the Township Council does not have any control, and therefore makes no response to those allegations in Paragraph 35.

36. The allegations contained in Paragraph 36 are not directed at the Township Council but are directed towards the private actions of third persons, namely unidentified "Township residents," on private social medial forums and platforms over which the Township Council does not exercise any control, and

therefore Defendant makes no response to those allegations in Paragraph 36.

37. Admitted insofar as Council President Hermanson posted the message and that other members of the Township Council expressed their views on social media with regard to the nailing of PVC piping to utility poles and related concerns. Otherwise denied.

38. Defendant denies that it attempted "to disguise the discriminatory nature of comments being made" by members of the public. Officials did appropriately note that comments regarding religion would be inappropriate. Otherwise denied.

39. The allegations contained in Paragraph 39 are not directed at the Township Council but are directed towards the private action of third persons, namely unidentified "members of the public," and therefore Defendant makes no response to those allegations in Paragraph 39.

SIGN ORDINANCE

40. Paragraph 40 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same.

41. Plaintiffs are left to their proofs as to the allegations in Paragraph 41 of the Complaint as the July 21, 2017 letter sent from Michael J. Kelly, Administrative Officer

for Mahwah's Department of Land Use and Property Maintenance and any response from the Eruv Association speaks for itself.

42. Plaintiffs are left to their proofs as to the allegations in Paragraph 42, as the proposed Ordinance 1812 was neutral on its face, and speaks for itself. **Further, Ordinance 1812 was never enacted.**

43. Defendant denies Plaintiffs' characterization of its intent with respect to the Township Council's proposed Ordinance 1812, as the Ordinance is neutral on its face, and does not expressly prohibit placement of lechis on utility poles. **Further, Ordinance 1812 was never enacted.**

44. Admitted insofar as the Council took a straw poll in support of the issuance of summonses to show support for the Zoning Officer's determination. **However, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

45. Defendant admits that no summonses have been issued by the Township for violation of its sign ordinance, including to the Bergen Rockland Eruv Association, and as to the remainder of the allegations, Plaintiffs are left to their proofs as to whether lechis were being singled out with the introduction of proposed Ordinance 1812 for removal from utility poles. **Further, summonses were never issued, Ordinance 1806 was repealed in its**

entirety on December 28, 2017, and Ordinance 1812 was never enacted.

46. Defendant admits that there have been instances of vandalism and that they have been investigated by the Township Police. Council President Hermansen did not deny that the vandalism in question was the product of a hate crime; he stated that the Township should await completion of its investigation before prematurely announcing that it was a hate crime. The investigation was subsequently completed, an arrest was made and it was determined that the incident did not constitute a hate crime. Otherwise denied.

47. Denied. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

As to COUNT I

48. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

49. Admitted in part and denied in part. Defendant admits that Ordinance 1806 was enacted on or about June 29, 2017, but denies the remainder of the allegations in Paragraph 49 of the Complaint. Defendant sought to enact Ordinance 1806 as a way to stop vandalism to Mahwah property in its various parks, including athletic equipment and field surfaces that have been

vandalized. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.** Otherwise denied.

50. Denied. Ordinance 1806 did not target Orthodox Jews or any other protected group of people. Ordinance 1806 - which was never enforced - limited the use of Mahwah parks to residents of the State of New Jersey. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.** Otherwise denied.

51. Denied. The Ordinance was never enforced, as directed by Bergen County Prosecutor Gurbir S. Grewal. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

52. Denied. Further, Ordinance 1806 was never enforced.

As to Count II

53. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

54. Denied. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.** Otherwise denied.

55. Denied.

56. Denied.

As to Count III

57. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

58. Paragraph 58 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same.

59. Denied. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

60. Paragraph 60 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

61. Denied.

As to Count IV

62. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

63. Admitted.

64. Denied. Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

65. Denied. Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

66. Denied. Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

67. Paragraph 67 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

As to Count V

68. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

69. Paragraph 69 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same.

70. Defendant denies Plaintiff's characterization of N.J.S.A. 13:8A-51, and N.J.A.C. 7:36-25.10(d), as neither of those statutes prohibits total "restrictions [based] on

residency or as otherwise may be in violation of the LAD." Rather, N.J.A.C. 7:36-25.10(d) expressly states: "A local government unit or nonprofit shall not enter into exclusive use agreements or allow discriminatory scheduling of the use of the funded parkland or its recreation and conservation facilities based on residency or otherwise in violation of the Law Against Discrimination, N.J.S.A. 10:51 et seq., or other applicable law." N.J.S.A. 13:8A-51 expressly requires approval of the commissioner for any restrictions on the basis of residency. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

71. Denied.

72. Denied.

73. Admitted. **However, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

74. Denied. **Summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

As to Count VI

75. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

76. Plaintiffs are left to their proofs as to the allegations in Paragraph 23 of the Complaint, as the contracts with the State of Jersey referenced therein speak for themselves.

77. Denied. **Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.**

78. Denied. Pursuant to N.J.A.C. 7:36-9.1(j)and(k) and N.J.A.C. 7:36-14.1(j) and (k), the State is entitled to initiate suit solely for injunctive relief or to seek specific enforcement, but said regulations do not expressly authorize a lawsuit for repayment of all Green Acres funding that Defendant has received.

As to Count VII

79. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

80. Denied. While the Township Council took a "straw poll" vote regarding the issuance of summonses, no actual summonses were ever issued to anyone for the placement of lechis on utility poles in the Township. The Township Council does not have the authority to direct a Department Head to act in any manner; this power belongs to the Mayor. **Further, summonses**

were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

81. Paragraph 81 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. To the extent that Paragraph 81 contains any factual allegations directed toward the Township Council, they are denied.

82. Denied. Summons were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

As to Count VIII

83. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

84. Denied. Summons were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted..

85. Denied. Further, summons were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

86. Paragraph 83 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. Otherwise denied.

87. Paragraph 87 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. To the extent that Paragraph 87 contains any factual allegations directed toward the Township, they are denied. Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

88. Denied. Summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

As to Count IX

89. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

90. Admitted.

91. Denied. Summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

92. Denied. Summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted..

93. Paragraph 93 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. To the extent that Paragraph 93 contains any factual

allegations directed toward the Township, they are denied. Further, summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

94. Denied. Summonses were never issued, Ordinance 1806 was repealed in its entirety on December 28, 2017, and Ordinance 1812 was never enacted.

As to DEMAND FOR RELIEF

Wherefore, it is denied that Plaintiffs are entitled to any of the relief and/or penalties prayed for in the Complaint.

SEPARATE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted. Thus, the Complaint may be subject to a dismissal pursuant to F.R.C.P. 12(b)(6) or (c).
2. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.
3. Plaintiffs' claims for declaratory, injunctive, and civil monetary penalties are barred because they have been rendered moot with the repeal of the ordinances upon which their claims are based.
4. Plaintiffs do not have standing to bring a claim for violations of the LAD, the First and Fourteenth Amendments of the United States Constitution, or the Civil Rights Act

on behalf of persons who are not residents of the State of New Jersey.

5. Any and/or all actions taken by Defendant was for legitimate, non-discriminatory reasons unrelated to any person's religion.
6. At no time did Defendant act with discriminatory intent towards Orthodox Jews.
7. Defendant breached no legal duty owed to Plaintiffs or to the residents of New Jersey whom the Attorney General of the State of New Jersey is authorized to represent.
8. All acts of the Defendant were at all times performed in good faith, without malice, and without intent to violate the rights of any religious group.
9. Plaintiffs failed to exhaust all available internal, contractual, and/or administrative remedies.
10. Plaintiffs are not entitled to repayment of Green Acres funds from the Township pursuant to either N.J.A.C. 7:36-9.1(j) (k) and N.J.A.C. 7:36-14.1(j) and (k), but only to injunctive relief or specific performance.

11. Defendants assert herein all defenses and immunities available to them under the Civil Rights Act of 1871 for Plaintiff's federal causes of action.
12. Defendants are immune from all claims arising out of their legislative decisions pursuant to the holding in Bogan v. Scott-Harris, 523 U.S. 44(1998).
13. Defendants are immune from claims pursuant to 42 U.S.C. §1983 and their other federal statutory law and state civil rights claims that are based upon their discretionary actions pursuant to the qualified or good faith immunity provided by Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), and Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1277 (3d Cir. 1994), and further immune from liability for their good faith belief that their conduct was lawful. Good v. Pumpkin County, 891 F.2d. 1087, 1092 (3rd Cir. 1989).
14. Plaintiff's constitutional claims against the Township must fail as a matter of law since Plaintiff cannot prove a constitutional deprivation resulting from an official custom or policy or procedure under 42 U.S.C. §1983. Monell v. Dept. of Social Services, 436 U.S. 658, 691-94 (1978).
15. Plaintiffs are not entitled to an award of attorneys' fees under the LAD, 42 U.S.C. 1988, or the Civil Rights Act as Defendants' actions did not discriminate against any

protected group of persons; nor did their actions violate the constitutional rights of any persons.

16. Defendant reserves the right to raise additional separate defenses, the existence of which may arise out of the discovery in this action.

WHEREFORE, Defendant demands judgment dismissing the Plaintiffs' Complaint together with costs of suit, attorney's fees, interest and such other amounts as the Court may deem equitable and just.

JURY DEMAND

Defendant demands a trial by jury on all issues so triable.

Methfessel & Werbel

Attorneys for Defendant, Mahwah
Township Council



By: _____
Eric L. Harrison, Esq.

Dated: March 27, 2018

CERTIFICATION


In accordance with Loc. Civ. R. 11.2, I, Eric L. Harrison, Esq., attorney for The Mahwah Township Council, hereby certify that according to Plaintiffs' Complaint the matter in controversy in the above-captioned civil action is related to Bergen Rockland Eruv Association, et al. v. Township of Mahwah, Civil Action No. 2:17-cv-06054-JMV-CLW, which matter settled on or about January 31, 2018.

I further certify pursuant that the foregoing pleading has been electronically filed and served within the time period provided under the Federal Court Rules or by consent of the parties.

Pursuant to 28 U.S.C. §1764(s), I declare under punishment of perjury, that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Methfessel & Werbel

Attorneys for Defendant, Mahwah
Township Council


By: _____
Eric L. Harrison, Esq.

Dated: March 27, 2018

CERTIFICATION OF ELECTRONIC SERVICE

I, Eric L. Harrison, Esq., hereby certify that a copy of the within Answer, was e-filed with the Clerk of the United States District Court, District of New Jersey and as such was simultaneously served upon the Attorneys of record for all other Parties, via e-filing/PACER.

Methfessel & Werbel

Attorneys for Defendant, Mahwah
Township Council



By: _____
Eric L. Harrison, Esq.

Dated: March 27, 2018