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14 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
15 **FOR MARICOPA COUNTY**

16 STATE OF ARIZONA, *ex rel.* KRIS  
17 MAYES, Attorney General of the State of  
18 Arizona,

19 Plaintiff,

20 vs.

21 ROCK SUPPLY, LLC, an Arizona  
22 Limited Liability Company; FORTUNE  
23 ROCK LLC, an Arizona Limited Liability  
24 Company,

25 Defendants.

**Civil Action No.** \_\_\_\_\_

**VERIFIED COMPLAINT**

(Non-classified Civil)  
(Action for Declaratory Judgment)

26 The Plaintiff State of Arizona *ex rel.* Kris Mayes, Attorney General of the State of  
Arizona (“the State”), alleges the following:

1 **NATURE OF ACTION**

2 1. The State brings this civil action under Arizona Revised Statutes (“A.R.S.”) § 13-  
3 2917, against Defendant Rock Supply LCC (“Rock Supply”) and Defendant Fortune Rock LLC  
4 (“Fortune Rock”) (collectively, “Defendants”) to abate, enjoin, and/or prevent a public  
5 nuisance caused by Defendants. The State seeks injunctive relief pursuant to A.R.S. § 13-2917.

6 **PARTIES**

7 2. The State’s relator, Kris Mayes, is the Attorney General of the State of Arizona  
8 (“Attorney General”). The Attorney General maintains her central office in Maricopa County.

9 3. Defendant Rock Supply LLC is an Arizona limited liability company  
10 incorporated in Arizona with its principal place of business in Phoenix.

11 4. Defendant Fortune Rock LLC is an Arizona limited liability company  
12 incorporated in Arizona with its principal place of business in Phoenix.

13 5. During the times mentioned in this Complaint, Defendants owned and/or operated  
14 an aggregate mining operation located on five parcels of residentially zoned land in Yavapai  
15 County, Arizona.

16 **JURISDICTION AND VENUE**

17 6. The Attorney General is authorized to bring this action pursuant to A.R.S. § 13-  
18 2917(C).

19 7. This Court has jurisdiction over the subject matter of this action pursuant to  
20 A.R.S. § 13-2917(C).

21 8. This Court has personal jurisdiction in this matter because at all times alleged  
22 herein Defendants conducted business in Arizona, the site of Defendants’ mining operation is  
23 located in Arizona, and the actions alleged in this Complaint occurred in Arizona.

24 9. Venue is proper in this Court pursuant to A.R.S. §§ 12-401(17).  
25  
26

1 **GENERAL ALLEGATIONS**

2 Introduction

3 10. Defendants are two companies that together own five (5) parcels of rural,  
4 residentially zoned land in Yavapai County and are preparing to open and operate a brand-new  
5 aggregate mine on their property (the “Mine”). The five parcels are surrounded by other  
6 residentially zoned properties with existing homes occupied by full-time residents who never  
7 expected to live next to an aggregate mine. Aggregate mines are the source of material for  
8 construction, road building, and landscaping. However, such mines are typically (a) located  
9 away from residential properties with extensive buffer zones and setbacks in order to reduce to  
10 disturbances to neighbors and (b) opened and operated before residential neighbors are  
11 established in the area. The Defendants have done precisely the opposite: They are opening a  
12 mine long after the neighborhood has been established and, because of that, the Defendants  
13 have virtually no ability to create reasonable setbacks to prevent disruption to their neighbors.  
14 *See* Exhibit 1 (Overview Map) and Exhibit 2 (Mine Map); *see also* Exhibit 16 (Mears  
15 Declaration ¶ 18).

16 11. Rock Supply LLC’s member/managers are: Jacob S. Jessop; James Y. Cox;  
17 Joseph S. Jessop; and Nancy H. Sturges. Rock Supply is named as the operator of the Mine in  
18 the Mine’s Reclamation Plan. *See* Exhibit 3 (Rock Supply Articles of Organization).

19 12. Fortune Rock LLC’s sole member/manager is Michael Han. Fortune Rock is  
20 named as the landowner of the Mine in the Mine’s Reclamation Plan. *See* Exhibit 4 (Fortune  
21 Rock Amended Articles of Organization).

22 13. Fortune Rock is the current deed holder for the Mine’s five parcels.

23 14. The parcels that constitute the Mine have been deeded and transferred from other  
24 companies owned by member/managers associated with the current Mine operator, Rock  
25 Supply.  
26

1           15.    Kyote Valley Investment Group, LLC (“Kyote”) owned all five parcels of the  
2 Mine from 2007 to 2020. *See* Exhibit 5 (2007 Parcel Deeds).

3           16.    Kyote has a single LLC as a member/manager: D & S Land Development, LLC  
4 (“D&S”). One of the managers of D&S is Nancy H. Sturges, who is also a member/manager of  
5 Rock Supply. *See* Exhibit 6 (Kyote Articles of Organization) and Exhibit 7 (D&S Articles of  
6 Orgazination).

7           17.    In 2020, Kyote transferred by warranty deed Parcels 306-44-031A and 306-44-  
8 031B (“Parcels A and B”) to Fix Pro Home Services LLC (“Fix Pro”). *See* Exhibit 8 (2020  
9 Parcel Deeds). Fix Pro has one member/manager: James Y. Cox, who is a member/manager of  
10 Rock Supply. *See* Exhibit 9 (Fix Pro Articles of Organization).

11           18.    In 2022, Fix Pro transferred Parcels A and B by quit claim deed to Fortune Rock.  
12 *See* Exhibit 10 (2022 Fix Pro Deeds).

13           19.    Also in 2022, Kyote transferred by warranty deed Parcels 306-44-031C, 306-44-  
14 031D, and 306-44-031E (“Parcels C, D, and E”) to Fortune Rock. *See* Exhibit 11 (2022 Kyote  
15 Deeds).

16           20.    Thus, Rock Supply has two member/managers – James Y. Cox and Nancy H.  
17 Sturges – who have owned through their companies the Mine parcels currently owned by  
18 Fortune Rock, which is owned by Michael Han.

19           21.    Prior to the transfer of the Mine parcels to Fortune Rock in 2020 and 2022, at  
20 least one of the previous parcel owners, Fix Pro, undertook activities on some of the Mine  
21 parcels that signaled they intended to build homes on those parcels, rather than operate a mine.  
22 However, within the past two years, ownership of the Mine parcels has been consolidated under  
23 Fortune Rock and the Defendants have taken action to open a mine on all five residentially  
24 zoned parcels.

25           22.    The Defendants are using an exemption within the county zoning statutes, A.R.S.  
26 § 11-812(A)(2) that allows a mine to be exempt from any zoning ordinances. *See* Exhibit 12

1 (A.R.S. § 11-812) and Exhibit 13 (Application for Mine Exemption). By taking parcels the  
2 Defendants had previously attempted to build homes on and transforming those parcels into a  
3 mine, the Defendants removed the restrictions imposed on their parcels by the county zoning  
4 regulations. Defendants now appear intent on operating a mine in a residential neighborhood,  
5 despite no record showing them to have previous mining experience.

6 23. In recent years, some property owners and developers have surreptitiously used  
7 the mining exemption as a shield to avoid county regulation (or intervention) to improve sites  
8 as a precursor to site development. Under the guise of mining, these developers have tried to  
9 permit and operate mines near established residences or used the threat of mining to induce  
10 counties to reverse prior zoning/development decisions or compromise on established  
11 development standards. What these sites have in common is a lack of resource studies,  
12 managers and owners without actual operations and mining experience, and no favorable  
13 market analyses that clearly demonstrate that the proposed mines are an essential and valuable  
14 mineral resource. Unfortunately, Reclamation Plans are not required to present resource  
15 information or demonstrate marketability of the intended products, nor does the State of  
16 Arizona preclude persons with no mining experience from opening and operating mines. *See*  
17 Exhibit 16 (Mears Declaration ¶¶ 14-15).

18 24. To contrast this with a typical mining development project, a responsible mining  
19 company considering a mine on this property would have conducted an extensive resource  
20 evaluation including physical and chemical testing of the saleable products. That data would  
21 have been used to complete a detailed mine plan and financial pro forma that justifies the  
22 expense of permitting, operating, and closing the mine while generating an adequate return on  
23 investment. Further, responsible mining companies would have considered impacts to the  
24 surrounding community and would develop specific operating and mine design concepts that  
25 reduce their impact on the surrounding community. Lastly, no responsible mining entity would  
26 ever try to undertake this project unless the mineral resource was unique, irrefutably provided a

1 critical and irreplaceable resource to the local market, and had conducted meaningful outreach  
2 to the community. *See* Exhibit 16 (Mears Declaration ¶¶ 17-18).

3 25. By creating a mine in an established residential neighborhood, the Defendants  
4 will bring mining activities to the doorsteps of their neighbors. These mining activities will  
5 include: operation of aggregate mine equipment, such as rock crushers, pneumatic rock  
6 hammers, and bulldozers; blasting of bedrock; and rock hauling trucks. *See* Exhibit 16 (Mears  
7 Declaration ¶ 4). By siting these activities in a neighborhood, the Defendants will create a  
8 public nuisance, pursuant to A.R.S. § 13-2917(A)(1). *See* Exhibit 14 (A.R.S. § 13-2917).  
9 Specifically, the mining activities will be injurious to the health of residents in the  
10 neighborhood, offensive to the senses of the neighbors, and will obstruct the neighbors' free  
11 use of their property and interfere with their comfortable enjoyment of life and their property.

12 26. The Attorney General has the authority to “bring an action in superior court to  
13 abate, enjoin *and prevent*” a public nuisance. A.R.S. § 13-2917(C) (emphasis added).  
14 Accordingly, in order to prevent the Defendants from opening and operating a mine in an  
15 established residential neighborhood and creating a public nuisance, the Attorney General  
16 brings this action seeking an order declaring that Defendants' creation of a mine in the Cedar  
17 Heights/Spruce Road neighborhood constitutes a public nuisance in violation of A.R.S. § 13-  
18 2917, and enjoining the Defendants from operating a mine on their property because it would  
19 violate A.R.S. § 13-2917.

#### 20 The Mine

21 27. On April 7, 2022, and on May 2, 2022, Fortune Rock acquired five (5) parcels of  
22 land in Yavapai County: Arizona Parcel Numbers (“Parcels”) 306-44-031A, 306-44-031B,  
23 306-44-031C, 306-44-031D, and 306-44-031E, that together constitute the Mine. *See* Exhibit  
24 15 (Reclamation Plan at Figure 4).

25 28. Rock Supply will operate an aggregate mining operation at the Mine. *See* Exhibit  
26 15 (Reclamation Plan at 3).

1           29. James Cox (“Cox”) is a manager and member of Rock Supply. Rock Supply and  
2 Cox will be the operators of the Mine. *See* Exhibit 15 (Reclamation Plan at 1-2).

3           30. Aggregate mining involves “clearing, covering or moving land using mechanized  
4 earth-moving equipment on privately owned property for aggregate development and  
5 production purposes, including ancillary aggregate finished product activities. Aggregate  
6 mining includes an operation that mixes or recycles rock, sand, gravel or similar aggregate  
7 materials with water and cement or with asphalt.” A.R.S. § 27-441(2).

8           31. The Mine will likely seek to produce aggregate material from rock that consists  
9 of extrusive volcanic (basalt) and limestone. *See* Exhibit 16 (Mears Declaration ¶ 4).

10          32. As an aggregate mine that intends to remove rock to manufacture aggregate  
11 material, the Mine’s operations will likely require drilling and blasting to loosen the competent  
12 bedrock units and then crushing and sorting of the broken materials to create saleable products.  
13 Crushed materials will likely be stored in large stockpiles and then loaded onto trucks for  
14 delivery to the marketplace. *See* Exhibit 16 (Mears Declaration ¶ 4).

15          33. Rock Supply estimates that the property will produce approximately 616,000  
16 cubic yards of materials over the estimated 20-year lifetime. If annualized, average annual  
17 production would be slightly over 30,000 cubic yards of material but the actual production rates  
18 and total mine production can vary based exclusively on market conditions and operational  
19 costs. The transport of that amount of material would likely require approximately 4,000 truck  
20 trips per year. *See* Exhibit 16 (Mears Declaration ¶¶ 5, 8).

21          34. Rock Supply likely will have insufficient water supplies to wash the sorted  
22 materials but will rather conduct a dry mining operation. In this type of operation, water is  
23 generally used sparingly to control dust on mine roadways, reduce dust during crushing and  
24 sorting, maintain moisture in stockpiles, and control dust on the unpaved roadways leading to  
25 and from the property. Air permitting in Yavapai County does not mandate the extensive dust  
26

1 control practices required in Maricopa or Pima Counties so it is likely that dust emissions from  
2 the property will be largely unregulated. *See* Exhibit 16 (Mears Declaration ¶ 7).

3 35. For the residents living adjacent to the mine, dust emissions will be quite  
4 significant, especially during blasting events and periodic cycles of crushing and material  
5 loading. For the numerous residents living adjacent to the mine access road and unpaved  
6 roadways that provide access and egress from State Route 89, the dust from an estimated 4,000  
7 truck trips per year will be egregious. *See* Exhibit 16 (Mears Declaration ¶ 8).

8 36. Given the close proximity to existing neighbors, the noise from planned mine  
9 operations will be significant. Noise from drilling and blasting operations will occur  
10 periodically but the activities involving crushing, sorting, loading and mobile equipment  
11 operation will more frequently impact persons living in close proximity to the mine, perhaps on  
12 a daily basis. While it's impossible to predict the precise noise levels, blasting, material  
13 handling and backup alarms will routinely generate noise levels in excess of 90 decibels. *See*  
14 Exhibit 16 (Mears Declaration ¶ 9).

15 37. Although the Reclamation Plan does not discuss the mining operations in any  
16 detail, competent basalt or limestone deposits typically require drilling and blasting mining  
17 techniques. Blasting requires the placement of explosive compounds in a series of drill (blast)  
18 holes to apply energy sufficient for fracturing and displacing the bedrock in preparation for  
19 crushing. The amount of energy, the volumes and brisance of the explosives, and the number of  
20 blast holes will be determined by the blasting contractor, but the impact to adjacent neighbors  
21 could be significant. Although exact impacts are unknown at this time, but there is potential for  
22 fly rock to impact nearby properties. Further, blast waves and ground motion will be quite  
23 noticeable and could cause structural damage to buildings in close proximity to the mine. *See*  
24 Exhibit 16 (Mears Declaration ¶ 10).

25 38. The mine is located in an area of fairly high relief and disturbed ground and  
26 operational areas are expected to generate substantial amounts of rainfall runoff, erosion, and

1 sediment transport. Lacking stormwater controls or onsite retention ponds, downgradient  
2 washes and properties will be subject to unusual drainage and sediment impacts. The  
3 Reclamation Plan does not mention stormwater and sediment controls and it is unknown if one  
4 is available. *See* Exhibit 16 (Mears Declaration ¶ 11).

5 39. It is likely that the Mine does not possess a unique mineral resource of sufficient  
6 quantity that would have a meaningful impact on the local construction materials market.  
7 Further, there are several fully permitted mines in proximity to Chino Valley that already  
8 supply high quality construction aggregates.

9 40. The Defendants intend to mine approximately 616,330 cubic yards over 20 years.  
10 *See* Exhibit 15 (Reclamation Plan at 4).

11 41. The Mine is accessed via Spruce Road. *See* Exhibit 1 (Overview Map).

12 42. Spruce Road is a single lane (one car-width wide) road with sections where the  
13 road can be dangerous to navigate when the road is muddy because of a sloping drop off. The  
14 slope is where rain will run off from the Mine property.

15 43. According to Rock Supply's Reclamation Plan, the Processing Activities will  
16 occur in the Mine's material processing areas ("Material Processing Areas"). *See* Exhibit 15  
17 (Reclamation Plan at 5).

18 44. The Material Processing Areas are in Parcels 306-44-031A and 306-44-031B.  
19 *See* Exhibit 2 (Mine Map)

20 45. Parcel 306-44-031B shares a property line with a residential zoned parcel owned  
21 by Danny and Susi Brumett ("the Brumetts"), whose house lies approximately 250 feet from  
22 the proposed Material Processing Area in Parcel 306-44-031B. *See* Exhibit 17 (Residents  
23 Map1).

24 46. Parcel 306-44-031A shares a property line with a residential zoned parcel owned  
25 by Carolyn Cold ("Cold"), whose house lies approximately 600 feet from the proposed  
26 Material Processing Area in Parcel 306-44-031A. *See* Exhibit 17 (Residents Map1).

1           47.    The proposed mining area (“Mining Area”) of the Mine covers approximately  
2 18.3 acres with mining in all five parcels. Mining Area parcels share property lines with four  
3 residential zoned parcels with full-time residents. The Mining area is within a half-mile of  
4 approximately twenty-five (25) residential zoned parcels with full-time residents. *See Exhibit*  
5 *17 (Residents Map1).*

6           48.    The Mining Area is comprised primarily of a hill that rises immediately to the  
7 south of Parcels 306-44-010F ( the Brumetts’ property), 306-44-028A (Charles Turner’s  
8 property), and 306-44-010L (Trevor and Brittany Yost’s property). Mining activities would  
9 take place approximately five-hundred (500) feet from their homes and would dominate their  
10 view to the south. *See Exhibit 17 (Residents Map1).*

11           49.    Dust emissions from the Mine and the resultant trucking of materials will be  
12 significant and egregious. *See Exhibit 16 (Mears Declaration ¶ 8).*

13           50.    Noise from the Mine will be significant for persons living in close proximity to  
14 the Mine. *See Exhibit 16 (Mears Declaration ¶ 9).*

15           51.    Rock Supply will likely be required to use explosives to mine material from the  
16 mining area, which has the potential to create harm to nearby neighbors, including potential fly  
17 rock impacts and/or structural damage to buildings. *See Exhibit 16 (Mears Declaration ¶ 10).*

18           52.    The disturbed ground and operational areas of the Mine are likely to generate  
19 substantial amounts of rainfall runoff, erosion, and sediment transport. Without stormwater  
20 controls or onsite retention ponds, downgradient washes and properties will be subject to  
21 unusual drainage and sediment impacts. *See Exhibit 16 (Mears Declaration ¶ 11).* Likely areas  
22 of impact from the Mine’s uncontrolled stormwater runoff would be the adjacent properties and  
23 Spruce Road. *See Exhibit 17 (Residents Map1).*

The Neighborhood

1  
2           53. Daniel and Susan Brumett (“Brumetts”) reside full time at 3775 West Virginia  
3 Way, Chino Valley, Arizona. They own residential parcel 306-44-010F. *See* Exhibit 18  
4 (Brumett Declaration ¶¶ 2-3) and Exhibit 17 (Residents Map1).

5           54. The Brumetts’ property borders the Mine directly to the north of the material  
6 processing area. The Brumetts’ house is around 210 feet from the material processing area. The  
7 Brumetts’ water storage tank around 10 feet from the Mine’s property line. *See* Exhibit 18  
8 (Brumett Declaration ¶¶ 6, 11).

9           55. The Brumetts’ property sits directly underneath the Mining Area. From the  
10 Brumetts’ patio, the Mining Area is approximately 500 feet away. *See* Exhibit 18 (Brumett  
11 Declaration ¶ 11).

12           56. About five years ago, the Brumetts retired and moved to their home to enjoy the  
13 quiet of the neighborhood, the fresh air, and the animal life. The Brumetts performed what they  
14 called “due diligence” to find a property that would be away from businesses and other  
15 commercial activity, flight paths of airplanes, and reduced sounds of other kinds. Susan has  
16 hearing loss and wanted to avoid excessive noise. *See* Exhibit 18 (Brumett Declaration ¶¶ 7-8,  
17 13).

18           57. The Brumetts did not anticipate that they could be living 400 feet downhill from a  
19 mine and it will devastate their peace and quiet, and ruin their retirement plans. *See* Exhibit 18  
20 (Brumett Declaration ¶ 15).

21           58. Carolyn and Michael Dever (“Devers”) reside full time at 4865 North Spruce  
22 Road, Chino Valley, Arizona. They own residential parcels 306-44-011M and 306-44-011N.  
23 *See* Exhibit 19 (Dever Declaration ¶¶ 2-3) and Exhibit 17 (Residents Map1).

24           59. The Devers’ property lies at or around a half mile from the Mine. *See* Exhibit 19  
25 (Dever Declaration ¶ 6).  
26

1           60.    The Devers built a home on their property in 2014, with the intent of living in a  
2 remote and natural environment during their retirement. *See* Exhibit 19 (Dever Declaration at ¶  
3 3).

4           61.    The Devers regularly enjoy the quiet surrounding their house by spending time  
5 outdoors around their home observing birds and animals; walking on the roads near the Mine;  
6 looking at the view. *See* Exhibit 19 (Dever Declaration ¶ 7).

7           62.    In 2014 when the Devers moved into the neighborhood, they expected to live in a  
8 quiet, rural neighborhood without an industrial, commercial operation nearby. *See* Exhibit 19  
9 (Dever Declaration ¶ 8).

10          63.    The Devers employed a company, Mile High Excavating, to prepare a site on  
11 their property for their triple-wide manufactured home and the driveway. *See* Exhibit 19  
12 (Dever Declaration ¶ 9).

13          64.    The Devers selected the neighborhood knowing that occasional noisy operations  
14 would be likely, including: development of homes that used earth moving and other heavy  
15 equipment to prepare home sites and to dig for utility siting; blasting of rock to prepare home  
16 sites; and use of heavy equipment to repair roads. The Devers expected these interruptions  
17 would be occasional and part of life in the neighborhood. They did not anticipate that they  
18 could live near a mine or expect to live with the noise and dust generated by a mine. *See*  
19 Exhibit 19 (Dever Declaration ¶ 10).

20          65.    The Devers regularly use Cedar Heights Road to access their property. Cedar  
21 Heights Road is a private, 16-foot wide dirt road created by deeded easement that provides  
22 access to the neighborhood from the closest paved road. The Devers' house is about a quarter  
23 mile away from Cedar Heights Road. *See* Exhibit 19 (Dever Declaration ¶ 11).

24          66.    Dust from Cedar Heights Road reaches the Devers house. *See* Exhibit 19 (Dever  
25 Declaration ¶ 12).

1           67.    Upon information and belief, Cedar Heights Road currently has regular local  
2 traffic of primarily passenger cars and trucks, and occasional commercial traffic. Cedar Heights  
3 Road does not currently have traffic that involves the frequent use of commercial rock-hauling  
4 trucks.

5           68.    In or around 2019, the Devers heard the noise from the Mine Property when three  
6 home-site pads were being prepared. The noise came from a rock hoe, an industrial rock-  
7 splitting heavy machinery. The noise was present for two (2) weeks during the weekdays. The  
8 noise consisted of the smashing of rocks by the rock hoe, the beeping alerts when the  
9 machinery backed up, and the engines of the machinery. During this period, the Devers could  
10 not hold a conversation outside without yelling. The Devers chose to stay inside during those  
11 two weeks to avoid the noise. *See* Exhibit 19 (Dever Declaration ¶ 13).

12           69.    Before moving to the neighborhood, the Devers determined that the area would  
13 be quiet and free of industrial noise. They chose the area because of that. Michael Dever is  
14 concerned about the effects from the Mine, including: an increase in the amount of dust from  
15 the Mine and from the trucks hauling rocks; the noise making it impossible for the Devers to be  
16 outside of their home; Cedar Heights Road becoming impassable and/or unusable because of  
17 trucks using it when wet; the loss of bird and animal life around their home because of the  
18 Mine activity. *See* Exhibit 19 (Dever Declaration ¶¶ 14-15)

19           70.    Michael Dever has pulmonary fibrosis/emphysema. He is concerned that the dust  
20 from the Mine and from the trucks on Cedar Heights Road will worsen his condition. *See*  
21 Exhibit 19 (Dever Declaration ¶ 16).

22           71.    Julia Blines and her husband Floyd Blines (“the Blines”) reside full time at 4375  
23 North Spruce Road, Chino Valley, Arizona. The Blines have lived at the Blines’ property for  
24 more than 20 years. *See* Exhibit 20 (Blines Declaration ¶¶ 2-3) and Exhibit 17 (Residents  
25 Map1).  
26

1           72.    The Blines' property is about 1,000 feet from the Mine's material processing  
2 area. *See* Exhibit 17 (Residents Map1).

3           73.    Spruce Road is the primary access road for the Mine. To access Julia Blines'  
4 property, she must drive past the Mine entrance. *See* Exhibit 20 (Blines Declaration ¶¶ 9-12).

5           74.    Julia Blines moved to her home in 2003, because she wanted a remote location  
6 that was calm and tranquil and she wanted to garden. She and her husband Floyd retired to their  
7 property and live there full time. *See* Exhibit 20 (Blines Declaration ¶ 6).

8           75.    When Julia Blines moved to her home, she understood and believed that the  
9 parcels around her would be used for residences. She understood that the building of new  
10 residences might temporarily cause noise and dust from building activities to reach her. She did  
11 not anticipate that she could live 1,000 feet from a mine's material processing area. *See* Exhibit  
12 20 (Blines Declaration ¶ 7).

13           76.    Floyd Blines has Stage 4 chronic obstructive pulmonary disease ("COPD").  
14 COPD restricts a person's breathing. *See* Exhibit 20 (Blines Declaration ¶ 8).

15           77.    Spruce Road is one car-width across and there is only one spot on the road where  
16 a car can pull over to allow another car to pass. Spruce Road is a clay road that becomes very  
17 soft when wet with rain or snow, and becomes deeply rutted when trucks and cars use it while it  
18 is wet. *See* Exhibit 20 (Blines Declaration ¶¶ 10-11).

19           78.    Before it was declared a mine, the Defendants constructed a road that allowed  
20 mud to flow onto Spruce Road and made it impassable until a neighbor cleared the road. *See*  
21 Exhibit 20 (Blines Declaration ¶ 13).

22           79.    Julia Blines is worried about the effect of having a Mine next door to her. She is  
23 concerned about the effect that dust will have on her quality of life and on her husband's health.  
24 She is concerned that the noise will destroy the peace and quiet that currently exists on her  
25 property and in her neighborhood. *See* Exhibit 20 (Blines Declaration ¶ 14).

1           80.     Julia Blines would not be able to access her property if trucks hauling rock  
2 damage Spruce Road or Cedar Heights Road, block Spruce Road, or otherwise prevent create  
3 an obstruction on either Spruce Road or Cedar Heights Road because there is only one route to  
4 access her property. *See* Exhibit 17 (Residents Map1).

5           81.     Julia Blines intended to live out her retirement years on her property. If the dust  
6 or noise caused her to lose the ability to enjoy her property or live peacefully, it would destroy  
7 that possibility. *See* Exhibit 20 (Blines Declaration ¶ 15).

8           82.     John and Judy Vanderhoven (“Vanderhovens”) reside full time at 4275 North  
9 Spruce Road, Chino Valley, Arizona. Mr. Vanderhoven has lived at the Property for  
10 approximately 8 years. *See* Exhibit 21 (Vanderhoven Declaration ¶¶ 2, 4) and Exhibit 17  
11 (Residents Map1).

12           83.     The Vanderhovens’ home is approximately less than 220 yards in a direct line  
13 from the proposed mine site. The entrance to his property is about 200 yards south on Spruce  
14 Road from the mine’s entrance. *See* Exhibit 21 (Vanderhoven Declaration ¶ 5).

15           84.     The Vanderhovens moved to their neighborhood to enjoy the quiet and peaceful  
16 environment. They own a property several miles from the Arrowhead aggregate mine across  
17 Highway 89. Unlike with the purchase of their property on Spruce Road, when they purchased  
18 the property near the Arrowhead mine, they knew there would be noise and mine activity. They  
19 can hear the noise from the machinery and beeping from bulldozers backing up at their property  
20 near the Arrowhead mine, and they decided not to build a house at that property because of the  
21 noise. They purchased the property on Spruce Road because they wanted to live somewhere  
22 that was quiet. *See* Exhibit 21 (Vanderhoven Declaration ¶¶ 6, 8).

23           85.     John Vanderhoven does not object to people building on their property in the  
24 neighborhood. There are times when it is noisy from someone doing excavation, hammering  
25 rock, or even blasting, but he knows that it is just a temporary situation. He did not anticipate  
26

1 living about the length of only two football fields away from a mine. *See* Exhibit 21  
2 (Vanderhoven Declaration ¶ 9).

3 86. John Vanderhoven was a Deputy Sheriff with the Yavapai County Sheriff's  
4 Department for 20 years and is now retired. His income comes from a state pension. If the  
5 Vanderhovens had to move, John Vanderhoven believes that his property would be worth much  
6 less if the mine exists, and the move would be a significant financial burden. *See* Exhibit 21  
7 (Vanderhoven Declaration ¶¶ 3, 10).

8 87. The section of Spruce Road from Cedar Heights Road that leads to the  
9 Vanderhovens' house is about a quarter of mile long and is a one lane private dirt road which  
10 John Vanderhoven maintains for himself and his neighbors because his neighbors are older than  
11 him and he is physically able to do the work. There are about a dozen vehicles that use the road  
12 on a daily basis. John Vanderhoven does the work on the road to keep it drivable and cleans out  
13 the ditches along the side of the road and the culverts under the road when it rains. *See* Exhibit  
14 21 (Vanderhoven Declaration ¶ 12).

15 88. When Spruce Road gets wet from rain or snow, the road turns to mud, and John  
16 Vanderhoven has to smooth it out, because he and his neighbors cannot afford to put a lot of  
17 material on the road to keep it drivable when wet. *See* Exhibit 21 (Vanderhoven Declaration ¶  
18 13).

19 89. John Vanderhoven has put gravel on a hilly section of Spruce Road near his  
20 house so that he and his neighbors can get back and forth on the road when it gets muddy. The  
21 section of road where the mine entrance is located does not have any gravel, so it gets very  
22 muddy when it rains. Garbage trucks that come up once a month have had a hard time getting  
23 through when the roads are muddy. *See* Exhibit 21 (Vanderhoven Declaration ¶ 14).

24 90. Spruce Road was not designed to handle heavy equipment. John Vanderhoven  
25 believes that the road itself will be damaged by equipment and trucks from the Mine, including  
26

1 the possibility of damage to the culverts under the Spruce Road. *See* Exhibit 21 (Vanderhoven  
2 Declaration ¶ 15).

3 91. Spruce Road is a one-lane road with a small section past the entrance of the mine  
4 where a vehicle can pull over. Between Cedar Heights Road and the mine entrance, it is one  
5 lane. If a truck is driving up the road while someone else is driving down in that section, one of  
6 the vehicles has to back up. Recently, a paving machine broke down on the road near the  
7 Vanderhovens' house and their neighbors were unable to get in or out while it was stuck.  
8 Spruce Road is the only way to access the Vanderhovens' property, so if a mine truck breaks  
9 down or otherwise gets stuck on Spruce Road, it will block access to his property and to his  
10 neighbors' properties, including access by emergency vehicles that may be needed. *See* Exhibit  
11 21 (Vanderhoven Declaration ¶ 16).

12 92. Many of the Vanderhovens' neighbors are elderly and have medical conditions.  
13 *See* Exhibit 21 (Vanderhoven Declaration ¶ 16).

14 93. Judy Vanderhoven has severe allergies and asthma. The Vanderhovens are  
15 concerned about dust from the Mine and how it may affect Judy's conditions. *See* Exhibit 21  
16 (Vanderhoven Declaration ¶ 7).

17 94. Chad Cold is the son of the late-Richard Cold and Carolyn Cold ("the Colds), his  
18 75-year-old mother, who lives at 4450 North Spruce Road in Chino Valley, Arizona ("Colds'  
19 Property"). *See* Exhibit 22 (Cold Declaration ¶¶ 2-3) and Exhibit 17 (Residents Map1).

20 95. In 1993, Richard Cold, and his neighbor, Victor Miller, purchased approximately  
21 40 acres and divided it evenly. The Miller family acquired the southern half of the purchased  
22 property, and the Colds acquired the north half. The Millers still own and reside at their  
23 property, and Carolyn Cold still owns and resides at her property. *See* Exhibit 22 (Cold  
24 Declaration ¶ 3).

25 96. The Colds retired to the Colds' Property to start the next chapter of their lives  
26 after living in Southern California for many years. Richard grew up on a ranch in Montana and

1 wanted to retire somewhere that was quiet and not around a lot of people, unlike in California.

2 *See* Exhibit 22 (Cold Declaration ¶ 4).

3 97. When Richard Cold purchased the property, nothing existed in terms of  
4 infrastructure, including Spruce Road. *See* Exhibit 22 (Cold Declaration ¶ 5).

5 98. Richard Cold, who was a retired union electrician, built Spruce Road and the  
6 entire utility infrastructure for the properties along the Spruce Road, including an underground  
7 electrical system. Richard Cold did not want above ground power lines which historically have  
8 been known to cause fires in high wind areas. *See* Exhibit 22 (Cold Declaration ¶ 5).

9 99. Richard Cold put great effort and thought into how he built the roads and his  
10 home so that it would blend in with the natural environment. The Colds have lived in that house  
11 for the last twenty years. *See* Exhibit 22 (Cold Declaration ¶ 6).

12 100. Since 2019, Chad Cold has traveled from California and visited his parents every  
13 other weekend. Chad Cold and his children and siblings have spent a lot of time there with his  
14 parents in the past 20 years, including spending Thanksgiving every year with them. *See*  
15 Exhibit 22 (Cold Declaration ¶ 7).

16 101. Since Richard Cold died, Chad Cold has looked after his mother, who lives on the  
17 property alone and has no intention of leaving the property. She is very upset to have someone  
18 come and possibly destroy the area, especially after all the hard work she and her husband had  
19 done. *See* Exhibit 22 (Cold Declaration ¶ 8).

20 102. Chad Cold has helped to maintain Spruce Road with his father. He believes that  
21 the use of Spruce Road from Cedar Heights Road to the mine entrance for mine traffic will  
22 destroy the road. When Richard Cold built Spruce Road, he did not intend it to be used  
23 extensively by heavy duty trucks hauling tons of rock. Chad Cold is concerned about  
24 emergency vehicles having the ability to get to his mother in an emergency if the road is  
25 damaged. Their neighbor, Victor Miller, is in poor health and has had an ambulance to his  
26 house at least 20 times. Spruce Road is one car-width wide, and a stuck truck or extensive

1 damage to the road could make it impassable. It is the only road into his mother's property. *See*  
2 Exhibit 22 (Cold Declaration ¶¶ 9-10).

3 103. Chad Cold is aware that the owners of the parcels immediately to the north of his  
4 mother's property have established a mine on their parcels and intend to run an aggregate  
5 mining operation there. Chad was told by James Cox, one of the member/managers of the Mine  
6 operator, that their operation will create a 200 foot cliff on the edge of the Colds' property.  
7 According to the Reclamation Plan of the Mine, the Mining Area will be approximately 600  
8 feet from Carolyn Cold's house. *See* Exhibit 22 (Cold Declaration ¶ 11).

9 104. Chad Cold is concerned that the Mine activities will affect his mother's and the  
10 Millers' well. *See* Exhibit 22 (Cold Declaration ¶ 13).

11 105. Chad Cold believes the Mine will definitely affect the environment of the  
12 neighborhood. There is abundant wildlife in the area that he believes will be scared off by the  
13 noise at the Mine. It is an open range cattle area with cattle wandering around in addition to  
14 other wildlife. He is also concerned about where water will go when it rains as it comes off the  
15 Mining Area. People have built their homes in areas with culverts to protect them from runoff,  
16 but Chad Cold believes the runoff directions will change because of the Mine. *See* Exhibit 22  
17 (Cold Declaration ¶ 14).

18 106. Chad Cold is concerned about the possibility of blasting taking place and its  
19 possible effects on the well on his mother's property and on the water table in the area. He is  
20 concerned about the effects of blasting on the buildings on his mother's property. *See* Exhibit  
21 22 (Cold Declaration ¶ 15).

22 107. Richard Cold's plan for his property was to build his home, build another home to  
23 possibly sell or give to Chad's sister, and to build a third house for Chad. Richard Cold was not  
24 able to build two of the houses before he passed, so Chad Cold intends to build on the parcel  
25 next to my mother's house and live there when he retires. When Chad Cold's parents moved  
26 there, they intended to develop a property that blended into the neighborhood. When he decided

1 to retire there, he wanted to continue his family's legacy. He never anticipated that he would be  
2 living next door to a mine. *See* Exhibit 22 (Cold Declaration ¶ 16).

### 3 4 Dust Effects

5 108. Particulate matter or particle pollution is the term for a mixture of solid and  
6 particulate matter comprised of dust, dirt, soot, and/or smoke. Particle pollution can be variable  
7 in size with some being visible to the naked eye and others only being detected using an  
8 electron microscope. *See* Exhibit 23 (EPA Doc1 at 1).

9 109. A particle's size is directly linked to a particle's health impact. The EPA has  
10 stated that exposure to particles less than 10 microns in diameters has been linked to a variety  
11 of health problems including premature death in people with heart or lung disease, nonfatal  
12 heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased  
13 respiratory systems. *See* Exhibit 24 (EPA Doc2 at 1).

14 110. Particle pollution also has environmental impacts on the community, including  
15 visibility impairment, and staining and damage to stone and other materials. *See* Exhibit 24  
16 (EPA Doc2 at 2).

### 17 COUNT ONE

#### 18 (Declaratory Judgment)

19 111. The State incorporates by reference and realleges the foregoing paragraphs as  
20 though fully set forth herein.

21 112. The Mine will generate significant and egregious amounts of dust for nearby  
22 residents through its mining activities, rock-crushing activities, and moving and transportation  
23 of materials.

24 113. The Mine has the potential to create dangerous conditions for nearby residents  
25 from fly rock caused by blasting.

1           114. The Mine will generate excessive amounts of noise and dust for nearby residents  
2 through its mining activities, rock-crushing activities, and moving and transportation of  
3 materials.

4           115. The nearby residents currently live in the neighborhood in order to enjoy a quiet  
5 neighborhood. The nearby residents work together to maintain roads. The nearby residents  
6 moved to the neighborhood specifically to be in a rural area isolated from industrial activities.

7           116. The neighborhood around the Mine (and the roads on which the Mine must run its  
8 rock-hauling trucks) contains of a considerable number of persons. *See* A.R.S. § 13-  
9 2917(A)(1).

10          117. The neighborhood near the Mine can only be accessed by Cedar Heights Road.  
11 Cedar Heights Road is wide enough for two cars to pass each other and runs west from a paved,  
12 county-maintained road, Yuma Road. Spruce Road is a single-car width wide and runs south  
13 from Cedar Heights Road. The Mine entrance is on Spruce Road. Virginia Way runs along a  
14 wash and runs west from the intersection of Cedar Heights Road and Spruce Road. All three  
15 roads are unimproved dirt roads that are privately-owned, created through deeded easements,  
16 and maintained by the residents.

17          118. The Mine will obstruct the nearby residents' free use of their property and  
18 interfere with the nearby residents' comfortable enjoyment of life and their property by: (1)  
19 causing significant and egregious amounts of dust to spread and prevent the residents from  
20 opening windows or spending time outside their homes as is currently done; (2) creating  
21 excessive noise levels that will prevent residents from opening windows or spending time  
22 outside their homes as is currently done; (3) creating excess commercial truck traffic on  
23 unimproved roads not designed to handle such trucks and making the roads impassable through  
24 improper and improvident usage.

1           119. The Mine will be injurious to the health of residents by increasing the dust in the  
2 area and causing harm to nearby residents' existing health conditions and increasing the levels  
3 of particulate matter that all nearby residents will have to breathe.

4           120. Because the Mine will obstruct the nearby residents' free use of their property  
5 and interfere with the nearby residents' comfortable enjoyment of life and their property and  
6 will be injurious to the nearby residents' health, pursuant to A.R.S. § 13-2917(C), the Court  
7 should declare the Mine a public nuisance to prevent the obstruction and the injury to the  
8 nearby residents.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, the State prays for relief against Defendants, as follows:

3 A. An Order declaring that the operation of the Mine on Fortune Rock’s property in  
4 Yavapai County would constitute a public nuisance in violation of A.R.S. § 13-2917.

5 B. An Order enjoining the Defendant companies, their officers, and their members  
6 from operating a mine on Defendant Fortune Rock’s property in Yavapai County because it  
7 would violate A.R.S. § 13-2917.

8 C. For the State’s taxable costs and costs of litigation; and

9 D. For such other and further relief as this Court deems just and proper.

10  
11 **RESPECTFULLY SUBMITTED** this 3rd day of November, 2023.

12 **KRISTIN K. MAYES**  
13 Attorney General

14 /s/ J. Nicholas Bacon  
15 Daniel C. Barr  
16 Chief Deputy Attorney General

17 J. Nicholas Bacon  
18 James C. Olson II  
19 Assistant Attorneys General  
20 Environmental Enforcement Section  
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23  
24  
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26

VERIFICATION

STATE OF ARIZONA     }  
County of Maricopa    }

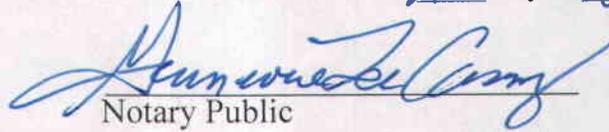
Troy Arnold, being first duly sworn upon his oath, deposes and says:

1. I am the Environmental Investigator with the Environmental Enforcement Section of the Attorney General's Office, and have been delegated the authority to verify Complaints by the Section Chief, Curtis Cox.

2. I have read the foregoing Complaint, know the contents thereof, and that on my own knowledge and belief, the matters alleged herein are true, except for those matters alleged on information and belief, and as to those matters, I believe the Complaint to be true.

  
\_\_\_\_\_  
Troy Arnold, Environmental Investigator  
Environmental Enforcement Section, Attorney General's Office

SUBSCRIBED AND SWORN TO before me this 2<sup>ND</sup> day of NOVEMBER, 2023.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

7569854v1



VERIFICATION

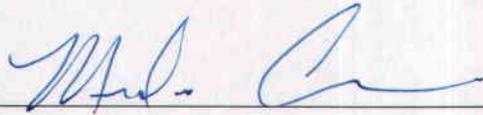
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STATE OF ARIZONA     )  
                                  )  
County of Maricopa    )

Mindi Cross, being first duly sworn upon his oath, deposes and says:

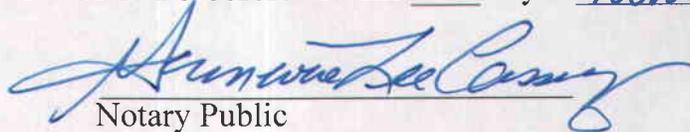
1. I am the Senior Environmental Scientist with the Environmental Enforcement Section of the Attorney General’s Office, and have been delegated the authority to verify Complaints by the Section Chief, Curtis Cox.

2. I have read the foregoing Complaint, know the contents thereof, and that on my own knowledge and belief, the matters alleged herein are true, except for those matters alleged on information and belief, and as to those matters, I believe the Complaint to be true.

  
\_\_\_\_\_

Mindi Cross, Senior Environmental Scientist  
Environmental Enforcement Section, Attorney General’s Office

SUBSCRIBED AND SWORN TO before me this 2<sup>ND</sup> day of November, 2023.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

