

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JEWS FOR JESUS, INC., and SUSAN C. MENDELSON,	<b><u>PLAINTIFFS'</u></b> <b><u>VERIFIED</u></b> <b><u>COMPLAINT</u></b>
Plaintiffs,	
- against -	
THE TOWN OF OYSTER BAY, THE TOWN BOARD OF THE TOWN OF OYSTER BAY, RICHARD BETZ, JUSTIN MCCAFFREY, CHRIS COSCHIGNANO, ANGELO DELLIGATTI, ELIZABETH FAUGHNAN, ANTHONY MACAGNONE, JOSEPH MUSCARELLA, ROSE MARIE WALKER,	<b>DEMAND FOR JURY TRIAL</b>
Defendants.	Case No. _____

**PARTIES**

1. Plaintiff, Jews for Jesus, Inc., a California not-for-profit corporation, commences this action to protect the rights of its employees, staff and volunteers who utilize the public parks in the Town of Oyster Bay to fulfill its corporate purpose through the peaceful distribution of literature and speaking to people while in the public parks in the Town of Oyster Bay.

2. Plaintiff, Susan C. Mendelson (hereinafter “Plaintiff Mendelson”), is an adult citizen and resident of the State of New York, who maintains a residence at 338 E. 43rd Street, New York, NY 10017. Plaintiff Mendelson is an employee of Jews for Jesus, Inc., and appears in both her capacity as an employee of Jews for Jesus, Inc., and in her personal capacity.

3. Defendant, the Town of Oyster Bay (hereinafter “Town”), is a municipality located in Nassau County, Long Island, organized and existing under and pursuant to the laws of the State of New York, with the ability to sue and be sued in its own name.

4. Defendant, the Town Board of the Town of Oyster Bay (hereinafter the “Town Board”), is a duly constituted board created and existing pursuant to the laws of the Town of Oyster Bay and the State of New York, and consists of a body of Town of Oyster Bay officials responsible for, among other things, conducting public hearings, voting on proposed laws or amendments to the Town of Oyster Bay Code, accepting bids for Town purchases and road improvement projects, and granting rezoning and special use permit applications. The Town Board is sued herein as a body, and the individual members of the Town Board are sued in their individual capacities.

5. Defendant Richard Betz is employed by the Town of Oyster Bay as the Commissioner of Parks, and is being sued in his individual capacity.

6. Defendant Justin McCaffrey is employed by the Town of Oyster Bay as the Commissioner of the Department of Public Safety, and is being sued in his individual capacity.

7. Defendant Chris Coschignano is a City Councilman for the Town of Oyster Bay and is being sued in his individual capacity.

8. Defendant Angelo Delligatti is a City Councilman for the Town of Oyster Bay and is being sued in his individual capacity.

9. Defendant Elizabeth Faughnan is a City Councilwoman for the Town of Oyster Bay and is being sued in her individual capacity.

10. Defendant Anthony Macagnone is a City Councilman for the Town of Oyster Bay and is being sued in his individual capacity.

11. Defendant Joseph Muscarella is a City Councilman for the Town of Oyster Bay and is being sued in his individual capacity.

12. Defendant Rose Marie Walker is a City Councilwoman for the Town of Oyster Bay and is being sued in her individual capacity.

13. Upon information and belief, each of the Defendants sued herein are the agents, servants, employees, licensees, guaranties, indemnitors, invitees, or assignees of each other, and in doing the things herein alleged acted within the course and scope of such agency, employment, license, guaranty, indemnity, invitation, assignment and/or relationship and with the full knowledge, consent and approval of the remaining Defendants.

### **JURISDICTION AND VENUE**

14. Plaintiffs bring this action seeking declaratory, injunctive and other relief to redress deprivations by the Defendants, acting under color of state law, of certain rights secured to the Plaintiffs and others as alleged herein under the United States Constitution, the Constitution of the State of New York, and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343(a)(3) and 1343(a)(4), which provide for original jurisdiction in this Court of all suits brought pursuant to 42 U.S.C. § 1983. Jurisdiction is also conferred on this Court by 28 U.S.C. § 1331 because the cause of action arises under the Constitution and laws of the United States. This Court has supplemental subject matter jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a) in that the state law claims form part of the same case or controversy as the federal claims.

15. This Court is authorized to grant Declaratory Judgment under the Declaratory Judgment Act, Title 28 U.S.C. §§ 2201 and 2202 (1988), implemented through Rule 57 of the Federal Rules of Civil Procedure, and to issue the Preliminary and Permanent Injunctive relief requested by Plaintiffs under Rule 65 of the Federal Rules of Civil Procedure. This Court is authorized to grant Plaintiffs' prayer for relief and to award Plaintiffs' costs in this action for violations of Plaintiffs' constitutional and civil rights, including a reasonable attorney's fee, pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1988 and Rule 54, and Title 28 U.S.C. § 1920.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the Defendants reside and/or do business in the Eastern District of New York and may be found and served in the Eastern District of New York. Venue is proper in the Eastern District of New York as all of the events giving rise to the claims herein occurred in this District.

### **FACTS**

17. Jews for Jesus, Inc., is a non-profit corporation based in San Francisco, California, that seeks to spread awareness of its views regarding Jesus Christ. Among the corporate purposes of Jews for Jesus, Inc., is to exercise the Free Speech rights of its members to further its religious beliefs. Jews for Jesus, Inc., has branch offices located in New York City, Chicago, Los Angeles, San Francisco, Boston, Washington, D.C., South Florida, Toronto, Montreal, London, Paris, Dnepropetrovsk, Johannesburg, Sydney, Odessa, Moscow, Kiev, Kharkov, Rio de Janeiro and Tel Aviv. Jews for Jesus, Inc., has authorized the filing of this lawsuit to vindicate the Free Speech rights of its members and ensure that these rights will not be violated by Defendants prospectively.

18. John J. Burns Park (hereinafter the “Park”) is a park located in the Town of Oyster Bay, which contains facilities for public recreational activities, such as free concerts, organized sports games, and parade-a-thons for local schools.

19. The public utilizes John J. Burns Park regularly for various activities involving communication, the performing arts, and the exchange of ideas.

20. John J. Burns Park is a traditional public forum.

21. The public parks in the Town of Oyster Bay are regularly utilized for various activities involving communication, the performing arts, and the exchange of ideas making them fit the category of traditional public fora.

22. The public beaches in the Town of Oyster Bay are regularly utilized for various activities involving communication and the exchange of ideas making them fit the category of traditional public fora.

**ENFORCEMENT OF TOWN OF OYSTER BAY CODE § 168-16**

**AND ATTEMPTS TO RESOLVE CASE WITHOUT LITIGATION**

**Enforcement of Town of Oyster Bay Code § 168-16 in July and August 2006**

23. The following factual allegations discuss Town of Oyster Bay Code § 168-16 and its application to Plaintiffs prior to adoption of the revised Town Code discussed below.

24. On July 25, 2006, Plaintiff Mendelson and her colleagues from Jews for Jesus, Inc., went to John J. Burns Park in the Town of Oyster Bay to distribute their literature and speak with interested individuals about their religious beliefs.

25. On July 25, 2006, when Plaintiff Mendelson and her colleagues arrived at the Park, they were met by Defendant Justin McCaffrey, the Commissioner of Public Safety for the Town of Oyster Bay.

26. On July 25, 2006, Defendant Justin McCaffrey, the Town's Commissioner of Public Safety, informed Plaintiff Mendelson that the Town Supervisor for the Town of Oyster Bay, John Venditto, had given orders to call the police to issue an arrest summons if Jews for Jesus, Inc., handed out one piece of literature.

27. On July 25, 2006, Nassau County Police Officers were called on behalf of the Town of Oyster Bay to address the situation involving attempts by members of Jews for Jesus, Inc., to exercise their First Amendment rights at John J. Burns Park.

28. Upon information and belief, the Nassau County Police Department has been delegated authority to enforce the Town of Oyster Bay Code at locations within the Town.

29. On July 25, 2006, the police officers prevented members of Jews for Jesus, Inc., from exercising their Free Speech rights by ordering that the members stop distributing literature in the Park.

30. On July 25, 2006, the police officers demanded that Plaintiff Mendelson and those associated with Jews for Jesus, Inc., stop distributing literature.

31. On July 25, 2006, after Plaintiff Mendelson stated that she would not distribute literature, but merely wanted to walk through the Park and speak with people about her religious beliefs, she was "escorted" from the Park by the police officers.

32. On July 25, 2006, one police officer stated to Plaintiff Mendelson, "It's not even about the Ordinance at this point; they just want you to leave."

33. Upon information and belief, the Town and the Town Board have authorized the Town's Parks Commissioner, the Deputy Commissioner of Parks, and the Commissioner of the Oyster Bay Department of Public Safety to administer Town Code § 168-16, concerning speech related activities at Town parks and beaches.

34. On July 25, 2006, Plaintiffs' legal counsel, Frederick H. Nelson, Esq., contacted Deputy Chief McHale of the Nassau County Police Department to determine the process for obtaining a permit to distribute literature in the parks of the Town of Oyster Bay.

35. On July 25, 2006, Deputy Chief McHale told Mr. Nelson that no person was allowed to distribute literature in any public parks in the Town of Oyster Bay.

36. On July 25, 2006, Deputy Chief McHale further stated that, to the best of his knowledge, no person had ever been given a permit to distribute literature in any public park within the Town of Oyster Bay.

37. On July 25, 2006, after Mr. Nelson further inquired as to the availability of access to the public parks for merely speaking with individuals, without any distribution of literature, Deputy Chief McHale replied that Jews for Jesus, Inc., would be allowed to enter the public parks to speak with people, but the police would remove Jews for Jesus, Inc., personnel if anyone was offended by the discussion.

38. On July 25, 2006, during the aforementioned conversation with Mr. Nelson, Deputy Chief McHale stated, in substance, that:

- a. Any person offended by personnel affiliated with Jews for Jesus, Inc., could make a complaint to the park officials.
- b. The officials would then be authorized to issue a trespass citation to members of Jews for Jesus, Inc., and contact the Nassau County Police.
- c. Based upon the trespass citation issued by the park officials, the Nassau County Police would demand that members of Jews for Jesus, Inc., leave the public park or be arrested.

39. On July 25, 2006, Mr. Nelson also contacted the Town Attorney for the Town of Oyster Bay.

40. On July 25, 2006, the Town Attorney's office confirmed the policies articulated above by Deputy Chief McHale and affirmed that there was no permit process for literature distribution in public parks of the Town of Oyster Bay.

41. On or about July 27, 2006, Plaintiff Mendelson phoned the Town of Oyster Bay seeking information regarding applying for a permit that would give Jews for Jesus, Inc., the right to distribute free religious literature in Town parks.

42. On or about July 27, 2006, Plaintiff Mendelson spoke with an individual who said that the Deputy Commissioner of Parks, George Baptista, would return her call after speaking to the Town's legal department.

43. On or about July 27, 2006, Deputy Commissioner Baptista called Plaintiff Mendelson and stated definitively that there was no permit process in place for literature distribution – that it did not exist. Deputy Commissioner Baptista further advised Plaintiff Mendelson that, although there was a Town Code provision, Town of Oyster Bay Code § 168-16, (hereinafter “the Code”) ostensibly governing the issuance of permits for, *inter alia*, the distribution of literature in Town parks with special permission from the Town Board, there was no process in place for the actual issuance of such permits.

44. After the above-mentioned futile attempts to obtain an application for a permit to distribute literature and converse with people in the Town's public parks, Plaintiff Mendelson returned to John J. Burns Park on August 1, 2006, to exercise her constitutionally protected right to freedom of speech.

45. On August 1, 2006, prior to going to the Park, Plaintiff Mendelson notified the local precinct of her intent and spoke with Deputy Chief McHale in order to enlist his assistance in exercising her constitutional right to free speech.

46. On August 1, 2006, Plaintiff Mendelson informed Deputy Chief McHale that she would be at John J. Burns Park later that day.

47. On August 1, 2006, soon after arriving at John J. Burns Park and attempting to distribute literature and converse peaceably with members of the public in the Park, Plaintiff Mendelson was escorted from the Park and charged with a violation of Town of Oyster Bay Code § 168-16.

48. On August 1, 2006, Town of Oyster Bay Code § 168-16 stated, in relevant part:

No person shall erect any structures, stand or platform; hold any meeting; perform any ceremony; make a speech, address or harangue; exhibit or distribute any sign, placard, notice, declaration or appeal of any kind or description ... in any park or beach except by special permission of the Town Board.

**Town of Oyster Bay seeks first prosecution pursuant to Town Code § 168-16**

49. As a result of her activities on August 1, 2006, Plaintiff Mendelson was given an accusatory instrument charging her with violation of the Town of Oyster Bay Code § 168-16, which was punishable by a fine not to exceed \$250, or imprisonment not to exceed five days, or by both such fine and imprisonment.

50. The matter was returnable on September 11, 2006.

51. Plaintiff Mendelson pleaded not guilty and the matter was scheduled in order to allow her to move to dismiss to vindicate her constitutional rights.

52. Plaintiff Mendelson moved to dismiss the accusatory instrument on the grounds that the Town of Oyster Bay Code § 168-16 was unconstitutional on its face and as applied,

and further that the accusatory instrument failed to comply with the Criminal Procedure Law and was fatally defective.

53. The Town of Oyster Bay opposed the motion to dismiss by defending the constitutionality of the Code and the enforcement and, in an effort to rectify defects in the original accusatory instrument, filed a superseding accusatory instrument charging Plaintiff Mendelson with violating the Town of Oyster Bay Code § 168-16.

54. On or about April 4, 2007, Plaintiff Mendelson's motion to dismiss was granted on the grounds that Town of Oyster Bay Code § 168-16 was both unconstitutional on its face, and as applied to Plaintiff Mendelson. *See* Decision and Order, dated April 4, 2007, *People v. Susan Mendelson*, Index. No. 2006NA 00602 (Pardes, J.). A copy of the Decision and Judgment is annexed hereto as Exhibit "A."

55. The Judgment was entered on April 4, 2007, and Notice of Entry was served on the Town of Oyster Bay on April 24, 2007.

56. The Town of Oyster Bay did not submit a notice of appeal with respect to the April 4, 2007, Judgment and dismissal of the accusatory instrument against Plaintiff Mendelson. Therefore, the Judgment and dismissal became final and binding. By virtue of the Judgment and dismissal of the accusatory instrument against Plaintiff Mendelson, the doctrine of *res judicata* barred contesting liability for the unlawful enforcement of Town of Oyster Bay Code § 168-16.

**PLAINTIFFS FILE FIRST CIVIL RIGHTS COMPLAINT**

**CHALLENGING TOWN OF OYSTER BAY CODE § 168-16**

57. As a direct and proximate result of the enforcement of Town of Oyster Bay Code § 168-16 in July and August 2006 and the refusal to allow Plaintiffs to exercise their

freedom of speech, Plaintiffs were damaged by the deprivation of their rights guaranteed by the United States and New York State Constitutions. As a direct and proximate result of the enforcement of Town of Oyster Bay Code § 168-16 in July and August 2006 and the refusal to allow Plaintiff Mendelson to exercise her freedom of speech, Plaintiff Mendelson suffered emotional distress, embarrassment and humiliation.

58. On June 22, 2007, Plaintiffs filed a Verified Complaint alleging that Town of Oyster Bay Code § 168-16 was unconstitutional on its face and as applied to Plaintiffs.

**Town of Oyster Bay enacts New Regulations, but does not revise Town Code § 168-16**

59. The month following the filing of Plaintiffs' Verified Complaint, on or about July 3, 2007, the Town of Oyster Bay enacted New Regulations to regulate free speech in the public parks and beaches in the Town of Oyster Bay.

60. On or about July 3, 2007, the Town of Oyster Bay enacted New Regulations titled Department of Parks Rules and Regulations (hereinafter referred to as the "New Regulations"). A copy of the July 3, 2007, Town of Oyster Bay Department of Parks Rules and Regulations is annexed hereto as Exhibit "B."

61. However, the Town of Oyster Bay did not adopt any revision to Town of Oyster Bay Code § 168-16 until nearly one year later -- on or about June 24, 2008.

62. From July 3, 2007, through June 24, 2008, the Town of Oyster Bay admits in affidavits that the New Regulations limiting free speech in the public parks and beaches in the Town of Oyster Bay were enforced without ever codifying any authority for the enactment or enforcement of the New Regulations. The Commissioner of Parks, Richard Betz, swears under oath that in June or July 2007 he created the New Regulations and began enforcing them without codification by the Town of Oyster Bay. Mr. Betz states that he

created the New Regulations in a rush because it would take too long at that point for the Town of Oyster Bay Board to formally delete § 168-16 from the Town Code and replace it with a revised § 168-16 that would pass constitutional muster. Mr. Betz admits that he knew the authority to enact and enforce the New Regulations had not been codified by the Town until nearly a year later – on June 24, 2008. To this admission, Mr. Betz adds that he had been enforcing the New Regulations and requiring permits prior to allowing the distribution of literature for the entire year despite knowing he had not been given the authority by any revision to § 168-16 of the Town Code.

63. The New Regulations, Section 3, Subsection (f)(2), states in part:

No person shall engage in the distribution of printed or similarly expressive material without a permit issued by the Commissioner. . . Permits shall limit permit holders to no more than four (4) persons distributing printed material at any given time. In order to limit the likelihood of littering by disinterested recipients of the distributed material and to minimize unwanted intrusion into on other park user's quiet enjoyment of the park space, distribution of printed or similarly expressive material may occur only upon an indication of interest by the recipient, and only from a stationary table in a fixed location specified in the permit. The location(s) in which such activity shall be permitted in each park has been selected by the Commissioner . . .

64. The New Regulations, Section 3, Subsection (f)(2), prohibits the distribution of literature without a permit whether or not the leafletter seeks to peacefully distribute literature on special event days or non-special event days in parks within the Town of Oyster Bay.

65. The New Regulations, Section 3, Subsection (f)(2), limits literature distribution to behind a fixed table whether or not the leafletter seeks to peacefully distribute literature on special event days or non-special event days in parks within the Town of Oyster Bay.

**Plaintiffs attempt to avoid further litigation by educating the Town of Oyster Bay regarding the faults within the New Regulations**

66. Following the enactment of the New Regulations, Plaintiffs' counsel specifically informed the Town of Oyster Bay that the New Regulations would fail court scrutiny because they failed to distinguish between special event days and non-special event days in parks within the Town of Oyster Bay.

67. Following the enactment of the New Regulations, Plaintiffs' counsel provided the Town of Oyster Bay with cases holding that the New Regulations would fail court scrutiny because they required a permit for literature distribution on special days and non-special event days in parks within the Town of Oyster Bay.

68. The Town of Oyster Bay rejected Plaintiffs' counsels' information and made the decision to ignore the cases holding that the New Regulations would fail court scrutiny because they required a permit for literature distribution on special days and non-special event days in parks within the Town of Oyster Bay.

69. Plaintiffs made numerous attempts to resolve the current dispute without litigation by providing the Town of Oyster Bay with court cases holding that the New Regulations would fail court scrutiny.

**Plaintiffs attempt to distribute literature under the New Regulations in July 2007**

70. On July 8, 2007, at 6:20 p.m., Plaintiff Mendelson arrived at John J. Burns Park to distribute literature with two additional employees of Jews for Jesus, Inc., Mr. Jason Verreyne and Mr. Tuvya Zaretsky.

71. On July 8, 2007, Plaintiff Mendelson, Mr. Verreyne, and Mr. Zaretsky approached the sound booth in a large grassy area within the park and Mr. Zaretsky asked to speak with whoever was in charge.

72. On July 8, 2007, Defendant Justin McCaffrey, Commissioner of the Town of Oyster Bay Department of Public Safety, and Mr. Colin O'Donnell, Special Counsel to the Supervisor for the Town of Oyster Bay, approached Plaintiff Mendelson, Mr. Verreyne, and Mr. Zaretsky.

73. On July 8, 2007, Defendant Justin McCaffrey informed Plaintiff Mendelson, Mr. Verreyne, and Mr. Zaretsky that the Town of Oyster Bay had accommodated their needs by providing for a literature distribution permit scheme under the New Regulations. Defendant Justin McCaffrey explained that the New Regulations required Plaintiffs to apply for a permit five (5) days prior to the intended date of literature distribution.

74. On July 8, 2007, Defendant Justin McCaffrey informed Plaintiff Mendelson, Mr. Verreyne, and Mr. Zaretsky that they were required to conduct their literature distribution activities from behind a table.

75. On July 8, 2007, Defendant Justin McCaffrey directed Plaintiff Mendelson, Mr. Verreyne, and Mr. Zaretsky to a lone table with three folding chairs. The table was placed approximately one hundred and fifty (150) yards from the rear of the public seating area along an isolated service road well out of the reach of park-goers.

76. On July 8, 2007, there were no people anywhere near the vicinity of the table where Plaintiffs were designated to distribute literature.

77. On July 8, 2007, Mr. Zaretsky informed Defendant Justin McCaffrey that it was unreasonable to expect them to conduct their activity from behind any table, and that far

removed table in particular. Mr. Zaretsky also explained that the five (5) day prior notice for a literature distribution permit was also unreasonable and noted that it was especially so to ask for one within a public park.

78. On July 8, 2007, Defendant Justin McCaffrey informed Plaintiff Mendelson, Mr. Verreyne, and Mr. Zaretsky that if they tried to hand out any literature, he would call the Nassau Police for enforcement assistance.

79. On July 8, 2007, Plaintiff Mendelson, Mr. Verreyne, and Mr. Zaretsky forfeited their free speech rights and left John J. Burns Park without distributing literature.

80. On July 8, 2007, as Plaintiff Mendelson, Mr. Verreyne, and Mr. Zaretsky were leaving John J. Burns park, they noticed that the Town of Oyster Bay had an information table set up near the high pedestrian trafficked point of public ingress to the park and were giving away plastic potato chip bag clips, schedules of coming events, and a newsletter to park-goers.

81. The New Regulations were enforced against Plaintiffs on July 8, 2007, despite the failure of the Town of Oyster Bay to enact any codification authorizing enactment or enforcement of the New Regulations.

**Town of Oyster Bay enacts New Code § 168-16 giving Commissioner of Parks**

**authority to enact and enforce New Regulations**

82. Nearly one year later, on or about June 24, 2008, the Town of Oyster Bay adopted a revision to Code § 168-16 (the “New Code”), stating:

No person shall erect any structure, stand or platform; conduct any parade, drill or maneuver of any kind, form any procession for a parade or proceed in the park; hold any meeting; perform any ceremony; exhibit or distribute any sign, placard, notice, leaflet, declaration or appeal of any kind or description; exhibit any performance or show of any kind or nature; or run or race any horse or other animal, or, being in or on a vehicle, race

with another vehicle or horse, in any park or beach except by permit issued by the Commissioner of the Department of Parks. The Commissioner shall promulgate such regulations as may be necessary and appropriate to issue and enforce such permits, consistent with the legislative intent set forth herein, as approved by the Town Board.

A copy of the June 24, 2008, Town of Oyster Bay revision to Code § 168-16 is annexed hereto as Exhibit "C."

**ACLU joins Plaintiffs in warning the Town of Oyster Bay Town Board regarding the faults within the New Code and New Regulations**

83. Prior to adopting the New Code, the ACLU joined with Plaintiffs' counsel by again warning the Town of Oyster Bay Town Board that the New Code and New Regulations were unconstitutional.

84. The Town of Oyster Bay Town Board rejected the ACLU's and Plaintiffs' counsels' information and made the decision to adopt the New Code despite having been provided the information that the New Code would fail court scrutiny.

**Plaintiffs attempt to distribute literature under the New Code and New Regulations in July 2008**

85. On July 29, 2008, Plaintiff Mendelson and another missionary from Jews for Jesus, Inc., went to John J. Burns Park with the intent to share their views with fellow citizens in the park and distribute free literature to those park-goers who expressed an interest.

86. On July 29, 2008, the New Code and New Regulations were enforced to prevent Plaintiffs from peacefully distributing literature in John J. Burns Park.

87. On July 29, 2008, Plaintiff Mendelson appeared at the park and began to peacefully engage citizens in conversation about her views, and offered a single-page information sheet to those interested in learning more.

88. On July 29, 2008, almost immediately upon Plaintiff Mendelson's arrival, the Town of Oyster Bay Commissioner of Parks, Defendant Richard Betz, approached Plaintiff Mendelson and threatened to call the police and have her removed from the park if she did not agree to conduct her literature distribution from behind a table that had been set up by Defendant Richard Betz in a specified area of the park.

89. On July 29, 2008, Plaintiff Mendelson declined to be confined to a table location arbitrarily chosen by Defendant Richard Betz, and kindly replied that she would continue to engage in the exercise of peaceful literature distribution while walking around the park.

90. On July 29, 2008, Plaintiff Mendelson returned to her literature distribution and was followed by a park public safety officer for the remainder of the time that she was peacefully distributing literature.

91. On July 29, 2008, after approximately twenty minutes, Defendant Richard Betz reappeared with several police officers from the Nassau County Police Department. Defendant Richard Betz again required that Plaintiff Mendelson cease engaging citizens in the park and offering them information about her views.

92. On July 29, 2008, Plaintiff Mendelson again kindly declined to stop her peaceful literature distribution. Defendant Richard Betz, after conferencing with the police officers, stated that Plaintiff Mendelson must either leave the park voluntarily or she would be arrested.

93. On July 29, 2008, Plaintiff Mendelson, believing that it was her constitutionally protected right to peacefully engage her fellow citizens in conversation about her religious views, especially in a traditional forum for such expression like a public park, declined to leave the park and was arrested.

94. On July 29, 2008, the police officers handcuffed Plaintiff Mendelson and, in full view of her fellow citizens, escorted her from the park and into the back of a waiting police car.

95. On July 29, 2008, Plaintiff Mendelson spent approximately thirty to forty-five minutes waiting in the back of the police car before she was eventually driven to the Seventh Precinct. Once there, Plaintiff Mendelson was first escorted into a holding room and handcuffed to a chair (for approximately thirty to forty-five minutes), and subsequently placed in a jail cell. After two additional hours in the jail cell, Plaintiff Mendelson paid \$200 in bail to secure her release. No Defendant had lawful cause or probable cause to arrest Plaintiff Mendelson, and the arrest of Plaintiff Mendelson was unlawful.

**Town of Oyster Bay seeks second prosecution pursuant to Town Code § 168-16**

96. As a result of her activities on July 29, 2008, Plaintiff Mendelson was given two accusatory instruments charging her with unlawful public address without a permit (Appearance Ticket No. 284246) in violation of the New Code § 168-16, and trespass (Appearance Ticket No. 284245) in violation of New York Penal Law § 140.05.

97. Plaintiff Mendelson pleaded not guilty and the matter was scheduled in order to allow her to move to dismiss to vindicate her constitutional rights.

98. As before, the Town of Oyster Bay opposed the motion to dismiss by defending the constitutionality of the New Code and the New Regulations.

99. On March 17, 2009, Plaintiff Mendelson's motion to dismiss was granted on the grounds that the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), are unconstitutional on their face. *See* Decision and Order,

dated March 17, 2009, *People v. Susan Mendelson*, Index. No. 2008NA 011929 (Engel, J.).  
A copy of the Decision and Judgment is annexed hereto as Exhibit “D.”

100. The Town of Oyster Bay has not submitted a notice of appeal with respect to the March 17, 2009, Judgment and dismissal of the accusatory instrument against Plaintiff Mendelson. Therefore, the Judgment and dismissal became final and binding. By virtue of the Judgment and dismissal of the accusatory instrument against Plaintiff Mendelson, the doctrine of *res judicata* bars contesting liability for the unlawful enforcement of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2).

101. By virtue of the Judgment and dismissal of the accusatory instrument against Plaintiff Mendelson, Defendants are barred by the doctrine of *res judicata* from contesting liability under 42 U.S.C. § 1983, the United States Constitution and the New York State Constitution.

### **GENERAL ALLEGATIONS**

102. The adoption of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and the actions of Defendants deprived Plaintiffs of their constitutional and civil rights.

103. As a direct and proximate result of the Defendants’ adoption and enforcement of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), Plaintiffs have forfeited and forever lost the opportunity to exercise their constitutional and civil rights.

104. As a direct and proximate result of the Defendants’ adoption and enforcement of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3,

Subsection (f)(2), Plaintiff Mendelson suffered emotional distress, embarrassment and humiliation.

105. As a direct and proximate result of the Defendants' adoption and enforcement of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), Plaintiffs are uncertain and unsure of their ability to distribute literature in the public parks and beaches in the Town of Oyster Bay and due to this chilling have forfeited and forever lost the opportunity to exercise their constitutional and civil rights.

106. Plaintiffs have been damaged by the deprivation of their rights guaranteed by the United States and New York State Constitutions. Plaintiffs are uncertain whether they will be arrested and fined in the future for the distribution of literature and conversations with people in the Town's public parks.

107. The threat of future arrests and fines, as evidenced by the prior application and interpretation against Plaintiffs, is both great and immediate.

108. The future chilling of Plaintiffs' rights is an absolute certainty unless and until this Court grants the injunctive and declaratory relief requested herein.

109. Defendants' actions have chilled Plaintiffs' constitutional and civil rights to the point that they fear arrest for their desired future literature distribution and conversations with people in the Town of Oyster Bay's public parks.

110. Plaintiffs wish to continue distributing free literature and converse with people in the Town of Oyster Bay's public parks, and have specific and concrete intentions to continue engaging in this activity, but they are fearful of being arrested by Defendants for exercising their protected constitutional and civil rights.

111. Plaintiffs have a concrete and certain intent to distribute free literature and converse with people in the Town of Oyster Bay's public parks on various dates in the future in addition to the locations and dates specified herein: July: 3, 4, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 24, 25, 27, 31; and August: 1, 4, 7, 8, 11, 13, 14, 15.

112. The violations of Plaintiffs' constitutional and civil rights alleged herein have caused, and will continue to cause, Plaintiffs to suffer extreme hardship, actual and impending, irreparable injury and damage.

113. Plaintiffs currently suffer from the denial of rights guaranteed by the United States and New York Constitutions because of Defendants' actions taken under color of law pursuant to official acts of Defendants as interpreted and applied against Plaintiffs.

114. There is a substantial likelihood that Plaintiffs will prevail on the merits in this case because Defendants' actions and practices, as applied against Plaintiffs, constitute an abridgement of their constitutional rights, and such restrictions are strictly scrutinized.

115. The harm to Plaintiffs outweighs any subjective harm to the Defendants.

116. The public interest is benefited when constitutional and civil rights are protected by the Courts.

117. Plaintiffs have no adequate remedy at law at this time to correct the continuing deprivations of their most cherished constitutional liberties.

118. On information and belief, each of the Defendants approved and agreed to the decision to ban all literature distribution without a permit and agreed that individuals engaging in such activity must be behind a table in a fixed location in the Town of Oyster Bay's public parks at all times (even on non-special event days).

119. On information and belief, each of the Defendants approved and agreed to the decision to cause the arrest and/or fine of any person who distributed any literature in the Town of Oyster Bay's public parks without a permit and without being behind a table in a fixed location in the Town of Oyster Bay's public parks at all times (even on non-special event days).

120. Defendants and Defendants' officers/agents/employees had the ability and authority to prevent the violation of Plaintiffs' rights protected under the United States Constitution and the New York Constitution.

121. Defendants and Defendants' officers/agents/employees failed to act in any way to prevent the alleged violations of Plaintiffs' rights protected under the United States Constitution and the New York Constitution.

122. Defendants and Defendants' officers/agents/employees had personal knowledge of the events described herein.

123. The Town of Oyster Bay Town Board Defendants, either by adopting the New Code and authorizing the enactment and enforcement of the New Regulations that permit or tolerate unconstitutional acts by Town of Oyster Bay officers/agents/employees or by adhering to a policy, practice or custom of non-supervision amounting to deliberate indifference to constitutional rights, are personally liable for damages the actions alleged herein pursuant to 42 U.S.C. § 1983.

124. The Town of Oyster Bay Town Board Defendants knew, or should have known, that a ban on literature distribution activities without a permit requiring a person to remain behind a fixed table at all times (even on non-special event days) violates the United States

Constitution and the New York Constitution, making them personally liable for damages for the actions alleged herein pursuant to 42 U.S.C. § 1983.

125. Any reasonable Town of Oyster Bay official would know, or should have known, that a ban on literature distribution activities without a permit requiring a person to remain behind a fixed table at all times (even on non-special event days) violates the United States Constitution and the New York Constitution, making them personally liable for damages for the actions alleged herein pursuant to 42 U.S.C. § 1983.

126. Because it is well settled law that literature distribution activities and peaceful conversations with people in public parks is a form of peaceful free speech protected by the United States and New York Constitutions, any reasonable Town of Oyster Bay officer, agent, or employee would know, or should have known, that a ban on literature distribution activities without a permit requiring a person to remain behind a fixed table at all times (even on non-special event days) violates the United States Constitution and the New York Constitution, making them personally liable for damages for the actions alleged herein pursuant to 42 U.S.C. § 1983.

127. Defendant Richard Betz is the Town of Oyster Bay official who has oversight of officials, agents and employees of the Town of Oyster Bay. Defendant Richard Betz has the authority to implement policies which will eliminate the constitutional violations alleged herein and to prevent arrests without probable cause. Defendant Richard Betz took no action to avoid or prevent the constitutional violations and unlawful arrest alleged herein. The incidents described herein reveal the acts and omissions of Defendant Richard Betz deprived Plaintiffs of their free speech and freedom of religious expression rights under the First and Fourteenth Amendments to the United States Constitution and the New York

Constitution and further deprived Plaintiff Mendelson of her right to be secure in her person against unreasonable searches and seizures under the First and Fourteenth Amendments to the United States Constitution. Defendant Richard Betz knew or should have known that his actions were unlawful.

128. Defendant Justin McCaffrey is the Town of Oyster Bay official who has oversight of officials, agents and employees of the Town of Oyster Bay. Defendant Justin McCaffrey has the authority to implement policies which will eliminate the constitutional violations alleged herein and to prevent arrests without probable cause. Defendant Justin McCaffrey took no action to avoid or prevent the constitutional violations and unlawful arrest alleged herein. The incidents described herein reveal the acts and omissions of Defendant Justin McCaffrey deprived Plaintiffs of their free speech and freedom of religious expression rights under the First and Fourteenth Amendments to the United States Constitution and the New York Constitution and further deprived Plaintiff Mendelson of her right to be secure in her person against unreasonable searches and seizures under the First and Fourteenth Amendments to the United States Constitution. Defendant Justin McCaffrey knew or should have known that his actions were unlawful.

129. Defendant Chris Coschignano is the Town of Oyster Bay official who has oversight of officials, agents and employees of the Town of Oyster Bay. Defendant Chris Coschignano has the authority to implement policies which will eliminate the constitutional violations alleged herein and to prevent arrests without probable cause. Defendant Chris Coschignano took no action to avoid or prevent the constitutional violations and unlawful arrest alleged herein. The incidents described herein reveal the acts and omissions of Defendant Chris Coschignano deprived Plaintiffs of their free speech and freedom of

religious expression rights under the First and Fourteenth Amendments to the United States Constitution and the New York Constitution and further deprived Plaintiff Mendelson of her right to be secure in her person against unreasonable searches and seizures under the First and Fourteenth Amendments to the United States Constitution. Defendant Chris Coschignano knew or should have known that his actions were unlawful.

130. Defendant Angelo Delligatti is the Town of Oyster Bay official who has oversight of officials, agents and employees of the Town of Oyster Bay. Defendant Angelo Delligatti has the authority to implement policies which will eliminate the constitutional violations alleged herein and to prevent arrests without probable cause. Defendant Angelo Delligatti took no action to avoid or prevent the constitutional violations and unlawful arrest alleged herein. The incidents described herein reveal the acts and omissions of Defendant Angelo Delligatti deprived Plaintiffs of their free speech and freedom of religious expression rights under the First and Fourteenth Amendments to the United States Constitution and the New York Constitution and further deprived Plaintiff Mendelson of her right to be secure in her person against unreasonable searches and seizures under the First and Fourteenth Amendments to the United States Constitution. Defendant Angelo Delligatti knew or should have known that his actions were unlawful.

131. Defendant Elizabeth Faughnan is the Town of Oyster Bay official who has oversight of officials, agents and employees of the Town of Oyster Bay. Defendant Elizabeth Faughnan has the authority to implement policies which will eliminate the constitutional violations alleged herein and to prevent arrests without probable cause. Defendant Elizabeth Faughnan took no action to avoid or prevent the constitutional violations and unlawful arrest alleged herein. The incidents described herein reveal the acts

and omissions of Defendant Elizabeth Faughnan deprived Plaintiffs of their free speech and freedom of religious expression rights under the First and Fourteenth Amendments to the United States Constitution and the New York Constitution and further deprived Plaintiff Mendelson of her right to be secure in her person against unreasonable searches and seizures under the First and Fourteenth Amendments to the United States Constitution. Defendant Elizabeth Faughnan knew or should have known that her actions were unlawful.

132. Defendant Anthony Macagnone is the Town of Oyster Bay official who has oversight of officials, agents and employees of the Town of Oyster Bay. Defendant Anthony Macagnone has the authority to implement policies which will eliminate the constitutional violations alleged herein and to prevent arrests without probable cause. Defendant Anthony Macagnone took no action to avoid or prevent the constitutional violations and unlawful arrest alleged herein. The incidents described herein reveal the acts and omissions of Defendant Anthony Macagnone deprived Plaintiffs of their free speech and freedom of religious expression rights under the First and Fourteenth Amendments to the United States Constitution and the New York Constitution and further deprived Plaintiff Mendelson of her right to be secure in her person against unreasonable searches and seizures under the First and Fourteenth Amendments to the United States Constitution. Defendant Anthony Macagnone knew or should have known that his actions were unlawful.

133. Defendant Joseph Muscarella is the Town of Oyster Bay official who has oversight of officials, agents and employees of the Town of Oyster Bay. Defendant Joseph Muscarella has the authority to implement policies which will eliminate the constitutional violations alleged herein and to prevent arrests without probable cause. Defendant Joseph Muscarella took no action to avoid or prevent the constitutional violations and unlawful

arrest alleged herein. The incidents described herein reveal the acts and omissions of Defendant Joseph Muscarella deprived Plaintiffs of their free speech and freedom of religious expression rights under the First and Fourteenth Amendments to the United States Constitution and the New York Constitution and further deprived Plaintiff Mendelson of her right to be secure in her person against unreasonable searches and seizures under the First and Fourteenth Amendments to the United States Constitution. Defendant Joseph Muscarella knew or should have known that his actions were unlawful.

134. Defendant Rose Marie Walker is the Town of Oyster Bay official who has oversight of officials, agents and employees of the Town of Oyster Bay. Defendant Rose Marie Walker has the authority to implement policies which will eliminate the constitutional violations alleged herein and to prevent arrests without probable cause. Defendant Rose Marie Walker took no action to avoid or prevent the constitutional violations and unlawful arrest alleged herein. The incidents described herein reveal the acts and omissions of Defendant Rose Marie Walker deprived Plaintiffs of their free speech and freedom of religious expression rights under the First and Fourteenth Amendments to the United States Constitution and the New York Constitution and further deprived Plaintiff Mendelson of her right to be secure in her person against unreasonable searches and seizures under the First and Fourteenth Amendments to the United States Constitution. Defendant Rose Marie Walker knew or should have known that her actions were unlawful.

135. Defendants acted without reasonable cause and without due care in causing the citation and arrest of Plaintiff Mendelson.

136. As a direct and proximate result of Defendants' actions and omissions, Plaintiff Mendelson suffered humiliation, embarrassment, discomfort, mental anguish, fear, anxiety, loss of reputation, emotional distress and loss of her liberty and freedom.

137. Defendants' actions and omissions were performed with malice, or oppression, or callous or deliberate indifference or a conscience disregard of Plaintiff Mendelson's rights, so as to justify an award of exemplary damages.

138. Defendants had a duty at all times mentioned herein to implement and enforce policies and procedures to adequately supervise and adequately train their officials, agents and employees so as to prevent the constitutional violations and unlawful arrest alleged herein.

139. Defendants failed to implement and enforce policies and procedures to adequately supervise and adequately train their officials, agents and employees so as to prevent the constitutional violations and unlawful arrest alleged herein.

140. Defendants actions and omissions regarding the failure to adequately train their officials, agents and employees so as to prevent the constitutional violations and unlawful arrest alleged herein exhibit deliberate indifference to the constitutional and civil rights of persons seeking to peacefully distribute literature.

141. Defendants' New Code and New Regulations, customs and practices, applied and enforce under color of state law and under Town of Oyster Bay Code, were the moving force behind the Defendants' actions.

142. Defendants' New Code and New Regulations, customs and practices operate to unconstitutionally limit, ban and censor free speech and free exercise rights.

143. All Defendants acted under color of state law with willful and/or wanton and/or malicious and/or callous and/or deliberate indifference for the rights of Plaintiffs.

144. Plaintiffs have satisfied all conditions precedent to bringing this action seeking equitable and monetary relief from Defendants.

**AS AND FOR A FIRST CAUSE OF ACTION:**

**THE NEW CODE AND THE NEW REGULATIONS**  
**VIOLATE THE FREEDOM OF SPEECH CLAUSE UNDER**  
**THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

145. The averments of paragraphs 1-144 are repeated and realleged in full force and effect as if repeated in their entirety herein.

146. The First Amendment to the United States Constitution, applied to the States through the Fourteenth Amendment, prohibits making any law unconstitutionally abridging the freedom of speech.

147. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions impede Plaintiffs' right to Free Speech by granting unfettered discretion to Defendants and their agents to deny Plaintiffs the right to distribute literature and serve no rational, substantial or compelling interest.

148. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), are unconstitutional on their face because they create an unconstitutional restraint on protected speech by requiring Plaintiffs to obtain a permit prior to participating in any literature distribution in the Town's public parks and to remain behind a fixed table even on non-special event days.

149. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), do not contain necessary standards, safeguards, or definitions to act in assessing permit applications to engage in Free Speech activities in Town parks.

150. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), give unbridled discretion to decide whether, when, and how to allow Free Speech activities in Town parks.

151. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions are an unconstitutionally overbroad restriction on expressive activity and fail narrow tailoring.

152. Plaintiffs were deprived of their right under the First Amendment to engage in Free Speech activities in violation of the United States Constitution.

153. Plaintiffs have been, and continue to be, deprived of their First Amendment right to engage in Free Speech in violation of the United States Constitution.

154. Plaintiffs have suffered damages as a result of Defendants' deprivation of their rights through their past enforcement, and by the threat of future enforcement, of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2).

155. Plaintiffs have suffered nominal, compensatory, special and exemplary damages as a result of Defendants' deprivation of their rights.

WHEREFORE, Plaintiffs respectfully request that this Court grant the equitable and monetary relief requested herein and any further relief this Court deems is just under the circumstances.

**AS AND FOR A SECOND CAUSE OF ACTION:**

**THE NEW CODE AND THE NEW REGULATIONS  
VIOLATE THE FREE SPEECH CLAUSE OF ARTICLE 1, SECTION 8,  
OF THE NEW YORK STATE CONSTITUTION**

156. The averments of paragraphs 1-155 are repeated and realleged in full force and effect as if repeated in their entirety herein.

157. Article 1, Section 8, of the New York State Constitution, prohibits making any law unconstitutionally abridging the freedom of speech.

158. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions impede Plaintiffs' right to Free Speech by granting unfettered discretion to Defendants and their agents to deny Plaintiffs the right to distribute literature and serve no rational, substantial or compelling interest.

159. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), are unconstitutional on their face because they create an unconstitutional restraint on protected speech by requiring Plaintiffs to obtain a permit prior to participating in any literature distribution in the Town's public parks and to remain behind a fixed table even on non-special event days.

160. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), do not contain necessary standards, safeguards, or definitions to act in assessing permit applications to engage in Free Speech activities in Town parks.

161. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), give unbridled discretion to decide whether, when, and how to allow Free Speech activities in Town parks.

162. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions are an unconstitutionally overbroad restriction on expressive activity and fail narrow tailoring.

163. Plaintiffs were deprived of their right under Article 1, Section 8, of the New York State Constitution, to engage in Free Speech activities in violation of Article 1, Section 8, of the New York State Constitution.

164. Plaintiffs have been, and continue to be, deprived of right under Article 1, Section 8, of the New York State Constitution, to engage in Free Speech in violation of right under Article 1, Section 8, of the New York State Constitution.

165. Plaintiffs have suffered damages as a result of Defendants' deprivation of their rights through their past enforcement, and by the threat of future enforcement, of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2).

166. Plaintiffs have suffered nominal, compensatory, special and exemplary damages as a result of Defendants' deprivation of their rights.

WHEREFORE, Plaintiffs respectfully request that this Court grant the equitable and monetary relief requested herein and any further relief this Court deems is just under the circumstances.

**AS AND FOR A THIRD CAUSE OF ACTION:**

**THE NEW CODE AND THE NEW REGULATIONS**  
**VIOLATE THE FREE EXERCISE CLAUSE UNDER**  
**THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

167. The averments of paragraphs 1-166 are repeated and realleged in full force and effect as if repeated in their entirety herein.

168. The First Amendment to the United States Constitution, applied to the States through the Fourteenth Amendment, prohibits making any law unconstitutionally abridging the free exercise of religion.

169. Plaintiff, Jews For Jesus, Inc., was created for the purpose of spreading the Gospel of Jesus Christ. Plaintiff Mendelson is an employee of Jews For Jesus, Inc., and shares a personal belief and mandate to spread the Gospel of Jesus Christ.

170. The Bible instructs believers to share the Gospel with others, and Plaintiffs rely on the Bible to guide their words and actions.

171. Plaintiffs sought, and continue to seek, to discuss issues from a religious perspective, to distribute religious literature, and to engage in religious speech through sharing their faith on public property in the Town of Oyster Bay.

172. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions require Plaintiffs to censor religious speech in a traditional public forum and impose a burden on Plaintiffs that is not imposed on other individuals.

173. By forcing Plaintiffs to choose between abandoning their religious beliefs in order to gain access to speech in the traditional public forum, or abiding by their religious beliefs only to be arrested and prosecuted, Defendants' have imposed a substantial burden on Plaintiffs' sincerely held religious beliefs.

174. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), permit an individualized assessment and are not neutral or generally applicable.

175. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions impede Plaintiffs' right to Free Exercise by granting unfettered discretion to Defendants and their agents to deny Plaintiffs the right to distribute literature and serve no rational, substantial or compelling interest.

176. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), are unconstitutional on their face because they create an unconstitutional restraint on protected speech by requiring Plaintiffs to obtain a permit prior to participating in any literature distribution in the Town's public parks and to remain behind a fixed table even on non-special event days.

177. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), do not contain necessary standards, safeguards, or definitions to act in assessing permit applications to engage in Free Exercise activities in Town parks.

178. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), give unbridled discretion to decide whether, when, and how to allow Free Exercise activities in Town parks.

179. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions are an unconstitutionally overbroad restriction on expressive activity and fail narrow tailoring.

180. Plaintiffs were deprived of their right under the First Amendment to engage in Free Exercise activities in violation of the United States Constitution.

181. Plaintiffs have been, and continue to be, deprived of their First Amendment right to engage in Free Exercise in violation of the United States Constitution.

182. Plaintiffs have suffered damages as a result of Defendants' deprivation of their rights through their past enforcement, and by the threat of future enforcement, of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2).

183. Plaintiffs have suffered nominal, compensatory, special and exemplary damages as a result of Defendants' deprivation of their rights.

WHEREFORE, Plaintiffs respectfully request that this Court grant the equitable and monetary relief requested herein and any further relief this Court deems is just under the circumstances.

**AS AND FOR A FOURTH CAUSE OF ACTION:**

**THE NEW CODE AND THE NEW REGULATIONS  
VIOLATE THE EQUAL PROTECTION CLAUSE UNDER  
THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

184. The averments of paragraphs 1- 183 are repeated and realleged in full force and effect as if repeated in their entirety herein.

185. Plaintiffs' Due Process, Free Speech and Free Exercise rights are protected from arbitrary discrimination under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

186. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions substantially burden Plaintiffs' constitutional rights in an arbitrary and capricious manner.

187. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions burden Plaintiffs' rights through an unconstitutional abridgment of Plaintiffs' Due Process, Free Speech and Free Exercise rights.

188. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions impede Plaintiffs' right to Due Process, Free Speech and Free Exercise by granting unfettered discretion to Defendants and their agents to deny Plaintiffs the right to distribute literature and serve no rational, substantial or compelling interest.

189. Plaintiffs have suffered damages as a result of Defendants' deprivation of their rights through their past enforcement, and by the threat of future enforcement, of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2).

190. Plaintiffs have suffered nominal, compensatory, special and exemplary damages as a result of Defendants' deprivation of their rights.

WHEREFORE, Plaintiffs respectfully request that this Court grant the equitable and monetary relief requested herein and any further relief this Court deems is just under the circumstances.

**AS AND FOR A FIFTH CAUSE OF ACTION:**

**THE NEW CODE AND THE NEW REGULATIONS**  
**VIOLATE THE DUE PROCESS CLAUSE**  
**UNDER THE FIFTH AND FOURTEENTH AMENDMENTS**  
**TO THE UNITED STATES CONSTITUTION**

191. The averments of paragraphs 1- 190 are repeated and realleged in full force and effect as if repeated in their entirety herein.

192. Plaintiffs' right to be free from the threat of arbitrary arrest and incarceration is protected under the Fifth and Fourteenth Amendments to the United States Constitution.

193. Plaintiffs' rights to Due Process, Free Speech, Free Exercise, and Equal Protection are fundamental rights protected under the First and Fourteenth Amendments to the United States Constitution.

194. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions burden Plaintiffs' rights through an unconstitutional abridgment of Plaintiffs' Due Process, Free Speech, Free Exercise and Equal Protection rights.

195. The New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' actions impede Plaintiffs' right to Due Process, Free Speech, Free Exercise, and Equal Protection by granting unfettered discretion to Defendants and their agents to deny Plaintiffs the right to distribute literature and serve no rational, substantial or compelling interest.

196. Defendants intentionally, willfully and knowingly threatened Plaintiffs with arrest under the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and did arrest and incarcerate Plaintiff Mendelson against her will and consent.

197. Plaintiffs have suffered damages as a result of Defendants' deprivation of their rights through their past enforcement, and by the threat of future enforcement, of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2).

198. Plaintiffs have suffered nominal, compensatory, special and exemplary damages as a result of Defendants' deprivation of their rights.

WHEREFORE, Plaintiffs respectfully request that this Court grant the equitable and monetary relief requested herein and any further relief this Court deems is just under the circumstances.

**AS AND FOR A SIXTH CAUSE OF ACTION:**

**INJUNCTIVE RELIEF**

199. The averments of paragraphs 1-198 are repeated and realleged in full force and effect as if repeated in their entirety herein.

200. As a direct and proximate result of the adoption and enforcement of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), Plaintiffs have been, and continue to be, irreparably harmed.

201. The harm to Plaintiffs is not fully compensable with money damages.

202. Plaintiffs have a concrete desire to continue engaging in the distribution of free literature and the expression of their religious views in the Town of Oyster Bay.

203. In light of the dismissal of the accusatory instrument by the district court finding that the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), are unconstitutional on their face, Plaintiffs are likely to succeed on the merits of their claims.

204. The threat of continued forfeiture of Plaintiffs' rights is both great and immediate.

205. The harm to Plaintiffs outweighs any subjective harm to the Defendants.

206. The public interest is benefitted when constitutional and civil rights are protected by the Courts.

207. Unless restrained and enjoined by this Court, Defendants will continue to harass, arrest, and threaten to arrest Plaintiffs for exercising their constitutional rights.

208. Plaintiffs are entitled to injunctive relief.

WHEREFORE, Plaintiffs respectfully request that this Court grant the equitable relief requested herein and any further relief this Court deems is just under the circumstances.

**AS AND FOR A SEVENTH CAUSE OF ACTION:**

**DECLARATORY RELIEF**

209. The averments of paragraphs 1-208 are repeated and realleged in full force and effect as if repeated in their entirety herein.

210. An actual controversy has arisen between Plaintiffs and Defendants in that Plaintiffs contend that, as a direct and proximate result of Defendants' adoption and enforcement of the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), Plaintiffs have been irreparably harmed in that Defendants' actions are hostile to a reasonable interpretation of the law as it pertains to the right to free speech and literature distribution.

211. Plaintiffs wish to continue distributing literature, and have a specific and concrete intent to continue engaging in this activity as they have in the past, but they are fearful of Defendants' future adverse actions against Plaintiffs for exercising their protected constitutional and civil rights.

212. Plaintiffs also desire a judicial determination of the rights and duties of the respective parties under the United States and New York Constitutions based upon the past

enforcement, and a judicial declaration that Plaintiffs' distribution of literature and expression of religious speech is protected by the United States and New York Constitutions, and a finding that the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), violated Plaintiffs' rights.

WHEREFORE, Plaintiffs respectfully request that this Court grant the equitable relief requested herein and any further relief this Court deems is just under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiffs request a trial by jury of all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

1. Issue a preliminary injunction and permanent injunction restraining and enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from enforcing the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), while Plaintiffs or their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, are engaging in literature distribution activities in the Town of Oyster Bay's public parks or beaches without first obtaining a permit on non-special event days;
2. Issue a Declaration that the New Code (Town of Oyster Bay Code § 168-16) and the New Regulations, Section 3, Subsection (f)(2), and Defendants' past enforcement constitute an impermissible restraint of Plaintiffs' rights in violation of the United States Constitution, and Article 1, Section 8, of the New York State Constitution;

3. Issue a Declaration that Plaintiff Mendelson's arrest and incarceration constitutes an impermissible restraint of Plaintiffs' rights in violation of the United States Constitution, and Article 1, Section 8, of the New York State Constitution;
4. Grant Plaintiffs an award of nominal and/or compensatory and/or special and/or exemplary damages in an amount to be determined based upon Defendants' willful, wanton, malicious, callous and deliberate indifference to Plaintiffs' rights;
5. Grant Plaintiffs' costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1988 and Rule 54, and Title 28 U.S.C. § 1920;
6. Grant Plaintiffs such other and further relief as may be just and proper.

Dated: May 11, 2009, in Jericho, New York.

s/ Bryan F. Lewis  
Bryan F. Lewis, Esq. (BL-5146)  
**NIXON PEABODY LLP**  
50 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
E-mail: [blewis@nixonpeabody.com](mailto:blewis@nixonpeabody.com)  
Telephone: (516) 832-7526  
Facsimile: (866) 947-2036  
Local Counsel for Plaintiffs

s/Frederick H. Nelson  
Frederick H. Nelson, Esq. (FN-0418)  
Florida Bar No.: 0990523  
**AMERICAN LIBERTIES INSTITUTE**  
P.O. Box 547503  
Orlando, FL 32854-7503  
E-mail: [rick@ali-usa.org](mailto:rick@ali-usa.org)  
Telephone: (407) 786-7007  
Facsimile: (407) 786-2978  
Lead Trial Counsel for Plaintiffs  
Pending admission *Pro Hac Vice*

s/J. Michael Johnson  
J. Michael Johnson, Esq. (JJ-9538)  
Louisiana State Bar No.: 26059  
**ADF LOUISIANA REGIONAL SERVICE CENTER**  
P.O. Box 52954  
Shreveport, LA 71135  
Email: [mjohnson@telladf.org](mailto:mjohnson@telladf.org)  
Telephone: (318) 603-1435  
Facsimile: (318) 603-1437  
Co-Counsel for Plaintiffs  
Pending admission *Pro Hac Vice*

**VERIFICATION AND DECLARATION UNDER PENALTY OF PERJURY**

Pursuant to 28 U.S.C. § 1746, I hereby declare, under penalty of perjury under the laws of the United States of America, that the foregoing factual statements in Plaintiffs' Verified Complaint are true and correct.

Executed this 7<sup>th</sup> day of May, 2009.

Steve Wertheimer  
JEWS FOR JESUS, INC.

**VERIFICATION AND DECLARATION UNDER PENALTY OF PERJURY**

Pursuant to 28 U.S.C. § 1746, I hereby declare, under penalty of perjury under the laws of the United States of America, that the foregoing factual statements in Plaintiffs' Verified Complaint are true and correct.

Executed this 7<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_  
SUSAN C. MENDELSON