

1 **KRISTIN K. MAYES**
Attorney General
2 State Bar I.D. No. 14000

3 **DANIEL C. BARR** (10149)
Chief Deputy Attorney General
4 **J. NICHOLAS BACON** (032563)
5 **JAMES C. OLSON, II** (035710)
Assistant Attorneys General
Environmental Enforcement Section
6 2005 N. Central Avenue
Phoenix, AZ 85004-1592
7 Telephone: (602) 542-8099
Environmental@azag.gov

8 *Attorneys for Plaintiff*

9 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **FOR MARICOPA COUNTY**

12 STATE OF ARIZONA, *ex rel.* KRISTIN
K. MAYES, Attorney General of the
13 State of Arizona,

14 Plaintiff,

15 vs.

16 ROCK SUPPLY, LLC an Arizona
Limited Liability Company, and
17 FORTUNE ROCK LLC, an Arizona
Limited Liability Company,

18 Defendants.

Civil Action No. _____

**PETITION FOR ORDER TO SHOW
CAUSE AND MOTION FOR
PRELIMINARY INJUNCTION AND
MEMORANDUM IN SUPPORT**

19
20 **MOTION**

21 Pursuant to Rule 65 of the Arizona Rules of Civil Procedure, Plaintiff State of
22 Arizona *ex rel.* Kristin K. Mayes, Attorney General for the State of Arizona (“the State”) moves for a Preliminary Injunction requiring Defendant Rock Supply, LLC (“Rock
23 Supply ”), an Arizona limited liability company, and Defendant Fortune Rock LLC (“Fortune Rock”), an Arizona limited liability company, (collectively, “Defendants”) to
24 cease all mining activities and material processing on Yavapai County Parcel Numbers
25
26

1 306-44-031A, 306-44-031B, 306-44-031C, 306-44-031D, and 306-44-031E. This Motion
2 is supported by the below memorandum and the verified Complaint filed on November 3,
3 2023. The State also petitions the Court for an order to Defendants to show cause why the
4 relief sought herein should not be granted.

5 **MEMORANDUM**

6 **A. Factual History**

7 Defendants are two companies that together own five (5) parcels of rural,
8 residentially zoned land in Yavapai County and are preparing to open and operate a
9 brand-new aggregate mine (“the Mine”) on their property for the next 20 years. The five
10 parcels are surrounded by other residentially zoned properties with existing homes
11 occupied by full-time residents who never expected to live next to an aggregate mine.
12 Aggregate mines are a source of material for construction, road building, and
13 landscaping. However, such mines are typically (a) located away from residential
14 properties with extensive buffer zones and setbacks in order to reduce disturbances to
15 neighbors and (b) opened and operated before residential neighbors are established in the
16 area. The Defendants have done precisely the opposite: They are attempting to open a
17 mine long after the neighborhood has been established and, because of that, have
18 virtually no ability to create reasonable setbacks to prevent disruption to their neighbors.
19 (Compl. ¶ 10.)

20 Before seeking to dig a mine in a residential area, a previous corporate owner,
21 whose sole member/manager is now one of the current member/managers of Defendant
22 Rock Supply, intended to build home sites on these parcels. *See* Compl. ¶ 21. The
23 Defendants now rely on A.R.S. § 11-812(A)(2), a provision within zoning laws that
24 exempts a mine from zoning ordinances, to permit them to operate a mine in a residential
25 neighborhood, despite the Defendants having no documented mining experience. Compl.
26 ¶ 22. In recent years, the mining exemption has been abused by property owners and
developers to avoid regulations while modifying and developing a property for home

1 sites. Compl. ¶ 23.

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

11 **B. Legal Analysis**

12 To prevail on its preliminary injunction motion, the State must demonstrate: (a) it
13 has the authority to make the request and (b) a preliminary injunction is warranted in this
14 instance. The State satisfies both elements here.

15 **1. The State has the authority to request a preliminary injunction.**

16 The Attorney General has the authority to “bring an action in superior court to
17 abate, enjoin, and prevent” a person from maintaining or creating a public nuisance. *See*
18 A.R.S. § 13-2917(C). A public nuisance is “injurious to health, indecent, offensive to the
19 senses or an obstruction to the free use of property that interferes with the comfortable
20 enjoyment of life by an entire community or neighborhood or by a considerable number
21 of persons.” A.R.S. § 13-2917(A)(1).

22 Defendants are persons as defined by statute. A.R.S. § 13-105(30). Defendants'
23 Mine will be injurious to their neighbors' health, offensive to their neighbors' senses, and
24 obstruct their neighbors' free use of their property. Because Defendants continue to
25 pursue the creation of this public nuisance, the State has the authority to seek an
26 injunction to prevent and enjoin the Defendants' mining activities in the neighborhood.
A.R.S. § 13-2917(C).

1 **2. The State satisfies the four elements required for a preliminary injunction.**

2 There are four elements necessary for the grant of a preliminary injunction. *Shoen*
3 *v. Shoen*, 167 Ariz. 58, 63 (Ct. App. 1991). *See also Smith v. Ariz. Citizens Clean*
4 *Election Comm’n*, 212 Ariz. 407, 410 (2006) (adopting the *Shoen* rule as the standard for
5 preliminary injunction). Those four elements are:

- 6 1. A strong likelihood of success on the merits,
- 7 2. A possibility of irreparable harm if the injunction is not granted,
- 8 3. A balance of hardships weighing in [the State’s] favor, and
- 9 4. Public policy favors the requested relief.

10 *Id.*

11 Of the four factors, the “critical factor is relative hardship.” *TP Racing, L.L.L.P. v.*
12 *Simms*, 307 P.3d 56, 62 (Ct. App. 2013). The State may demonstrate relative hardship
13 by showing either “probable success on the merits and the possibility of irreparable
14 injury” (the first two elements of the above test) or “the presence of serious questions
15 and the balance of hardships tips sharply in [its] favor” (the second two elements above).
16 *Id.* The test is applied on a “sliding scale”, meaning that the movant need only show one
17 of two tests for relative hardship. *Ariz. Ass’n of Providers for Persons with Disabilities*
18 *v. State*, 223 Ariz. 6, 12 (Ct. App. 2009).

19 Here, the State can prove all four elements of the *Shoen* test and demonstrate
20 relative hardship by either measure. Therefore, the court should grant the State’s request
21 for preliminary injunction.

22 a. Strong Likelihood of Success on the Merits

23 The close proximity of the Mine to its residential neighbors cannot be disputed.
24 *See, e.g., Compl. ¶¶ 45-47, 49.* Likewise, assuming that the Mine is a legitimate venture
25 by the Defendants and operated as such, the Mine will unavoidably create a nuisance
26 given its proximity to neighboring homes and the machinery and processes inherent to
aggregate mines.

1 This Mine will operate for the next 20 years. Compl. ¶ 33. Trucks and other heavy
2 equipment will likely destroy the small, privately-maintained roads that the neighbors and
3 emergency vehicles rely on. Compl. ¶¶ 41, 77, 80, 90-91, 102. Blasting has the potential
4 to harm the neighbors' health and property. Compl. ¶ 37. Dust and noise will pervade the
5 surrounding area. Compl. ¶¶ 35-36. Defendants cannot operate the Mine without
6 inflicting these harms on the neighborhood. Compl. ¶¶ 32-38.

7 All of this evidence proves that the Mine will create a public nuisance and that
8 abatement and prevention is necessary.

9 b. Possibility of Irreparable Injury if the Injunction is Not Granted

10 Injury is irreparable if it cannot be remediated by monetary damages. *Shoen*, 167
11 Ariz. at 63; *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship*, 228
12 Ariz. 61, 65 (Ct. App. 2011). Courts consider how accurately monetary damages can be
13 calculated. *IB Prop. Holdings, LLC* at 65. If some damages can be calculated and not
14 others, "injunctive relief may be appropriate if those damages are inadequate to address
15 the full harm suffered." *Id.*

16 Because Defendants continue to pursue construction of the Mine in a residential
17 area, there is a constant and reasonable probability that the Mine will create a public
18 nuisance. The resulting public nuisance will cause further irreparable harm that cannot be
19 fully remedied by monetary damages. Mining will irreparably damage the character and
20 tranquility of the neighborhood. Residents may be forced to remain indoors for weeks at
21 a time to avoid the noise and dust emanating from the Mine. *See* Compl. 13, 19-20, ¶¶
22 68-69, 108-110. Defendants are likely to use explosives to blast apart the rock, which
23 threatens nearby homes and neighbors with dangerous "fly rock" (rock shrapnel hurled
24 into the air by the explosion) and the resulting blast waves may damage homes. Compl. ¶
25 37. Defendants' heavy equipment threatens to damage Spruce Road – a small, one-lane,
26 privately maintained road that provides the sole access point for resident and emergency
vehicles of approximately five residences – and to Cedar Heights Road – a two-lane

1 privately maintained unimproved road that is the sole access road for dozens of
2 residences. Compl. ¶¶ 41, 77, 80, 90-91, 101. Crushing, blasting, drilling, and stockpiling
3 will also release substantial dust into the air. Compl. ¶¶ 35, 50. Some of the neighbors
4 have underlying health conditions and could be particularly harmed by this dust. *See*
5 Compl. ¶¶ 76, 79, 92-93, 108-110.

6 If permitted to engage in mining and processing activities prior to this Court's
7 issuance of a permanent injunction, there is a reasonable likelihood that the Defendants'
8 mining activities will injure their neighbors' health, offend their neighbors' senses, and
9 interfere with the neighbors' comfortable enjoyment of life and property. Such harms
10 cannot be entirely remedied by monetary damages.

11 c. A Balance of Hardships Weighs in the State's Favor

12 The State can prove that the "balance of hardships" weighs in its favor. *Shoen*, 167
13 Ariz. at 63. Once the Defendants begin mining activities, the public nuisance will be
14 created and nearby residents will immediately be impacted. Rock crushers, hauling
15 trucks, and mobile drilling rigs will intrude upon the neighborhood. The Defendants' first
16 mining activities will likely require using explosives to blast apart the rock or other heavy
17 machinery to tear the rock from the property, either of which will generate noise and
18 dust. The next step will be to set up rock crushers and conveyer belts to grind up the
19 blasted rock, creating even more noise and dust. After the rock is crushed, the neighbors
20 enjoyment of their property will be ruined as trucks haul out the rock as it is sold, likely
21 damaging the road and generating yet more dust. Once the rock stockpiles are depleted,
22 the process begins again. The nature of the neighborhood will be irreparably altered when
23 the Defendants begin mining activities. *See* Compl. ¶¶ 25, 35-37, 90.

24 On the other hand, the Defendants' only "hardship" is the temporary loss of
25 income (if any) from their mining operations. Defendants do not anticipate mining until
26 January 1, 2024 anyway, and mining equipment has not been delivered as of October 20,
2023. Compl. Ex. 13 (Application for Mine Exemption) at MTR0000030. A preliminary

1 injunction at this point does not shut down a going business concern; it maintains the
2 status quo. *Id.* The Defendants may also benefit from a preliminary injunction as it
3 minimizes their investment prior to this Court determining that the Mine is a public
4 nuisance. Therefore, this factor also weighs in the State's favor.

5 d. Public Policy Favors the Requested Relief

6 Public policy favors a clean and safe environment as well as protecting existing
7 neighborhoods from the dust, noise, and blasting dangers created by a new aggregate
8 mine in its midst. This is the purpose of Arizona's public nuisance law. *State Farm Mut.*
9 *Auto. Ins. Co. v. Wilson*, 162 Ariz. 251, 253 (1989) (the Arizona Supreme Court looks to
10 legislative enactments to determine public policy considerations). Arizona's public
11 nuisance law authorizes the Attorney General to obtain an injunction requiring the
12 abatement and prevention of circumstances that injure, offend, or interfere with the
13 comfortable enjoyment of life for a neighborhood. *See* A.R.S. § 13-2917.

14 Dust and fly rock may injure the neighbors. *See* Compl. ¶ 37. Spruce Road will
15 likely be damaged by the Defendants' heavy mining equipment and trucks and made
16 impassable and deprive residents with access to their properties. *See* Compl. ¶¶ 41, 77,
17 80, 90-91, 101. A rock crusher 250 feet from a house will destroy the quiet enjoyment of
18 nearby residents for weeks at a time. Compl. ¶¶ 25, 36, 46. These all create a public
19 nuisance of the sort that the Legislature empowered the Attorney General to prevent and
20 seek relief from. Therefore, public policy favors a preliminary injunction preventing the
21 Defendants from engaging in mining activities.

22 **CONCLUSION**

23 The State requests the Court grant its Motion for Preliminary Injunction and order
24 Defendants to cease all mining activity and material processing at the Mine. The State
25 also hereby petitions the Court for an order to Defendants to show cause, if any, why the
26 State should not be granted the relief sought herein.

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DATED this 3rd day of November, 2023.

Kristin K. Mayes
Attorney General

/s/J. Nicholas Bacon

Daniel C. Barr
Chief Deputy Attorney General

J. Nicholas Bacon
James C. Olson, II
Assistant Attorneys General
Environmental Enforcement Section