TERRI MARSH, ESQ. (*pro hac vice*)
terri.marsh.hrlf@gmail.com
HUMAN RIGHTS LAW FOUNDATION
1615 L Street, NW, Suite 1100
Washington, D.C. 20036
Phone: (202) 697-3858

UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF NEW YORK

Plaintiffs, ZHANG Jingrong, ZHOU Yanhua, ZHANG Peng, ZHANG Cuiping, WEI Min, LO Kitsuen, LI Xiurong, CAO Lijun, HU Yang, GAO Jinying, CUI Lina, XU Ting, and BIAN Hexiang vs. Chinese Anti-Cult World Alliance (CACWA), Michael CHU, LI Huahong, WAN Hongjuan, ZHU Zirou, & DOES 1-5 Inclusive, Defendants	**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** Civil Action No. 15-cv-1046

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> "In all the States from the beginning down to the adoption of the Articles of Confederation the citizens thereof possessed the fundamental right, inherent in citizens of all free governments, peacefully *to dwell within the limits of their respective States*, *to move at will from place to place therein*…"
>
> *United States v. Wheeler*, 254 U.S. 281 (1920).

INTRODUCTION

Defendants' Motion to Dismiss (hereinafter "Motion" or "MTD") is fatally undermined by mistakes of both law and fact. Defendants' Motion misconstrues the pleading standard for civil rights claims against private parties. The Motion then misapplies this standard, emptily asserting that Plaintiffs' allegations of a conspiracy – both to deprive Plaintiffs of their rights and to hinder the authorities' ability to protect these rights – are conclusory, while ignoring Plaintiffs' specific allegations of Defendants' collaboration, shared misconduct, and deliberate interference with Plaintiffs' rights, directly and through manipulation of the police. Defendants then make the boot-strap argument that Plaintiffs have not alleged the requisite class-based animus for their claims under 42 U.S.C. § 1985(3) because Falun Gong is not a religion, and that Plaintiffs' claim under 18 U.S.C. § 248 must fail for the same reason. This argument flatly contradicts Plaintiffs' allegations, is inconsistent with American foreign policy, ignores the obvious intent of the civil rights laws at issue, and flies in the face of the fundamental constitutional value of religious freedom.

Defendants' Motion also repeatedly mischaracterizes the facts of the case, attempting to steer the Court's attention away from the allegations *as pled* and to smuggle affirmative defenses into a motion that, at this stage of litigation, has no place for them. The Motion attempts to plead its own facts with regard to Defendant Chinese Anti-Cult World Alliance's (CACWA) affiliations with the Chinese Anti-Cult Alliance (CACA) and the Chinese Communist Party (CCP), and with regards to CACWA's advocacy of the *douzheng* (violent suppression) and *zhuanhua* (forced ideological conversion) of Falun Gong practitioners. As Plaintiffs allege, CACWA is in fact one of several global organizations created by the CACA and CCP to convince foreign nations, governments, law enforcement, and the general public to subject Falun Gong to *douzheng* and *zhuanhua*. As part of CACWA's propaganda campaign, Defendants and other CACWA supporters distribute flyers and other materials calling for these and related acts. And, as Plaintiffs allege in detail, Defendants do

more than merely carry out or support these calls for the unlawful, violent suppression of Falun Gong in Flushing – they have personally perpetrated, furthered, endorsed, and/or ratified acts of violence and intimidation against Plaintiffs solely as a result of their actual or perceived religious beliefs. For these and other reasons stated below, Defendants' Motion should be denied.

ARGUMENT

Upon a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court "must accept as true all allegations in the complaint and draw all reasonable inferences in favor of the non-moving party." *Gorman v. Consol. Edison Corp.*, 488 F.3d 586, 591-92 (2d Cir. 2007). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Factual allegations need only raise a right to relief above the purely speculative level. 5 C. Wright & A Miller, Federal Practice and Procedure § 1216, pp. 235-36 (3d ed. 2004). Plaintiffs must allege sufficient facts that exclude alternative explanations or theories. *See Twombly*, 550 U.S. at 552. "[W]hen allegations of parallel conduct are set out in order to" allege an agreement, "they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action." *Id.* at 557. "A well-pled complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Id.* at 556.

In the context of a civil rights conspiracy claim under § 1985(3), a conspiracy "need not be shown by proof of an explicit agreement but can be established by showing that the 'parties have a tacit understanding to carry out the prohibited conduct.'" *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 427 (2d Cir. 1995) (quoting *United States v. Rubin*, 844 F.2d 979, 984 (2d Cir. 1988)). "[T]he agreement need not be overt, but if not, the alleged acts must be sufficient to raise the inference of mutual understanding. . . . [A]cts performed together by members of a conspiracy are adequate when they are unlikely to have been undertaken without an agreement." *Kunik v. Racine County*, 946 F.2d 1574, 1580 (7th Cir. 1991). "[A]sking for plausible grounds to infer an agreement does not impose a

probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Twombly*, 550 U.S. at 556.

Defendants, contending throughout their Motion that Plaintiffs' allegations of conspiracy are conclusory and non-specific, would apparently have this Court conclude that their alleged repeated acts of violence and intimidation directed against actual or perceived Falun Gong practitioners in the Flushing area "could just as well be independent action" and therefore do not provide "plausible grounds to infer an agreement," tacit or otherwise. *Id.* at 556-57. Defendants make this assertion despite Plaintiffs' numerous specific factual allegations which detail Defendants' shared objectives, strategy and tactics, animus, and links to CACWA, in conjunction with numerous acts having been carried out by more than one Defendant acting in concert. Similarities between their acts, as well as the Defendants' shared affiliations with an anti-Falun Gong hate group and shared distribution of anti-Falun Gong propaganda materials, are ignored, disputed, and/or mischaracterized by the Defendants. Defendants' suggested narrative, in which Defendants merely seek to "educate" the community and bring about "harmony" and "peace," MTD at 3, fails to treat Plaintiffs' factual allegations as true and does not present a likely alternative reading of Plaintiffs' allegations.[1]

Defendants also make the audacious argument that Falun Gong is not even a religious practice deserving of the civil rights protections under any of Plaintiffs' federal claims, and that the sites where the Falun Gong-adhering Plaintiffs practice their spiritual exercises and distribute their spiritual literature do not deserve the same religious freedom protections that apply to worshippers at churches, synagogues, mosques, and temples. Defendants ask this Court to place its stamp of approval on the Defendants' invidious religious animus and discrimination.

I. Plaintiffs State a Claim Under the Deprivation Clause of 42 U.S.C. § 1985(3).

The deprivation clause of § 1985(3) states: "If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons

[1] Defendants' insistence on a "heightened pleading standard" in civil rights cases is misplaced. *See Iqbal v. Hasty*, 490 F.3d 143, 157 (2d Cir. 2007) (holding that the Supreme Court in *Twombly* did not require a universal standard of heightened fact pleading but instead a more flexible "plausibility standard") (rev'd on other grounds in *Ashcroft v. Iqbal,* 556 U.S. 662 (2009)). The Second Circuit has applied this "plausibility standard" in subsequent § 1985(3) cases. *See, e.g., Turkmen v. Hasty*, 2015 WL 3756331 (2d Cir. 2015).

of the equal protection of the laws, or of equal privileges and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages . . .” In order to state a claim under the deprivation clause, 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, or the equal privileges and immunities under 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.” *Thomas v. Roach*, 165 F.3d 137, 146 (2d Cir. 1999). Claims must also show that the conspiracy was motivated by “some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ actions.” *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971).

Defendants’ Motion asserts that Plaintiffs’ allegations are not sufficient to show a conspiracy and are not sufficient to show that Defendants were motivated by the required class-based, invidiously discriminatory animus. These arguments fail for the reasons provided below.

A. Conspiracy

Plaintiffs’ Complaint alleges sufficient facts to plead a conspiracy to deprive Plaintiffs of their right to intrastate travel. As noted above, a conspiracy “need not be shown by proof of an explicit agreement but can be established by showing that the ‘parties have a tacit understanding to carry out the prohibited conduct.’” *LeBlanc-Sternberg*, 67 F.3d at 427. Defendants, in their attempt to argue that Plaintiffs’ Complaint does not adequately plead a conspiracy, blatantly misconstrue whatever allegations they do not outright ignore.

As Plaintiffs have alleged, Defendants Chu, Li, Wan, and Zhu are co-chairs or known supporters of Defendant CACWA, an organization that describes the peaceful spiritual practice of Falun Gong and Falun Gong believers as “anti-humanity” and “anti-society,” designations which have been commonly used in persecutory campaigns throughout history, including those carried out by the Nazis and the Khmer Rouge, to instigate and further violence.[2] As these groups used such

[2] *See, e.g.*, Jeffrey Herf, “The ‘Jewish War’: Goebbels and the Anti-Semitic Campaigns of the Nazi Propaganda Ministry,” *Holocaust and Genocide Studies*, 51-80 (Spring 2005), available at URL: http://migs.concordia.ca/documents/HerfNaziPropagandaGoebbelsandtheJewsHGSSpring2005.pdf. According to several experts, including *Genocide Watch*, there are eight stages of genocide: classification, symbolization, dehumanization, organization, polarization, identification, extermination, and denial. In the dehumanization phase, one groups denies the humanity of the other group. Members are often equated with subhuman creatures. The purpose of the practice is to overcome the normal human revulsion against murder or violence. *See* Gregory H. Stanton, “The 8

designations to instigate unlawful practices, the CACWA, its agents, and its supporters similarly call for the violent suppression of Falun Gong believers in Flushing in flyers, brochures, and pamphlets displayed at the CACWA booth, located in the heart of one of the busiest intersections in Flushing, and distributed to persons in Flushing, New York, on a regular basis. *See* Compl. ¶¶ 39, 41, 43-44, 100, 110; *see also* Exhibit 1 (providing a representative compilation of these and related statements).

Defendants share not only a hostile animus toward members of the Falun Gong religion, but also "the same objective (to purge Flushing of Falun Gong believers); the same methods (the perpetration of ongoing acts of violence and intimidation, especially near Falun Gong spiritual sites while believers access the roadways of New York State to distribute Falun Gong religious materials); [and] the same violence-inducing speech and anti-Falun Gong polemic . . ." Compl. ¶ 138. Each of the individual Defendants has carried out acts of intimidation and violence in concert with one or more of the other Defendants, or has actively supported, endorsed, and ratified such conduct.

Defendants' Motion erroneously characterizes Plaintiffs' allegations detailing the relevant activities of Defendants Li, Chu, Wan, Zhu, and the CACWA as "vague" (MTD at 6, 9, 11); lacking sufficient detail (MTD at 11, 16, 21); "conclusory" (MTD at 10, 12, 15, 17, 20); "exaggerated" (MTD at 2, 14); "unfounded" (MTD at 2); "false" (MTD at 10); "unsubstantiated" (MTD at 11, 18); and "preposterous" (MTD at 17). Defendants ignore, dispute, and mischaracterize allegations that set forth with specificity the methods, motives, objectives, and activities that Defendants shared during their collaborative acts of violence and intimidation. "[W]here there are well-pleaded allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Twombly*, 550 U.S. at 679. Nonetheless, Defendants' Motion presents new, novel, and unsubstantiated facts and defenses, failing to treat Plaintiffs' allegations as true.

For the reasons set forth below, Plaintiffs' non-conclusory allegations plausibly give rise to an entitlement for relief under the deprivation clause of § 1985(3).

i. Defendants Li, Wan, and Zhu

Shared Methods

Stages of Genocide," *Genocide Watch* (1998), available at URL: http://www.genocidewatch.org/genocide/8stagesofgenocide.html.

Plaintiffs allege that CACWA co-chair Defendant Li, motivated by anti-Falun Gong animus, participated in no fewer than twelve acts of violence and intimidation that interfered directly with the Plaintiffs' right to access public roads and spaces in Flushing. *See, e.g.*, Compl. ¶¶ 5, 26, 34-35, 77, 79, 80-81, 84, 86-87, 128. Several of these incidents were carried out by Defendant Li in concert with one or more of the other Defendants. *See, e.g.*, Compl. ¶¶ 77, 84, 104, 113-14.

Defendant Li's participation in a conspiracy, and not a series of isolated acts, is demonstrated by the well-coordinated attack she carried out against Plaintiff Bian Xexiang, based on her mistaken belief that Plaintiff Bian was a Falun Gong believer. Compl. ¶ 77. As Plaintiffs allege, after noticing that Plaintiff Bian was engaged in personal activity at his neighborhood bank in Flushing, Defendant Li called for backup and support from roughly twenty to thirty individuals. After Plaintiff Bian walked out of the bank, Defendant Li and her supporters, "acting in unison," surrounded him; cursed, beat, and spit at him; and shouted anti-Falun Gong rhetoric at him. Defendant Zhu, participating in the attack, grabbed at Plaintiff Bian's bag, followed by Defendant Li and others shouting in unison, "Falun Gong is beating up a disabled person," at which point Defendant Zhu jumped out of his wheelchair and lay on the ground. *Id.* It strains credulity to conclude that these individuals randomly acted "in unison" without any sort of prior discussion or plan. Moreover, this well-coordinated attempt to make it appear as if the victim of the attack, Plaintiff Bian, had attacked Defendant Zhu clearly reflects a tacit agreement not only to violate Falun Gong believers' right to travel on the public streets of Flushing, but also to blame a Falun Gong believer for the outbreak of violence. Plaintiffs further allege other, similar incidents in which Defendant Li has called for "backup" and "support" from CACWA supporters and volunteers and has carried out acts of violence and intimidation in concert with other Defendants. Compl. ¶¶ 29, 62, 77, 81, 84, 86, 90, 104, 113-14.

Plaintiffs similarly allege that Defendant Wan, motivated by anti-Falun Gong animus, participated in no fewer than nine acts of violence and intimidation that interfered directly with the Plaintiffs' right to access public roads and spaces in Flushing (Compl. ¶¶ 101-09); and that Defendant Zhu has participated in no fewer than four such acts (Compl. ¶¶ 77, 111-14). In two of these incidents, Defendant Zhu acted in concert with Defendant Li, on one occasion responding directly to Defendant Li's call for "backup." Compl. ¶ 77, 113-14. During other incidents,

Defendant Wan acted in concert with Defendants Li and Chu to deprive Falun Gong believers of their right to access public spaces and streets in Flushing. Compl. ¶¶ 84, 103-04.

These allegations, taken together with Defendants' threats to "eradicate" Falun Gong, "make Falun Gong disappear from the United States," and in other ways harm Falun Gong believers, as well as Defendants' shared affiliation with Defendant CACWA, permit the Court to infer far "more than the mere possibility" of a conspiracy. *Twombly*, 550 U.S. at 607.

Shared Objectives

In conjunction with their interference with Plaintiffs' right to access public spaces and streets within the state of New York as a result of Plaintiffs' actual or perceived status as Falun Gong believers, Defendants Li, Wan, and Zhu have expressed their shared objective to violently suppress or in other ways harm Falun Gong. All have participated in the distribution of CACWA materials calling for the elimination or eradication (*chedi dujue*), violent suppression (*douzheng*), and forced conversion (*zhuanhua*) of Falun Gong. Compl. ¶¶ 60, 76, 100, 110, 118; *see also* Exh. 1. Defendants Wan and Li have expressed these anti-Falun Gong objectives even more directly. While Wan has threated to "eradicate [Falun Gong] from the United States," "round up" and "strangle [Falun Gong] to death," "dig out [the] hearts, livers and lungs" of those who practice Falun Gong (Compl. ¶¶ 101, 102, 108), Defendant Li has said that she and her CACWA cohorts can "make [Falun Gong] disappear instantly even in the United States." Compl. ¶¶ 26, 79. In addition, Defendant Li has stood by while CACWA associates told Plaintiffs that "Falun Gong must not be allowed to exist" in Flushing and have threatened to kill and beat Falun Gong Plaintiffs to death. Compl. ¶¶ 58, 79, 81.

Shared Animus

As detailed below, Plaintiffs' allegations detailing Defendants' shared anti-Falun Gong animus are abundant and unambiguous. *See infra* at I(B)(ii). This shared animus makes Plaintiffs' allegations of a conspiracy even more plausible.

ii. Defendant Chu

Defendants contend, blatantly disregarding Plaintiffs' allegations, that Defendant Chu "only participates in peaceful protests and the distributing of materials in a non-threatening manner."

MTD at 17. Plaintiffs' allegations in fact detail Defendant Chu's active role in the alleged conspiracy, thereby rendering Defendants' alternative narrative unlikely and implausible.

Shared Methods

Generally, Plaintiffs' allegations detail Defendant Chu's founding and management of CACWA, as well as his direction and control over the activities of CACWA supporters and volunteers. Compl. ¶¶ 59, 62, 89, 93-94, 98, 124, 144-45. Specifically, they demonstrate how and when Defendant Chu planned, called for, supported, endorsed, furthered, and ratified the methods employed by Defendants Li, Wan, and Zhu to deprive Plaintiffs of their right to intrastate travel.

Plaintiffs allege that Defendant Chu planned and called for acts of violence and intimidation. At a meeting with supporters paid to participate in an anti-Falun Gong protest, Defendant Chu directly told supporters to "PK" Falun Gong, a slang term meaning "battle against" or "destroy." Compl. ¶ 89. Defendant Chu collaborated with Defendant Li in the planning and coordination of the production of CACWA propaganda materials that emphasize the use of (1) imperative speech calling for the violent suppression (the *jiepi*, the *zhuanhua,* or *douzheng* of all believers) of Falun Gong, often coupled with reports of its effective implementation; and (2) dehumanizing depictions of Falun Gong believers which support, justify, and instigate the calls to suppress Falun Gong. Compl. ¶¶ 62(a), 117-21; *see also* Exh. 1.[3] Defendant Chu produced a library of these materials, designed to justify, legitimize, and instigate the anti-Falun Gong violence in Flushing. Compl. ¶¶ 62, 94, 144. He has additionally recruited individuals to distribute these materials. Compl. ¶¶ 62, 89, 97, 119. He has offered to pay "overseas Chinese" between seven and nine dollars a day to engage in acts vilifying or attacking Falun Gong believers, and has stood by CACWA posters calling for violence and aggression towards Falun Gong. Compl. ¶¶ 91, 97, 99.

Plaintiffs further allege that Defendant Chu, through appearances with other Defendants involved in anti-Falun Gong violence, has supported, endorsed, and ratified their conduct. Some of these appearances occurred at hate rallies and other hate-based anti-Falun Gong events organized

[3] As noted elsewhere, designations of Falun Gong as a *xie jiao* (deviated religion) on CACWA vests designed and produced by Defendant Chu, in addition to his designation of Falun Gong as an anti-humanity and anti-society group, are not only inflammatory but motivate, instigate, and justify the violent maltreatment and intimidation of Falun Gong. See *supra* at I(A)(ii).

and attended by Defendant Chu as co-Chair of the CACWA, where his primary or sole purpose was to advocate aggression and violence against local New York Falun Gong adherents. Compl. ¶¶ 71, 86, 94, 95, 97. For example, on May 13-15, 2014, Defendant Chu appeared with Defendant Li in front of the United Nations in New York City, holding banners and calling out slogans degrading and dehumanizing Falun Gong adherents who were on the scene celebrating a religious event, and calling for aggression against them. Compl. ¶ 90. Other appearances were more directly tied to other Defendants' acts of violence. For example, on December 15, 2014, Defendant Chu stood by while Defendant Wan violently attacked a Falun Gong believer. Compl. ¶ 96. On January 3, 2015, Defendant Wan attacked Plaintiff Zhang and then made a phone call requesting backup or support from Defendant Chu, who arrived at the scene and ratified her unlawful conduct. Compl. ¶ 103.

Shared Objectives

As Plaintiffs' allegations detail, Defendant Chu's objectives are identical to those of Defendants Li, Wan, and Zhu. As noted just above, Defendant Chu, in collaboration with Defendant Li, produced the CACWA flyers, brochures, and pamphlets that clearly state the violent anti-Falun Gong objectives of the CACWA. One such CACWA flyer calls upon all "overseas Chinese" "to completely eradicate Falun Gong," (*chedi dujue*) and even urges the American government to "strike a severe blow against" (*yanli daji*) Falun Gong in the United States. Compl. ¶ 118. CACWA materials calling for the violent forced conversion of Falun Gong (*zhuanhua*) are also commonplace. *Id.* Such materials also include the terms *duifu* or *douzheng*, referring to the violent suppression of a targeted group, in this case, Falun Gong. Compl. ¶¶ 119- 120; see also Exh. 1.

Plaintiffs similarly allege Defendant Chu's pivotal role in the creation of the CACWA vests that characterize Falun Gong as a *xie jiao* ("evil cult" or "deviated religion"), a phrase used in CCP parlance to mark dissident groups as legitimate targets for discrimination or violent abuse, much as racial epithets marked African Americans as legitimate targets of discrimination and lynching. Compl. ¶¶ 93, 94, 122; *see also* Compl. ¶ 125 (noting that Defendants Chu and Li selected Flushing as the headquarters for the CACWA because it is home to those who readily grasp the meaning of the coded anti-Falun Gong propaganda).

Shared Animus

As detailed below, Plaintiffs' allegations detailing all Defendants' shared anti-Falun Gong animus are abundant and unambiguous. *See infra* at I(B)(ii). Plaintiffs' allegations regarding Defendant Chu cannot be ignored or simply dismissed as "conclusory." They provide specific details as to the dates and circumstances of the conduct carried out by Defendant Chu. Especially when taken together with allegations as to the other named Defendants' acts of violence and intimidation and Defendant Chu's close collaboration and authority over these Defendants, a reasonable – and inescapable – inference must be drawn that Defendant Chu participated in a conspiracy with these other Defendants to carry out the alleged unlawful acts, depriving Plaintiffs of their rights.

iii. Defendant CACWA

Defendant CACWA has acted through its agents, Defendants Chu and Li. Unless it can be shown that Defendants Chu and Li acted outside the scope of their agency, an argument which Defendants have waived, CACWA is liable and responsible for the aforementioned § 1985(3) violations carried out by Defendants Li and Chu.[4]

B. Class-Based Animus

In the Second Circuit, animus based upon religious beliefs meets the requirement under § 1985(3) for "class-based, invidiously discriminatory animus." *See Jews for Jesus v. Jewish Comm. Rel. Council of NY*, 968 F.2d 286, 291 (2d Cir. 1992); *Colombrito v. Kelly*, 764 F.2d 122, 130 (2d Cir. 1985). Courts have upheld pleadings stating a claim under § 1985(3) even by members of a variety of "unusual religious groups." *Colombrito*, 764 F.2d at 130 (citations omitted).

Nevertheless, Defendants attempt to argue that Plaintiffs ought not be afforded the protections of § 1985(3) because their religion does not qualify as a "religion." Defendants further

[4] Even if Defendants had not waived this argument, the argument would fail due to CACWA's hostile animus towards Falun Gong and well-publicized dedication to its violent suppression. As noted above, in its official New York State registration material, the CACWA describes Falun Gong as "anti-society" and "anti-humanity," a designation used globally to instigate violence towards a targeted group (*see supra* note 3). The CACWA's Falun Gong *douzheng* objectives are clearly expressed in CACWA flyers, brochures, and pamphlets without any objection from the CACWA. *See* Exh. 1. The organization has been praised for its effective *douzheng* against Falun Gong. Compl. ¶¶ 66-67.

argue that Plaintiffs have not pled sufficient factual allegations to demonstrate the Defendants' discriminatory, anti-Falun Gong animus. Both of these arguments are groundless.

i. Falun Gong is recognized as a religion under U.S. law.

Defendants contend that Falun Gong practitioners' status as a religious class constitutes nothing more than "Plaintiffs' self-serving statement." MTD at 12. Quite astonishingly, Defendants argue that even if this Court agrees with all of Plaintiffs' other arguments and finds that Plaintiffs have set forth a well-pled conspiracy to deliberately deprive them of their rights by reason of their status as Falun Gong practitioners, Plaintiffs still fail to state a claim because Falun Gong practitioners are not a class entitled to federal civil rights protections. This argument is baseless.

There is no formal test as to what constitutes a religion or spiritual practice, and thus no specific pleading requirement limiting how parties may articulate their sincere religious or spiritual beliefs. *See United States v. Ballard*, 322 U.S. 78 (1944) (Supreme Court must look to the sincerity of a person's beliefs to decide if those beliefs constitute a religion deserving constitutional protection, not to any specific set of attributes that must be pled). Defendants cite *Iao v. Gonzales*, 400 F.3d 530, 531-32 (7th Cir. 2005), apparently believing it supports their argument because it notes that Falun Gong "is not a religion *in the Western sense*" (emphasis added) because "there is no deity." MTD at 12. But the Court in *Iao* treated Falun Gong as a religion for asylum purposes. Moreover, neither federal nor state governments "can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." *Torasco v. Watkins*, 367 U.S. 488, 495 (1961). "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others." *Id.* at n. 11. Defendants even concede that Falun Gong "draws from the religious teachings of Taoism and Buddhism." MTD at 12. As such, it would be constitutionally impermissible for this Court to deny Falun Gong the protections of § 1985(3) while affording them to other religious belief systems.

The Motion's characterizations of Falun Gong as not meriting the same protection afforded all other religions are borrowed from the propaganda campaign carried out in China to demonize and instigate hatred and persecution against the spiritual group. Based on deliberate

misrepresentations, these characterizations inject their own meaning into Chinese sacred texts in various ways, including the isolation of phrases or words outside their original context and the failure to acknowledge the central tenets of the religion expressed in such phrases as "maintain a benevolent heart and kind mind always;" cultivate compassion (*shan*) and tolerance (*ren*). These hostile depictions of Falun Gong ignore alleged facts that illustrate similarities between Falun Gong and other Eastern spiritual practices. Compl. ¶ 135. Contrary to what Plaintiffs allege, Defendants' Motion concludes – without citation to any authority whatsoever – that Falun Gong's founder, Li Hongzhi, has stated that Falun Gong is no more than a "a set of exercises centered on the practice of qigong (breathing exercises)." MTD at 12. This assertion, in addition to being a factual challenge that has no place in a motion to dismiss, is simply incorrect. As is noted in the sworn affidavit of Falun Gong expert Erping Zhang, submitted here as Exhibit 2, Falun Gong possesses many of the same characteristics of other religious belief systems, particularly Buddhism, including its aim to enable its practitioners "to achieve enlightenment through observing such moral principles as Compassion," holding "that human beings go through the cycle of reincarnation" and that "there are karmic reasons behind everything in society," and teaching its adherents "to be a good person in society, and to show reverence to Buddha in order to achieve enlightenment." Exh. 2 at ¶ 4.

Defendants also misrepresent the State Department's 2000 Human Rights Report on China as somehow supportive of their theory that Falun Gong is not a religious or spiritual practice. MTD at 24. Defendants fail to recognize that the State Department analysis of the persecution of Falun Gong in China is discussed under the heading "Freedom of Religion," and that it notes that Falun Gong "blends aspects of Taoism, Buddhism, and meditation techniques . . . with the teachings of Li Hongzhi." *See* Department of State, 2000 Human Rights Report on China.[5] Moreover, the overwhelming weight of other U.S. government statements militates in favor of designating Falun Gong as a religion. A 2006 Congressional Research Service (CRS) report describes Falun Gong as

[5] Available at URL: http://www.state.gov/j/drl/rls/hrrpt/2000/eap/684.htm.

"combin[ing] an exercise regimen with meditation, moral values, spiritual beliefs, and faith." Thomas Lum, "China and Falun Gong," Congressional Research Service, May 25, 2006.[6]

The U.S. Congress has also passed numerous resolutions condemning the persecution of Falun Gong for their *peaceful religious* beliefs. *See, e.g.*, H. Res. 304, 108th Cong. (2004) (emphasizing that Falun Gong is a peaceful spiritual movement that originated in the People's Republic of China); H. Res. 605, 111th Cong. (2010) (describing Falun Gong as "a traditional Chinese spiritual discipline founded by Li Hongzhi in 1992, which consists of spiritual, religious, and moral teachings for daily life, meditation, and exercise, based upon the principles of truthfulness, compassion, and tolerance"); H. Res. 281, 113th Cong. (2014) (expressing concern over "large numbers of Falun Gong practitioners imprisoned for their religious beliefs"); S. Res. 232, 112th Cong. (2011) (emphasizing that "freedom of religion includes the right of Falun Gong practitioners to freely practice Falun Gong"). The State Department's annual International *Religious* Freedom Reports (emphasis added) consistently include Falun Gong practitioners in their discussions of China's "religious demography" and document the persecution of Falun Gong as a violation of religious freedom. *See, e.g.*, Department of State, International Religious Freedom Report for 2013, "China," ("Falun Gong adherents were among those reported to be held solely for their religious association").[7] The U.S. Commission on International *Religious* Freedom (emphasis added) has done the same. *See, e.g.*, U.S. Commission on International Religious Freedom, Annual Report 2015 ("For religious freedom, this has meant unprecedented violations against . . . Falun Gong practitioners.").[8]

Finally, the Second Circuit has treated Falun Gong as a religion for asylum purposes in many cases. *See, e.g., Yi Guan Zhang v. Mukasey*, 286 Fed.Appx. 751 (2d Cir. 2008); *Chen v. U.S. Dept. of Justice*, 426 F.3d 104 (2d Cir. 2005); *see also Mindeng Zheng v. Holder*, 465 Fed.Appx. 35, 41 n. 7 (2d Cir. 2012) ("Changed personal circumstances may include . . . conversion to a new religion such as

[6] Available at URL: http://fpc.state.gov/documents/organization/67820.pdf.
[7] Available at URL: http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper
[8] Available at URL:
http://www.uscirf.gov/sites/default/files/USCIRF%20Annual%20Report%202015%20%282%29.pdf

Christianity or Falun Gong."). In short, there is simply no basis for denying Falun Gong practitioners the religious class-based protections afforded by § 1985(3).

ii. Plaintiffs' allegations demonstrate Defendants' anti-Falun Gong animus.

Defendants argue that Plaintiffs' allegations do not show that Defendants "treated Plaintiffs as a class of persons unequally in a manner that is malicious, hostile, or damaging." MTD at 13. "Defendants' acts in expressing differing opinions can only be construed as indifference to the effect it would have on Plaintiffs." *Id.* Plaintiffs, of course, do not allege that Defendants merely "express[ed] differing opinions." Rather, Defendants deliberately waged an ongoing campaign of violence and intimidation as a result of Plaintiffs' religious beliefs. Contrary to Defendants' arguments, such allegations quite plainly rise to the level of "hatred of, or condescension toward" Falun Gong practitioners. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1971).

Plaintiffs' allegations detailing Defendants' anti-Falun Gong animus are abundant and unambiguous. Defendant Chu has, using the preferred parlance of the CCP, repeatedly labeled Falun Gong an "evil cult" or "deviated religion" ("*xie jiao*"), a coded phrase that designates a group as an appropriate target for violence and maltreatment. Compl. ¶¶ 92-93, 122. He has called upon followers to "PK" (meaning battle against or defeat) Falun Gong. Compl. ¶ 89. Defendant Li has called Falun Gong practitioners "pets of the United States, lapdogs of America," has said that Falun Gong practitioners who return to China will be shot, and has said that she can make Falun Gong "disappear." Compl. ¶¶ 79-80. Defendant Wan referred to one Falun Gong believer as a "fucking Falun Gong motherfucker." Compl. ¶ 105. She has said Falun Gong will be "eradicate[d]" or "kill[ed]." Compl. ¶¶ 101-04. And she has stated her feeling that Falun Gong "are even worse than dogs." Compl. ¶ 108. Defendant Zhu has shoved pro-Falun Gong flyers in the face of Falun Gong practitioners distributing them and has angrily attempted to tear down Falun Gong posters. Compl. ¶¶ 111-12. Defendants Chu and Li share strong ties with anti-Falun Gong groups in China that label Falun Gong a deviated religion and call for their *douzheng* or violent suppression. Compl. ¶¶ 67-71. These allegations, taken together with the acts of violence and intimidation alleged throughout the

Complaint, obviously do not reflect a mere difference of opinion regarding Falun Gong's value as a spiritual practice, but rather a deeply held hatred toward the spiritual group.[9]

In addition to the statements made personally by Defendants, all individual Defendants have participated in the production and/or distribution of Defendant CACWA's anti-Falun Gong propaganda, further demonstrating Defendants' collective anti-Falun Gong animus. Compl. ¶¶ 116-26. Defendant Chu and Defendant Li are co-chairs of the CACWA, which includes in its mission statement the assertion that Falun Gong is "anti-society" and "anti-humanity." MTD at 3. Defendants Wan and Zhu are known supporters of this organization. Compl. ¶¶ 100, 110. These materials repeatedly call for the *douzheng* (violent suppression) and *zhuanhua* (forced ideological conversion) of Falun Gong. Compl. ¶¶ 117-18, 120. They depict Falun Gong practitioners as "psychopathic," "exceptionally brutal and savage," "subhuman," and "demonic." Compl. ¶ 14. They call for Falun Gong's "defeat" (*duifu*). Compl. ¶ 119. They characterize Falun Gong as "malignant tumors" and dangerous threats to society. Compl. ¶ 121. They characterize Falun Gong practitioners as members of an "evil cult" or "deviated religion" (*xie jiao*), "a phrase used in CCP parlance to mark dissident groups as legitimate targets for discrimination or violent abuse . . ." Compl. ¶ 122. These materials, and Defendants' voluntary production and/or distribution of them throughout Flushing, do not indicate a respectful theological or political disagreement. *See* Exh. 1. They are degrading, dehumanizing, and hateful.[10]

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[9] This is corroborated by an officer at the 109th police precinct in Flushing, who told Plaintiff Bian that the Defendants had mistreated him based on their belief that he practiced the Falun Gong religion. Compl. ¶ 77.

[10] Defendants' invocation of the First Amendment's free speech protections regarding this and Plaintiffs' other federal claims widely misses the mark. Plaintiffs do not contend that Defendants' materials – irrational and odious as they are – would not ordinarily receive First Amendment protection. As Plaintiffs explicitly state in their Complaint, their claims are "not premised on the Defendants' anti-Falun Gong hate speech," and such speech "does not by itself form the basis for any independent cause of action." Compl. ¶ 14. Rather, Defendants' CACWA materials are relevant insofar as they represent voluminous, circumstantial evidence of Defendants' discriminatory animus and intent, as well as the persecutory goals of their acts, plans, and agreements. *See Wisconsin v. Mitchell*, 508 U.S. 476, 489-490 (1993) ("The First Amendment . . . does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent."); *see also Earle v. Benoit*, 850 F.2d 836, 843 (1st Cir. 1988) ("[T]he agreement that rests at the heart of a conspiracy is seldom susceptible of direct proof. More often than not such an agreement must be inferred from all the circumstances."). Since Defendants' materials stand as proof of their animus, intent, objectives, and, more generally, an independent agreement in furtherance of illegal conduct, the court can quickly dispose of the Motion's irrelevant discussion of First Amendment free speech protections. The Motion's contention that Defendants' threats to violently eradicate or maltreat Plaintiffs and other Falun Gong believers in Flushing merit First Amendment protection is also incorrect. Threats are not protected by the First Amendment. *See Watts v. United States*, 394 U.S. 705, 707 (1969).

For these reasons, there can be little doubt that Defendants' alleged anti-Falun Gong sentiments rise to the level of class-based, invidiously discriminatory animus.

II. Plaintiffs State a Claim Under the Hindrance Clause of 42 U.S.C. § 1985(3).

The hindrance clause provides that "[i]f two or more persons in any State or Territory conspire . . . for the purposes of . . . preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . the party so injured or deprived may have an action for the recovery of damages . . ." 42 U.S.C. § 1985(3). While civil rights claims under the hindrance clause have not been addressed in depth by this Circuit, the Ninth Circuit has found that, in addition to demonstrating a conspiracy, such claims must meet three requirements: (1) "the purpose [of the conspiracy] must be to interfere with state law enforcement, not just to interfere with the persons seeking to exercise their legal rights"; (2) the conspiracy must be "directed at a protected class"; and (3) the conspiracy must implicate "a constitutional right." *See National Abortions Federation v. Operation Rescue*, 8 F.3d 680, 685 (9th Cir. 1993).

Defendants assert that Plaintiffs' allegations do not establish a conspiracy to interfere with law enforcement and are not sufficient to show that Defendants were motivated by the required class-based, invidiously discriminatory animus. These arguments fail for the reasons provided below.

A. Conspiracy

Plaintiffs' specific factual allegations provide plausible grounds to infer a tacit agreement to hinder the local authorities from securing Plaintiffs' equal protection of the laws. Defendants' arguments to the contrary again mischaracterize Plaintiffs' claim as conclusory or non-specific by simply ignoring or disputing the specific factual allegations in support of the claim.

In *Libertad v. Welch*, 53 F.3d 428, 450 (1st Cir. 1995), the Court found that the plaintiffs' allegations were "sufficient to raise a genuine dispute" and thus overcome a motion for summary judgment where defendants, a group of anti-abortion activists, impeded the state's ability to protect the rights of women seeking access to abortion clinics. One defendant "testified that their purpose is

to close down the [abortion] clinics and thereby prevent abortions." *Id.* Another defendant "admitted during his testimony that one of the reasons that the protesters intentionally go limp or flail their limbs when arrested by the police is to make it more difficult and time-consuming for the police to arrest them, thereby 'buying time' for the unborn." *Id.* Similarly, in *National Abortions Federation*, anti-abortion activists "deliberately kept secret their target sites to prevent law enforcement from utilizing proactive means of maintaining access to these medical facilities" and "negotiate[d] with police in order to obtain agreements with the police regarding whether they will be arrested" in order to "alter police conduct so that police conduct will aid in the achievement of defendants' blockade goals." 8 F.3d at 686-87. Here, Defendants, acting in concert in pursuit of their shared objective to carry out a *douzheng* violent suppression campaign against Falun Gong practitioners in Flushing – a campaign necessarily requiring state action – have lied to or otherwise misled the police regarding their acts of violence and intimidation, and have made statements suggesting that they have directly influenced the police to ensure that Falun Gong practitioners in Flushing remain vulnerable to violence and intimidation. Taken together, these specific factual allegations at the very least provide "enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Twombly*, 550 U.S. at 556.

Plaintiffs allege that the China Anti-Cult Association (CACA), an organization founded "to purge the world of the Falun Gong religion and its believers through a '*douzheng*' campaign," established Defendant CACWA, among other organizations, to conduct "comprehensive suppression overseas." Compl. ¶ 51. Such campaigns pursue "the forced conversion of targeted groups through violence aimed at forcing members of such groups to renounce" their beliefs. Compl. ¶ 49. As such, these campaigns necessarily require the commitment of state authorities to carry out widespread acts of persecution against Falun Gong practitioners, or at the very least to passively permit this persecution to occur. This is all the more clear from Defendants' propaganda materials that urge "the American government to 'strike a severe blow against' ('*yanli daji*') Falun Gong in the United States" and which characterize Falun Gong believers as members of a '*xie jiao*' ('evil cult' or 'deviated religion') or "as mentally subhuman, diseased, or pestilential," phrases used

"to mark dissident groups as legitimate targets for discrimination and abuse." Compl. ¶¶ 118, 121-23. It is therefore not only plausible but also likely that each of the Defendants, as agents or supporters of CACWA and regular distributors of these materials, share the goal of influencing United States authorities to carry out or permit the *douzheng* of Falun Gong.[11]

Plaintiffs further allege that Defendants have, at times acting in concert, carried out overt acts in pursuit of this goal, thereby supporting a reasonable inference that Defendants were participating in a conspiracy rather than acting independently of one another. Defendants Li and Zhu, acting in concert with a mob to surround and intimidate Plaintiff Bian, misled police regarding the incident, resulting in Plaintiff Bian's arrest. Compl. ¶ 77. During the incident, Defendant Zhu jumped out of his wheelchair after Defendant Li and others began chanting, "Falun Gong is beating up a disabled person," in an attempt to give the appearance that Plaintiff Bian was the aggressor. *Id.* A picture of Plaintiff Bian in handcuffs was later posted on a CACWA affiliate website. *Id.* Similarly, Defendant Li, again acting in concert with Defendant Zhu during an act of intimidation directed against Plaintiffs Li and Cao, "pinch[ed] the back of one of her hands with the other hand to create the appearance of an injury," turning her hand red and yelling, "Falun Gong is attacking me." Compl. ¶ 81. These attempts to deceive the authorities into believing that Defendants are the victims rather than the perpetrators of abuse go well beyond the *Libertad* defendants' efforts to "intentionally go limp" so as to delay arrest, 53 F.3d at 450, or the *National Abortions Federation* defendants' "negotiat[ions] with police" regarding the circumstances of their arrests. 8 F.3d at 686-87.

Defendants have also made statements asserting that they have collaboratively influenced local authorities, such that Falun Gong practitioners in Flushing will not receive equal protection under the law. Defendant Wan has told Plaintiffs, "It is of no use if you call the police," and "You can call the police. *We* have people in the police station." Compl. ¶¶ 20-21, 101-02. Defendant Li

[11] This goal, to be sure, is not likely to be achieved, just as the defendants' goal in *Libertad* to "close down the [abortion] clinics and thereby prevent abortions," 53 F.3d at 450, was not likely to be achieved through their activism – but the relevant inquiry in establishing a conspiracy is simply whether the defendants share a "purpose . . . to interfere with state law enforcement," not whether this purpose is realistic or achievable. *See National Abortions Federation*, 8 F.3d at 685.

has told Plaintiffs that "[e]ven the United States cannot protect you; *we* can make you disappear instantly even in the United States . . ." Compl. ¶¶ 26, 79 (emphases added).[12] These statements, made on behalf of Defendants and their fellow CACWA supporters imply collaborative action and hinder the local police authorities' ability to protect Plaintiffs' rights. First, police depend upon police reports, calls, and general public trust in the police force to protect the rights of citizens. The statements made by Defendants Wan and Li undermine this public trust and clearly seek to instill fear in the Falun Gong community so that Falun Gong practitioners will not feel comfortable reporting incidents to or calling the police. Second, these statements "permit the Court to infer more than the mere possibility" that Defendants have, in fact, made direct efforts to influence local police authorities, and therefore "plausibly give rise to an entitlement to relief." *Twombly*, 550 U.S. at 607.[13] This is particularly true in light of Plaintiffs' allegations that, despite the increasing frequency of acts of violence and intimidation committed in the months preceding the filing of Plaintiffs' Complaint, the "police have not been able to control the violence, intimidation, and other criminal conduct to date . . ." Compl. ¶¶ 127-131.

Defendants' conduct "raises a suggestion of a preceding agreement" to interfere with the local authorities' protection of Plaintiffs' rights. *Twombly*, 550 U.S. at 557. Taking together the Defendants' stated goals, lies to police, and statements asserting direct influence upon the police, it is unlikely that their conduct "could just as well be independent action." *Id.* Defendants, unable to present a plausible alternative reading of these allegations, instead altogether ignore them in their Motion. For this reason, they are simply incorrect in their assertion that Plaintiffs "fail to plead any facts sufficient to state a claim" under the hindrance clause of § 1985(3). MTD at 15.

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[12] Overt acts in furtherance of a conspiracy under § 1985(3) need only be committed by "one of the conspirators." *Girard v. 94th St. & Fifth Ave. Corp.*, 396 F.Supp. 450, 455 (S.D.N.Y. 1975). Thus, because all Defendants conspired to interfere with state authorities in pursuit of their shared goal to wage a "*douzheng*" campaign against Falun Gong practitioners in Flushing, the acts of Defendants Li, Zhu, and Wan described here also implicate Defendant Chu.

[13] Both Congress and courts, through legislation and common law respectively, have recognized the significance of communications to police in enabling the protection of law enforcement. Congress thus enacted 18 U.S.C. § 1512(c)(2) to criminalize "misleading conduct toward another person, with intent to...hinder, delay, or prevent the communication to a law enforcement officer . . . of information relating to the commission or possible commission of a Federal offense." Likewise, courts have long applied the common law of misprision of felony to legally oblige civilians to report crimes, assuming the importance of such reports to the duties of law enforcement.

B. Class-Based Animus

Defendants further challenge Plaintiffs' claim under the hindrance clause of § 1985(3) on the grounds that Plaintiffs do not sufficiently allege that Defendants were motivated by the required invidiously discriminatory, class-based animus. For the same reasons set forth *supra* at I(B), this argument is not persuasive.

III. The Complaint Adequately States a Claim Under 18 U.S.C. § 248.

Section 248(a)(2) of the Freedom of Access to Clinic Entrances (FACE) Act provides for civil remedies against whoever "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." Because Plaintiffs' Complaint contains specific factual allegations detailing Defendants' use of threats and force to intentionally interfere with Plaintiffs' lawful exercise of their religious rights at the Falun Gong Spiritual Center and its associated spiritual sites, Plaintiffs successfully state a claim under § 248(a)(2). Defendants' arguments to the contrary fail.

A. The plain text of § 248 is not limited to reproductive rights.

Defendants first contend that, because Congress's "general intent" in passing § 248 was to protect the rights of women to receive reproductive healthcare services, and because Plaintiffs in this case "are not even remotely close to dealing with the dangers of providing or receiving an abortion," Plaintiffs' § 248 claim must fail. MTD at 23. This argument ignores the text of § 248(a)(2), which provides protections for the rights of religious adherents to access places of religious or spiritual worship. Defendants seem to suggest, without providing any legal reason beyond the act's title referring to clinic access, that the Court should ignore this clearly stated and unambiguous provision. MTD at 23-24. Courts, however, "must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984). The plain, unambiguous text of § 248(a)(2) provides religious freedom protections. Congress's clear intent in passing this legislation was to "ensure that the first amendment right of religious liberty

receives the same protection from interference" that the bill gives to abortion. CONG. REC. S15660 (1993) (statement of Sen. Hatch). Thus, Defendants' argument is without any basis in law.

B. Falun Gong is a religion.

Defendants further contend that because "Falun Gong is not a religion," Plaintiffs fail to satisfy the elements of § 248(a)(2). For the same reasons provided *supra* at I(B)(i), Falun Gong must be considered a religion for purposes of U.S. federal civil rights protections, and therefore Defendants' argument fails.

C. The Falun Gong Spiritual Center and its associated sites constitute "places of worship" within the meaning of § 248.

Defendants further submit that not only is Falun Gong not a religion warranting protection under federal civil rights law, but even if it is, Falun Gong does not have a "formal place of worship" and thus Falun Gong spiritual sites should not be afforded the same protections as more traditional places of worship such as churches, synagogues, and mosques. MTD at 24. This argument is inconsistent with Congress's intent in passing the act and again runs contrary to the Constitution's most fundamental religious freedom protections.

Congress's intent in enacting § 248(a)(2) was to protect spiritual conduct "occurring at or in the immediate vicinity of a place of religious worship, such as a church, synagogue *or other structure or place used primarily for worship*." H.R. REP. NO. 103-488 (1994) (emphasis added). Nowhere in the statute or legislative history is "worship" defined to exclude religious practices that do not involve a belief in a deity. Nowhere does the legislative history of the act suggest that Congress intended to limit its protections to "formal" places of worship, as Defendants urge this Court to do. MTD at 24. Rather, the record makes clear that Congress intended that the act be broadly applied to any "structure or place used primarily for worship," thereby focusing on the religious *function* of the place rather than imposing any formal requirements on what constitutes a "place of worship" within the meaning of the act.[14] This reading is all the more sensible given that the reading that Defendants

[14] "Over 250 sects inhabit our land. Some believe in a purely personal God, some in a supernatural deity; others think of religion as a way of life envisioning as its ultimate goal the day when all men can live together in perfect understanding and peace. There are those who think of God as the depths or our being; others, such as the Buddhists, strive for a state

urge the Court to adopt would – like their arguments that Falun Gong is itself not a religion – run afoul of the Constitution's prohibition on "aid[ing] those religions based on a belief in the existence of God as against those religions founded on different beliefs." *Torasco*, 367 U.S. at 495. Imposing formal requirements on what constitutes a "place of worship" would, in effect, elevate most Western religious belief systems over many Eastern religious or spiritual practices and beliefs.

Finally, it is clear that the Falun Gong Spiritual Center and its associated spiritual sites are used for religious purposes, thereby falling within the protections of § 248(a)(2). As Plaintiffs allege, the Falun Gong Plaintiffs "practice the Falun Gong religion when in the Flushing area at the Falun Gong Spiritual Center" and "also engage in religious activities at five designated Falun Gong sites situated within walking distance of the Spiritual Center," including "staff[ing] and maintain[ing] tables at these sites and distribut[ing] Falun Gong religious literature." Compl. ¶¶ 5-6. Plaintiffs further attach herein, as Exhibit 3, the sworn affidavit of Rong Yi, the Vice President of the Falun Dafa Association, which manages and oversees important spiritual activities in Queens and other boroughs of New York. As Ms. Yi attests, she oversees and manages Falun Gong religious activities at the local Falun Dafa Association office located in Flushing, New York, at 40-46 Main Street. Activities at the office include spiritual meditation, religious study, and the hosting of spiritual conferences. She further coordinates the associated Falun Gong sites, where activities primarily involve the distribution of Falun Gong-related religious literature. Thus, these sites constitute places used primarily for the spiritual activities engaged in by Falun Gong practitioners and fall within the meaning of the term "place of religious worship" for purposes of § 248(a)(2).

D. Plaintiffs' § 248 claim is adequately pled.

Contrary to Defendants' assertion that Plaintiffs fail to "describe the acts allegedly committed by Defendants that were in violation of 18 U.S.C. § 248," Plaintiffs' Complaint contains specific factual allegations detailing numerous incidents in which Defendants, personally and in

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of lasting rest through self-denial and inner purification; in Hindu philosophy, the Supreme Being is the transcendental reality which is truth, knowledge and bliss." *United States v. Seeger*, 380 U.S. 163, 174 (1965). Accordingly, a "place of worship" will vary, consistent with the nature of the religious or spiritual belief.

collaboration with others, used force or the threat of force to make Plaintiffs afraid to travel near the Falun Gong Spiritual Center or its associated sites, interfering with Plaintiffs' religious practices.

The overwhelming majority of incidents of violence and intimidation alleged in Plaintiffs' Complaint occurred in the immediate vicinity of either the Spiritual Center or its associated sites. *See* Compl. ¶¶ 20-26, 28-29, 33, 80-81, 84, 86, 95, 101-02, 107, 109, 111-12. Many of these incidents occurred while Plaintiffs were distributing religious literature. *See, e.g.,* Compl. ¶¶ 23, 80, 86, 101, 105, 109, 111-12. One incident occurred while Plaintiffs Cao and Li were taking a cart of religious materials from one of the spiritual sites back to the Falun Gong Spiritual Center. Compl. ¶¶ 81, 113. The Plaintiffs in this instance were obstructed by the actions of Defendant Li, and then by a mob of twenty to thirty people she called to assist her, who surrounded Plaintiffs and shouted death threats. *Id.* This and other violent or intimidating acts carried out in the vicinity of the Spiritual Center interfered with the right of Plaintiffs to practice their religion at their chosen place of worship. Other acts directly interfered with the religious or devotional practices of the Falun Gong Plaintiffs, for example by knocking displayed religious materials onto the ground. Compl. ¶¶ 20-21, 80, 101-02.

Thus, these Plaintiffs were clearly "exercising or seeking to exercise the First Amendment right of religious freedom" at their spiritual sites. 18 U.S.C. § 248(a)(2). Defendants employed "force or threat of force" to "injure[], intimidate[] or interfere[] with" the exercise of these rights. *Id.* Finally, these acts were intentional, motivated by the Defendants' hateful anti-Falun Gong animus and desire to purge Flushing of Falun Gong practitioners. *See supra* at I(B)(ii). Indeed, if the acts described in Plaintiffs' Complaint do not successfully state a claim of interference with religious freedom under § 248(a)(2), it is difficult to imagine what acts would. For these reasons, Defendants' motion to dismiss Plaintiffs' § 248(a)(2) claim should be denied.

IV. The Intracorporate Conspiracy Doctrine Does Not Bar Plaintiffs' 1985(3) Claims.

Defendants also contend that Plaintiffs' conspiracy claims under § 1985(3) (both the deprivation and hindrance clauses) must be dismissed because, under the doctrine of intracorporate immunity, "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." MTD at 8 (quoting *Herrmann v. Moore*, 576 F.2d 453, 459 (2d Cir. 1978)). This argument fails. First, the intracorporate conspiracy doctrine does not apply here, because Defendants Wan and Zhu have no official role or membership in CACWA, are not authorized to act on behalf of CACWA, and therefore are not agents of CACWA. Rather, Defendants Wan and Zhu "support" CACWA and "act collaboratively" with Defendants Chu and Li. Compl. ¶¶ 43-44. Second, the intracorporate conspiracy doctrine does not apply where either (1) conspiracy members act outside the scope of their capacity, *Girard v. 94th Street & Fifth Ave. Corp.*, 396 F. Supp. 450 (S.D.N.Y. 1975); or (2) the corporate entity was established for the purpose of engaging in discriminatory acts remedied by § 1985. *See People by Abrams v. 11 Cornwell Co.*, 695 F.2d 34 (2d Cir. 1982). Even if Defendants Wan and Zhu were considered to be agents of CACWA, their unlawful acts of violence and intimidation were not carried out in their official capacity. Alternatively, if these acts were carried out in an official capacity as part of CACWA's explicitly anti-Falun Gong mission, then it becomes immediately clear that CACWA was established for the purpose of engaging in discriminatory acts remedied by § 1985. For these reasons, the intracorporate conspiracy doctrine is not applicable.

V. Plaintiffs' Claims Are Not Time-Barred.

Finally, Defendants submit that Plaintiffs' claims based upon allegations predating March 3, 2012 are time-barred by the three-year statute of limitations on Plaintiffs' federal claims. MTD at 22. This is incorrect. There are only three Plaintiffs whose federal claims are based upon injuries suffered prior to March 3, 2012: Li Xiurong, Cao Lijun, and Bian Hexiang. *See* Compl. ¶¶ 29-30, 34. The remaining nine Plaintiffs listed under these claims all endured injuries after March 3, 2012, and their claims are therefore clearly not time-barred. The claims of Plaintiffs Li, Cao, and Bian are also not time-barred, because the injuries they suffered were part of Defendants' continuing violation. Acts taken outside of a limitations period may be considered as part of a timely claim if the plaintiff can sufficiently allege the existence of an ongoing unlawful practice and some non-time-barred acts taken in furtherance of that practice. *See Velez v. Reynolds*, 325 F.Supp.2d 293, 312 (S.D.N.Y. 2004). This continuing violation doctrine has been applied in the Second Circuit to claims under § 1985(3).

See Cornwell v. Robinson, 23 F.3d 694 (2d Cir. 1994). Plaintiffs here were attacked by Defendants in furtherance of the Defendants' conspiracy to eliminate the visible presence of Falun Gong believers from Flushing and the streets surrounding the Spiritual Center. *See supra* at I(A). Though the specific attacks on Plaintiffs Li, Cao, and Bian predated the limitations period, the Defendants subsequently carried out many other attacks with the same motive and the same methods, taken in furtherance of the same scheme. *See id.*[15] Because these acts were part of an ongoing conspiracy, and because the vast majority of the acts were carried out within the limitations period, Defendants' actions constitute a continuing violation and the acts outside the limitations period may still be considered as part of a timely claim.[16] Therefore, none of Plaintiffs claims are time-barred.[17]

CONCLUSION

For the above-stated reasons, Defendants' Motion to Dismiss should be denied.

Dated: July 21, 2015

Respectfully submitted,
_____/s/_____
Terri E. Marsh (*pro hac vice*)
HUMAN RIGHTS LAW FOUNDATION
Attorney for Plaintiffs

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[15] Though Defendants' attacks against similarly situated Plaintiffs did not directly involve Li, Cao, and Bian, those attacks each created the chilling effect against intrastate travel for the victims of all past and future attacks. Chilling effects against intrastate travel are considered deprivations of intrastate travel. *See Thompson v. Shapiro*, 270 F.Supp. 331 (D. Conn. 1967) (holding statute unconstitutional for its chilling effect on right to travel), aff'd, 394 U.S. 618 (1969); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974) (holding that "penalties" to the right to travel must be balanced by compelling state interests). Even if there were no chilling effects, the attacks within the limitations period, taken in furtherance of the same scheme as that against Plaintiffs Li, Cao, and Bian, are sufficient to support a § 1985(3) continuing violation analysis.

[16] Moreover, a § 1985(3) claim accrues only when the plaintiff "knows or has reason to know" of the injury that is the basis of the action. *See Eagleston v. Guido*, 41 F.3d 865, 871 (2d Cir. 1994). Because a § 1985(3) claim must plead a conspiracy with the objective of depriving plaintiffs of their rights, Plaintiffs only had reason to know of their injury under § 1985(3) when they had reason to know of facts demonstrating these elements. Plaintiffs Li, Cao, and Bian had no reason to know of the conspiracy or its objective until Defendants repeated their attacks on other Plaintiffs in a manner demonstrating these elements. Because these subsequent attacks occurred within the limitations period, these Plaintiffs' claims are not time-barred. In addition, CACWA and especially Defendant Chu have presented the CACWA mission and activities as legitimate in order to conceal from the public their role as a platform for the unlawful deprivation of others' civil rights. When a defendant acts to conceal the grounds for a suit from the plaintiff, that defendant becomes barred, via equitable estoppel, from relying on the statute of limitations as a defense. *See Pearl v. City of Long Beach*, 296 F.3d 76 (2d Cir. 2002).

[17] In addition, Plaintiffs' Complaint contains a number of allegations pertaining to events prior to March 3, 2012, for three important reasons: (1) some of these allegations underpin Plaintiffs' claim under N.Y. 79-n, which has a 6-year statute of limitations; (2) many of these allegations provide important background or context for subsequent events; and (3) many of these allegations demonstrate a pattern of abuses relevant to demonstrating Defendants' anti-Falun Gong animus, their participation in a conspiracy, their purpose to deprive Plaintiffs of their rights, and other elements of Plaintiffs' federal claims.