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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

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RABBI AVRAHAM BERNSTEIN and	:
ZISI BERNSTEIN	:
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Plaintiffs	:
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	:
	: Civil Action No. 3:07-4110
	:
	:
vs.	:
	:
	:
TOWNSHIP OF FREEHOLD, NEW JERSEY	:
DOROTHY H. AVALLONE, Mayor of the	:
Township of Freehold, THOMAS ANTUS,	:
Administrator of Freehold Township, RICHARD	:
PHELAN, Assistant Administrator of Freehold	:
Township, and JOHN DOES 1-20,	:
Defendants.	:
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AMENDED COMPLAINT AND JURY DEMAND

This action is brought on behalf of Plaintiff, Rabbi Avraham Bernstein (“Rabbi Bernstein”) and his wife, Zisi Bernstein (collectively “Plaintiff”), by and through their attorneys, Marks & Klein, LLP, and asserts claims under (i) 42 U.S.C.A. Section 1983; (ii) 42 U.S.C.A. Section 1982; and (iii) 42 U.S.C.A. Section 2000cc, et seq. For the reasons set forth below, Plaintiffs seek, *inter alia*, injunctive relief, compensatory damages, attorney’s fees and costs.

JURISDICTION AND VENUE

1. The Court has jurisdiction pursuant to 28 U.S.C. § 1331. The Court has original jurisdiction in that these claims arise under of the laws of the United States.
2. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this district because a substantial part of the events giving rise to the claim occurred in the District of New Jersey and Defendant is found in the District of New Jersey and the property that is the subject of this action is located in the District of New Jersey.

PARTIES

3. Plaintiffs Rabbi Avraham Bernstein and his wife, Zisi Bernstein, both own and reside at their single family residential home at 351 Stillwells Corner Road, Freehold Township, together with their eight children.
4. Rabbi Bernstein and his wife Zisi host prayer services in their home prior to the commencement of the Jewish Sabbath, on Friday afternoons before sundown. These prayer services last for approximately one hour on Friday evenings, and begin again the following Saturday morning where they last for approximately two and one half hours, usually from 9:30 A.M. to 12:00 noon.
5. In his clerical capacity, Rabbi Bernstein, is part of Lubavitch Chabad, a worldwide Jewish organization that is headquartered in Brooklyn, New York.
6. Defendant, Township of Freehold (“Township” or “Freehold”) is a municipal governing body in Monmouth County, New Jersey.
7. Defendant Dorothy H. Avallone is the Mayor of Freehold Township and is sued in this action in both her individual and official capacities.

8. Defendant Thomas Antus is the Administrator of Freehold Township and is sued in this action in both his individual and official capacities.

9. Defendant Richard Phelan is the Assistant Administrator of Freehold Township, and is sued in this action in both his individual and official capacities.

10. Defendants John Does 1-20 are persons who acted in concert with Defendants Avallone, Antus, Phelan and the Township of Freehold to violate the constitutional and statutory rights of Plaintiffs Rabbi Avraham Bernstein and his wife, Zisi Bernstein, as more specifically set forth in later portions of this Complaint. The John Doe Defendants are sued in this action in both her individual and official capacities.

FACTS AND BACKGROUND

11. The Bernsteins purchased their single-family residence in 1999. It is located in a residential zone on a busy street, Stillwells Corner Road, directly across from the Freehold Township Municipal building.

12. It is a two story home of approximately 4000 square feet in size. Prayer services during the Sabbath are conducted in the living room/children's play area, a space measuring approximately 12 X 18 feet.

13. The rest of the home retains its residential character at all times as the prayer services are ancillary to the residential use of the house by the Rabbi, his wife Zisi and their eight children.

14. Religious activities that occur in the Bernsteins' home are primarily an exercise of the family's personal religious beliefs.

15. Specifically, Rabbi Bernstein's family, his neighbors and guests observe the Jewish Sabbath each Friday night beginning at sunset, until sunset on Saturday night every week of the year.

16. During the Sabbath or *Shabbos*, Rabbi Bernstein and his guests perform prayers and services in accordance with Orthodox Jewish Law, which requires the presence of ten men or a *minyan* to read from the Torah and recite other prayers.

17. Rabbi and Zisi Bernstein believe the prayers and services which take place in their home are absolutely necessary for their practice of their faith.

18. During the Sabbath, in accordance with Orthodox Jewish Law, neither the Rabbi, nor his guests are permitted to drive any automobiles. Consequently, members of the ten man *minyan* who pray at the Rabbi's house on Friday evening or Saturday morning are generally neighbors who walk to the Rabbi's house.

19. The *minyan* may also include overnight guests who the Rabbi and his wife invite for the Sabbath who arrive before the Sabbath and, in accordance with their beliefs, remain at Rabbi Bernstein's residence until after the Sabbath ends.

20. Further, on certain prescribed Jewish holidays, Rabbi Bernstein prays at his house, which also requires the presence of a *minyan* in accordance with Orthodox Jewish Law.

21. Rabbi Bernstein does not hold daily prayer services at his house, although he does conduct an evening class, once a week, for between four and eight individuals.

22. Rabbi and Zisi Bernstein, by praying in their home in accordance with Orthodox Jewish Law are exercising their constitutionally protected right to practice their religion

in their home in a manner consistent with his Orthodox Jewish beliefs pursuant to the Free Exercise Clause of the First Amendment to the United States Constitution.

A. History of Freehold Township Religious Persecution

23. The Township of Freehold (“Freehold” or the “Township”) has long been aware that Rabbi Bernstein uses his home to pray and practice his Orthodox Jewish beliefs.

24. In February 2007, Rabbi Bernstein received notice of violation of the Township’s municipal zoning ordinance from code enforcement officer William McGee, alleging Rabbi and Zisi Bernstein were using their home as a house of worship. (See Exhibit A attached.)

25. In response to the notice, a letter was sent by Rabbi Bernstein’s attorney, Gerald A. Marks, a copy of which is annexed as Exhibit B, which specifically referred the Township and its attorney to the decision in *Issac Farhi v. The Commissioners of the Borough of Deal*, 204 N.J. Super. 575 (1985), where the Court held that government actions preventing a gathering of religious worshipers in a private residence violates the free exercise of religion guaranty under the New Jersey State Constitution. The Township also was referred to the decision in *Kari Bari Temple v. Bd. of Adjustment*, 271 N.J. Super. 241, 252 (App. Div. 1994), as authority for Rabbi Bernstein’s right to conduct prayer services in his home.

26. In April 2007, the Township responded by issuing a Summons to Rabbi Bernstein for violation of the township zoning ordinance that purportedly prohibits the establishment of a “house of worship” in a residential zone, without obtaining zoning approval from the zoning board of adjustment.

27. **The Freehold Township municipal ordinance does not contain any definition of a “house of worship” and the Rabbi was charged, in municipal court, with committing a quasi-criminal offense that is not defined by the township’s zoning ordinance.**

28. Further, the Bernsteins have no desire to alter the zoning status of his home from that of a primary residence.

29. In response to municipal court action taken by Freehold Township, a suit was commenced by Rabbi Bernstein in the New Jersey Superior Court on May 29, 2007 alleging that the Township’s actions were wrongful because the municipal offense with which Rabbi Bernstein was charged was not defined by the township zoning ordinance, and more importantly, the Township’s charge was a violation of the Rabbi’s United States and New Jersey State Constitutional rights to freely practice his religious beliefs in his own home. (See Exhibit C).

30. The complaint further alleged that the actions of the Township constituted a misuse of zoning power in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) because the Rabbi did not and does not need any zoning permit to practice his religious beliefs in his house as the religious services being conducted were ancillary to the residential use of his home.

31. Upon information and belief, in retaliation for the commencement of the suit, some time thereafter Freehold Township secretly set up a video camera in a window in the Municipal Building across the street from the Bernstein’s home, aimed at the home, for surveillance of the Bernstein’s home. Upon information and belief, the camera

operates only from late Friday afternoon prior to the start of the Sabbath until sometime after the conclusion of the Sabbath on Saturday evening. (See Exhibit D)

32. Upon further information and belief, the purpose of the camera is to identify and monitor the individuals coming into and out of the Bernstein's house immediately before, during, and at the conclusion of the Sabbath.

33. In addition, the camera appears to be aimed at the front door, driveway and walkway leading to the Rabbi's house and does not appear to be used for general police surveillance purposes, clearly indicating to Rabbi and Zisi Bernstein, their family and co-religionists, that the surveillance is prejudicial and targeted in nature.

34. Finally, the camera is removed from the window of the Freehold Township municipal building on Mondays and is not re-installed until the following Friday afternoon.

35. Upon information and belief, the decision to establish video surveillance of the Rabbi's house was made at the direction of Defendants Avallone, Antus, Phelan, and/or John Does 1-20, or the decision to establish such surveillance has been authorized and ratified by Defendants Avallone, Antus, Phelan, and/or John Does 1-20.

36. On or about August 1, 2007, the Rabbi, Zisi Bernstein, their neighbors and guests, learned about the existence of the surveillance camera which targets the Bernstein's home.

37. The video camera surveillance has caused great concern to the Rabbi and Zisi Bernstein, their neighbors and guests who pray at his house during the Sabbath, and has had a chilling effect on their ability to freely pray and practice their religious beliefs in accordance with Orthodox Jewish Law.

38. Freehold Township's surveillance has harmed the Rabbi and Zisi Bernstein, their family members, and the members of the *minyan*, who are being intimidated and/or embarrassed by the surveillance on the Bernstein's home, surveillance they believe is present because of their religious beliefs and practices.

39. Absent Freehold Township's video surveillance, members of Rabbi Bernstein's family, his neighbors and guests would be able to pray and conduct religious services unmolested in accordance with their beliefs.

40. Such video surveillance has interfered with and chilled the constitutionally protected right of the free exercise of religion of Rabbi Bernstein, Zisi Bernstein, their family, neighbors and guests.

41. The clandestine video surveillance has also interfered with the religious practices and beliefs of those joining the rabbi in prayer on the Sabbath.

42. Specifically, it is against the religious beliefs and practices of those individuals joining Rabbi Bernstein to pray on the Sabbath to in any way be involved in any physical change in the world during the Sabbath, which would include but not be limited to, driving a motor vehicle, starting a cooking fire on a gas stove, turning on an electric light, operating any machinery or doing any other "work", and not be photographed, either by video or still other cameras.

43. The clandestine videoing of those individuals entering and leaving Rabbi Bernstein's house during the Sabbath, was an intrusion and interference by the governing body of Freehold Township with Jewish Orthodox religious practices and beliefs, in violation of RLUIPA 42 U.S.C. §§ 2000cc.

44. On September 25, 2007, in an effort to correct the Township's failure to include a definition of "house of worship" (see preceding paragraphs 44 – 46 of this Complaint), Freehold township adopted a new definition entitled ""CHURCHES AND OTHER PLACES OF WORSHIP" which constitutes both a further retaliation against Rabbi Bernstein's right to hold prayer services in his home but is also a prayer restriction unlawfully restricting the rights of all religious groups to conduct prayer services within their homes located in various residential zones in Freehold Township.

45. The new ordinance definition unanimously adopted by the Freehold Township Committee on September 25, 2007 provides, in relevant part, as follows:

"CHURCHES AND OTHER PLACES OF WORSHIP - Any structure or building that is used as the regular site for traditional services, meetings and/or gatherings of an organized religious body or community, which services, meetings and/or gatherings are presided over by the ordained or otherwise officially recognized leader of that body or community. Exempted are incidental, temporary or sporadic meetings attended by a small number of persons such that the character of the zone district in which it is located is not compromised for occupants of properties in that area."

46. The evening on which the above referenced ordinance was being read for a second time prior to its adoption, Rabbi Bernstein and other members of the Freehold Township community appeared to present argument in opposition to the passage of the ordinance on the grounds that the ordinance was unconstitutionally vague and represented a further violation of RLUIPA.

47. Further, a four (4) page Memorandum entitled "Constitutional defects of the Proposed Ordinance", attached hereto as Exhibit E, was presented to the Township Committee and made part of the record of the proceedings.

48. The Memorandum contended that the proposed ordinance definition was improper for the following seven reasons:

- i. The use of the words “small” and “temporary” rendered the ordinance unconstitutionally vague on its face;
- ii. The term “other places of worship” rendered the ordinance unconstitutionally vague in terms of its application;
- iii. The First Amendment right of Freedom of Religion was superior to the right of the municipality to enact any definition in its ordinance that interfered with that right;
- iv. The ordinance definition treated religious assemblies different from secular assemblies in violation of RLUIPA;
- v. The exclusion of “regular” prayer meetings from residential zones was contrary to long established practice in the United States and would have the effect of stopping the growth of new religious groups;
- vi. The ordinance interfered with religion, a judicially recognized “inherently beneficial use” in residential zones ; and
- vii. Ignored the normal “police powers” granted to municipalities to control “nuisances” and instead improperly used the zoning power to infringe on both Constitutional and statutory rights granted to individuals who desire to conduct prayer services in their homes.

49. Rabbi Bernstein now seeks preliminary and permanent injunctive relief, with temporary restraints, in order to: enjoin the enforcement of the zoning ordinance definition entitled “Churches and Other Places of Worship” adopted September 25, 2007; enjoin the continuance of any remaining municipal court proceedings or Zoning Board “Special Use” determinations with respect to his residence; prohibit any future electronic

surveillance of his home; and a determination that he has the constitutionally protected right to pray in his home in accordance with his past practice.

50. Rabbi Bernstein and Zisi Bernstein now seeks preliminary and permanent injunctive relief, with temporary restraints, in order to enjoin the continuance of the prejudiced and targeted surveillance in and allow him to regain his constitutionally protected right to pray in his home in accordance with his beliefs and Orthodox Jewish Law.

COUNT I

VIOLATION OF 42 U.S.C.A. § 1983

51. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

52. 42 U.S.C.A. § 1983 provides a cause of action to persons who have been deprived of rights under the Constitution or laws of the United States against persons who cause such deprivations acting under color of state law.

53. Defendants Freehold Township, Avallone, Antus, Phelan, and/or John Does 1-20, by issuing or causing the issuance of a Municipal Court Summons and ordering or causing the video surveillance of the Bernstein's house, have acted under color of law of the State of New Jersey.

54. The Defendants action in issuing or causing the issuance of a Municipal Court Summons and ordering or causing the video surveillance of the Bernstein's house represent the official policy of the Freehold Township or are the result of decisions made by a person whose decision in that regard represent the policy of Freehold Township.

55. The actions of Freehold Township and the other Defendants through quasi criminal proceedings in its Municipal Court and video camera surveillance of the Bernstein's home, represent an illegal attempt to prohibit the Bernstein's, their family, neighbors and guest from freely exercising their right to practice their religion in the Bernstein's home.

56. Such action deprives the Plaintiffs of their right to free exercise of religion under the First Amendment to the United States Constitution.

57. Freehold Township's surveillance, as retaliation for commencement of the New Jersey State Court suit, under both the Fourteenth Amendment of the United States Constitution and the RILUIPA of 2000, deprives the Plaintiffs of their right of access to courts guaranteed and protected under the First Amendment to the United States Constitution.

58. The Township's selective surveillance of the Bernstein's home is discriminatory and targeted at them because of their exercise of First Amendment rights and deprives the Plaintiffs of their rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

59. The Plaintiffs have no adequate remedy at law and are threatened with imminent and irreparable harm as a result of the Township's interference with their exercise of religion. Freehold Township's efforts to chill and/or prevent the Plaintiffs from practicing his religion in his home have exactly that effect, forcing them to choose between practicing their religion in accordance with their beliefs or acting in accordance with the desires of Freehold Township, their local government.

60. Freehold Township's surveillance of the Bernstein's home has chilled and restricted the plaintiffs' free practice of religion by embarrassing and intimidating Rabbi and Zisi Bernstein, their family, neighbors and guests.

61. As a result, Rabbi and Zisi Bernstein, their family, neighbors and guests have been unable to freely practice their religion and instead forced into conflict with Freehold Township Municipal Government as a result of their religious beliefs.

62. The Township's *Sabbath only surveillance* of the Bernstein's home is discriminatory on its face.

63. Absent Freehold Township's surveillance, Rabbi and Zisi Bernstein would be able to practice their religion, unmolested, within their home in the company of their family, neighbors and guests in accordance with their beliefs.

64. By reason of the aforesaid deprivation of Constitutional rights, the Plaintiffs are entitled to compensatory damages, a declaratory judgment and injunctive relief declaring the Township and other Defendants be preliminarily and permanently enjoined from engaging in video surveillance of Rabbi Bernstein's home, and enjoin any and all interference with Rabbi Bernstein's practice of religion in his home in accordance with Orthodox Jewish Law.

COUNT II
VIOLATION OF 42 U.S.C.A. § 1982

65. Plaintiff repeats and reiterates all the allegations set forth in the preceding portions of the Complaint as though fully set forth at length.

66. 42 U.S.C.A. §1982 provides that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

67. Rabbi and Zisi Bernstein's ethnic identity as Orthodox Jews and Rabbinical identity as a practicing member of his faith are inextricably intertwined. At the time §1982 was adopted, Jews constituted a group of people Congress intended to protect under 42 U.S.C. § 1982.

68. Freehold Township's prejudicial surveillance of a clergyperson's home both intimidates and interferes with his right to use his residential real property in violation of 42 U.S.C §1982 .

69. Freehold Township has acted with discriminatory intent in selectively videoing the Bernstein's residence during the Sabbath time period.

70. As a result of the Township's surveillance, the Bernstein's right to freely utilize their property has been infringed upon by the Township and other Defendants because the Defendants are interfering with their right to engage in prayer and worship within their home according to their beliefs with his family.

71. Rabbi and Zisi Bernstein have been harmed.

72. The Township's surveillance of Rabbi Bernstein's property denies the Plaintiffs rights guaranteed and protected by 42 U.S.C.A. § 1982 and the Federal and State Constitutions.

73. Absent the Bernstein's ethnic and religious background as a practicing Orthodox Jews of Jewish decent, they would be able to pray and conduct religious services on his property as he desires.

74. The Defendants' conduct is a direct result of the Plaintiffs' religious and racial background.

75. The Bernsteins have no adequate remedy at law and is threatened with imminent and irreparable loss of his right to practice his religion, and as such has been harmed.

76. By reasons of the violation of the Bernsteins' rights to use and enjoy their property free from discrimination, the Bernsteins are entitled to compensatory damages, a declaratory judgment and injunctive relief permanently enjoining Freehold Township and the other Defendants from engaging in surveillance of the Bernsteins' property as the surveillance interferes with their practice of religion in their home in accordance with the Orthodox Jewish Laws.

COUNT III
VIOLATION OF RELIGIOUS LAND USE AND INSTITUTIONALIZED
PERSONS ACT OF 2000 (RLUIPA)

77. Plaintiff repeats and reiterates all the allegations set forth in the preceding portions of the Complaint as though fully set forth at length.

78. Rabbi and Zisi Bernstein's right to practice their religious beliefs in his home is protected by the provisions of the RLUIPA, 42 U.S.C. §§ 2000cc, *et seq.*

79. RLUIPA protects protect individuals, houses of worship, and other religious institutions from discrimination in zoning and land marking laws.

80. In passing RLUIPA, Congress found that the right to assemble for worship is at the very core of free exercise of religion.

81. RLUIPA prohibits zoning laws and other governmental actions that treat religious assemblies on less than equal terms with nonreligious institutions.

82. RLUIPA prohibits municipal and zoning actions that unreasonably limit religious assemblies.

83. Freehold Township has violated RLUIPA by their unconstitutionally vague and undefined charge that Rabbi Bernstein is operating a “house of worship”.

84. Freehold Township and the other Defendants have violated RLUIPA by attempting to prohibit religious assembly in a private home.

85. Freehold Township and the other Defendants have also violated RLUIPA in treating the Plaintiff’s religious assembly in their home on less than equal terms with nonreligious assemblies such as family gatherings or guest parties.

86. RLUIPA has been violated by the Defendants decision and action training a video camera on the Bernsteins’ door, causing embarrassment to the Orthodox Jews seeking to practice their faith in a family setting in the Bernsteins’ home in accordance with Orthodox Jewish Laws.

87. As a result of the camera trained on the Bernsteins’ home immediately before and after the Sabbath, the Plaintiffs’ exercise of religion is chilled and infringed upon because his fellow worshipers are embarrassed and hesitant to join the Bernsteins at their home as a result of the presence of the video camera set up by Freehold Township trained on the Bernstein’s home.

88. As a result of the actions of Freehold Township and the other Defendants, the Bernsteins and their guests have been interfered with and prevented from fully and freely exercising their religion within the Bernstein’s home, a fundamental right protected by the First and Fourteenth Amendments to the United States Constitution.

89. RLUIPA has also been violated by Freehold Township's adoption of an ordinance definition entitled "Churches and Other Places of Worship" on September 25, 2007 as it treats the religious gatherings of all peoples in Freehold township residential zones, including those held by Rabbi Bernstein, on less than equal terms with nonreligious assemblies.

90. The Bernsteins are entitled to seek relief pursuant to RLUIPA.

91. Rabbi and Zisi Bernstein are entitled to seek damages for the Defendants' violation of RLUIPA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, Rabbi Avaham Bernstein and Zisi Bernstein, pray as follows:

(a) For this Court to find Defendant Freehold Township and the other Defendants herein, liable for the causes of action alleged;

(b) For this Court to immediately and permanently enjoin Freehold Township and the other Defendants herein from interfering with the free exercise of Rabbi and Zisi Bernstein's religious beliefs;

(c) For damages, attorneys fees and costs provided by RLUIPIA, 42 U.S.C. § 1988, and other applicable law; and

(d) For such other and further relief as the Court deems just and proper.

Respectfully submitted,



Gerald A. Marks, Esq.
MARKS & KLEIN, LLP
Attorney for Plaintiffs
Rabbi Avraham Bernstein
and Zisi Bernstein

Dated: October 15, 2007

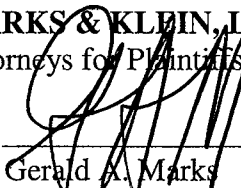
JURY DEMAND

Plaintiff requests a jury for any of the fact issues that may be tried by jury

DESIGNATION OF TRIAL COUNSEL

Gerald A. Marks, Esq. is hereby designated as trial counsel for Plaintiffs in the within matter.

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