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Attorneys for the Lodge Defendants (as defined below)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Juan-Carlos Preciado, et al., Plaintiffs vs. Great Wolf Lodge, et al., Defendants	No. 2:22-cv-01422-DLR **MOTION TO DISMISS** (Oral Argument Requested)

Defendants "Great Wolf Lodge," whose true name is GWR Arizona LLC ("Lodge"); "Soy Nuan," whose true name is Say Moua; Isela Kerbaugh; Aaron Betz; Sydney Doe; and Amy Johnson (together, "Lodge Defendants") move to dismiss Plaintiffs' Complaint under Fed. R. Civ. P. 12(b)(6) for Plaintiffs' failure to state a claim upon which relief can be granted and Fed. R. Civ. P. 12(b)(5) for Plaintiffs' failure to serve the Lodge Defendants with sufficient process.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs claim that the Lodge Defendants deprived Plaintiffs of property, religion, expression, due-process, and equal-protection interests protected by the First, Fifth, and Fourteenth Amendments to the United States Constitution and other laws. As alleged by Plaintiffs, the Lodge Defendants violated these rights when the Lodge Defendants insisted that Plaintiffs wear face masks complying with the

Lodge's company policies and when the Lodge Defendants made Plaintiffs leave the Lodge after Plaintiffs insisted on wearing a Guy Fawkes mask and a face shield instead.

For relief, Plaintiffs seek a declaratory judgment, a preliminary injunction, over $50,000 in compensatory damages, $7,500,000 in punitive damages, as well as fees and costs. (Complaint ¶¶ 337–44). Plaintiffs also demand that a grand jury be empaneled to pursue criminal charges against the Defendants. (Complaint ¶¶ 345–47).

Plaintiffs have failed to state a claim upon which relief can be granted under any of their six counts:

- **Counts 1 and 6**: Plaintiffs have failed to state claims for relief under 42 U.S.C. § 1983 because Plaintiffs failed to allege facts showing that the Lodge Defendants (1) were acting under "color of state law" and (2) had deprived Plaintiffs of any rights.
- **Counts 2 and 3**: Plaintiffs have failed to state a claim for relief under 42 U.S.C. § 1985 or a theory of common law conspiracy because Plaintiffs failed to allege facts showing that the Lodge Defendants (1) were motivated by a discriminatory purpose and (2) had deprived Plaintiffs of any rights.
- **Count 4**: Plaintiffs have failed to state a claim for relief under 42 U.S.C. § 2000a *et al.* for denial of service at a place of public accommodation because Plaintiffs failed to allege facts showing that the Lodge Defendants would have treated differently similarly situated customers who, unlike Plaintiffs, were not of Mexican or Filipino national origin.
- **Count 5**: Plaintiffs have failed to state a claim for relief under a theory of intentional infliction of emotional distress because Plaintiffs failed to allege facts showing that (1) the Lodge Defendants behaved in an "extreme" or "outrageous" manner, (2) the Lodge Defendants intentionally or recklessly

inflicted emotional distress on Plaintiffs, and (3) Plaintiffs' emotional distress was "severe."[1]

Finally, the demand for a grand jury should be dismissed as outside the scope of a civil action.

II. FACTUAL BACKGROUND

This case arises from Plaintiffs' visit to the Lodge on March 2, 2021. (Complaint ¶¶ 25, 46). The following are the material facts alleged by Plaintiffs as they relate to that visit and the Lodge Defendants.

When Plaintiffs entered the indoor water park, Plaintiff Mr. Preciado was wearing a Guy Fawkes mask (Complaint ¶¶ 55–56 and Exhibit C). The Lodge's Security Agent, Say Moua, approached Mr. Preciado and informed him that the Guy Fawkes mask did not comply with the Lodge's face-mask policy and that Mr. Preciado would have to remove it. (*Id.* ¶¶ 57–58, 61). Mr. Preciado argued that the Lodge's face-mask policy only applied to the Lodge employees (*id.* ¶ 62) and asked Mr. Moua to "leave [Mr. Preciado] alone" and to "stop harassing" him (*id.* ¶ 70).

Mr. Moua walked away (*id.* ¶ 72), but returned with SRPD Officer Laroche (*id.* ¶ 74). Mr. Moua again told Plaintiffs that they needed to comply with the Lodge's face-mask policies. (*Id.* ¶ 76). Mr. Preciado continued to argue that the Lodge's face-mask policies did not apply to him (*id.* ¶¶ 77, 129–37) and added that only the owner of the property was allowed to talk to Plaintiffs (*id.* ¶¶ 84, 113). After Mr. Moua asked Mr. Preciado to affirm that Mr. Preciado would abide by the

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[1] Plaintiffs entitle their fifth count, "Infliction of Emotional Stress." (Complaint ¶¶ 321–325). Because Plaintiffs' allegations more closely track a cause of action for intentional infliction of emotional distress than a cause of action for negligent infliction of emotional distress, the Lodge assumes that Plaintiffs intended to bring the former. If Plaintiffs intended the opposite, such a claim would fail for the straightforward reason that Plaintiffs do not allege that they witnessed the injury to a closely related person or that they were in the zone of danger and at risk of bodily harm themselves. *See Pierce v. Casas Adobes Baptist Church*, 162 Ariz. 269, 272 (1989) (stating elements of cause of action for negligent infliction of emotional distress).

Lodge's mask policy, Mr. Preciado told Plaintiff Ms. Bautista-Preciado, "you know what let's go, we are leaving, cancel the trip, let's get out of here." (*Id.* ¶¶ 138, 140).

Plaintiffs then went to the reception desk to file a complaint against Mr. Moua. (*Id.* ¶¶ 141–42). Responding to the complaint, the Lodge's acting director Isela Kerbaugh and another Lodge employee, Aaron Betz, approached Plaintiffs. (*Id.* ¶¶ 143, 146). Ms. Kerbaugh confirmed that it was the Lodge's right to insist that all guests wear masks in compliance with the Lodge's policies and that Mr. Preciado's Guy Fawkes mask did not comply. (*Id.* ¶¶ 147–49, 156–57). She also informed Ms. Bautista-Preciado that Ms. Bautista-Preciado's face shield did not comply either and apologized if any Lodge employee had told Ms. Bautista-Preciado anything different. (*Id.* ¶¶ 159, 165). After Ms. Bautista-Preciado responded that she and her husband were exempt from the mask requirement and that what they were wearing was "the most [they] could wear" (*id.* ¶ 166), Ms. Kerbaugh asked Plaintiffs to leave the Lodge and told them that she would refund their money. (*Id.* ¶¶ 170–72). Plaintiffs continued to argue (*id.* ¶¶ 173–202), and Ms. Kerbaugh eventually asked Mr. Betz to call the police to escort Plaintiffs out (*id.* ¶¶ 203, 205).

At this point, Mr. Preciado left, but Ms. Bautista-Preciado returned to the indoor water park to retrieve their belongings. (*Id.* ¶¶ 210–11). When she remained there, Lodge employee Sydney Doe approached her and insisted that she leave. (*Id.* ¶ 212). Ms. Doe escorted Ms. Bautista-Preciado to the lobby, (*id.* ¶ 219) where Officer Laroche was waiting with another SRPD officer. (*Id.* ¶ 220). After Ms. Kerbaugh gave Ms. Bautista-Preciado a receipt for their refund, (*id.* ¶ 224), Ms. Bautista-Preciado made some final protests (*id.* ¶¶ 225–260), and then left the Lodge (*id.* ¶ 261).

III. LEGAL ARGUMENT

Plaintiffs' Complaint against the Lodge Defendants should be dismissed under Rule 12(b)(6) for Plaintiffs' failure to state a claim upon which relief can be granted

and Fed. R. Civ. P. 12(b)(5) for Plaintiffs' failure to serve the Lodge Defendants with sufficient process.

A. Rule 12(b)(6) – Failure to State a Cognizable Claim

To survive a 12(b)(6) motion, a complaint must contain factual allegations sufficient to "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While "a complaint need not contain detailed factual allegations[,] it must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570). "In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

Plaintiffs have failed to plead sufficient non-conclusory factual allegations to state a plausible claim for relief under any of their six counts.

1. Counts 1 and 6 – 42 U.S.C. § 1983

"To maintain an action under section 1983 against . . . individual defendants, [a plaintiff] must . . . show: (1) that the conduct complained of was committed by a person acting under the color of *state* law; and (2) that this conduct deprived them of rights, privileges, or immunities secured by the Constitution or laws of the United States." *Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th Cir. 2015) (quoting *Evans v. McKay*, 869 F.2d 1341, 1347 (9th Cir. 1989)) (internal quotation marks omitted; emphasis in original).

Plaintiffs failed to allege facts under Counts 1 and 6 that satisfy either requirement.

(a) Color of *State* Law

Nowhere do Plaintiffs allege that the Lodge Defendants were acting under color of *state* law. Plaintiffs allege that all the Defendants acted under color of the SRPMIC's June 19, 2020 Local Emergency Declaration (Complaint ¶ 287). But a party acting under color of *tribal* law is not acting under color of *state* law for § 1983 purposes. *See, e.g., Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th Cir. 2015) (holding "actions under section 1983 cannot be maintained in federal court for persons alleging a deprivation of constitutional rights under color of tribal law.") (internal quotation marks and citations omitted). Thus, Plaintiffs have failed to state a claim for relief under 42 U.S.C. § 1983. On this basis alone Counts 1 and 6 of Plaintiffs' Complaint should be dismissed.[2]

(b) Deprivation of Rights

Plaintiffs further failed to state a claim for relief under Counts 1 and 6 because Plaintiffs failed to allege facts to support plausible claims that they had been deprived of any rights.

For Count 1, Plaintiffs never identified any property or religious-liberty interests that Defendants allegedly deprived them of in violation of the Constitution's Due Process and Equal Protection clauses. A party cannot be "deemed 'entitled' to something when the identity of the alleged entitlement is vague." *Town of Castle Rock*, Colo. *v. Gonzale*s, 545 U.S. 748, 763 (2005). For example, this Court recently granted a 12(b)(6) motion to dismiss a § 1983 claim where the plaintiff alleged that her rights to free speech, free exercise of religion, and equal protection were violated when her school district did not allow her to wear a graduation cap that she had augmented with traditional Native American beadwork and an eagle feather. *Waln v.*

[2] Plaintiffs would have failed to state a claim for relief even if a party could be liable under § 1983 when acting under color of *tribal* law because Plaintiffs' allegation that Defendants were acting under color of the SRPMIC's June 19, 2020 Local Emergency Declaration (Complaint ¶ 287) is conclusory. *See Moss*, 572 F.3d at 969.

Dysart Sch. Dist., 522 F. Supp. 3d 560 (D. Ariz. 2021). The Court held that the free-exercise theory of her claim failed because the plaintiff's "Amended Complaint does not demonstrate that wearing a beaded cap adorned with an eagle feather to a public high school graduation ceremony was an actual 'practice' of [the plaintiff's] religion." *Id.* at 605. Likewise, here, Plaintiffs' alleged deprivation of their religious-liberty interests cannot support their § 1983 claims where they fail to allege that it is an actual practice of their religion to wear a Guy Fawkes mask or face shield instead of the masks required by the Lodge. And Plaintiffs' alleged deprivation of property cannot support their § 1983 claim because Plaintiffs not only fail to identify any property that they were deprived of, but the only property that could have been reasonably inferred to have been lost when Plaintiffs were required to leave the Lodge—i.e., the money Plaintiffs paid to enter the Lodge—was fully refunded.

For Count 6, the specific facts Plaintiffs allege—that Plaintiffs were required to wear masks that complied with the Lodge's policies—do not constitute a First Amendment "freedom of expression" violation. The First Amendment's speech clause protects conduct only if it is "inherently expressive." *See Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 66 (2006). In the specific context of masks, "an extensive line of federal cases has established that the choice to wear a mask is not expressive conduct because 'there are several non-political reasons why one may not be wearing a mask at any given moment.'" *See Sehmel v. Shah*, 514 P.3d 1238, 1243 (Wash. Ct. App. 2022) (quoting *Stewart v. Justice*, 518 F. Supp. 3d 911, 919 (S.D. W. Va. 2021)) (citing cases).[3] Likewise, here, Plaintiffs' insistence

[3] *Minnesota Voters All. v. Walz*, 492 F. Supp. 3d 822, 837 (D. Minn. 2020) (holding mask requirement did not target conduct with a significant expressive element); *Denis v. Ige*, 538 F. Supp. 3d 1063, 1079 (D. Haw. 2021) (same); *Justice*, 502 F. Supp. 3d at 1066 (holding that not wearing a mask is not expressive because "failing to wear a face covering would likely be viewed as inadvertent or unintentional, and not as an expression of disagreement with the Governor."); *Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214, 236 (D. Md. 2020) ("[E]specially in the context of COVID-19, wearing a face covering would be viewed as a means of preventing the

on not wearing masks that complied with the Lodge's mask policies does not, itself, communicate any message. Thus, Plaintiffs have failed to state a plausible claim for relief under Count 6.

2. Count 2 – 42 U.S.C. § 1985

To establish a claim under 42 U.S.C. § 1985 based on an alleged conspiracy to deprive persons of their rights or privileges, "the plaintiff must allege and prove four elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." *United Broth. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 828–29 (1983).

Plaintiffs failed to allege facts to plausibly establish the second (discriminatory purpose) and fourth (deprivation of rights) elements.

(a) Discriminatory Purpose

To satisfy the discriminatory-purpose element of a § 1985 claim, a plaintiff must show "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffith v. Breckenridge*, 403 U.S. 88, 102 (1971).

Here, Plaintiffs allege no specific facts to support their conclusory allegation that "[t]he discriminatory animus was that the employees working for the (GWL) were a Sovereign class and the Plaintiffs were not." (Complaint ¶ 308).[4] Plaintiffs

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spread of COVID-19, not as expressing any message.").

[4] By "a Sovereign class," Plaintiffs seem to be alleging that the Lodge's employees are members of the SRPMIC. (*See* Complaint ¶¶ 297, 302, 307, 308). None of the Lodges' employee defendants are members of SRPMIC. But to avoid the need to treat this motion as a motion for summary judgment, the Lodge Defendants do not rely on this reality to overcome Plaintiffs' Complaint.

seem to be alleging that the Lodge's employees denied Plaintiffs service because Plaintiffs are "non-tribe members." (*See* Complaint ¶¶ 301–302). These allegations are not only insufficient to support Plaintiffs' claims because they are conclusory, they are also belied by the specifically alleged fact that LODGE Defendants were, and only ever claimed to be, implementing the LODGE's mask policies. (*See* Complaint ¶¶ 38, 61, 76, 102, 105, 112, 128, 165, 176, 198, 230, 251). Plaintiffs make no factual allegation from which to reasonably infer that Defendants were motivated by Plaintiffs' status as "non-tribe members." On this basis alone Count 2 of Plaintiffs' Complaint should be dismissed.

(b) Deprivation of Rights

Plaintiffs claim that as a result of the alleged conspiracy between the Defendants, Plaintiffs were deprived "of the equal protection, equal privileges, and immunities as guaranteed by the constitution and laws of the United States and the State of Arizona" as well as Plaintiffs' "constitutionally protected rights of property and freedom of conscience." (Complaint ¶¶ 303–04). These are the same injuries alleged in Counts 1 and 6. Thus, for the same reasons explained above, Plaintiffs have failed to state a plausible claim for damages under 42 U.S.C. § 1985, and therefore, Count 2 should be dismissed.

3. Count 3 – Common Law Conspiracy

"For a civil conspiracy to occur two or more people must [1] agree to accomplish [2] an unlawful purpose or to accomplish a lawful object [3] by unlawful means, [4] causing damages." *Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 498 (2002). These are essentially the same elements of a conspiracy claim under 42 U.S.C. § 1985. *See United Broth. of Carpenters & Joiners of Am., Local 610, AFL-CIO*, 463 U.S. at 828–29. Accordingly, Count 3 should be dismissed for the same reasons that Count 2 should be dismissed, see above.

4. Count 4 – 42 U.S.C § 2000a *et al.*

To state a claim under Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000a *et al.*) for denial of service at a place of public accommodation, a plaintiff must show: "(1) he is a member of a protected class, (2) he attempted to contract for services and afford himself of the full benefits and enjoyment of a public accommodation, (3) he was denied the full benefits or enjoyment of a public accommodation, and (4) that such services were available to similarly situated persons outside his protected class who received full benefits or were treated better." *Dragonas v. Macerich*, CV-20-01648-PHX-MTL, 2021 WL 3912853, at *4 (D. Ariz. Sept. 1, 2021) (citing *Crumb v. Orthopedic Surgery Med. Grp.*, No. 07-CV-6114-GHK-PLAx, 2010 WL 11509292, at *3 (C.D. Cal. Aug. 18, 2010), aff'd, 479 F. App'x 767 (9th Cir. 2012)).

Here, Plaintiffs fail to allege facts establishing the fourth element—that the services denied them "were available to ***similarly situations persons*** outside [their] protected class who received full benefits or were treated better." *See id.* (emphasis added). But Plaintiffs fail to allege that the Lodge treated non-Mexican and non-Filipino customers who also refused to comply with the Lodge's mask policy different than the Lodge treated Plaintiffs. Therefore, Plaintiffs have failed to state a plausible claim for relief under 42 U.S.C. § 2000a *et al.*, and Count 4 should be dismissed.

5. Count 5 – Intentional Infliction of Emotional Distress

A claim for intentional infliction of emotional distress under Arizona law has three elements: (1) "the conduct by the defendant must be 'extreme' and 'outrageous,'" (2) "the defendant must either intend to cause emotional distress or recklessly disregard the near certainty that such distress will result from his conduct," and (3) "severe emotional distress must indeed occur as a result of defendant's conduct." *Citizen Publ'g Co. v. Miller*, 210 Ariz. 513, 516, ¶ 11 (2005).

Plaintiffs have failed to plead facts plausibly establishing any of these three elements.

(a) "Extreme" and "Outrageous"

Subjecting another person to "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" does not amount to "extreme" or "outrageous" behavior. *See Davis v. First Nat'l Bank of Ariz.*, 124 Ariz. 458, 461 (App. 1979) (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d). To rise to that level, a defendant's conduct must "go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community . . . in which . . . an average member of the community would . . . exclaim, 'Outrageous!'" *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43 (1987) (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d).

The Lodge Defendants' alleged conduct does not rise to that level. Plaintiffs allege that the Lodge Defendants "callously identif[ied] themselves as superior people in a Sovereign class, above the law of the United States" and "humiliated, shamed, scoffed, threatened, coerced, and ultimately denied [Plaintiffs] service." (Complaint ¶¶ 322, 324). These allegations cannot plausibly establish the "extreme" and "outrageous" element for three independent reasons. First, they are conclusory. *See Moss*, 572 F.3d at 969. Second, even if it is accepted as true that the Lodge employees had "humiliated, shamed, scoffed [at], [or] threatened" Plaintiffs, this is the precisely the kind of conduct that has been held not to constitute "extreme" or "outrageous" conduct. *See Davis*, 124 Ariz. at 461. Third, it is not plausible that the "average member of the community would . . . exclaim, 'Outrageous!'," when learning of Plaintiffs' allegations that the Lodge Defendants made Plaintiffs leave the Lodge because Plaintiffs refused to abide by the Lodge's generally applicable mask policy. *See Ford*, 153 Ariz. at 43.

On this basis alone Counts 5 of Plaintiffs' Complaint should be dismissed.

(b) Intentional or Reckless Conduct

"This [intentional or reckless conduct] element is satisfied where the wrongdoer has the specific purpose of inflicting emotional distress or where he intended his specific conduct and knew or should have known that emotional distress would likely result." *Pankratz v. Willis*, 155 Ariz. 8, 13 (App. 1987) (brackets in original; citation omitted).

Here, Plaintiffs do not allege that the Lodge Defendants "knew or should have known that emotional distress would likely result" from their conduct. Instead, Plaintiffs allege that the Lodge and its employees knew or should have known "the duties we each have towards one another as members of society with different beliefs, customs, usages, and practice." (Complaint ¶ 321). Thus, Plaintiffs have failed to allege a plausible claim for relief on theory of intentional infliction of emotional distress under Arizona law.

On this basis, too, Count 5 of Plaintiffs' Complaint should be dismissed.

(c) "Severe" Emotional Distress

To establish a claim for intentional infliction of emotional distress, it is not enough for a defendant to causes a plaintiff any modicum of emotional distress—the emotional distress must be "severe." *Midas Muffler Shop v. Ellison*, 133 Ariz. 194, 198–99 (App. 1982) ("The courts have also uniformly insisted that the emotional distress suffered be severe. '[A] line of demarcation should be drawn between conduct likely to cause mere 'emotional distress' and that causing "severe emotional distress" . . . .'.") (brackets in original; citation omitted). Severe emotional distress generally manifests itself physically. *See id.* at 199 (citing for "[e]xamples of emotional distress considered severe by the courts": plaintiffs suffering a heart attack, nervous exhaustion, premature labor, "writhing in bed in a state of extreme shock and hysteria," headaches, incapacitating anxiety, and a multiple sclerosis relapse).

Plaintiffs do not allege that they suffered any severe emotional distress as the

actual result of the Lodge's conduct. The only distress Plaintiffs allege that plausibly rises to the level of "severe" was the result of Plaintiffs' decision to file this lawsuit. (Complaint ¶ 323) ("Plaintiffs have had to digest a lifetime's worth of legal knowledge which have caused expense that were not scheduled, sleep loss, weight gain, and other physical symptomatologies due to the mental and emotional distress caused by Defendants' negligent actions.").

Count 5 should be dismissed for this third reason as well.

B. Rule 12(b)(5) – Insufficient Service of Process

Plaintiffs, through a US Marshall, hand delivered process for the Lodge Defendants to Stephanie Baker, (Doc. 20 at 1–5), who is the Director of Guest Services for the Lodge and employed by the Great Lakes Services, LLC, the management company that manages the Lodge. Stephanie Baker was not authorized to accept service of process for any of the Lodge Defendants under either Rule 4(e) or Rule 4(h). Thus, Plaintiffs' entire Complaint against the Lodge Defendants should also be dismissed under Rule 12(b)(5) for insufficient service of process.

IV. CONCLUSION

For the foregoing reasons Plaintiffs have failed to state a claim on which relief can be granted on any of the six counts of Plaintiffs Complaint. Therefore, the Lodge Defendants request that Plaintiffs' Complaint against them be dismissed.

Dated this 14th day of October, 2022.

JENNINGS, STROUSS & SALMON, P.L.C.

By *s/ Jay A. Fradkin*
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CERTIFICATE OF CONFERRAL

Defendants "Great Wolf Lodge," whose true name is GWR Arizona LLC ("Lodge"); "Soy Nuan," whose true name is Say Moua; Isela Kerbaugh; Aaron Betz; Sydney Doe; and Amy Johnson (together "Lodge Defendants") certify through undersigned counsel that they provided written notice to Plaintiffs in compliance with this Court's Order (Doc. 19) and LRCiv 12.1(c). Plaintiffs provided neither their phone numbers nor email addresses with their Complaint and Summons. The only contact information Plaintiffs provided was the following:

Juan-Carlos Preciado and Bianca Bautista-Preciado
In Care of 3280 East Milky Way
Gilbert, Arizona 85295

Accordingly, on October 13, 2022, the Lodge Defendants hand delivered a letter at the indicated address to a Roselyn Parks, who answered the door and signed for the letter. The letter included a draft copy of the above Motion to Dismiss and requested that Plaintiffs contact undersigned counsel to confer in good faith and determine whether the motion can be avoided. Plaintiffs have not responded.

DATED this 14th day of October, 2022.

JENNINGS, STROUSS & SALMON, P.L.C.

By *s/ Jay A. Fradkin*
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One East Washington Street, #1900
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Attorneys for Lodge Defendants

CERTIFICATE OF SERVICE

☐ I hereby certify that on _____, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

☒ I hereby certify that on October 14, 2022, I served the attached document by mail on the following, who are not registered participants of the CM/ECF System:

Juan-Carlos Preciado
Bianca Bautista-Preciado
3280 East Milky Way
Gilbert, Arizona 85298

s/ Vickie E. Aragon