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*Attorneys for Defendant, Fondomonte Arizona, LLC*

**ARIZONA SUPERIOR COURT**

**MARICOPA COUNTY**

STATE OF ARIZONA, *ex rel.* KRISTIN K.  
MAYES, ATTORNEY GENERAL,

Plaintiff,

vs.

FONDOMONTE ARIZONA, LLC, an  
Arizona Limited Liability Company,

Defendant.

Case No.: CV2024-035721

**FONDOMONTE ARIZONA, LLC'S  
ANSWER**

*(Assigned to the Hon.Scott Minder)*

(Tier III)

Defendant Fondomonte Arizona, LLC ("Fondomonte"), for its Answer to the Complaint,  
hereby admits, denies, and alleges as follows:<sup>1</sup>

<sup>1</sup> The State of Arizona inappropriately asserts conclusory factual allegations against Fondomonte in the paragraph preceding the numerical paragraphs of the Complaint in violation of Rule 10(b) of the Arizona Rules of Civil Procedure. Because those allegations are outside the pleading, no response is required. To the extent that those allegations are directed to, and require a response from Fondomonte, those allegations are denied.

1 Fondomonte denies each and every allegation in the Complaint, except those allegations  
2 which are hereinafter specifically admitted, qualified, or otherwise answered.

3 The Complaint fails to plead an applicable discovery tier as defined in Rule 26.2(c)(3) of  
4 the Arizona Rules of Civil Procedure. Fondomonte affirmatively certifies that to the extent Rule  
5 26.2(c)(3) of the Arizona Rules of Civil Procedure applies in this case, this matter falls within  
6 Tier III as described in Rule 26.2(b) of the Arizona Rules of Civil Procedure.

7 **INTRODUCTION**

8 1. Paragraph 1 of the Complaint sets forth factual assertions not directed at  
9 Fondomonte; therefore, no response is required. To the extent a response is required, Fondomonte  
10 denies those allegations.

11 2. Paragraph 2 of the Complaint sets forth factual assertions not directed at  
12 Fondomonte; therefore, no response is required. To the extent a response is required, Fondomonte  
13 denies those allegations.<sup>2</sup>

14 3. Paragraph 3 of the Complaint sets forth factual assertions and legal conclusions for  
15 which no response is required. To the extent a response is required, Fondomonte denies those  
16 allegations.

17 4. Paragraph 4 of the Complaint sets forth factual assertions and legal conclusions for  
18 which no response is required. To the extent a response is required, Fondomonte denies those  
19 allegations.

20 5. Paragraph 5 of the Complaint sets forth factual assertions and legal conclusions for  
21 which no response is required. To the extent a response is required, Fondomonte denies those  
22 allegations.<sup>3</sup>

23 \_\_\_\_\_  
24 <sup>2</sup> In Footnote 1 to Paragraph 2 of the Complaint, the State of Arizona inappropriately asserts  
25 conclusory factual allegations in a footnote outside the numerical paragraphs of the Complaint  
26 in violation of Rule 10(b) of the Arizona Rules of Civil Procedure. Because those allegations are  
outside the pleading, no response is required. To the extent that those allegations are directed to,  
and require a response from Fondomonte, those allegations are denied.

27 <sup>3</sup> In Footnote 2 to Paragraph 5 of the Complaint, the State of Arizona inappropriately asserts  
28 conclusory factual allegations in a footnote outside the numerical paragraphs of the Complaint  
in violation of Rule 10(b) of the Arizona Rules of Civil Procedure. Because those allegations are

6. The allegations contained within Paragraph 6 of the Complaint are denied.

7. Paragraph 7 of the Complaint calls for legal conclusions and sets forth legal standards for which no response is required. To the extent a response is required, Fondomonte denies those allegations.

8. Paragraph 8 of the Complaint calls for legal conclusions and sets forth legal standards for which no response is required. To the extent a response is required, Fondomonte denies those allegations.

9. Paragraph 9 of the Complaint calls for legal conclusions and sets forth legal standards for which no response is required. To the extent a response is required, Fondomonte denies those allegations.<sup>4</sup>

10. Paragraph 10 of the Complaint sets forth factual assertions and legal conclusions not directed at Fondomonte; therefore, no response is required. To the extent a response is required, Fondomonte denies those allegations. Any assertion that Fondomonte should be held responsible for an alleged legislative failure is without legal merit and is expressly denied.

11. The allegations contained within Paragraph 11 of the Complaint are denied.

12. The allegations contained within Paragraph 12 of the Complaint are denied.

13. Paragraph 13 of the Complaint calls for legal conclusions and sets forth legal standards for which no response is required. To the extent a response is required, Fondomonte denies those allegations.

14. Paragraph 14 of the Complaint calls for legal conclusions and sets forth legal standards for which no response is required. To the extent a response is required, Fondomonte denies those allegations.

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outside the pleading, no response is required. To the extent that those allegations are directed to, and require a response from Fondomonte, those allegations are denied.

<sup>4</sup> In Footnote 3 to Paragraph 9 of the Complaint, the State of Arizona inappropriately asserts conclusory factual allegations in a footnote outside the numerical paragraphs of the Complaint in violation of Rule 10(b) of the Arizona Rules of Civil Procedure. Because those allegations are outside the pleading, no response is required. To the extent that those allegations are directed to, and require a response from Fondomonte, those allegations are denied.

1           15.     The allegations contained within Paragraph 15 of the Complaint are denied.

2                               **JURISDICTION AND VENUE**

3           16.     Paragraph 16 of the Complaint calls for legal conclusions and sets forth legal  
4 standards for which no response is required. To the extent a response is required, Fondomonte denies  
5 those allegations.

6           17.     In response to Paragraph 17 of the Complaint, Fondomonte states that it does not  
7 contest jurisdiction at this time.

8           18.     The allegations contained within Paragraph 18 of the Complaint are denied.

9           19.     In response to Paragraph 19 of the Complaint, Fondomonte states that it does not  
10 contest jurisdiction at this time.

11          20.     In response to Paragraph 20 of the Complaint, Fondomonte states that it does not  
12 contest venue at this time.

13                               **PARTIES**

14          21.     Paragraph 21 of the Complaint calls for legal conclusions and sets forth legal  
15 standards for which no response is required. To the extent a response is required, Fondomonte denies  
16 those allegations.

17          22.     In response to Paragraph 22 of the Complaint, Fondomonte admits that it is a  
18 limited liability company incorporated under the laws of the State of Arizona. The remaining  
19 allegations are denied.

20          23.     The allegations contained within Paragraph 23 of the Complaint are denied.

21          24.     The allegations contained within Paragraph 24 of the Complaint are admitted.

22          25.     The allegations contained within Paragraph 25 of the Complaint are admitted.

23                               **ALLEGATIONS**

24          26.     In response to the allegations contained within Paragraph 26 of the Complaint,  
25 Fondomonte admits only that it has operated in the Ranegras Basin since 2014. The remaining  
26 allegations contained within Paragraph 26 of the Complaint are denied.

27          27.     The allegations contained within Paragraph 27 of the Complaint are denied.

28          28.     The allegations contained within Paragraph 28 of the Complaint are denied.

29. The allegations contained within Paragraph 29 of the Complaint are denied.

30. Fondomonte is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 30 of the Complaint and, therefore, denies the same.

31. Fondomonte is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 31 of the Complaint and, therefore, denies the same.<sup>5</sup>

32. Fondomonte is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 32 of the Complaint and, therefore, denies the same.

33. The allegations contained within Paragraph 33 of the Complaint are denied.

34. The allegations contained within Paragraph 34 of the Complaint are denied.

35. The allegations contained within Paragraph 35 of the Complaint are denied.<sup>6</sup>

36. Paragraph 36 of the Complaint sets forth factual assertions and legal conclusions for which no response is required. To the extent a response is required, Fondomonte denies those allegations.

37. Paragraph 37 of the Complaint sets forth factual assertions and legal conclusions for which no response is required. To the extent a response is required, Fondomonte denies those allegations.

38. The allegations contained within Paragraph 38 of the Complaint are denied.

39. Paragraph 39 of the Complaint sets forth factual assertions and legal conclusions for which no response is required. To the extent a response is required, Fondomonte denies those allegations.

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<sup>5</sup> In Footnote 4 to Paragraph 31 of the Complaint, the State of Arizona inappropriately asserts conclusory factual allegations in a footnote outside the numerical paragraphs of the Complaint in violation of Rule 10(b) of the Arizona Rules of Civil Procedure. Because those allegations are outside the pleading, no response is required. To the extent that those allegations are directed to, and require a response from Fondomonte, those allegations are denied.

<sup>6</sup> In Footnote 5 to Paragraph 35 of the Complaint, the State of Arizona inappropriately asserts conclusory factual allegations in a footnote outside the numerical paragraphs of the Complaint in violation of Rule 10(b) of the Arizona Rules of Civil Procedure. Because those allegations are outside the pleading, no response is required. To the extent that those allegations are directed to, and require a response from Fondomonte, those allegations are denied.

40. The allegations contained within Paragraph 40 of the Complaint are denied.

41. Fondomonte is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 41 of the Complaint and, therefore, denies the same.<sup>7</sup>

42. The allegations contained within Paragraph 42 of the Complaint are denied.

43. The allegations contained within Paragraph 43 of the Complaint are denied.

44. The allegations contained within Paragraph 44 of the Complaint are denied.

45. Fondomonte is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 45 of the Complaint and, therefore, denies the same.

46. The allegations contained within Paragraph 46 of the Complaint are denied.

47. The allegations contained within Paragraph 47 of the Complaint are denied.

**COUNT ONE**  
**(Public Nuisance, A.R.S. § 13-2917)**

48. Fondomonte responds to those allegations incorporated by reference in Paragraph 48 of the Complaint as they were answered in the preceding paragraphs of this Answer.

49. Paragraph 49 of the Complaint calls for legal conclusions and sets forth legal standards for which no response is required. To the extent a response is required, Fondomonte denies those allegations.

50. The allegations contained within Paragraph 50 of the Complaint are denied.

51. The allegations contained within Paragraph 51 (including all subparts) of the Complaint are denied.

52. The allegations contained within Paragraph 52 of the Complaint are denied.

53. The allegations contained within Paragraph 53 of the Complaint are denied.

54. The allegations contained within Paragraph 54 of the Complaint are denied.

55. The allegations contained within Paragraph 55 of the Complaint are denied.

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<sup>7</sup> In Footnote 6 to Paragraph 41 of the Complaint, the State of Arizona inappropriately asserts conclusory factual allegations in a footnote outside the numerical paragraphs of the Complaint in violation of Rule 10(b) of the Arizona Rules of Civil Procedure. Because those allegations are outside the pleading, no response is required. To the extent that those allegations are directed to, and require a response from Fondomonte, those allegations are denied.

56. The allegations contained within Paragraph 56 of the Complaint are denied.

57. Fondomonte denies that the State of Arizona is entitled to any of the relief requested in the Prayer for Relief (including all subparts) following Paragraph 56 of the Complaint.

**AFFIRMATIVE DEFENSES**

1. Fondomonte affirmatively alleges that the Complaint, and each claim for relief set forth therein, fails to state a claim upon which relief can be granted.

2. Fondomonte affirmatively alleges that there may be a lack of joinder of one or more indispensable parties who should and must be joined and, without joinder of these proper parties, complete relief cannot be accorded among those already attempted to be made parties to this civil action.

3. Fondomonte affirmatively asserts that Kris Mayes, Attorney General of the State of Arizona, lacks standing to pursue the cause of action asserted in the Complaint.

4. Fondomonte affirmatively asserts that the cause of action asserted in this Complaint cannot be brought against it as a matter of law.

5. Fondomonte affirmatively asserts that the Complaint is barred, in whole or in part, by A.R.S. § 3-112.

6. Fondomonte affirmatively asserts that the Complaint is barred, in whole or in part, by A.R.S. § 45-453.

7. Fondomonte affirmatively asserts that the Complaint is barred, in whole or in part, for lack of legally cognizable damages.

8. Fondomonte affirmatively asserts, preserves, and does not knowingly or intentionally waive, any additional affirmative defenses set forth in Arizona Rules of Civil Procedure 8 or 12, or as recognized in statute or in common law, which discovery may reveal to be applicable, or any other matter constituting an avoidance or affirmative defense.

9. Fondomonte affirmatively alleges that the State of Arizona's injuries and damages, if any, may have been caused or contributed to by the negligence, carelessness, inattention, or otherwise wrongful or negligent acts of State of Arizona or their agents, representatives, or employees, or other persons including firms, corporations or body politics over whom

Fondomonte has no control or right of control; therefore, the State of Arizona's damages should be reduced or eliminated by the State of Arizona's own percentage of negligence and fault or the negligence or fault of a third-party under the doctrine of comparative fault.

10. Fondomonte affirmatively alleges that the State of Arizona's damages, if any, must be reduced by the comparative fault of other persons, including responsible non-parties pursuant to A.R.S. § 12-2501 *et seq.*

11. Fondomonte affirmatively alleges that the acts or omissions, if any, of Fondomonte were not a substantial factor in bringing about the alleged injuries and, therefore, were not a contributing cause thereof, but were superseded by the acts or omissions of others, which were sole or independent, intervening, and proximate causes of any such injuries or damages allegedly sustained.

12. Fondomonte affirmatively alleges that the proximate cause of the events giving rise to this action may have been an alteration or modification of the land at issue, which was not reasonably foreseeable, and was made by a person or entity other than Fondomonte.

13. Fondomonte affirmatively alleges that the State of Arizona failed to mitigate its damages.

14. Fondomonte affirmatively alleges that the State of Arizona's claims are barred by the doctrine of spoliation of evidence.

15. Fondomonte affirmatively asserts that the Complaint is barred, in whole or in part, by the doctrine of unclean hands.

16. Fondomonte affirmatively asserts that the Complaint is barred, in whole or in part, by the State of Arizona's actions, knowledge, acquiescence, or consent.

17. Fondomonte affirmatively asserts that the Complaint is barred, in whole or in part, by the State of Arizona, its representative, or agents' failure to meet a condition precedent.

18. Fondomonte incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise raised, pleaded, or asserted by any other party to this matter whether named now or in the future.

19. Fondomonte affirmatively alleges that, after appropriate discovery, one or more of



the following affirmative defenses may be applicable: lack of formation, lack of consideration, lack of material reliance, novation, lack of privity, abatement, discharge, estoppel, fraud, parole evidence, breach of contract, anticipatory breach, lack of breach, lack of reasonable reliance, unjust enrichment, set off, recoupment, full performance, prevention of performance, no causal nexus, failure to act in a commercially reasonable manner, frustration of purpose, release, *in pari delicto*, illegality, impermissible taking, laches, *res judicata*, impossibility or impracticability, statute of frauds, statute of limitations, waiver, failure to comply with statutory requirements, failure to satisfy condition(s) precedent, and/or bad faith. The extent to which the State of Arizona's claim may be barred by one or more of the foregoing affirmative defenses cannot be adequately determined until Fondomonte has had an opportunity to complete discovery.

20. Fondomonte reserves the right to amend its Answer and plead additional or more specific affirmative defenses as warranted by the facts determined through discovery.

**WHEREFORE**, Defendant, Fondomonte Arizona, LLC having fully answered the Complaint, requests this Court enter judgment in its favor and against the State of Arizona as follows:

- A. That the State of Arizona take nothing by its Complaint;
- B. That the State be ordered to pay Fondomonte Arizona, LLC's costs and attorneys' fees pursuant to A.R.S. § 3-112 and such other Arizona law as may be applicable under the circumstances; and
- C. That Fondomonte Arizona, LLC be awarded all other relief deemed just and reasonable.

**RESPECTFULLY SUBMITTED** this 9th day of April, 2025.

**ROSE LAW GROUP pc**

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**ORIGINAL** of the foregoing e-filed with AZ  
TurboCourt this 9th day of April, 2025.

Clerk of the Court  
MARICOPA COUNTY SUPERIOR COURT

**COPY** of the foregoing electronically  
delivered via the court's electronic e-filing  
method, this same day to:

Honorable Scott Minder  
MARICOPA COUNTY SUPERIOR COURT

**COPY** of the foregoing e-mailed/mailed on  
this same day to:

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By: /s/ Rose Reynolds