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11 **SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **YAVAPAI COUNTY**

13 RESIDENTS OF THE RED ROCK LOOP,
14 INC., a Delaware nonprofit corporation, and
15 THE SMOKE TRAIL RANCH PROPERTY
16 OWNERS ASSOCIATION, INC., an Arizona
17 nonprofit corporation,

18 Plaintiffs,

19 v.

20 YAVAPAI COUNTY, ARIZONA, by and
21 through the YAVAPAI COUNTY BOARD
22 OF SUPERVISORS and GLOBAL
23 COMMUNITY COMMUNICATIONS
24 ALLIANCE, an Arizona Corporation

25 Defendants.

No. P-1300-CV2021-00142

**DEFENDANT GLOBAL COMMUNITY
COMMUNICATIONS ALLIANCE'S
MOTION TO DISMISS**

AND

**JOINDER IN YAVAPAI COUNTY'S
MOTION TO DISMISS**

(Oral Argument Requested)

26 Defendant Global Community Communications Alliance (“Global”), by and through
27 undersigned counsel, hereby requests this Court dismiss claims against it found within the
28 First Amended Complaint (“FAC”) pursuant to Ariz. R. Civ. P. 12(b)(6). Plaintiff’s action
fails to state a legal violation of Arizona’s open meeting law. Further, Plaintiff fails to state a
legally cognizable zoning violation against Global. This Motion is supported by the Following
Memorandum of Points of Authorities.

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. FACTUAL BACKGROUND.**

4 Plaintiffs are two corporate entities that purport to represent the interests of concerned
5 homeowners. (FAC, ¶¶ 1-2). Global is an Arizona non-profit religious organization. (FAC, ¶
6 4). Plaintiffs allege that Global is subject to R1-12 and R1L-35 zoning restrictions. (FAC, ¶
7 10). Specifically, the FAC states that the “foregoing zoning [R1-12 and R1L-35] allows only
8 certain permitted residential uses, which are described and codified in Section 400 of the
9 Yavapai County Planning and Zoning Ordinance.” (FAC, ¶ 11). A copy of Section 400, *et*
10 *seq.*, the Yavapai County Planning and Zoning Ordinance is attached hereto as Exhibit 1.¹

11 Section 400 cites to “Use Districts” within Yavapai County, including an R1L District
12 (Section 410), RMM District (Section 411), R1 District (Section 412), RCU District (Section
13 413), R2 District (Section 414), and RS District (Section 415). (Exhibit 1, p. 34, § 400). Each
14 one of the “R” Districts allows religious institutions, like Global, to use the property for those
15 purposes:

- 16 • R1L District allows “Religious institutions.” (Exhibit 1, p. 35, § 410(B)).
- 17 • RMM District allows “Religious institutions.” (Exhibit 1, p. 39, § 411(F)).
- 18 • R1 District allows everything allowed in R1L and RMM (Exhibit 1, p. 40, §
19 412(A)).
- 20 • RCU District allows everything allowed in RL, R1L, and RMM (Exhibit 1, p.
21 41, § 413(A)).
- 22 • R2 District allows everything allowed in RCU (Exhibit 1, p. 42, § 414(A)).
- 23 • RS District allows all uses and structures “in any more restrictive Zoning
24 District.” (Exhibit 1, p. 40, § 412(A)).

25 ¹ The Zoning Ordinances are public records that the Court may consider without converting
26 the Rule 12(b)(6) motion into a Rule 56 motion. *Coleman v. City of Mesa*, 230 Ariz. 352, 356,
27 ¶ 9, 284 P.3d 863, 867 (2012). The Court may likewise consider any document that is
28 “central” to the claim. *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289, ¶ 7, 246 P.3d 938,
940 (App. 2010).

1 Because each “R” Zoning District in Yavapai County allows as a matter of law the use of the
2 property for religious purposes and to build structures in those Districts (*See* Exhibit 1), and
3 because Global’s allegedly improper conduct is pursuant to, and in furtherance of, its religious
4 use of the subject property, a violation did not occur as a matter of law.

5 The FAC also alleges that Yavapai County’s open meeting laws were violated in
6 relation to a settlement between Global and Yavapai County. (FAC, ¶¶ 22-28). Rather than
7 repeat what has already been correctly said, Global references and incorporates Yavapai
8 County’s “Factual Background” found in its Motion to Dismiss, including its Exhibit 1, as if
9 fully set forth here. (Defendant Yavapai County’s Motion to Dismiss, pp. 2-4). In short, the
10 open meeting laws were complied with regarding the settlement.

11 **II. LEGAL STANDARD.**

12 A motion to dismiss brought under Rule 12(b)(6) tests the legal sufficiency of a claim.
13 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To avoid dismissal, a complaint must
14 allege “enough facts to state a claim that is plausible on its face.” *Clemens v. DaimlerChrysler*
15 *Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
16 570 (2007)). Dismissal is appropriate when a complaint lacks a cognizable legal theory or the
17 factual allegations are insufficient “to support a cognizable legal theory.” *Conservation Force*
18 *v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011). Courts must accept a complaint’s allegations
19 as true, but that tenet does not apply to “labels and conclusions” or “a formulaic recitation of
20 the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal
21 quotations and citation omitted). When deciding a 12(b)(6) motion, courts may consider
22 documents that are referenced in the complaint, when no party questions their authenticity.
23 *United States v. Corinthian Colls.*, 655 F.3d 984, 998-99 (9th Cir. 2011). Additionally, “a
24 complaint’s exhibits, or public records regarding matters referenced in a complaint, are not
25 ‘outside the pleading,’ and courts may consider such documents without converting a Rule
26 12(b)(6) motion into a summary judgment motion.” *Coleman v. City of Mesa*, 230 Ariz. 352,
27 356 (2012) (citations omitted).

1 **III. ARGUMENT.**

2 **A. The Complaint Fails to State a Claim.**

3 **1. Count 1 Fails to State a Legally Cognizable Violation of Arizona Open**
4 **Meeting Law.**

5 Defendant Global joins the County's Motion to dismiss on grounds of failure to state a
6 legally cognizable violation of the Arizona Open Meeting Law.

7 **2. Count 2 Fails to State a Legally Cognizable Violation of Yavapai**
8 **County Zoning Ordinances.**

9 Plaintiffs allege Global's particular use of its private property is a violation of Yavapai
10 County's zoning and restrictions; as a matter of law, Plaintiffs are mistaken. Global is a
11 religious group with an established religious use of its property located in Yavapai County.
12 The Settlement referred to in the First Amended Complaint was entered into as a result of a
13 Complaint filed by Global against Yavapai County and the Yavapai County Board of
14 Adjustments and Appeals (V1300-CV 2019-80189). The County, in response to pressure
15 from property owners (who are members of the Plaintiff organizations in this present suit),
16 unconstitutionally attempted to preclude Global's right to use its property for religious uses of
17 through the refusal to issue building permits. Pursuant to A.R.S. § 41-1493 *et seq.* ("FERA"),
18 42 U.S.C. § 2000 *cc et seq.* ("RLUIPA"), 42 U.S.C. § 1983, and the 1st, 5th, and 14th
19 Amendments of the Constitution, Global is entitled to continue its established religious use of
20 its real property. Furthermore, Yavapai Zoning Ordinances expressly direct that "R" zoned
21 districts allow religious use of property. (*See Exhibit 1*). Accordingly, Yavapai County and the
22 Board of Adjustments and Appeals entered into the Settlement Agreement to affirm and
23 recognize Global's legal right to continue its established religious use and attest to its
24 compliance with existing zoning and land use restrictions.

24 Global submitted a Site Plan to the County and the County subsequently issued Global
25 a Zoning Clearance and Building Permit. Yavapai County's form for the Zoning Clearance
26 and Building Permit included the description "Site Plan (Religious Use)." (*Exhibit 2*).² The
27 nature of the document (a Zoning Clearance) for a "Miscellaneous Non-Residential" permit

28 ² The site plan is a public record that the Court may properly review and rely upon. *Coleman*,
230 Ariz. at 356, ¶ 9.

1 acknowledges the present legality of the established religious uses on Global's property.
2 Under Yavapai County ordinances, a Zoning Clearance is not a granting of new land uses.
3 Rather, it is defined in Yavapai County Planning and Zoning Ordinance ("YCPZO") § 301 as:
4 "[t]he approval or authorization by the Land Use Specialist indicating that a proposed
5 building, structure *or use of land* meets all the standards contained in this Ordinance."
6 [Emphasis added]. The Zoning Clearance is merely a review and analysis of the property's
7 current use and proposed buildings as it pertains to existing zoning regulations. The County,
8 through its agent, issued Global the Zoning Clearance and Building Permit and such religious
9 use is allowed in "R" Districts. (See Exhibit 1). Additionally, the County issued a Certificate
10 of Completion regarding Global's site plan with the description: "outdoor religious gathering
11 and assembly." (Exhibit 3). This document acknowledges the established religious use of the
12 property. Accordingly, Global's use of its property satisfies and complies with applicable
13 County ordinances.

14 Even if the Court were to deem the open meeting laws were violated, it would not
15 change the legality of Global's established religious use of their property. Similarly, it would
16 not void the subsequently issued zoning clearance and building permit, or the certificate of
17 completion. The aforementioned permit and certificate are public documents that were readily
18 available for inspection had the Plaintiffs performed a proper inquiry into Global's permitted
19 land uses before filing suit. Plaintiffs' belief that the legally protected established religious use
20 is a violation of Yavapai County Zoning Ordinances is a legally incorrect conclusion, thus
21 lacking valid justiciable legal recourse.

22 **IV. CONCLUSION**

23 Plaintiffs have not stated a claim because Yavapai County's open meeting laws were
24 complied with in relation to the property at issue. Furthermore, Plaintiffs have failed to state a
25 claim because Global's current use of its real property is legally permitted and permissible.
26 Accordingly, Plaintiff's First Amended Complaint against Global Community
27 Communications Alliance should be dismissed with prejudice.
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