UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ZHANG Jingrong, ZHOU Yanhua, ZHANG Peng ZHANG Cuiping, WEI Min, LO Kitsuen, CAO Lijun HU Yang, GUO Xiaofang, GAO Jinying, CUI Lina, XU Ting, BIAN Hexiang Plaintiffs, vs. Chinese Anti-Cult World Alliance, Michael CHU, LI Huahong, WAN Hongjuan, ZHU Zirou, and DOES 1-5 Inclusive Defendants.	)	Civil Action No. 15 CV 1046

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BY DEFENDANTS CHINESE ANTI-CULT WORLD ALLIANCE, MICHAEL CHU, LI HUAHONG, WAN HONGJUAN, AND ZHU ZIROU

Served: June 5, 2015

Edmond W. Wong (EW3267)
LAW OFFICE OF EDMOND W. WONG

118-21 Queens Boulevard, Ste. 516
Forest Hills, N.Y. 11375
Telephone: (516) 900-4088

TABLE OF CONTENTS

TABLE OF AUTHORITIES

RULES AND STATUTES

CASES

OTHER AUTHORITIES

Defendants Chinese Anti-Cult World Alliance Inc., Michael Chu, Huahong Li, Hongjuan Wan, and Zirou Zhu respectfully submit this memorandum of law in support of their motion pursuant to (i) Federal Rules of Civil Procedure 12(b)(6) to dismiss the Third, Fourth, and Fifth Causes of Actions contained in the Plaintiffs' Complaint, on the ground that it fails to state a cause of action on which relief may be granted and (ii) to dismiss the Third, Fourth, and Fifth Causes of Actions contained in the Plaintiffs' Complaint, on the ground that Defendants' alleged wrongful conducts predating May 3, 2012 are time-barred.

PRELIMINARY STATEMENT

Plaintiffs Zhang Jingrong, Zhou Yanhua, Zhang Peng, Wei Min, Lo Kitsuen, Li Xiurong, Cao Lijun, Hu Yang, Gao Jinying, Cui Lina, and Xu Ting (hereinafter referred to as "Plaintiffs") are practitioners and supporters of Falun Gong, an alleged spiritual movement that originated in the People's Republic of China. The Falun Gong Plaintiffs maintain five tables at sites scattered throughout the streets of Flushing, Queens County to distribute Falun Gong publications and materials denouncing China and the Communist Party.

Defendant Chinese Anti-Cult World Alliance Inc. (hereinafter referred to as "CACWA") is a New York State domestic not-for-profit corporation. CACWA's purpose is to educate and to warn the society against Falun Gong's ill practices. CACWA is currently co-chaired by Defendants Michael Chu and Li Huahong. Defendants Hongjuan Wan and Zirou Zhu served as volunteers for CACWA. CACWA and its volunteers maintain one table to distribute publications and pamphlets in opposition to the Falun Gong movement.

Since 2008, the Falun Gong Plaintiffs have long been embroiled in a mud-slinging, propagandist, and ideological battle against CACWA to promote its self-labeled "religious" practice in Flushing, Queens County. CACWA, on the other hand, promotes and upholds the view that Falun Gong is not a religion, but rather a cult that is outlawed under the laws of the People's Republic of China.

Plaintiffs now seek to challenge CACWA by couching its overly-exaggerated Complaint in a litany of state causes of actions and unfounded federal claims alleging "Defendants' involvement in a conspiracy to injure Plaintiffs and to deprive them of their fundamental rights on the basis of their religion." (Compl. ¶14). Plaintiffs' use of the Federal Courts and federal causes of actions should be rejected – especially where as stated below, there are no factual allegations to support any showing of a conspiracy amongst the Defendants necessary to support a claim pursuant to 42 U.S.C. § 1985(3) and 18 U.S.C. § 248.

STATEMENT OF FACTS

Falun Gong, or Falun Dafa, took roots in China in the late 1990s through the teachings of founder Li Hongzhi. The U.S. Department of State's 2000 Human Rights Country Report on China ("Country Report") states that Falun Gong blends Li Hongzhi's teachings with "aspects of Taoism, Buddhism, and the meditation techniques of qigong (a traditional martial art)." *See also*, Compl. ¶3. Despite Falun Gong's "mystical nature ... Falun Gong does not consider itself a religion and has no clergy or formal place of worship." *Country Report*.

Since 1999, ex-Chinese President Jiang Zemin and other high ranking officials have effectively outlawed Falun Gong as an illegal organization and branded its practitioners as members of an evil "cult." Furthermore, "the Standing Committee of the National People's Congress adopted a decision to ban cults, including Falun Gong, under Article 300 of the Criminal Law." *Country Report* (internal quotations omitted). The practice of Falun Gong has effectively been banned in China since 1999. As such, many of the Falun Gong members have left China to spread this practice in the United States of America.

In Flushing, Queens, Plaintiffs promote their Falun Gong agenda by accusing opposition such as CACWA of being the Communist Party's pawns who carry out persecution overseas to stifle their freedom of speech and freedom of religious practice. Plaintiffs are self-proclaimed to be a religion, which is in direct contradiction of Falun Gong's teachings. (Compl. ¶¶5, 6, 55, 56, 132-135, 162-166, 169-175). Furthermore, there are no allegations of fact in the Complaint which claim recognition, acceptance, or

incorporation for such religious activities. Plaintiffs merely claim to have received permission from the New York City Police Department 109th Precinct's ex-Captain Tommy Ng to maintain tables at five sites located on the streets of Flushing, Queens, none of which are officially religious sites.

The CACWA is a domestic not-for-profit corporation whose purpose, as stated in its certificate of incorporation, is as follows:

> "To educate society about the dangers of Falun gong [sic] cult and its anti-human and anti-society practices. To warn the society about the emerging anti-society cults and so-called "spiritual" practices that distort human psyche. To promote the community harmony and concord, and perform community-oriented services for harmony, mutual understanding, and peace."

Defendants Michael Chu and Li Huahong co-chair the Alliance to voice the opinions of anti-Falun Gong Chinese-Americans in the United States. Defendants Wan Hongjuan and Zhu Zirou are volunteers who advocate for CACWA. Their mission is not one of violence, but of promoting peace and understanding amongst the community in Flushing, Queens.

Defendants have never advocated violence, much less conspired to attack Plaintiffs. Defendants reject any insinuations in the Complaint that Defendants sought to violate Plaintiffs' civil rights. Despite containing an unflattering portrait of Defendants' purpose, the Complaint fails to state a claim upon which Plaintiffs may be granted relief.

STANDARDS FOR REVIEW

I. MOTION TO DISMISS

Federal Rule of Civil Procedure 12(b)(6) provides for the dismissal of a claim for "failure to state a claim upon which relief can be granted[.]" The United States Supreme Court has held that pleading standards must be shifted from "simple notice pleading" to a more "heightened form of pleading." *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). A motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim is proper "only where it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him to relief." *Scotto*

v. Almenas, 143 F.3d 105, 109-110 (2d Cir. 1998) (quoting *Branham v. Meachum*, 77 F.3d 626, 628 (2d Cir. 1996). Pleading facts that are "naked assertions devoid of further factual enhancement" does not suffice. *Twombly*, 550 U.S. at 557; *See also Hirsch v. Arthur Anderson & Co.*, 72 F.3d 1085 (2d Cir. 1995). The Court must accept as true all factual statements alleged in the complaint and draw all reasonable inferences in favor of the nonmoving party. *Vietnam Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104 (2d Cir. 2008). However, the Court need not "swallow the plaintiff's invective hook, line, and sinker; bald assertions [and] unsupported conclusions … need not be credited." *Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996). "Dismissal is not appropriate 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Chance v. Armstrong*, 143 F.3d 698, 701 (2d Cir. 1998). "This rule applies with particular force where the plaintiff alleges civil rights violations[.]" *Id*.

As demonstrated below, Plaintiffs' Third, Fourth, and Fifth causes of action must be dismissed for failure to state a cause of action. Plaintiffs do not meet the standard for pleading a plausible cause of action for conspiracy to violate civil rights and a conspiracy to prevent authorities from providing full, free, and equal access to public spaces. Plaintiffs further fail to establish a cause of action arising from interference with religious freedom. Plaintiffs utterly fail to support their implausible arguments with factual support and therefore cannot withstand a motion to dismiss.

II. CONSPIRACY PURSUANT TO 42 U.S.C. § 1985(3)

42 U.S.C. § 1985(3), itself, does not create substantive rights, but rather serves as a vehicle for vindicating deferral rights, privileges and immunities defined elsewhere. *Great American Fed. Sav. & Loan Assn. v. Novotny*, 442 U.S. 366, 372 (1979). To state a cause of action under the deprivation clause of § 1985(3), a plaintiff must allege (1) a conspiracy, (2) for the purpose of depriving a person or class of persons of the equal protection of the laws, (3) an overt act in furtherance of the conspiracy; and (4) an injury to the plaintiff's person or property, or a deprivation of a right or privilege of a citizen of the United States. *Griffin*, 403 U.S. 88, 102-103 (1971); *Friends of Falun Gong v. Pac. Cultural Enter.*, 228

F.Supp.2d 273, 279 (E.D.N.Y. 2003). Further, to reach a purely private conspiracy under § 1985(3), "a plaintiff must show, inter alia, (1) that some racial or perhaps otherwise class-based, invidiously discriminatory animus lay behind the conspirators' actions, and (2) that the conspiracy aimed at interfering with rights that are protected against private, as well as official, encroachment." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268 (1993).

(a) "Meeting of the Minds"

Conspiracy is an essential element of a claim under 42 U.S.C. § 1985. *Thomas v. Roach*, 165 F.3d 137, 146 (2d Cir. 1999). The standard of establishing a § 1985 claim is a stringent one. Plaintiffs must "provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end." *Webb v. Goord*, 340 F.3d 105, 110 (2d Cir. 2003). "[A] complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss." *Boddie v. Schneider*, 105 F.3d 857, 862 (2d Cir. 1997). Thus to state a claim for conspiracy, Plaintiffs must allege sufficient facts to demonstrate that Defendants acted in concert with each other. Plaintiffs must provide the time or place of any agreement to enter into a conspiracy, or allege statements suggesting the existence of any such conspiracy.

(b) "Some Racial, or Perhaps Otherwise Class Based, Invidiously Discriminatory Animus"

The Court in *Griffin v. Breckenridge* established an intent requirement for claims arising pursuant to 42 U.S.C. § 1985(3). By doing so, the *Griffin* Court restricted § 1985(3) from becoming a "general federal tort law." *New York State Nat'l Org. for Women v.* Terry, 886 F.2d 1339, 1358 (2d Cir. 1989) (quoting *Griffin v. Breckenridge*, 403 U.S. at 102 (1971)). To reach a purely private conspiracy under § 1985(3), the plaintiff must show that "some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action." *Griffin v. Breckenridge*, 403 U.S. at 102 (1971). The U.S. Supreme Court has asserted that § 1985(3) plaintiffs should prove that defendants had taken their action "at least in part 'because of,' not merely 'in spite of' its adverse effects upon an

identifiable group." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 272 (1993) (*quoting Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)). The Court stressed that invidious discriminatory animus or intent implies more than awareness of, or indifference to, the effect of the Defendants' actions toward the Plaintiffs. Rather, Plaintiffs must show that Defendants acted with "hatred of, or condescension toward" a protected class to deprive them of equal protection. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. at 270 (1993).

Accordingly, it must be determined whether the aggrieved qualifies as a class of persons protected under § 1985(3). The Second Circuit Court of Appeals has defined "class-based animus" to include discrimination based on religion. *Jews for Jesus v. Jewish Comm. Rel. Council of NY*, 968 F. 2d 286, 291 (2d Cir. 1992). The mere assertion of racial motivation, however, is not sufficient to state a conspiracy claim. *See Graham v. Henderson*, 89 F.3d 75 (2d Cir. 1996). The Supreme Court in *United Brotherhood of Carpenters v. Scott*, 463 U.S. 825 (1983) has held that § 1985(3) protection does not extend to economic groups and that protection for political groups is highly disfavored.

III. FREEDOM OF SPEECH

The right to free speech is protected under the First Amendment. *U.S. Const. amend. I*. Speech does not lose its First Amendment protection merely because others engage in violence or illegal conduct after being exposed to it. The First Amendment does not allow the government "to forbid or proscribe the advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Advocacy is unprotected only if it is "intended to produce, and likely to produce, imminent disorder"; "advocacy of illegal action at some indefinite future time" is protected. *Hess v. Indiana*, 414 U.S. 105, 108-09 (1973).

Plainly, vague references to "unlawful discriminatory acts" are insufficient to meet even the loose standards of Rule 8 of the Federal Rules. *Martin v. New York State Dep't of Mental Hygiene*, 588 F.2d 371, 372 (2d Cir. 1978). None of these allegations overcome the First Amendment's protection for

advocacy. "Advocating hatred and intolerance against immigrants" is protected speech; indeed, even racist speech inciting acts of bigotry is protected. *E.g., R.A.V. v. St. Paul*, 505 U.S. 377, 393-94 (1992) (ban on bigoted fighting words that aroused "anger, alarm, or resentment" in others violated the First Amendment because it selectively restricted "messages of 'bias-motivated' hatred" and "messages of racial, gender, or religious intolerance"); *United States v. Eichman*, 496 U.S. 310, 318 (1990) (even "virulent ethnic and religious epithets" are protected speech); *Collin v. Smith*, 578 F.2d 1197 (7th Cir. 1978) (invalidating ordinances restricting hate speech within community of Holocaust survivors, including public assemblies that "incite violence, hatred, abuse, or hostility toward a person or group of persons by reason of reference to religious, racial, ethnic, national, or religious affiliation" and restricting the "dissemination of any materials . . . which promotes or incites hatred against persons by reason of their race, national origin, or religion").

IV. STATUTE OF LIMITATIONS

The Reconstruction Civil Rights Acts 42 U.S.C. §§1981, 1983, 1985, and 1986 (Civil Rights Acts), do not specifically provide a statute of limitations during which claims must be brought. *See Burnett v. Grattan*, 468 U.S. 42 (1984). Civil actions brought under Section 1985 borrow the state limitations period for personal injury actions. *Chardon v. Fumero Soto*, 462 U.S. 650, 655-656 (1983).

The applicable statute of limitations for § 1985 actions arising in New York requires claims to be brought within three years pursuant to Civ. Prac. Law § 214(2). *Paul v. Board of Trustees of the City of New York*, 654 F.2d 856, 866 (2d Cir.1981); *See Hernandez-Avila v. Averill,* 725 F.2d 25, 27 n. 3 (2d Cir. 1984); *Meyer v. Frank,* 550 F.2d 726, 728 n. 5 (2d Cir. 1977), *cert. denied,* 434 U.S. 830 (1977); *Blankman v. County of Nassau*, 819 F. Supp. 198 (E.D.N.Y. 1993). Accordingly, to the extent that Plaintiffs base any of their claims upon actions of Defendants that occurred more than three years prior to March 3, 2015, those claims are time-barred.

Although the statute of limitations is an affirmative defense under Fed. R. Civ. P. 8(c) and usually not an appropriate ground for dismissal, an exception is made in cases such as this where dismissal is proper based upon the face of the complaint. *See* 5B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure § 1357*, at 714 (3d ed. 2004) ("A complaint showing that the governing statute of limitations has run on plaintiff's claim for relief is the most common situation in which the affirmative defense appears on the face of the pleading and provides a basis for a motion to dismiss under Rule 12(b)(6).")

V. DOCTRINE OF INTRACORPORATE IMMUNITY

The Intracorporate Immunity Doctrine recognizes that because a corporation and its agents comprise a single entity, they are legally incapable of conspiracy. In connection with a case arising under 42 U.S.C. § 1985(3), "there is no conspiracy if the conspiratorial conduct challenged is essentially a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." *Herrmann v. Moore*, 576 F. 2d 453, 459 (2d Cir. 1978); *See also Girard v. 94th and Fifth Avenue Corp.*, 530 F.2d 66 (2d Cir. 1976). If an employee acts in the scope of his or her employment as an agent of the corporation, the only a single entity exists: the corporation. In other words, an alleged conspiracy between an employer and its employee acting with the scope of their employment is legally impossible. *See Solla v. Aetna Health Plans of New York Inc.*, 14 F.Supp.2d 252, 257 (E.D.N.Y. 1998).

VI. FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1994

The provisions of the Freedom of Access to Clinic Entrances Act of 1994 (FACE), 18 U.S.C. § 248, are as follows:

> "(a) Prohibited Activities.— Whoever—
>
> (1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been,

> or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or
>
> (3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship […] shall be subject to … civil remedies provided in subsection (c)[.]"

Though Plaintiffs fail to reference the subsection of § 248 applicable to their claim, it is deduced from their allegations that Plaintiffs are referencing § 248(a)(2). Civil remedies are only available when "such an action [is] brought under subsection (a)(2) [] by a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a *place of religious worship* or by the entity that owns or operates such place of religious worship. 42 U.S.C. § 248(c)(1)(a) (Emphasis added).

ARGUMENTS

I. PLAINTIFFS' COMPLAINT FAILS TO ALLEGE THE EXISTENCE OF A CONSPIRACY UNDER 42 U.S.C. § 1985(3)

In this case, Plaintiffs' Third and Fourth Causes of Action vaguely allege that Defendants engaged in a "conspiracy to violate civil rights" and "a conspiracy to prevent authorities from providing full, free, [and] equal access to public spaces." Compl. ¶¶161-168. "[A] complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss." *Boddie v. Schneider*, 105 F.3d 857, 862 (2d Cir. 1997). Plaintiffs' civil rights conspiracy claim, brought pursuant to 42 U.S.C. § 1985(3) should be dismissed as a matter of law because Plaintiffs (i) failed to plead a conspiracy or meeting of the minds, and (ii) failed to show that the conspiracy, if any, was motivated by "some racial, or perhaps otherwise class based, invidiously discriminatory animus ...." *Griffin v. Beckenridge*, 403 U.S. 88, 102 (1971).

Plaintiffs couch their argument on bald allegations that Defendants Chu, Li, Wan and Zhu "share the same objective" through utilizing methods of violence and intimidation to purge Flushing of Falun Gong. Compl. ¶¶ 138-139. Plaintiffs allege that CACWA is stationed in Flushing to "*douzheng*" against Falun Gong. Compl. ¶59. The Complaint alleges that Defendants collaborated to harm Plaintiffs by participating in activities of "violence, intimidation, ostracism [and] dehumanization[.]" Compl. ¶¶62, 64, 90. Further allegations state that Defendants CACWA, Chu, Li, Wan and Zhu collaborated to wage a campaign against Falun Gong in Flushing. Compl. ¶¶37, 59-60, 117-120. It is also alleged that Defendants provided "back-up" to each other during confrontations with Plaintiffs. Compl. ¶¶77, 81, 84, 96, 104, 113, 114. Plaintiffs attempt to play connect the dots with a series of severely misconstrued events to project a false picture of conspiracy.

The aforementioned allegations fall into two categories: a repetitious and conclusory allegation of conspiracy; and allegations that Defendants CACWA and Chu's speeches somehow emboldened or encouraged Defendants Li, Wan and Zhu to attack Plaintiffs. Neither state a claim for relief. First, Plaintiffs cite website articles in their Complaint which do not contain any allegations that CACWA or Defendants had a "meeting of the minds" to harm Plaintiffs. Compl. ¶¶59, 69, 73, 118. Plaintiff merely extracted sites from the large realm of the World Wide Web without alleging non-conclusory facts that said websites are affiliated with Defendants. In fact, said website publications fail to even mention CACWA or Defendants Chu, Li, Zhu and Wan. The website publications fail to establish that Defendants participated in a conspiracy to harm Plaintiffs.

Secondly, Plaintiffs allege that Defendants registered CACWA with the sole purpose of eliminating Falun Gong through "*douzheng*." Plaintiffs utterly misunderstand Defendants' mission. CACWA's mission is to promote "harmony [and] accord" within the community. Contrary to the Plaintiffs' claims, CACWA was established in an attempt to protect the Flushing community from harm and to provide public services to the community. Defendants are not "militant" by any means of the word. Defendants merely seek to voice opinions that are different from Plaintiffs' opinions. Defendants may share the same anti-Falun Gong sentiment, but they have not conspired to "destroy" Falun Gong.

It is important to note that CACWA's goal is to educate people on the health dangers of the Falun Gong cult practices (i.e. opposing the taking of medicine, denying the existence of diseases, and preaching that aliens have come to overtake humans). Much like the Plaintiffs who operate five distribution booths and hold protests, Defendants exercise the same right to do so in light of their own anti-Falun Gong beliefs by marching in parades and distributing published materials. This anti-Falun Gong belief is the flip-side of the coin to the beliefs held by Falun Gong Plaintiffs. The cited confrontations in Plaintiffs' Complaint are unsubstantiated stories of alleged wrong-doing on Defendants' part. What Plaintiffs fail to reveal is that they have provoked, instigated, and harassed Defendants at many of the cited events, which have initiated the confrontations. Plaintiffs now exploit the described situations vaguely and one-sidedly to garner support for their baseless allegations.

In this light, Plaintiffs' § 1985(3) claim is vaguely and inadequately pled. First, the Complaint only alleges a broad conspiracy to "violate civil rights" and a "conspiracy to prevent authorities from providing full, free, [and] equal access to public spaces." (Complaint pgs. 38-39, Third and Fourth Causes of Action). Even in assuming *arguendo* that the Complaint is read to allege a conspiracy to violate of the Plaintiffs' right to intrastate travel, there are no factual allegations in the Complaint to support Plaintiffs' claims.

Lastly, a conspiracy claim pursuant to 42 U.S.C. §1985 requires "factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve an unlawful end." *Webb v. Goord*, 340 F.3d at 110 (2d Cir. 2003); *Ostrer v. Aronwald*, 567 F.2d 551 (2d Cir. 1977). To plead conspiracy, plaintiffs must "specify in detail the factual basis necessary to enable [the defendants] intelligently to prepare their defense." *Ostrer v. Aronwald*, 567 F.2d at 553 (2d Cir. 1977). That includes "specific instances of misconduct" showing a "nexus" between the particular defendant and the conspiracy." Id." [A] complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss." *Boddie v. Schneider*, 105 F.3d 857, 862 (2d Cir. 1997). Indeed, Plaintiff's allegations are nothing more than the "unadorned, the-defendant[s]-unlawfully-harmed-me accusation," which the Supreme Court in *Iqbal* held

to be insufficient to state a claim. 129 S. Ct. at 1949; *See also Twombly*, 550 U.S. at 570 (when considering a Rule 12(b)(6) motion to dismiss, the court should not entertain legal conclusions devoid of any factual support.). As such, the Plaintiffs' conspiracy claims must be dismissed.

Furthermore, it has been held that a "[c]onspiracy fails as a matter of law where the participants are part of a single entity" because "[u]nder the intracorporate conspiracy doctrine, officers, agents and employees of a single corporate entity are legally incapable of conspiring together." *Hartline v. Gallo*, 546 F.3d 95, 99n.3 (2d Cir. 2008).

II. PLAINTIFFS FAILED TO SHOW THAT THE CONSPIRACY, IF ANY, WAS MOTIVATED BY "SOME RACIAL, OR PERHAPS OTHERWISE CLASS BASED, INVIDIOUSLY DISCRIMINATORY ANIMUS"

Plaintiffs' Complaint fails to show that the conspiracy, if any, was motivated by "some racial, or perhaps otherwise class based, invidiously discriminatory animus." Plaintiffs do not plead that the alleged conspiracy was motivated by race. Plaintiffs also have not established themselves a class upon which status has been conferred, warranting protection under 42 U.S.C. § 1985(3). Furthermore, there are no allegations of any invidiously discriminatory animus.

Plaintiffs' Complaint alleges in a conclusory fashion that Falun Gong is a religion. This claim is not supported by any cognizable fact other than Plaintiffs' self-serving statement. In fact, the claim that Falun Gong is a religion runs afoul of founder Li Hongzhi's teachings. Li Hongzhi states in his teachings that Falun Gong draws from the religious teachings of Taoism and Buddhism, but that Falun Gong, in and of itself, is just a set of exercises centered on the practice of qigong (breathing exercises). According to Li Hongzhi's teachings, Falun Gong is a self-cultivating exercise and not a religion. This is further confirmed in the U.S. Department of State Report, which states that Falun Gong is not a religion.

> "Falun Gong is an international movement, though primarily Chinese, that is often referred to as a 'religion' (or, by its critics, as a 'cult'), though it is not a religion in the Western sense. Like other Asian 'religions,' ... there is no deity. The emphasis is on spiritual self-perfection through prescribed physical exercises; in this respect the movement has affinities with traditional Chinese medicine." *Iao v. Gonzales*, 400 F.3d 530, 531-532 (7th Cir. 2005).

As such, Plaintiffs' claim of being a religion herein fails as it states nothing more than "naked assertions devoid of further factual enhancement[.]" *Twombly*, 550 U.S. at 557.

Furthermore, Falun Gong is not a political class. As stated above, Falun Gong is a form of exercise. The Complaint makes no claims in addressing whether or not Plaintiffs are a member of a political group. Aside from claiming to be members of a persecuted practice, Plaintiffs make no further factual references to support being members of a political class. "[T]he Second Circuit has held that plaintiffs who claim discrimination because they stand 'in political and philosophical opposition to the defendants, and who are, in addition, outspoken in their criticism of the defendants' political and governmental attitudes and activities do not constitute a cognizable class under Section 1985.'" *Gleason v. McBride*, 869 F.2d 688, 695 (2d Cir. 1989). Falun Gong practitioners, as a matter of law, are not members of a protected class (i.e. race or gender). Plaintiffs are neither an economic nor a political class of persons offered protection under § 1985(3).

Furthermore, no invidiously discriminatory animus has been demonstrated by Plaintiffs. No factual allegations are made to support a claim that Defendants treated Plaintiffs as a class of persons unequally in a manner that is malicious, hostile, or damaging. Plaintiffs bald allegations of Defendants' actions does not rise to the requisite showing of "hatred of, or condescension toward" Falun Gong practitioners. *Bray v. Alexandrua Women's Health Clinic*, 506 U.S. at 270 (1971). At most, Defendants' acts in expressing differing opinions can only be construed as indifference to the effect it would have on Plaintiffs. The Court has held that a mere awareness or indifference does not establish invidiously discriminatory animus *Id.* As such, Plaintiffs claim pursuant to 14 U.S.C. § 1985 must be dismissed.

III. PLAINTIFFS' THIRD AND FOURTH CAUSES OF ACTION AGAINST DEFENDANT CHINESE ANTI-CULT WORLD ALLIANCE SHOULD BE DISMISSED

Plaintiffs' Third Cause of Action alleging "Conspiracy to Violate Civil Rights" and Fourth Cause of Action alleging "Conspiracy to Prevent Authorities from Providing Full, Free, Equal Access to Public

Spaces" against Defendant CACWA should be dismissed pursuant to FRCP 12(b)(6) for failure to state a cause of action.

Plaintiffs' allege that CACWA "planned, directed, organized, mobilized, endorsed, and furthered the alleged violations through Defendants Chu and Li, ... with Defendants Wan and Zhu. (Compl. ¶36). Plaintiffs further allege that CACWA collaborated "extensively with co-conspirators Chu, Li, Zhu and Wan. (Compl. ¶42, 48, 74, 75). Plaintiffs attempt to garner support for their argument by alleging that CACWA is affiliated with certain anti-Falun Gong websites and organizations which promote a "*douzheng*" campaign against Falun Gong practitioners. (Compl. ¶¶37, 59). Plaintiffs delve into history in an attempt to create illusions of ties between Mainland Chinese anti-Falun Gong campaigns to that of CACWA's in order to taint CACWA's reputation. (Compl. ¶¶51, 66, 67).

Plaintiffs' aforementioned claims are all grounded in exaggerated and baseless claims devoid of fact which do not make out a claim of conspiracy. First, CACWA has not conspired to violate Plaintiffs' civil rights. CACWA was not incorporated for any unlawful purpose or unlawful mission. Its purpose is solely to educate and to warn society about the dangers of Falun Gong. CACWA further seeks "[t]o promote the community harmony and concord, and perform community-oriented services for harmony, mutual understanding, and peace." (Chinese Anti-Cult World Alliance Inc. Certificate of Incorporation dated September 28, 2008). CACWA maintains no websites which promote the alleged "*douzheng*" mission. In fact, CACWA has never been affiliated with, known about or published any articles found on the websites cited in Plaintiffs' Complaint. Moreover, Plaintiffs desperately try to bolster their conspiracy arguments by affiliating CACWA with non-parties to this action (i.e. Former Party-Chief Jiang Zemin and the China Anti-Cult Association). These exaggerated allegations of overseas partnerships with Chinese Communist Party Loyalists, including its highest ranking political figure, are solely naked assertions of collaboration that do not prove a "meeting of the minds" among the Defendants in this matter.

Furthermore, Plaintiffs' contention that CACWA promotes violence through its agents and co-conspirators are nothing more than unsubstantiated claims. CACWA does not solicit, recruit, nor

promote violence amongst its agents and volunteers. CACWA has not sanctioned nor endorsed any acts of violence cited in Plaintiffs' Complaint. As such, Plaintiffs' claims that CACWA conspired with Defendants Chu, Li, Wan and Zhu are solely conclusory statements which do not allege a meeting of the minds amongst Defendants Chu, Li, Wan and Zhu.

Secondly, CACWA's mission and actions are not motivated by any "racial, ... class based, invidiously discriminatory animus." CACWA's mission is not to destroy Falun Gong or to denigrate its practitioners, but to warn society of the dangers of Falun Gong's practice. CACWA does not prevent people from joining Falun Gong nor do they attempt to convert Falun Gong practitioners into anti-Falun Gong individuals. Plaintiffs, themselves, do not allege that CACWA's discriminatory actions, if any, are based on race. Nor do the Plaintiffs claim to be a class of persons protected by 42 U.S.C. § 1985(3). Falun Gong is not a religion under which § 1985(3) offers its protection. As such, Plaintiffs Third Cause of Action for Conspiracy to Violate Civil Rights must be dismissed because Plaintiffs fail to prove any "meeting of the minds" and fails to allege any "racial, ... class based, invidiously discriminatory animus."

Plaintiffs' Fourth Cause of Action must also be dismissed against Defendant CACWA. Plaintiffs' Complaint fails to plead any facts sufficient to state a claim upon which relief may be granted. Nowhere in the 46-page Complaint do the Plaintiffs allege that CACWA conspired to prevent authorities from providing Plaintiffs with full, free and equal access to public spaces. In fact, Plaintiffs maintain five distribution tables in key parts of Flushing to distribute their Falun Gong materials which has been directly sanctioned for use by authorities, to wit: the New York City Police Department. Plaintiffs' Complaint further admits that Plaintiffs participate in all other activities that make use of public space including community parades, which CACWA exercises no control or influence over.

Here, the Plaintiffs fail to allege any overt acts by CACWA to further a conspiracy to prevent authorities from granting equal access of public spaces to the Plaintiffs. Moreover, the Plaintiffs fail to allege that there was any "meeting of the minds" and any "racial, ... class based, invidiously discriminatory animus" in preventing authorities from granting Plaintiffs full, free, and equal access to

public spaces. As such, Plaintiffs' Fourth Cause of Action should be dismissed against Defendant CACWA.

Plaintiffs' allegations against CACWA claim that it engaged in anti-Falun Gong rhetoric and ideologies that Defendants Chu, Li, Wan and Zhu were subjected to and that said Defendants thus felt encouraged to attack Plaintiffs. Plainly, vague references to "unlawful discriminatory acts" are insufficient to meet even the loose standards of Rule 8 of the Federal Rules. *Martin v. New York State Dep't of Mental Hygiene*, 588 F.2d 371, 372 (2d Cir. 1978).

The specific references to speech against Falun Gong identify only speech that is protected, even if listeners react inappropriately to it. Although the Complaint provides no explanation or specifics about how CACWA's rhetoric could have led to the attacks on Plaintiffs, it would not matter if it did. Even if Plaintiffs could show that CACWA's rhetoric somehow inspired the attacks, their attempt to hold CACWA liable based on its speech against Falun Gong would still violate well established First Amendment principles.

None of the remaining allegations asserts that CACWA advocated committing imminent violence. Even if the complaint arguably could be read to suggest that CACWA somehow encouraged violence to occur at an indefinite future time that is not enough to state a claim. Instead, Plaintiffs describe only constitutionally protected speech. The Complaint alleges that CACWA advocates "*douzheng*," hatred and intolerance against Falun Gong Practitioners that inspired unlawful discriminatory acts. Compl. ¶36-37, 70. Similarly, Plaintiffs contend that the individual Defendants were subjected to and adopted CACWA's influences and ideologies that encouraged acts of violence.

None of these allegations overcomes the First Amendment's protection for advocacy. Advocating a difference in opinion is protected speech; indeed, even racist speech inciting acts of bigotry is protected. E.g., *R.A.V. v. St. Paul*, 505 U.S. 377, 393-94 (1992); *United States v. Eichman*, 496 U.S. 310, 318 (1990). As such, Plaintiffs' Third and Fourth Cause of Action should be dismissed against Defendant CACWA.

.

IV. PLAINTIFFS' THIRD AND FOURTH CAUSES OF ACTION AGAINST DEFENDANT MICHAEL CHU SHOULD BE DISMISSED

Plaintiffs' Third Cause of Action alleging "Conspiracy to Violate Civil Rights" and Fourth Cause of Action alleging "Conspiracy to Prevent Authorities from Providing Full, Free, Equal Access to Public Spaces" against Defendant Michael Chu should be dismissed pursuant to FRCP 12(b)(6) for failure to state a cause of action.

Defendant Chu is the co-chair of CACWA and operates CACWA from Flushing, New York. Defendant Chu is a community activist and Samaritan within the Flushing community. Plaintiffs besmirch Defendant Chu in their instant Complaint by alleging that Defendant Chu collaborates with Defendants Li, Zhu and Wan to violently suppress the practice of Falun Gong. (Compl. ¶¶62, 74, 75, 88). Plaintiffs spin a preposterous story alleging that Defendant Chu assists in the monitoring of overseas dissidents through his membership in various associations. (Compl. ¶¶69-73). To further manipulate the story, Plaintiffs allege without any facts that Defendant Chu transmitted propaganda footage to China for use in an anti-Falun Gong propaganda video. (Compl. ¶83). Plaintiffs misconstrue Defendant Chu's purpose as one of advocating aggression and violence towards Falun Gong adherents. (Compl. ¶90).

It is clear from the Plaintiffs' Complaint that no sufficient allegations of fact were made to support a claim in which Defendant Chu conspired to violate Plaintiffs' civil rights. Plaintiffs only make bare assertions that Defendant Chu advocated for the violent suppression of Falun Gong without substantiating any acts of violence. Plaintiffs contend that Defendant Chu makes numerous appearances to make public statements, which is clearly a protected right to freedom of speech. Moreover, allegations do not state that Defendant Chu participated in any violent attacks on Plaintiffs. Any claims of violence or witness to violence on Defendant Chu's part were mere conclusory statements made by the Plaintiffs.

Contrary to Plaintiffs' allegations, Defendant Chu only participates in peaceful protests and the distributing of materials in a non-threatening manner. Such actions in protest are similar to those of the Plaintiffs' public actions. For Plaintiffs to claim harm and foul would be hypocritical as they participate in the same form of activities in promoting their own ideals and beliefs. For the purposes of this cause of

action, Plaintiffs fail to allege that Defendant Chu deprived Plaintiffs of equal protection under the law, to wit: the right to intrastate travel. Unsubstantiated and inflated allegations that Defendant Chu provided support to the Chinese Communist Party do not save the Plaintiffs' claims from a dismissal. As such, Plaintiffs' claim of conspiracy herein fails to allege any overt act in furtherance of the conspiracy and fails to allege injury to the Plaintiffs and their property as committed by Defendant Chu.

Moreover, Defendant Chu's participation in peaceful anti-Falun Gong protests is not motivated by any "racial, ... class based, invidiously discriminatory animus." The Complaint does not allege that Defendant Chu has targeted Plaintiffs on racial grounds. The Complaint alludes to political differences, but Plaintiffs do not allege protection under political status. Furthermore, Defendant Chu continues to assert that Falun Gong is not a religion and does not warrant protection under 42 U.S.C. § 1985(3). For the foregoing reasons, Plaintiffs Third Cause of Action against Defendant Chu must be dismissed.

Plaintiffs' Fourth Cause of Action for conspiracy to prevent authorities from providing full, free, equal access to public spaces must also be dismissed against Defendant Chu. Plaintiffs merely claim that Defendant Chu distributes anti-Falun Gong material and participates in public speeches, but fails to cite that any of these actions influence authorities' decisions in providing full, free and equal access of public spaces to Plaintiffs. There are no allegations that Defendant Chu committed an overt act which prevented authorities from granting Plaintiffs access. Whether or not alleged conflicts are amenable to police action has no bearing on an allegation that Defendant Chu has prevented authorities from granting Plaintiffs access to public places. Furthermore, no right of intrastate travel has been violated by Defendant Chu as he has not prevented Plaintiffs from moving to and from their distribution tables or from participating in public events. As such, Plaintiffs' Fourth Cause of Action should be dismissed against Defendant Chu.

Furthermore, Plaintiffs contend that Defendant Chu is inciting violence with his speech. However, the Complaint cites Defendant Chu's public protests in front of the United Nations and during parades in an attempt to prove that Defendant Chu's speech incited violence. Compl. ¶¶90, 95. However, no incidents ever occurred during these events. Plaintiffs cannot allege that Defendant Chu's speeches

incited immediate violence. Regardless of the anti-Falun Gong rhetoric, Defendant Chu's speech was protected by the First Amendment and does not provide support for Plaintiffs' § 1985(3) claim.

Lastly, Defendant Chu is an agent of CACWA who is protected under the Doctrine of Intracorporate Immunity. Plaintiffs admit that Defendant Chu is the co-chair and agent for CACWA. Compl. ¶39, 88. It is also shown that Defendant Chu did not participate in any activity that went beyond the lawful scope of CACWA's purpose. As such, Defendant Chu and CACWA are considered one corporate entity in which conspiracy is legally impossible. As such, Plaintiffs' Third and Fourth Cause of Action should be dismissed against Defendant Chu.

V. PLAINTIFFS' THIRD AND FOURTH CAUSES OF ACTION AGAINST DEFENDANT HUAHONG LI SHOULD BE DISMISSED

Plaintiffs' Third Cause of Action alleging "Conspiracy to Violate Civil Rights" and Fourth Cause of Action alleging "Conspiracy to Prevent Authorities from Providing Full, Free, Equal Access to Public Spaces" against Defendant Huahong Li should be dismissed pursuant to FRCP 12(b)(6) for failure to state a cause of action.

Defendant Li is a co-chair of CACWA. Plaintiffs allege that Defendant Li "carried out acts of violence and intimidation against Falun Gong believers in Flushing." (Compl. §76). Plaintiffs list a series of alleged confrontations between Defendant Li and Falun Gong Practitioners from September 2008 through December 2014 as support for their conspiracy claim. (Compl. §§76-87).

Despite the incidents alleged in Plaintiffs' Complaint regarding confrontation between Defendant Li and Falun Gong practitioners, Plaintiffs fail to show *prima facie* that these incidents were committed as part of a conspiracy to harm Plaintiffs and to deprive Plaintiffs of their civil rights. On the contrary, the Plaintiffs' Complaint admits that Defendant Li was harassed herself by Plaintiffs. Defendant Li was subjected to harassment herself when supporters for the Plaintiffs accosted her and took pictures of her without her permission. Compl. ¶58. Plaintiffs' allegations of assault fail to establish a meeting of the

minds among Defendant Li and the remaining Defendants. Plaintiffs' repetitive allegations of collaboration among the Plaintiffs are also merely conclusory and devoid of any proof of a conspiracy.

Plaintiffs are further required to allege motive based on racial, class based invidiously discriminatory animus as § 1985(3) was not meant to be a general tort claim statute. Again, Plaintiffs fail to allege that it is a class upon which protection under this statute is granted. Plaintiffs neither allege class status under race, gender nor political stance. The mere assertion of being a religion does not pass muster to warrant the granting of § 1985(3) class status protection. For the foregoing, Plaintiffs fail to establish motive based on racial, class based invidiously discriminatory animus and the Third and Fourth Causes of Action must be dismissed against Defendant Li.

Lastly, Defendant Li is an agent of CACWA who serves as the co-chair for the corporation. Defendant Li has acted within the scope of CACWA's purpose during the time period at issue. Contrary to Plaintiffs' allegations, Defendant Li has not instigated confrontations with Plaintiffs. As such, Defendant Li has not acted outside of the scope of her capacity nor engaged in discriminatory acts remedied by § 1985(3). *Girard v. 94th Street & Fifth Ave. Corp.,* 396 F.Supp.450 (S.D.N.Y 1975); *People by Abrams v. 11 Cornwell Co.,* 695 F.2d 34 (2d Cir. 1982). As such, Plaintiffs' Third and Fourth Cause of Action should be dismissed against Defendant Li.

VI. PLAINTIFFS' THIRD AND FOURTH CAUSES OF ACTION AGAINST DEFENDANT ZIROU ZHU SHOULD BE DISMISSED

Plaintiffs' Third Cause of Action alleging "Conspiracy to Violate Civil Rights" and Fourth Cause of Action alleging "Conspiracy to Prevent Authorities from Providing Full, Free, Equal Access to Public Spaces" against Defendant Zirou Zhu should be dismissed pursuant to FRCP 12(b)(6) for failure to state a cause of action.

Defendant Zhu is a handicapped individual who is confined to a wheelchair. Plaintiffs allege that Defendant Zhu collaborates with Defendants in suppressing Falun Gong. Compl. ¶¶42, 25, 48. Plaintiffs' Complaint further cites incidents where Defendant Li has assaulted Falun Gong Plaintiffs.

Defendant Zhu's alleged attacks do not provide sufficient support for Plaintiffs' allegations of a conspiracy. Plaintiffs' Complaint fails to allege that Defendant Zhu's actions, if any, were influenced by a meeting of the minds with co-Defendants. Plaintiffs' sole contention of collaboration between Defendant Zhu and Defendant Li is nothing more than a bald allegation of conspiracy. Without more, Plaintiffs fail to show that Defendant Zhu conspired with Co-Defendants to deprive Plaintiffs of their civil rights.

Furthermore, Plaintiffs fail to assert that Plaintiffs are a class upon which warrants protection under § 1985(3). Nor has Plaintiffs established that Defendant Zhu has acted in a manner that conveyed hatred of or condescension towards the Plaintiffs. As such, Plaintiffs fail to state a claim arising under § 1985(3) for failing to prove class status and invidiously discriminatory animus. Accordingly, Plaintiffs Third and Fourth Causes of Actions against Defendant Zhu must be dismissed.

VII. PLAINTIFFS' THIRD, FOURTH AND FIFTH CAUSES OF ACTION AGAINST DEFENDANT HONGJUAN WAN SHOULD BE DISMISSED

Plaintiffs' Third Cause of Action alleging "Conspiracy to Violate Civil Rights," Fourth Cause of Action alleging "Conspiracy to Prevent Authorities from Providing Full, Free, Equal Access to Public Spaces" and Fifth Cause of Action alleging "Interference with Religious Freedom" against Defendant Zirou Zhu should be dismissed pursuant to FRCP 12(b)(6) for failure to state a cause of action.

Plaintiffs allege that Defendant Wan routinely collaborates with Defendant Li in carrying out acts of violence and intimidation against Falun Gong practitioners. Compl. ¶100.

Defendant Wan's alleged attacks do not provide sufficient support for Plaintiffs' allegations of a conspiracy. Plaintiffs' Complaint fails to allege that Defendant Wan's actions, if any, were influenced by a meeting of the minds with co-Defendants. Plaintiffs' sole contention of collaboration between Defendant Wan and Defendant Li is nothing more than a bald allegation of conspiracy. Plaintiffs fail to allege even the slightest shred of evidence to establish a time or place where this conspiracy came into

being. Without more, Plaintiffs fail to show that Defendant Wan conspired with Co-Defendants to deprive Plaintiffs of their civil rights.

Furthermore, Plaintiffs fail to assert that Plaintiffs are a class upon which warrants protection under § 1985(3). Nor has Plaintiffs established that Defendant Wan has acted in a manner that conveyed hatred of or condescension towards the Plaintiffs. As such, Plaintiffs fail to state a claim arising under § 1985(3) for failing to prove class status and invidiously discriminatory animus. Accordingly, Plaintiffs Third and Fourth Causes of Actions against Defendant Wan must be dismissed.

VIII. DEFENDANT'S ALLEGED WRONGUL CONDUCT PREDATING MARCH 3, 2012 ARE TIME-BARRED.

In the case at bar, Plaintiff's Complaint alleges purported wrongful acts of Defendants that occurred more than three years to the filing of their Complaint. For example, in alleging a § 1985 conspiracy, Plaintiffs allege that they suffered injuries as a result of Defendants violent acts. Compl. ¶¶29, 34, 43, 48, 54-58, 76-83, 113-114. All of these alleged actions occurred prior to May 3, 2012. Because, on the face of the Complaint, these alleged acts occurred more than three years before Plaintiffs' lawsuit was filed, any purported injuries Plaintiff suffered due to those actions are time-barred.

Accordingly, to the extent that Plaintiff predicates her §1985(3) causes of action upon time-barred acts, Plaintiffs' claims should be dismissed.

IX. PLAINTIFFS' FIFTH CAUSE OF ACTION AS AGAISNT ALL DEFENDANTS FOR INTERFERENCE WITH RELIGIOUS FREEDOM MUST BE DISMISSED FOR FAILURE TO MEET THE REQUIRED ELEMENTS OF THE CLAIM

Plaintiffs allege that Defendants have violated their rights pursuant to 18 U.S.C. § 248 – Freedom of Access to Clinic Entrances Act by "interfering with their religious freedoms" and "conspiring to use force and threats of force to prevent Plaintiffs from freely distributing religious materials at spiritual center sites" as well as "to prevent Plaintiffs from freely practicing their religion at the Falun Gong Spiritual Center and other designated religious sites in Flushing, New York." Compl. ¶¶173-174.

Plaintiffs' interference with religious freedoms claim, brought pursuant to 18 U.S.C. § 248 should be dismissed as a matter of law because (i) Plaintiffs' alleged harms are not of the type the statute intended to protect against, (ii) Plaintiff's complaint is too vague in pleading a violation of 18 U.S.C. §248, and (iii) Falun Gong does not qualify as a religion and the statute is thus not applicable to it.

Congress' general intent in passing 18 U.S.C. § 248 was to provide a recourse for those harmed by the violent and dangerous actions of anti-abortion activists whose unlawful conduct was interfering with the fundamental right of women to receive reproductive healthcare services. CR 103rd Congress (1993-1994), S.636, S3523-3524. As denoted by the title of the Act itself: "Freedom of Access to Clinic Entrances," those under the Act's umbrella of protection were meant to be able to enter abortion clinics and other abortion-related healthcare providers for abortion-related services without fear of harassment or bodily harm to themselves. The same holds true for healthcare providers of such services.

However, the purview of protection certainly was not meant to extend to individuals such as Plaintiffs in this case who are not even remotely close to dealing with the dangers of providing or receiving an abortion. In addition, Plaintiffs' alleged violation of rights deals with religious freedom and not the right of women to receive reproductive healthcare services.

Plaintiffs' 18 U.S.C. § 248 claim is also vaguely and inadequately pled, making only references to alleged uses of "force and threats of force to prevent Plaintiffs from freely distributing religious materials at spiritual center sites" as well as to "prevent Plaintiffs from freely practicing their religion at the Falun Gong Spiritual Center." Plaintiffs also vaguely allege that Defendants "were motivated to carry out these acts by their religion-based invidiously discriminatory animus towards Falun Gong practitioners." At no point in their Complaint do Plaintiffs describe the acts allegedly committed by Defendants that were a violation of 18 U.S.C. § 248. Nor do Plaintiffs ever cite any section of 18 U.S.C. § 248 that is pertinent to their situation, instead only broadly claiming a violation of said Act. In accordance with *Boddie v. Schneider*, 105 F.3d 857, 862 (2d Cir. 1997), "[a] complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss."

In the event that the Court decides to read a 18 U.S.C. § 248(a)(2), relief is only just against…

> "… [w]hoever by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship."

Falun Gong is not a religion nor does it have a clergy or formal place of worship and thus would not be protected under even a favorable reading of the Act. The State Department's 2000 Human Rights Report on China ("Country Report") notes that "Falun Gong does not consider itself a religion and has no clergy or formal places of worship." Plaintiffs fail to satisfy the elements of a 18 U.S.C. § 248(a)(2) claim which require the exercise of one's right to religious freedom at "a place of religious worship" as Falun Gong by definition has no formal place of worship. Thus, their "Falun Gong Spiritual Center and other designated religious sites" are a misnomer, as such sites are not religious in nature. For the foregoing reasons, Plaintiffs Fifth Cause of Action must be dismissed as to all Defendants.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant their motion to dismiss the Plaintiffs Complaint with prejudice.

Dated: Forest Hills, New York
June 5, 2015

Respectfully submitted,

LAW OFFICE OF EDMOND W. WONG

By: /s/ Edmond W. Wong
Edmond W. Wong (EW 3267)
118-21Queens Boulevard, Ste. 516
Forest Hills, N.Y. 11375
Telephone: (516) 900-4088