

1 Jay A. Fradkin – 006864
jfradkin@jsslaw.com
2 Alexander J. Egbert – 033510
aegbert@jsslaw.com
3 JENNINGS, STROUSS & SALMON, P.L.C.
A Professional Limited Liability Company
4 One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
5 Telephone: (602) 262-5911

6 *Attorneys for the Lodge Defendants (as*
7 *defined below)*

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 Juan-Carlos Preciado, et al.,
11 Plaintiffs,
12 vs.
13 Great Wolf Lodge, et al.,
14 Defendants.

No. 2:22-cv-01422-DLR

**LODGE DEFENDANTS’ REPLY
IN SUPPORT OF THEIR MOTION
TO DISMISS**

15 Defendants “Great Wolf Lodge,” whose true name is GWR Arizona LLC
16 (“Lodge”); “Soy Nuan,” whose true name is Say Moua; Isela Kerbaugh; Aaron Betz;
17 Sydney Doe; and Amy Johnson (together, “Lodge Defendants”) submit this
18 memorandum in support of its Motion to Dismiss (Doc. 24) and in reply to Plaintiffs’
19 “Motion to Strike Defendants Motion to Dismiss” (Doc. 28) and “Memorandum in
20 Support of Plaintiffs’ Motion to Strike Defendants Motion to Dismiss” (Doc. 29)
21 (both documents, collectively, “Plaintiffs’ Response”). Despite the titles of these two
22 filings by Plaintiffs, the Lodge Defendants assume that Plaintiffs intend the filings to
23 constitute their response to Lodge Defendants’ Motion to Dismiss, pursuant to Local
24 Rule of Civil Procedure 7.2(c) and the Court’s Order dated 11/16/2022 (Doc. 25).¹

25
26 _____
27 ¹ Inasmuch as Plaintiffs did intend their filings to constitute a motion to strike
28 pursuant to Local Rule of Civil Procedure 7.2(m), then Lodge Defendants object to
the filings on the grounds that no statute or rule has authorized them here. *See*
LR Civ 7.2(m)(1).

1 Plaintiffs appear to have abandoned their claims for damages and injunctive
 2 relief under Counts 1 through 6 of their Complaint (Doc. 1). As summarized in the
 3 following table, Plaintiffs' Response made no attempt (with two inadequate
 4 exceptions) to justify the fatal deficiencies in their Complaint that Lodge Defendants
 5 identified in their Motion to Dismiss.

Plaintiffs' Claim for Relief under _____	Fatal Deficiencies in Complaint Related to Claim: Failed to allege facts making plausible showing that the Lodge Defendants _____	Plaintiffs' Response Related to Deficiencies
42 U.S.C. § 1983 (Counts 1 and 6)	were acting under “color of state law”—only alleged that Lodge Defendants had been acting under color of tribal law.	Argued, contrary to law, that tribal and state law are only semantically different. <i>See</i> Memorandum at 2:17–22.
	had deprived Plaintiffs of alleged religious-liberty and expression interests.	None.
42 U.S.C. § 1985 (Counts 2 and 3)	were motivated by a discriminatory purpose.	Repeated conclusory allegation that Defendants used “invidiously discriminatory animus.” <i>See</i> Motion at ¶ 25.
	had deprived Plaintiffs of alleged religious-liberty and expression interests.	None.
42 U.S.C. § 2000a <i>et al.</i> (Count 4)	would have treated differently similarly situated customers who, unlike Plaintiffs, were not of Mexican or Filipino national origin.	None.

1 2 Common law theory of intentional infliction of emotional distress	behaved in an “extreme” or “outrageous” manner.	None.
3 4 (Count 5)	acted intentionally or recklessly to inflict emotional distress on Plaintiffs.	None.
5 6 7	inflicted emotional distress on Plaintiffs that was “severe.”	None.

8
9 To the extent Plaintiffs intended their Complaint to raise a separate claim for
10 declaratory relief, as may be implied in Plaintiffs’ Response (*see* Doc. 29 at 32–34),
11 Plaintiffs’ Response makes clear that such a claim has nothing to do with Lodge
12 Defendants. In fact, Plaintiffs accuse Lodge Defendants of “misleading” the Court
13 because Lodge Defendants’ Motion to Dismiss assumed (apparently incorrectly) that
14 the Lodge’s face-mask policy was a basis for Plaintiffs’ Complaint. (*See* Doc. 29 at
15 1:27–2:3). Instead, Plaintiffs’ Response clarifies under the heading “Declaratory
16 Relief” that they “have asked this court to review the constitutionality of President
17 Martin Harvier’s [COVID-19] directive.” (Doc. 29 at 32–34). According to the
18 specifically alleged facts in the Complaint, the Lodge Defendants only ever professed
19 to be implementing the Lodge’s—not the tribe’s—mask policies. (*See* Doc. 1 at
20 ¶¶38, 61, 76, 102, 105, 112, 128, 165, 176, 198, 230, 251). Thus, the requested
21 declaratory relief has nothing to do with the Lodge Defendants.

22 Finally, Plaintiffs’ Response provides no argument for why dismissal is not
23 warranted for Plaintiffs’ failure to serve the lodge Defendants with sufficient process.
24 Dismissal remains warranted on this ground alone, as well.

25 Therefore, for the foregoing reasons—and as more fully outlined in the Lodge
26 Defendants’ un rebutted Motion to Dismiss (Doc. 24)—the Court should dismiss
27 Plaintiffs’ Complaint against the Lodge Defendants under Fed. R. Civ. P. 12(b)(5)–
28

1 (6). And because Plaintiffs failed to submit a proposed amended complaint pursuant
2 to the Court’s Order dated 9/22/22 (Doc. 19), the dismissal should be with prejudice.

3 Dated this 5th day of December, 2022.

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

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6 By s/ Alexander J. Egbert
7 Jay A. Fradkin
8 Alexander J. Egbert
9 One East Washington Street, #1900
10 Phoenix, Arizona 85004-2554
11 Attorneys for Lodge Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2022, 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:

Scott W. Rodgers
srodgers@omlaw.com
Jeffrey B. Molinar
jmolinar@omlaw.com
Brandon T. Delgado
bdelgado@omlaw.com
Osborn Maledon, P.A.
2929 N. Central Avenue, 21st floor
Phoenix, AZ 85012-2793
*Attorneys for Defendants Salt River Pima-Maricopa
Indian Community, Martin Harvier and Philip LaRoche*

I hereby certify that on December 5, 2022, I served the attached document by U.S. mail on the following, who are not registered participants of the CM/ECF System:

Juan-Carlos Preciado
Bianca Bautista-Preciado
c/o 3280 East Milky Way
Gilbert, Arizona 85298
Plaintiffs Pro Per

s/ Meeling Tan