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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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10	Michael Salman and Suzanne Salman,)	No. CV 11-0646-PHX-FJM
11	Plaintiffs,)	ORDER
12	vs.)	
13	City of Phoenix, et al.,)	
14	Defendants.)	
15	_____)	

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17 We have before us defendants’ motion to dismiss (doc. 13), plaintiffs’ response (doc.
18 18), and defendants’ reply (doc. 19). Defendants move to dismiss plaintiffs’ civil conspiracy
19 claim on the grounds that it is barred by the intracorporate conspiracy doctrine or because
20 plaintiffs have failed to allege an actual conspiracy. We also have plaintiffs’ unopposed
21 motion to add exhibits to their amended complaint (doc. 9).

22 We assume as true the following facts alleged in plaintiffs’ complaint (doc. 6).
23 Plaintiffs, a married couple who reside in Phoenix, are “Born Again Christians.” They allege
24 that they wish to hold “private bible study groups” in their home, as well as display religious
25 signage on their property. In February 2007, plaintiffs met with neighbors and defendant
26 Councilman Claude Mattox. Defendant Councilman Mattox informed plaintiffs that they
27 must discontinue the bible studies, because they constituted “church use,” for which plaintiffs
28 lacked the required permits. On April 7, 2007, members of the Phoenix Fire Department

1 came to plaintiffs' home while they were hosting a Passover dinner for between fifteen and
2 twenty people, and ordered plaintiffs' guests to leave. In May 2007, plaintiffs submitted
3 construction plans for a building to be used for worship and bible study. In December 2007,
4 defendant Councilman Mattox made a motion to change the parking requirements for places
5 of worship. Because of these changes, plaintiffs had to withdraw their building permit
6 application. In November 2008, plaintiffs applied for a permit for a building in their
7 backyard. In a meeting on April 6, 2009, defendant City of Phoenix City Manager David
8 Cavosos told plaintiff Michael Salman about concern that the building would be used as a
9 church. Plaintiffs ultimately received the permit, constructed the building, and moved their
10 worship into it. Plaintiffs hosted an average of forty to fifty people at their home for bible
11 studies or worship, whom they allege are all "family and friends." Complaint, ¶¶ 67-69.

12 On June 11, 2009, pursuant to a search warrant, Phoenix Police Department officers
13 entered and searched plaintiffs' home. Defendant Inspector Frank Dancil issued a notice of
14 violation to plaintiffs. During the search, defendant Officer Oscar Cortez picked up a sign
15 that had been face down and placed it against a tree. The sign said "Christian Worship,
16 Sunday 10:00 AM, Wednesday 7:00 PM." In May 2010, plaintiff Michael Salman was
17 charged with sixty-seven building and zoning code violations. On September 27, 2010,
18 plaintiff Michael Salman was found guilty, and sentenced to sixty days in jail and three
19 years' probation by the Municipal Court of the City of Phoenix. His appeal is currently
20 pending.

21 In January 2011, plaintiff Suzanna Salman was charged with displaying biblical
22 scripture on a reader board in front of plaintiffs' residence in violation of city codes. On
23 March 21, 2011, Fire Department inspectors entered and inspected plaintiffs' property,
24 pursuant to a warrant. Plaintiff Michael Salman was charged with seven building code
25 violations.

26 Plaintiffs allege that defendants City of Phoenix, Councilman Mattox, Inspector
27 Dancil, and Officer Cortez conspired to deprive plaintiffs of their rights under the United
28 States Constitution, the Arizona Constitution, the Religious Land Use and Institutionalized

1 Persons Act, 42 U.S.C. § 2000cc, et seq., and the Arizona Free Exercise of Religion Act,
2 A.R.S. § 41-1493, et seq. Complaint, ¶ 230. Defendants move to dismiss on the grounds that
3 plaintiffs have not alleged a specific, conspiratorial agreement. “[L]iability for civil
4 conspiracy requires that two or more individuals agree and thereupon accomplish an
5 underlying tort which the alleged conspirators agreed to commit.” Wells Fargo Bank v.
6 Arizona Laborers, Teamsters and Cement Masons, 201 Ariz. 474, 498, 38 P.3d 12, 36 (2002)
7 (citation omitted).

8 We agree that plaintiffs have not alleged the requisite agreement to participate in a
9 tort. See Wells Fargo, 201 Ariz. at 499, 38 P.3d at 37. While the complaint lists numerous
10 acts by defendants City of Phoenix and several of its employees, plaintiffs have not alleged
11 that defendants acted in concert pursuant to any kind of agreement. See Restatement
12 (Second) of Torts § 876 cmt. a (1979) (“Parties are acting in concert when they act in
13 accordance with an agreement to cooperate in a particular line of conduct or to accomplish
14 a particular result.”). Plaintiffs’ allegations describe only defendants’ repeated efforts to
15 enforce the law, in accordance with the responsibilities of their employment. Such actions
16 alone cannot constitute an agreement to deprive plaintiffs of their legal rights. In the absence
17 of any allegations of an actual agreement, plaintiffs’ claim for civil conspiracy fails as a
18 matter of law.

19 We therefore need not reach defendants’ argument that because plaintiffs allege only
20 defendant City of Phoenix and its employees acted as conspirators, the intracorporate
21 conspiracy doctrine bars plaintiffs’ conspiracy claim.

22 II

23 Plaintiffs move for leave to add exhibits which were included in their original
24 complaint but inadvertently omitted from their amended complaint (doc. 9). Defendants have
25 not opposed the motion, and it is granted.

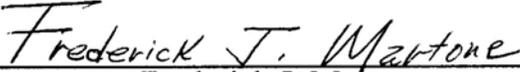
26 III

27 **IT IS ORDERED GRANTING** defendants’ motion to dismiss plaintiffs’ conspiracy
28 claim (doc. 13).

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IT IS ORDERED GRANTING plaintiffs' motion to add exhibits to their amended complaint (doc. 9).

DATED this 5th day of August, 2011.



Frederick J. Martone
United States District Judge