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10
11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR MARICOPA COUNTY**

13 STATE OF ARIZONA, *ex rel.* KRIS
14 MAYES, Attorney General of the State of
Arizona,

15 Plaintiff,

16 vs.

17 ROCK SUPPLY, LLC, an Arizona
18 Limited Liability Company; FORTUNE
19 ROCK LLC, an Arizona Limited Liability
Company,

20 Defendants.

Civil Action No: _____

**PROPOSED FORM OF ORDER:
PRELIMINARY INJUNCTION**

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22 This matter having come before the Court on the State's Motion for Order of
23 Preliminary Injunction, and the Court having reviewed the verified Complaint and
24 attached exhibits filed in this matter, Plaintiff's Motion for Preliminary Injunction, and
25 having considered the evidence presented, the Court hereby makes the following
26

1 findings:

- 2 1. Plaintiff State of Arizona *ex rel.* Kristin K. Mayes, Attorney General for the
3 State of Arizona (“the State” or “Plaintiff”) is authorized to bring this
4 action pursuant to A.R.S. § 13-2917(C).
- 5
6 2. This Court has jurisdiction over the subject matter of this action pursuant to
7 A.R.S. § 13-2917(C).
- 8
9 3. This Court has personal jurisdiction in this matter because at all times
10 alleged herein Defendant Rock Supply, LLC and Defendant Fortune Rock
11 LLC (collectively, “Defendants”) conducted business in Arizona, the site of
12 Defendants’ mining operation is located in Arizona, and the actions alleged
13 in this Complaint occurred in Arizona.
- 14
15 4. Venue is proper in this Court pursuant to A.R.S. § 12-401(17).
- 16
17 5. Plaintiff has satisfied the four-prong element test established for issuing a
18 preliminary injunction under *Shoen v. Shoen*, 804 P.2d 787, 792 (Ariz. Ct.
19 App. 1990).
- 20
21 6. Plaintiff has demonstrated: “(1) a strong likelihood of success on the merits,
22 (2) a possibility of irreparable injury if the injunction is not granted, (3) a
23 balance of hardships weighing in [its] favor, and (4) public policy favoring
24 the requested relief.” *Id.*
- 25
26 7. Plaintiff has demonstrated a strong likelihood of success on the merits
through A.R.S. § 13-2917, which prohibits the maintenance and creation of

1 public nuisances. A public nuisance includes conditions that are “injurious
2 to health, indecent, offensive to the senses or an obstruction to the free use
3 of property that interferes with the comfortable enjoyment of life or
4 property by an entire community or neighborhood or by a considerable
5 number of persons.” A.R.S. § 13-2917(A)(1). The Arizona Attorney
6 General has authority to bring an action to abate, enjoin, and prevent public
7 nuisances. There is a strong likelihood that Plaintiff will prove by a
8 preponderance of the evidence that Defendants’ operation of an aggregate
9 mine in a rural neighborhood, which will likely require blasting, drilling,
10 rock crushing, stockpiling, and trucking, is a public nuisance.
11

12
13 8. Plaintiff has proven a possibility of irreparable injury if the injunction is not
14 granted because the injuries caused by the Defendants’ aggregate mining
15 operation will irreparably damage the character and tranquility of the
16 neighborhood, and such damage may not be fully remediated by monetary
17 damages under *IB Property Holdings, LLC v. Rancho Del Mar Apartments*
18 *Ltd. Partnership*, 228 Ariz. 61, 65 (Ct. App. 2011).
19

20
21 9. Plaintiff has also proven that the “balance of the hardships weighs in [its]
22 favor.” *Shoen*, 167 Ariz. at 63. To satisfy the balance of the hardships
23 element, the State had to prove one of two sub-elements. *Id.* The first sub-
24 element was “probable success on the merits and the possibility of
25 irreparable injury.” *Id.* The second sub-element was whether ‘the balance of
26

1 hardships tips sharply’ in [its] favor.” *Id.* Even though the State only needs
2 to prove one, the State proved both.

3 Plaintiff established probable success on the merits and the
4 possibility of irreparable injury because the Defendants chose to locate and
5 operate the mine on parcels adjacent to homes and the intrusive and
6 destructive nature of the mining activities that Defendants must necessarily
7 engage in to operate the aggregate mine. This evidence established that
8 Defendants’ mining activities are likely to subject their neighbors to dust,
9 noise, traffic, and blasting. There is a reasonable likelihood that these
10 mining activities will injure their neighbors’ health, offend their neighbors’
11 senses, and interfere with the neighbors’ comfortable enjoyment of life and
12 property. Defendants’ mining activities will injure their neighbors, and such
13 injury cannot be fully remediated with monetary damages, so Defendants’
14 mining activities will inflict irreparable injury. *IB Property Holdings, LLC*
15 at 65.

16 The State also proved the second sub-element—“the presence of
17 serious questions and ‘the balance of hardships tips sharply’ in [the State’s]
18 favor.” *Shoen*, 167 Ariz. at 63. Once the Defendants begin mining
19 activities, the public nuisance will be created and nearby residents will
20 immediately be impacted. In contrast, the Defendants’ only hardship is the
21 temporary loss of income (if any) from their mining operations. Under the
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circumstances, the balance of hardships tip in the State’s favor because of the immediate, irreparable injury faced by neighbors, while Defendants’ only injury is postponing a twenty-year project that they did not intend to begin until January 2024. Since the State proved both sub-elements— even though only one is required— the State demonstrated the four-prong test’s third element.

10. Finally, the State proved that public policy favors the Court prohibiting Defendants from engaging in mining and processing activities at the site. The Legislature is the primary source of public policy and has authorized the Arizona Attorney General to obtain injunctive relief in cases of this type. *See* A.R.S. § 13-2917(C). Where entities inflict public nuisances on their neighbors, the Attorney General is entitled to seek and obtain an injunction ending the nuisance. *Id.*

11. Plaintiff is entitled to a preliminary injunction, requiring Defendants to cease all mining and processing activities at the Mine;

THEREFORE, IT IS HEREBY ORDERED, GRANTING the Motion for Order of Preliminary Injunction this _____ day of _____, 2023;

IT IS FURTHER ORDERED that Defendants shall:

Cease all mining and processing activities at the Yavapai County Parcel Numbers 306-44-031A, 306-44-031B, 306-44-031C, 306-44-031D, and 306-44-031E (the “Mine”) until such time as this Court enters a final disposition on the State’s Complaint.

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“Mining and processing activities” includes but is not limited to drilling, blasting, excavation, mineral extraction, crushing and screening, construction or modification or usage of stockpiles, or the transportation of soil, dirt, tailings, process water, or rock, to or from the Mine.

This preliminary injunction is binding upon the Defendants and their agents, servants, employees, attorneys, and all persons in active concert of participation with Defendants who receive actual notice of this Order regardless of the manner of such notice.

Judge of the Superior Court

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15 **FOR MARICOPA COUNTY**

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17 MAYES, Attorney General of the State of
18 Arizona,

19 Plaintiff,

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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. _____

**ORDER TO SHOW CAUSE
RE: PETITION FOR ORDER TO
SHOW CAUSE AND MOTION FOR
PRELIMINARY INJUNCTION**

26 This matter comes before the Court on Plaintiff's Petition for Order to Show Cause and Motion for Preliminary Injunction. The Court has received and considered the accompanying Memorandum and Plaintiff's Verified Complaint in this action. Based on the matters presented, and good cause appearing therefore;

