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26 **IN THE UNITED STATES DISTRICT COURT**
27 **FOR THE DISTRICT OF ARIZONA**

28 St. Mark Roman Catholic Parish Phoenix;
Christ the King Liturgical Charismatic
Church, Inc.; and First Christian Church
of Phoenix, Arizona, Inc.,
Plaintiffs,
vs.
City of Phoenix, Arizona,
Defendant.

Case No.

Judge

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 COME NOW the Plaintiffs, by counsel and pursuant to the Federal Rules of Civil
2 Procedure, and for their causes of action against Defendant allege and state the following:

3 **I.**

4 **INTRODUCTION**

5 1. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violation of their
6 civil rights. ST. MARK ROMAN CATHOLIC PARISH PHOENIX (“ST. MARK”),
7 CHRIST THE KING LITURGICAL CHARISMATIC CHURCH, INC. (“CKC”), and
8 FIRST CHRISTIAN CHURCH OF PHOENIX, ARIZONA, INC. (“FCC”) are
9 churches located in the city limits of Phoenix, Arizona. These churches want to ring
10 carillon bells from their locations in the City of Phoenix as part of their religious
11 exercise, but fear that they will be prohibited from doing so under a facially
12 unconstitutional noise ordinance.

13 2. On June 3, 2009, Bishop Rick Painter, the Pastor of CKC, was convicted and
14 sentenced to ten days in jail (suspended) and three years of probation for violating
15 Phoenix’s Noise Ordinance by ringing carillon bells from CKC’s church building.

16 3. On August 24, two City of Phoenix Prosecutors and two Phoenix Police
17 officers met with representatives of St. Mark and advised those representatives that St.
18 Mark could be prosecuted for violating the noise ordinance if St. Mark did not reduce
19 the amount of times that it rings its carillon to the satisfaction of certain neighbors.

20 4. St. Mark, CKC, and FCC desire to ring carillon bells in the future as part of
21 the exercise of their religion, and their right to free speech, but fear future prosecution
22 through application of the Phoenix Municipal Noise Ordinance.

23 5. Plaintiffs seek declaratory and injunctive relief to redress irreparable harm to
24 their civil rights by virtue of the existence and threatened application of the Phoenix
25 Noise Ordinance.

26 6. Plaintiff St. Mark also seeks nominal damages for violation of its
27 constitutional rights.

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II.

JURISDICTION AND VENUE

7. This action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments.

8. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

9. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.

10. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).

11. This Court has supplemental jurisdiction over Plaintiffs' State law claims by virtue of 28 U.S.C. §1367.

12. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988 and under AZ Stat. §41-1493.01(D).

13. Venue is proper in this Court under 28 U.S.C. § 1391(b), because Defendant is within the District.

III.

IDENTIFICATION OF PLAINTIFFS

14. Plaintiff St. Mark Roman Catholic Parish Phoenix is a church, organized and existing as a nonprofit religious corporation under the laws of the State of Arizona.

15. Plaintiff St. Mark is a Parish of the Roman Catholic Church of the Diocese of Phoenix.

16. Plaintiff St. Mark is located within the City limits of Phoenix, Arizona, at 400 North 30th Street.

17. Plaintiff Christ the King Liturgical Charismatic Church, Inc. is a church, organized and existing as a nonprofit religious corporation under the laws of the State of Arizona.

18. Plaintiff CKC is recognized as a church by the Internal Revenue Service.

1 purpose of playing the carillon.

2 31. The carillon system was installed and operated at the same levels as it
3 previously operated at the Church's facility on Bell Road.

4 32. The decision to install and play the carillon system was made by CKC's
5 Church Council.

6 33. The Church Council is the entity ultimately responsible for the governance
7 of CKC.

8 34. CKC's carillon is a part of the Church's exercise of its religion.

9 35. CKC rings carillon bells to honor and glorify God.

10 36. CKC believes that ringing the carillon is a way of acknowledging God's
11 sovereignty over time and all that exists.

12 37. CKC also rings the carillon as a way of evangelizing by notifying anyone
13 nearby that the Church is there and is a place of hope, help, and prayer.

14 38. CKC also rings the carillon as a way of continuing a centuries-old church
15 tradition of ringing bells as a way of glorifying God.

16 39. CKC made the decision to commence ringing the carillon from its
17 Greenway Road building on Palm Sunday, March 16, 2008.

18 40. Prior to March 16, 2008, CKC distributed approximately 1,000 fliers in the
19 surrounding vicinity advising residents that it was now located in the neighborhood and
20 would commence ringing its carillon on Palm Sunday, March 16, 2008.

21 41. On Palm Sunday, March 16, 2008, CKC began ringing its carillon.

22 42. The carillon was initially scheduled to ring from 7:00 a.m. to 9:00 p.m.

23 43. The carillon tolled the time on the half hour and the hour.

24 44. When the carillon tolled the time, it began by playing a 16-beat melody
25 taken from Handel's *Messiah*. Following the playing of the melody, the carillon tolled the
26 time.

27 45. When the carillon first began, CKC would play a short song following the
28 tolling of the time at 9:00 a.m., 12:00 p.m., 3:00 p.m., 6:00 p.m., and 9:00 p.m.

1 46. On Monday, March 17, 2008, Detective Daniel Cook from the City of
2 Phoenix Police Department visited the Church.

3 47. Detective Cook was following up on a noise complaint about the carillon.

4 48. Detective Cook notified CKC during his visit that CKC was not breaking
5 any laws by playing the carillon.

6 49. Detective Cook did not issue any citations to CKC during his visit on March
7 17, 2008.

8 50. On or about March 18, 2008, two of the residents who lived near CKC
9 spoke to Deacon James Lee, an employee of CKC, and complained about the carillon.

10 51. On or about March 21, 2008, CKC requested to meet with three of the
11 nearby residents who had complained about the carillon in an effort to see if a
12 compromise could be reached and to explain the Church's religious beliefs concerning
13 ringing the carillon.

14 52. Following the meeting, CKC voluntarily undertook various efforts to
15 mitigate the impact of the carillon on the nearby residents who had complained.

16 53. CKC reduced the time period of the carillon so that it now rings from 8:00
17 a.m. to 8:00 p.m.

18 54. CKC reduced the frequency of the carillon so that it rings every hour instead
19 of every half hour.

20 55. Instead of playing five songs per day, CKC only plays one song per day at
21 the noon hour.

22 56. CKC installed a two inch thick Styrofoam buffer on the side of the carillon
23 speakers facing the residents who complained.

24 57. CKC angled the carillon speakers more up in the air in order to mitigate
25 their impact on the nearby residents.

26 58. After the nearby residents complained about the carillon, CKC took decibel
27 readings of the carillon to assess its impact on the residents.

28 59. On July 18, 2008, Deacon James Lee measured the decibel level of the

1 carillon at each of the three nearby residents' property lines.

2 60. CKC's church building is approximately 40 feet from the property line of
3 the three nearby residents where Deacon Lee measured the decibel levels of the carillon.

4 61. The peak level of the carillon measured between 65.6 to 67.6 decibels at the
5 property line of the neighbors closest to CKC.

6 62. On January 26, 2009, the City of Phoenix filed a Misdemeanor criminal
7 Complaint against Bishop Rick Painter, the Pastor of CKC. *See* Municipal Misdemeanor
8 Complaint attached hereto as Exhibit "A."

9 63. The Complaint accused Bishop Painter of creating "an unreasonably loud,
10 disturbing and unnecessary noise, a Class 1 misdemeanor, in violation of Phoenix City
11 Code Sections 23-12 and 1-5."

12 64. Following a Trial in Municipal Court on May 12, 2009, Bishop Painter was
13 convicted of two counts of violating Phoenix City Code §23-12 (the Phoenix Noise
14 Ordinance) by ringing CKC's carillon.

15 65. On June 3, 2009, Bishop Painter was sentenced to ten days in jail
16 (suspended) and three years of probation for ringing the carillon.

17 66. CKC has ceased ringing its carillon for fear of future prosecution under the
18 Phoenix Noise Ordinance.

19 67. CKC desires to continue to ring its carillon as a means of worshipping
20 God, but is prohibited from doing so because of the threat of criminal prosecution from
21 the City of Phoenix.

22 68. CKC's exercise of religion is inhibited and stifled because of the
23 threatened application of the Phoenix Noise Ordinance.

24 ***St. Mark Roman Catholic Parish of Phoenix***

25 69. St. Mark is a church operating from a building located at 400 North 30th
26 Street in the City of Phoenix.

27 70. St. Mark rings carillon bells from its church buildings as an exercise of its
28 religious beliefs.

1 71. The carillon at St. Mark has rung for at least twenty years.

2 72. St. Mark's carillon usually rings every hour on the hour from 8:00 a.m. to
3 8:00 p.m.

4 73. The carillon that rings on the hour begins with a short melody followed
5 by the counting of the hour by bells.

6 74. At 12:00 p.m., the carillon rings a short *Angelus*.

7 75. The *Angelus* is a carillon melody that reminds parishioners to pray.

8 76. The carillon also rings three times before each Mass as a call to Mass.

9 77. Mass is held at St. Mark every evening, and three times on Sunday.

10 78. At 7:30 every evening, St. Mark's carillon rings five times for the prayer
11 for the dead.

12 79. The carillon at St. Mark is generated through an electronic system.

13 80. The carillon system is located approximately 100 yards from the nearest
14 resident to the Church – although that resident has not complained about the bells.

15 81. St. Mark rings the carillon every hour to remind people to pray.

16 82. St. Mark rings the carillon as a call for people to come to Mass and as a
17 call for people to pray for the dead.

18 83. St. Mark's carillon is part of a centuries-old tradition of the Catholic
19 Church as a whole.

20 84. The Catholic Church has a liturgical order for blessing the bells at a
21 church.

22 85. The blessings of the bells ceremony explains how the bells are an integral
23 and essential part of the exercise of religion of the church:

24

25 It is an ancient practice to summon the Christian people to the
26 liturgical assembly by means of some sign or signal and also to alert
27 them to important happenings in the local community. The peal of
28 bells, then, is in a way the expression of the sentiments of the people
of God as they rejoice or grieve, offer thanks or petition, gather
together and show outwardly the mystery of their oneness in Christ.

1 86. Ringing bells is inextricably intertwined in the life of St. Mark.

2 87. Ringing bells is an expression of the sentiment of the people of St. Mark
3 and thus cannot be silenced without silencing the voice of the entire people of the
4 church community.

5 88. On or about August 20, 2009, a representative of the City of Phoenix
6 Prosecutor's Office called St. Mark, to request a meeting to discuss St. Mark's carillon.

7 89. The Prosecutor stated that the City had received complaints about the
8 carillon at St. Mark and wanted to meet with the Church to see if something could be
9 worked out.

10 90. On August 25, 2009, Father Jorge Gonzales, St. Mark's Pastor, and Larry
11 Shima, an employee of the church, together with John Kelly, General Counsel of the
12 Diocese of Phoenix, met with two representatives of the Phoenix City Prosecutor's
13 office and two Phoenix City Police Officers.

14 91. The representatives of the Phoenix City Prosecutor's Office were Esteban
15 Gomez and James Richter, both of whom are Prosecutors.

16 92. The representatives from the Phoenix Police Department were Ted Music
17 and Manny Valenzuela.

18 93. During the meeting, both the Prosecutors and the Police Officers
19 conveyed to St. Mark that they were trying to find a remedy to appease the resident who
20 had complained about the carillon.

21 94. The resident who had complained about the carillon at St. Mark lives
22 approximately one block and a half away from the Church.

23 95. The Prosecutors advised St. Mark that they hoped a compromise could be
24 achieved that would avoid the need for prosecution under the Phoenix Noise Ordinance.

25 96. When questioned about the vagueness of the Phoenix Noise Ordinance,
26 the Prosecutors acknowledged that the ordinance was vague.

27 97. St. Mark fears that it will be prosecuted under the Phoenix Noise
28 Ordinance for ringing its carillon as a part of the exercise of its religion.

1 98. St. Mark desires to continue ringing its carillon in the future as it has done
2 for many years without fearing prosecution and criminal penalties for doing so.

3 ***First Christian Church***

4 99. FCC owns a building at 6750 N. 7th Avenue in the City of Phoenix.

5 100. FCC's building was designed by the late architect Frank Lloyd Wright
6 and was completed in 1973.

7 101. FCC also built a bell tower designed by Frank Lloyd Wright which was
8 completed in 1978.

9 102. The bell tower is located on FCC's property on 7th Avenue.

10 103. The bell tower is 120 feet high and has four sides, each of which is
11 unequal to the other three. The bell tower appears to be a triangle from any vantage
12 point. The bell tower contains 608,000 pounds of concrete, stone, and steel and has no
13 inward supporting structure.

14 104. Located on top of the bell tower is a cross that is 22 feet in height.

15 105. The bell tower was purposefully designed to emphasize its triangular
16 appearance because Mr. Wright's philosophy was that a building in the shape of a
17 triangle was a building in the attitude of prayer.

18 106. The bell tower contains an electronic carillon system.

19 107. FCC rang its carillon from the bell tower from its completion until
20 approximately 2006 when the carillon became inoperative.

21 108. The carillon would ring from FCC's bell tower at 12:00 p.m. and at 5:00
22 p.m.

23 109. FCC's rings its carillon is part of its exercise of religion.

24 110. FCC believes that ringing its carillon is a way of worshipping God.

25 111. FCC believes that ringing its carillon demonstrates the sovereignty of
26 God over time and creation.

27 112. FCC rang its carillon from its tower as part of a centuries-old tradition of
28 churches ringing bells as a means of worshipping God.

1 113. FCC plans to repair the bell tower so that the carillon is once again
2 operative.

3 114. FCC desires to once again commence ringing its carillon from the bell
4 tower in the near future as part of its exercise of religion.

5 115. FCC fears that if it commences ringing its carillon from its bell tower in
6 the future, that it will face prosecution for violating the Phoenix Noise Ordinance.

7 116. FCC desires to ring its carillon in the near future without fearing
8 prosecution and criminal penalties under the Phoenix Noise Ordinance.

9 ***The Phoenix Noise Ordinance***

10 117. The Phoenix Noise Ordinance is contained within the Phoenix City Code,
11 in relevant part, in sections 23-12 to 23-15. *See* Phoenix Municipal Code §§23-12 – 23-
12 15 attached hereto as Exhibit “B.”

13 118. Section 23-12 states, “Subject to the provisions of this article the creating
14 of any unreasonably loud, disturbing and unnecessary noise within the limits of the City
15 is hereby prohibited.” *See* Exhibit “B.”

16 119. The Noise Ordinance does not define the terms “unreasonably loud,”
17 “disturbing,” or “unnecessary.”

18 120. Section 23-14 provides a list of acts that are “declared to be loud,
19 disturbing, and unnecessary noises.

20 121. Section 23-14’s list of noises is a non-exclusive list.

21 122. Section 23-14 is not intended to enumerate all of the acts or noises that
22 would violate Section 23-12.

23 123. Section 23-15 lists several exemptions from the noise ordinance
24 prohibition contained in Section 23-12.

25 124. The exemptions contained within Section 23-15 are for:

26 (a) Any vehicle of the City while engaged upon necessary public
27 business.

28 (b) Excavations or repairs of bridges, streets or highways by or on

1 behalf of the City or the State, at night, when the public welfare
2 and convenience renders it impossible to perform such work
3 during the day.

4 (c) The reasonable use of amplifiers or loudspeakers in the course of
5 public addresses which are noncommercial in character, and which
6 amplifiers or loudspeakers are not used in connection with any
7 moving vehicle.

8 (d) The use of a hand-operated device producing not in excess of
9 seventy decibels of sound, "C" scale, measured a distance of fifty
10 feet from the instrument emanating sound from bicycles, pushcarts,
11 or other vehicles, or from vehicles in connection with the sale or
12 display of merchandise; provided, that such devices or musical
13 systems:

- 14 (1) Shall be operated only while the bicycle, pushcart or vehicle
15 is in motion;
16 (2) Shall play only pleasing melodies; and
17 (3) Shall not be played between the hours of 1:00 p.m. and 3:00
18 p.m., and between the hours of 9:00 p.m. and 10:00 a.m.

19 *See Exhibit "B."*

20 125. CKC's church building is approximately 40 feet from the property lines
21 of the nearest residents to the Church.

22 126. Deacon Lee's decibel level measurements at approximately 40 feet from
23 the source of the bells are lower than that allowed in the Noise Ordinance for vehicles
24 at 50 feet distance.

25 127. St. Mark's church building is approximately 100 yards from the nearest
26 resident to the church.

27 128. The decibel level measurements obtained at approximately 50 feet from
28 the bells at St. Mark are lower than that allowed in the Noise Ordinance for vehicles at

1 50 feet distance.

2 129. The Noise Ordinance does not contain an exemption for church bells.

3 130. The Noise Ordinance does not contain a specific exemption for noises
4 that emanate as part of the exercise of religion.

5 131. The Noise Ordinance contains only one decibel level standard in §23-
6 15(d) related to sounds emanating from vehicles.

7 132. Other than the one decibel level standard in §23-15(d), the Noise
8 Ordinance contains no other decibel level standards.

9 133. Other than the one decibel level standard in §23-15(d), the Noise
10 Ordinance contains no objective standards for enforcement.

11 134. Other towns and cities across the United States have noise ordinances that
12 contain specific exemptions for church bells. *See e.g., SEIU v. City of Houston*, 542 F.
13 Supp. 2d 617 (S.D. Tex. 2008) (discussing Houston's exemption for church bells); *see*
14 *also* City of Cambridge Massachusetts explanation of noise ordinance, *available at*
15 http://www.cambridgema.gov/deptann.cfm?story_id=63 (last visited August 26, 2009);
16 Jackson County North Carolina Noise Ordinance, *available at* [http://planning.](http://planning.jacksonnc.org/Noise_Ordinance.pdf)
17 [jacksonnc.org/Noise_Ordinance.pdf](http://planning.jacksonnc.org/Noise_Ordinance.pdf) (last visited August 26, 2009).

18 135. Plaintiffs would like to ring bells in the future as a part of the exercise of
19 their religion, but fear prosecution and enforcement of the Phoenix Noise Ordinance
20 against them.

21 136. Plaintiff CKC has ceased ringing its carillon out of fear of prosecution
22 under the Noise Ordinance.

23 137. Plaintiff St. Mark fears imminent prosecution if it does not compromise
24 or cease ringing its carillon.

25 138. Plaintiffs are being irreparably harmed due to Defendant's Noise
26 Ordinance.

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VI.

ALLEGATIONS OF LAW

139. Each and all of the acts herein alleged of the Defendant, its officers, agents, servants, employees, or persons acting at its behest or direction, were done and are continuing to be done under the color of state law, including the statutes, regulations, customs, policies, and usages of the State of Arizona.

140. The Noise Ordinance is unconstitutional on its face.

141. The Noise Ordinance is unconstitutionally vague.

142. The Noise Ordinance allows for subjective and/or arbitrary enforcement of its terms.

143. The Noise Ordinance is a content-based restriction on speech.

144. The Noise Ordinance is not a neutral law of general applicability.

145. The Noise Ordinance contains categorical secular exemptions but does not contain a categorical religious exemption.

146. The Noise Ordinance sets up a system of individualized exemptions from its requirements and prohibitions.

147. The Noise Ordinance is not supported by any compelling governmental interest.

148. The Defendant's interest in the Noise Ordinance is not advanced in the least restrictive means available.

149. The Noise Ordinance is unconstitutionally overbroad.

VII.

FIRST CAUSE OF ACTION:

VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH

UNDER THE UNITED STATES CONSTITUTION

150. Plaintiffs re-allege and incorporate herein, as though fully set forth herein, all previous paragraphs of this Verified Complaint and do further allege as follows:

151. The Noise Ordinance is an unconstitutional content-based restriction on

1 speech.

2 152. In order to enforce the Noise Ordinance, Defendant must review the
3 content of the speech.

4 153. The government may not exclude protected speech on the basis of its
5 content, absent a compelling governmental interest.

6 154. Defendant has no compelling government interest to justify its Noise
7 Ordinance.

8 155. Any interest Defendant has in its Noise Ordinance is not advanced in the
9 least restrictive means available.

10 156. The Noise Ordinance allows for discrimination against the viewpoint of a
11 speaker.

12 157. The government may not discriminate based upon the viewpoint
13 expressed by a speaker.

14 158. There is nothing in the Noise Ordinance that prohibits Defendant from
15 silencing speech based on viewpoint.

16 159. The Noise Ordinance allows for the exercise of unbridled discretion in
17 enforcing its terms.

18 160. The terms of the Noise Ordinance allow for subjective and/or arbitrary
19 enforcement.

20 161. Defendant's Noise Ordinance chills the exercise of First Amendment
21 rights by other organizations and individuals.

22 162. The Noise Ordinance violates the Free Speech Clause of the First
23 Amendment to the United States Constitution.

24 163. Unless and until Defendant is enjoined from enforcing the Noise
25 Ordinance, Plaintiffs will continue to suffer irreparable harm to their constitutional
26 rights.

27 WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set
28 forth in the prayer for relief.

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VIII.

SECOND CAUSE OF ACTION:

VIOLATION OF THE RIGHT TO DUE PROCESS

UNDER THE UNITED STATES CONSTITUTION

164. Plaintiffs re-allege and incorporate herein, as though fully set forth herein, all previous paragraphs of this Verified Complaint and do further allege as follows:

165. The Noise Ordinance is unconstitutionally vague.

166. The terms “Unreasonably loud,” “disturbing,” and “unnecessary” in the Noise Ordinance as well as other words are not defined and are unconstitutionally vague.

167. Individuals of ordinary, common intelligence would guess at the meaning of the terms in the Noise Ordinance.

168. The Noise Ordinance does not adequately notify persons of what expression is prohibited and what is permitted.

169. The lack of definition of the terms in the Noise Ordinance allows for subjective and/or arbitrary enforcement of the Ordinance.

170. The Noise Ordinance is unconstitutionally overbroad.

171. Defendant’s Noise Ordinance chills the exercise of First Amendment rights by other organizations and individuals.

172. The Noise Ordinance includes within its prohibitions expression that is protected by the First and Fourteenth Amendments.

173. Unless and until Defendant is enjoined from enforcing its Noise Ordinance, Plaintiffs will continue to suffer irreparable harm to their federal constitutional rights.

174. Therefore, the Noise Ordinance violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth in the prayer for relief.

1 IX.

2 **THIRD CAUSE OF ACTION:**

3 **VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION**

4 **UNDER THE UNITED STATES CONSTITUTION**

5 175. Plaintiffs re-allege and incorporate herein, as though fully set forth herein,
6 all previous paragraphs of this Verified Complaint and do further allege as follows:

7 176. Plaintiffs have a sincerely-held religious belief to ring bells as part of their
8 religious exercise.

9 177. The Noise Ordinance substantially burdens the Plaintiffs' exercise of
10 religion.

11 178. The Noise Ordinance is not a neutral law of general applicability.

12 179. The government may not substantially burden religious exercise through a
13 law that is not neutral or generally applicable absent a compelling governmental
14 interest.

15 180. The Noise Ordinance sets up a system of individualized exemptions from
16 its prohibitions.

17 181. The government may not set up a system of individualized exemptions
18 from a requirement or prohibition without extending an exemption to religious exercise
19 unless the government can demonstrate a compelling interest.

20 182. The Noise Ordinance contains categorical exemptions from its
21 prohibitions.

22 183. The Noise Ordinance does not offer a categorical exemption to conduct
23 that is part of religious exercise.

24 184. The government may not offer secular categorical exemptions and refuse
25 to offer a categorical exemption for religious exercise absent a compelling government
26 interest.

27 185. Defendant has no compelling government interest to justify its Noise
28 Ordinance.

1 186. Any interest Defendant has in its Noise Ordinance is not advanced in the
2 least restrictive means available.

3 187. Unless and until Defendant is enjoined from enforcing its Noise
4 Ordinance, Plaintiffs will continue to suffer irreparable harm to their federal
5 constitutional rights.

6 188. Therefore, the Noise Ordinance violates the Free Exercise Clause of the
7 First Amendment to the United States Constitution.

8 WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set
9 forth in the prayer for relief.

10 **X.**

11 **FOURTH CAUSE OF ACTION:**

12 **VIOLATION OF THE FREE EXERCISE OF RELIGION ACT (“FERA”)**

13 **ARIZONA STATUTES §§41-1493 – 41-1493.02.**

14 189. Plaintiffs re-allege and incorporate herein, as though fully set forth herein,
15 all previous paragraphs of this Amended Verified Complaint and do further allege as
16 follows:

17 190. Plaintiffs have a sincerely-held religious belief to ring bells as part of their
18 religious exercise.

19 191. The ringing of bells by the Plaintiffs is substantially motivated by their
20 religious beliefs.

21 192. The Noise Ordinance substantially burdens the Plaintiffs’ exercise of
22 religion.

23 193. Under FERA, government may not substantially burden Plaintiff’s free
24 exercise of religion unless it demonstrates that the burden is in furtherance of a
25 compelling governmental interest and that the burden is the least restrictive means of
26 furthering the compelling governmental interest.

27 194. Defendant has no compelling government interest to justify its Noise
28 Ordinance.

1 G. Adjudge, decree, and declare the rights and other legal relations of the
2 parties to the subject matter here in controversy, in order that such declarations shall
3 have the force and effect of final judgment; and

4 H. Retain jurisdiction of this matter for the purpose of enforcing the Court's
5 orders.

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1 Respectfully submitted this 2nd day of September, 2009.

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4 /s/ Dale Schowengerdt

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VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein that are relevant to Christ the King Liturgical Charismatic Church are true and correct.

Executed this 29th day of August, 2009, in Maricopa County, Arizona.

/s/ Alan L. Marbley
Board Member

/s/ James M. Lee
Deacon

/s/ Rick Painter, Sr.
Bishop, Pastor, Corp. Pres.

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VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein that are relevant to First Christian Church are true and correct.

Executed this 31st day of August, 2009, in Maricopa County, Arizona.

/s/ Jon Taylor
Jon Taylor
Senior Pastor
First Christian Church of Phoenix

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VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein that are relevant to St. Mark Roman Catholic Parish of Phoenix are true and correct.

Executed this 31st day of August, 2009, in Maricopa County, Arizona.

/s/ Jorge Gonzalez
Rev. Jorge Gonzalez, Pastor
St. Mark Roman Catholic Parish of Phoenix

82/03/2009 13:48

602-495-0145

CRIM CENTRAL FILES

PAGE 06/07

1 MARY C STONER, 007609
Assistant City Prosecutor
2 P.O. Box 4500
Phoenix, Arizona 85030-4500
3 (602) 262-6461/FAX (602) 534-9806
Attorney for State
4

CIVIL DIVISION
SUPPORT SERVICE
2009 JAN 26 AM 10: 06

5 IN THE MUNICIPAL COURT OF THE CITY OF PHOENIX
6 COUNTY OF MARICOPA, STATE OF ARIZONA

7 STATE OF ARIZONA,)

8 Plaintiff,)

vs.)

MISDEMEANOR COMPLAINT

9 RICK PAINTER,
08/14/1941,)

No: 20089045235

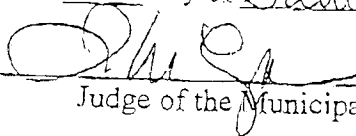
10 Defendant.)
11

12 The undersigned being first duly sworn, complains on information and belief that
13 defendant committed a misdemeanor in Phoenix, Maricopa County, Arizona, as follows:

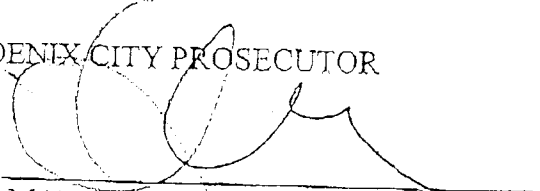
14 COUNT 1

15 On or about March 16, 2008, the defendant created an unreasonably loud, disturbing and
16 unnecessary noise, a Class 1 misdemeanor, in violation of Phoenix City Code, Sections 23-12 and 1-
17 5.

18
19 Subscribed and sworn to before me
this 26th day of January 2009

20 
21 Judge of the Municipal Court

PHOENIX CITY PROSECUTOR

22 By: 
23 MARY C STONER, 007609
24 Assistant City Prosecutor

PHOENIX CITY PROSECUTOR
P.O. Box 4500
Phoenix, Arizona 85030-4500
(602) 262-6461

DIVISION 2. NUISANCES AND NOISE*

***Cross references:** Animals, ch. 8; barking or howling dogs, § 8-2; building regulations, ch. 9; fire prevention, ch. 15; disturbing the peace, § 23-3; solid waste, ch. 27; removal of debris, weeds and other unhealthy or unsafe conditions on streets and sidewalks, § 31-10; hazardous excavations or embankments, § 32A-7; unnecessary vehicle noise, § 36-69; blowing horns or signaling devices, § 36-72; loudspeakers or amplifiers in or on vehicles, § 36-73; trucks causing excessive noise, § 36-88.09; inoperable or unregistered vehicles, § 36-161 et seq.; neighborhood preservation, ch. 39.

State law references: Authority to define and prevent nuisances and noise, A.R.S. §§ 9-499.01, 9-240(B)(13), 9-276(A)(2), (A)(16); criminal nuisances, A.R.S. § 13-2908; public nuisances, A.R.S. § 13-2917.

Sec. 23-11. Nuisances.

(A) Anything which is obnoxious to health, or is indecent, or is offensive to the senses, or is an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property by any considerable number of persons, or unlawfully obstructs any public street, alley, sidewalk or highway is hereby declared a nuisance and may be abated by order of the City Court. Every person who commits or maintains a nuisance shall be guilty of a misdemeanor.

(B) Any building, structure or utility determined to be unsafe and an imminent danger to the health, safety or welfare of the citizens of the City of Phoenix by the Superintendent of the Housing Services Division, or any building, structure or lot which is in such a condition as to constitute an imminent danger of fire, as determined by the Fire Marshal, shall constitute a public nuisance, subject to summary abatement, through either repair, cleaning up and removal of offending material, or the prevention of access through boarding up or other appropriate means.

(C) Should any of the conditions as set forth in section (B) hereof be found to exist by the designated official, such official is hereby authorized to summarily abate the nuisance in one of the manners set forth above and the cost of such abatement shall be certified to the City Treasurer who shall collect the sum due, together with interest thereon at the rate established by law, from the owner of the subject property or the person, or persons, entitled to immediate possession thereof.

(Code 1962, § 27-47; Ord. No. G-1496, § 1)

Sec. 23-12. Creation of unreasonably loud and disturbing noises prohibited.

Subject to the provisions of this article the creating of any unreasonably loud, disturbing and unnecessary noise within the limits of the City is hereby prohibited.

(Code 1962, § 26-1)

Sec. 23-13. Noises detrimental to life and health or public peace and welfare prohibited.

Noise of such character, intensity or duration as to be detrimental to the life or health of any individual or in disturbance of the public peace and welfare is hereby prohibited.

(Code 1962, § 26-2)

Sec. 23-14. Enumeration of loud, disturbing and unnecessary noises; enumeration not exclusive.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises and noises in violation of this article, but this enumeration shall not be deemed to be exclusive, namely:

(a) *Blowing horns or signaling devices.* The sounding or blowing of any horn or signal device on any automobile, truck, bus, motorcycle or other vehicle while not in motion, except as a danger signal if another vehicle is approaching, apparently out of control, or if in motion only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for any unnecessary and unreasonable period of time.

(b) *Radios, phonographs, etc.* The playing of any radio, phonograph or any other musical instrument in such a manner or with such volume, particularly between the hours of 11:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of persons in any office, hospital or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

(c) *Yelling, shouting, etc., on streets.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any hospital, dwelling, hotel or other type of residence, or of persons in the vicinity.

(d) *Pets.* The keeping of any animal, bird or fowl which, by causing frequent or long continued noise, shall disturb the comfort or repose of any person in the vicinity.

(e) *Use of vehicles.* The use of any automobile, truck, bus, motorcycle or other vehicle so out of repair, so loaded or in such manner as to make loud and unnecessary grating, grinding, rattling or other noise.

(f) *Blowing whistles.* The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work, as a warning of fire or danger or upon request of proper City authorities.

(g) *Exhaust discharge.* To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motorboat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom; provided, however, that the flying of controlled model airplanes, sailing of model boats or racing of model automobiles, having internal combustion engines not to exceed thirty-five hundredths cubic inch piston displacement, when used in the pursuit of a recreation hobby and at such locations as are under the jurisdiction or control of Parks, Playground and Recreational Board of the City and only at such times as may be designated by the Parks Department shall not be deemed to be within the provisions of this subsection.

(h) *Building operations, permit from Development Services Director.* The erection (including excavating), demolition, alteration or repair of any building in any residential district or section, other than between the hours of 6:00 a.m. and 7:00 p.m. from May 1 to and including September 30 and between the hours of 7:00 a.m. and 7:00 p.m. beginning October 1 to and including April 30 on weekdays, except in case of urgent necessity in the interest of public health, safety and welfare and then only with a permit from the Development Services Director, which permit may be granted for a period not to exceed thirty days, while the emergency continues. If the Development Services Director

should determine that the public health, safety and welfare will not be impaired by the erection, demolition, alteration or repair of any building within the hours specified herein, and if he shall further determine that loss or inconvenience would not result to any party in interest, he may grant permission for such work to be done at times other than specified herein, upon application being made at the time the permit for the work is awarded or during the progress of the work.

(i) *Excavation of streets, permit from City Engineer.* The excavation of streets and highways in any residential district or section, other than [within] the hours specified in section 23-14(h), except in the case of urgent necessity in the interest of public health, safety and welfare then only with a permit from the City Engineer, which permit may be granted for a period not to exceed thirty days, while the emergency continues. If the City Engineer should determine that the public health, safety and welfare will not be impaired by the excavation of streets and highways within the hours specified in section 23-14(h), and if he shall further determine that loss or inconvenience, should not result to any party in interest, he may grant permission for such work to be done other than specified in section 23-14(h), upon application being made at the time the permit for work is awarded or during the progress of work.

(j) *Noises near schools, hospitals, churches, etc.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same is in session, or adjacent to any hospital, which unreasonably interferes with the workings or session thereof; provided, that signs must be displayed in such streets indicating that the same is a school, institution of learning, church court or hospital.

(k) *Loading and unloading operations.* The creation of loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.

(l) *Noises to attract attention.* The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale of display of merchandise.

(m) *Loudspeakers or amplifiers on vehicles.* The use of mechanical loudspeakers or amplifiers on automobiles, trucks, buses or other moving or standing vehicles for advertising or other purposes.

(Code 1962, § 26-3; Ord. No. G-3119, §§ 1, 2)

Sec. 23-15. Exemptions.

None of the terms or prohibitions of sections 23-12 through 23-17 shall apply to or be enforced against:

- (a) Any vehicle of the City while engaged upon necessary public business.
- (b) Excavations or repairs of bridges, streets or highways by or on behalf of the City or the State, at night, when the public welfare and convenience renders it impossible to perform such work during the day.
- (c) The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character, and which amplifiers or loudspeakers are not used in connection with any moving vehicle.
- (d) The use of a hand-operated device producing not in excess of seventy decibels of sound, "C" scale, measured a distance of fifty feet from the instrument emanating sound from bicycles, pushcarts, or other vehicles, or from vehicles in connection with the sale or display of merchandise; provided, that such devices or musical systems:

- (1) Shall be operated only while the bicycle, pushcart or vehicle is in motion;
- (2) Shall play only pleasing melodies; and
- (3) Shall not be played between the hours of 1:00 p.m. and 3:00 p.m., and between the hours of 9:00 p.m. and 10:00 a.m.

(Code 1962, § 26-4; Ord. No. G-3581, § 1)

Sec. 23-16. Reserved.

Editor's note: Section 23-16 was repealed; see Ord. No. G-3581, § 2.

Sec. 23-17. Hospitals, quiet required.

The Traffic Engineer is hereby empowered to cause suitable street signs or markings to be placed on or along streets near or upon which any hospital is situated warning the public of the proximity of any such hospital and indicating the general direction in which the hospital is situated. Any person who shall make or cause to be made any unnecessary noise calculated to disturb the quiet of any inmate of any such hospital at any place between any such sign and such hospital or at any place situated within the general area indicated by such signs or markings to be in the vicinity of any such hospital, shall be guilty of a misdemeanor.

(Code 1962, § 26-6)

Cross references: Vehicles and traffic, ch. 36.