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WILLIAM T. WALSH
CLERK

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

JOSEPH PAOLELLA,
Plaintiff,

v.

CASE NO. 3:14-cv-06609-AET-LHG

BOROUGH OF POINT PLEASANT BEACH,
NEW JERSEY, a municipal entity of the
State of New Jersey,
Defendant.

Judge Anne E. Thompson
Magistrate Judge Lois H. Goodman

CONSENT JUDGMENT AND ORDER

Upon stipulation and consent of the parties, this Court finds as follows:

1. Plaintiff Joseph Paoella (hereafter "Plaintiff") is an adult resident of the State of New Jersey.
2. Defendant Point Pleasant Beach (hereafter "Defendant") is a public entity formed under the laws of the State of New Jersey. Defendant, through its officers, agents, servants, employees, attorneys, police, and successors in office, promulgates and enforces under the color of law the policies, practices, and customs governing the public use of the Point Pleasant Beach Boardwalk (hereafter "Boardwalk").
3. According to Section 3-32.2 of Defendant's Code of Ordinances, the Boardwalk is "that area of public right-of-way normally constructed of wood materials and lying between Ocean Avenue on the west and the Atlantic Ocean beach or certain limited established businesses on the east of said right-of-way. It shall also include all ramps and street-end areas leading to the boardwalk."
4. Plaintiff, as an exercise of his Christian beliefs, intends to go to the public areas of the Boardwalk, hold a sign expressing a religious message, and speak about God and hand out

religious literature, at no charge, to those who wish to receive his message. He will not solicit any charitable donations.

5. Defendant's policies, practices, and customs require Plaintiff and similarly-situated individuals to submit the following documents thirty-days in advance for Defendant to consider whether to allow them to engage in religious speech and expression on the Boardwalk: (1) a "Religious Activities Application and Facility Use Form," (2) a "Memorandum of Understanding," (3) a "Hold Harmless Agreement," and (4) "proof of insurance satisfactory to the Municipal Clerk" once the "Religious Activities Application" is approved (hereafter referred to as "Boardwalk policies"). True and correct copies of the "Religious Activities Application and Facility Use Form," "Memorandum of Understanding," and "Hold Harmless Agreement" are attached hereto as Exhibits A, B, and C, respectively.

6. Defendant agrees to stop applying and enforcing its present Boardwalk policies with regard to Plaintiff and similarly-situated individuals who want to exercise their free speech rights, including religious expression, on the Boardwalk, and Defendant agrees that Plaintiff and similarly-situated individuals may engage in free speech activities on the Boardwalk without first having to seek or obtain approval from Defendant, sign any agreement, or provide proof of insurance.

7. The parties agree that nothing in this agreement shall be construed to limit the power of the Borough of Point Pleasant Beach, bestowed upon it by the State of New Jersey, to adopt and enforce Ordinances, policies and procedures governing activities on the Boardwalk, provided such Ordinances, policies, and procedures are consistent with the First Amendment's requirements regarding reasonable time, place, and manner regulations that are viewpoint and content neutral.

8. Plaintiff and Defendant agree that, in light of this consent judgment and order, the claims against Defendant, as set forth in the complaint in this action, should be dismissed with prejudice.

9. Defendant agrees to pay Plaintiff's attorneys their reasonable attorneys' fees and costs in the amount of \$5,000.00, payable to the American Center for Law & Justice.

10. Defendant agrees that it will inform its officers, agents, servants, employees, attorneys, police, and successors in office about the terms of this consent judgment and order.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Defendant, its officers, agents, servants, attorneys, police, and successors in office shall not apply or enforce against Plaintiff and similarly-situated individuals any of Defendant's Boardwalk policies that are set forth in paragraph 5 above.

2. Defendant, its officers, agents, servants, attorneys, police, and successors in office shall not enforce the present Ordinance, policy and procedure that requires Plaintiff and similarly-situated individuals to seek or obtain approval from Defendant, sign any of the documents described above in paragraph 5, and provide proof of insurance, before they may engage in free speech activities, including religious expression, on the Boardwalk. Nothing in this paragraph shall be construed to limit the power of the Borough of Point Pleasant Beach, bestowed upon it by the State of New Jersey, to adopt and enforce new and different Ordinances, policies and procedures governing activities on the Boardwalk, provided such Ordinances, policies, and procedures are consistent with the First Amendment's requirements regarding reasonable time, place, and manner regulations that are viewpoint and content neutral.

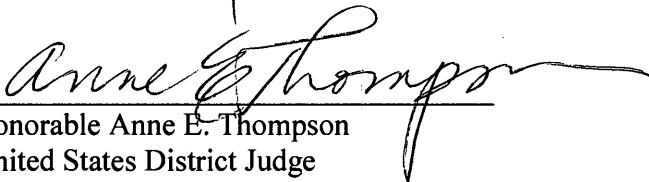
3. Plaintiff's claims against Defendant, as set forth in the complaint in this action, are dismissed with prejudice.

4. Defendant shall pay Plaintiff's attorneys their reasonable attorneys' fees and costs in the amount of \$5,000.00, payable to the American Center for Law & Justice, within sixty days of the date on which this consent judgment and order is entered on the court docket.

5. Defendant shall inform its officers, agents, servants, employees, attorneys, police, and successors in office about the terms of this consent judgment and order.

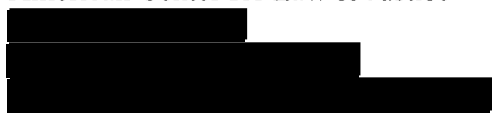
6. This consent judgment and order shall operate as a final adjudication of Plaintiff's claims as set forth in the complaint filed in this action. This Court, however, shall retain jurisdiction over the parties and the subject matter of this action for the purpose of enforcing this consent judgment and order.

IT IS SO ORDERED on this 15th day of December, 2014.


Honorable Anne E. Thompson
United States District Judge

Approved for entry:

/s/ Francis J. Manion
Francis J. Manion*
Geoffrey R. Surtees**
American Center for Law & Justice



Edward L. White III**
American Center for Law & Justice



* Admitted to D.N.J. Bar
** Admitted pro hac vice

Counsel for Plaintiff

Approved for entry:

/s/ Kevin Riordan
Kevin Riordan
Borough Attorney
Borough of Point Pleasant Beach



Counsel for Defendant

Dated: December 11, 2014



BOROUGH OF POINT PLEASANT BEACH
Religious Activities Application and Facility Use Form
(PLEASE PRINT)

Organization Sponsoring Event: _____

Organization Street Address: _____

Town, State, Zip: _____

Organization Phone Number: _____ Fax Number: _____

Organizational Contact for the Event: _____

Contact's Phone Number: _____

Event Name: _____

Type of Event: _____

Date(s) of Event: _____

Time(s): _____

Location Requested: _____

Contact information of individuals involved in proposed activities:

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Please attach a brief narrative of the planned event and any special needs that you may have.

This application must be completed in full and submitted at least 30 days prior to your event. Upon approval, applicant is to provide proof of insurance satisfactory to the Municipal Clerk.

The attached Memorandum of Understanding must be filled out in triplicate, executed and returned to:

Municipal Clerk
Borough of Point Pleasant Beach
P O Box 1048
Point Pleasant Beach, N. J. 08742

Ex. A to Consent Judgment & Order
Case No. 3:14-cv-6609-AET-LHG

MEMORANDUM OF UNDERSTANDING BETWEEN THE BOROUGH OF POINT PLEASANT BEACH AND _____

1. **Parties.** This Memorandum of Understanding ("MOU") is made and entered into by and between _____ and the Borough of Point Pleasant Beach, Ocean County, New Jersey ("Borough"), whose municipal offices are located at 416 New Jersey Avenue, Point Pleasant Beach, New Jersey 08742.

2. **Purpose.** The purpose of this MOU is to ensure that _____ is able to exercise speech and expressive rights protected by the First Amendment to the United States Constitution on that area known as the Point Pleasant Beach Boardwalk ("Boardwalk") without governmental interference or infringement.

3. **Terms.**

A. **General Responsibility of the Borough.** The Borough shall permit _____ to engage in speech and expressive activity, as protected by the First Amendment to the United States Constitution, on the Boardwalk without governmental interference or infringement.

B. **General Responsibility of Applicant.** While exercising First Amendment rights, _____ and others affiliated with him/her shall conduct themselves in a peaceful manner and shall not obstruct the flow of traffic along the Boardwalk.

C. **Specific Activities Permitted.** _____ shall be free to preach and distribute religious literature and Bibles on the Boardwalk and shall be able to display portable signs, so long as such activity does not obstruct the flow of traffic along the Boardwalk. He/She shall be free to include others in his/her religious speech and expressive activities, under the same terms that apply to him/her, provided that such activities do not obstruct the traffic flow along the Boardwalk or exceed permissible noise levels as provided in applicable Borough Ordinance.

4. **Signatures.** In witness whereof, the parties to this MOU, through their duly authorized representatives, have executed this MOU on the dates set out below and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein. The effective date of this MOU is the date of the signature last affixed to this page.

By: _____ (Sign) Date _____

Print Name: _____

BOROUGH OF POINT PLEASANT BEACH

By: _____ Date _____
(MAYOR)



HOLD HARMLESS AGREEMENT

Between the Borough of Point Pleasant Beach
and

Organization Sponsoring Event: _____

Organization Street Address: _____

Town, State, Zip: _____

Organizational Contact for the Event: _____

Organization Type(Individual, Partnership, Non-Profit Organization, Corporation, Public Entity):

In consideration of the use of: _____

On the following date(s): _____

For the purpose of: _____

the undersigned agrees to indemnify, and hold the Borough of Point Pleasant Beach and its officers, agents and employees harmless from any and all liability, claims, costs and attorney's fees arising out of the use of the property referred to above, including, but not limited to, claims of any kind arising from the negligence of the Borough of Point Pleasant Beach and/or the Borough of Point Pleasant Beach employees.

I understand that this Hold Harmless Agreement also requires that the Borough of Point Pleasant Beach is indemnified from any losses or damages resulting from the acts or omissions from any guest, participant, visitor or other person attending the event herein referred to. In order to induce the Borough of Point Pleasant Beach to accept this Hold Harmless Agreement, the following information concerning the intended use of the premises is furnished:

- 1: Alcoholic Beverages (_____) will (_____) will not be served.
- 2: Total number of persons anticipated is _____.
- 3: Live entertainment (_____) will (_____) will not be provided.

Authorized Signature: _____ Date: _____

Ex. C to Consent Judgment & Order
Case No. 3:14-cv-6609-AET-LHG