1	KRISTIN K. MAYES	
2	ATTORNEY GENERAL (Firm State Bar No. 14000) KRISTIN M. WROBEL (031147) ALEXANDRIA L. GORDON (038644) ASSISTANT ATTORNEYS GENERAL OFFICE OF THE ATTORNEY GENERAL 2005 North Central Avenue Phoenix, AZ 85004-1592 Telephone: (602) 542-8594 Facsimile: (602) 542-4377 Kristin.Wrobel@azag.gov ENVProtect@azag.gov THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA	
3		
4		
5		
6		
7		
8		
9		
10		
11		
12	STATE OF ARIZONA, ex rel. KRISTIN K. MAYES, ATTORNEY GENERAL,	Case No.: To Be Assigned
13	in with Es, it i out the instance,	Cube 11011 To De 11551gilled
14	Plaintiff,	COMPLAINT
	VS.	COMPLAINT
15	FONDOMONTE ARIZONA, LLC, an	(Non-classified Civil)
16	Arizona Limited Liability Company,	(Action for Declaratory Judgment)
17	Defendant.	
18	The State of Arizona ex rel. Kristin K. Mayes (the "State"), Attorney General, brings this	
19	nuisance action to prevent Defendant Fondomonte Arizona, LLC ("Fondomonte") from	
20	continuing to extract vast amounts of groundwater, causing a significant decline in the	
21	groundwater level in the Ranegras Plain Basin (the "Ranegras Basin"). Since 2014, Fondomonto	
22	has pumped massive amounts of groundwater to support its operations, which consist primarily	
23	of growing alfalfa. Fondomonte's groundwater pumping has substantially accelerated the	
24	dewatering of the Ranegras Basin. As groundwater levels have declined, the land has subsided	

threatening the water supply of residents and contributing to the decline in water quality. Fondomonte's actions constitute a public nuisance and must be enjoined.

#### I. <u>INTRODUCTION</u>

- 1. Groundwater is a vital, life-sustaining resource in hot, arid, Arizona. This is especially true in rural areas of the state such as the Ranegras Basin, where the primary water source for residents, businesses, and farms is groundwater extracted through wells.
- 2. The Ranegras Basin is one of seven (7) basins within La Paz County and consists of a single, closed aquifer.<sup>1</sup>
- 3. In La Paz County, some basins permit the transfer of groundwater extracted from their aquifers to areas outside of that basin. These basins are commonly called transfer basins.
- 4. The Ranegras Basin is not a transfer basin. The Ranegras Basin's groundwater is reserved *exclusively* for the community within the Ranegras Basin's use.
- 5. When an aquifer's groundwater outflow exceeds recharge, its groundwater level declines.<sup>2</sup>
- 6. Since Fondomonte began operating within the Ranegras Basin, dewatering of the Ranegras Basin has accelerated at an extraordinary rate, threatening the water supply upon which every resident within the Ranegras Basin relies. The substantial and rapid decline in the Ranegras Basin's groundwater level caused by Fondomonte's massive groundwater extraction has widespread effects and is a public nuisance, harming everyone reliant on the Ranegras Basin for water.
- 7. Nuisance law is a malleable doctrine that for centuries has been adapted to societal changes to protect communities from odors, smoke, pollution, offensive sights and sounds, and a myriad of other harms. Under A.R.S. § 13-2917, a public nuisance is anything that is "injurious

An aquifer is a geological formation that stores groundwater supply.

<sup>&</sup>lt;sup>2</sup> Groundwater in aquifers may be recharged through hydrogeological processes such as percolation of precipitation or surface water infiltration into the subsurface.

to health, indecent, offensive to the senses or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons."

- 8. While the mere threat of harm is sufficient to constitute a nuisance under the flexible nature of public nuisance law, Fondomonte's actions have already inflicted harm on the entire community within the Ranegras Basin, and its ongoing conduct will exacerbate this damage as groundwater levels continue to plummet.
- 9. A defendant can commit a public nuisance without violating any law or regulation. Indeed, public nuisance law often fills the gap when "regulatory and legislative processes are perceived to have failed to address a public health or welfare issue with catastrophic effects."<sup>3</sup>
- 10. This case is the result of a legislative failure to address a water crisis with catastrophic effects on the groundwater level in the Ranegras Basin. The decline in the groundwater level has negatively impacted and will continue to negatively impact the Ranegras Basin's water supply, water quality, and land, leading to substantial adverse effects on the community's health and safety. These catastrophic effects will be felt by the entire community within the Ranegras Basin for generations.
- 11. Fondomonte came to Arizona to extract water at an unreasonable and excessive rate because doing so was banned in its home country another arid desert with limited water. Fondomonte is taking advantage of Arizona's failure to protect its precious groundwater resource. Despite this failure, Fondomonte is not permitted to cause a public nuisance that injures the health and interferes with the entire community's comfortable enjoyment of life or property on the Ranegras Basin.

<sup>&</sup>lt;sup>3</sup> Leslie Kendrick, *The Perils and Promise of Public Nuisance*, 132 YALE L.J. 702, 709 (2023).

- 12. Without water, many within the Ranegras Basin community will be forced to abandon their land and homes. Without access to safe, quality water, the health of everyone within the community will be placed in grave danger.
- 13. The State brings this civil action under A.R.S. § 13-2917, against Fondomonte to abate, enjoin, and/or prevent the public nuisance caused by Fondomonte's excessive pumping.
- 14. The State seeks injunctive relief and appropriate monetary fines and fees pursuant to A.R.S. § 13-2917.
- 15. The public nuisance caused by Fondomonte's conduct will continue to harm the entire community within the Ranegras Basin until it is addressed.

### II. <u>JURISDICTION AND VENUE</u>

- 16. The State brings this action pursuant to A.R.S. § 13-2917, to obtain injunctive relief to enjoin and prevent the unlawful acts and practices alleged in this Complaint, and to obtain other relief, including but not limited to, the establishment of an abatement fund.
  - 17. This Court has subject matter jurisdiction.
- 18. As set forth herein, Fondomonte undertook acts, practices, and conduct giving rise to this action in the State of Arizona.
- 19. The Court's exercise of personal jurisdiction over Fondomonte is consistent with due process.
  - 20. Venue is proper in this Court pursuant to A.R.S. § 12-401(17).

# III. <u>PARTIES</u>

- 21. Plaintiff is the State of Arizona, *ex rel*. Kristin K. Mayes, the Attorney General of Arizona, who is authorized to prosecute this action pursuant to A.R.S. § 13-2917(C).
- 22. Fondomonte is a limited liability company incorporated in Arizona with its known place of business at 7144 E Stetson Dr. Ste. 300, Scottsdale, AZ 85251.

- 23. Upon information and belief, Fondomonte is a subsidiary of Almarai Company, a Saudi Joint Stock Company, located in Riyadh, Kingdom of Saudi Arabia.
  - 24. Fondomonte conducts operations at 44376 Vicksburg Road, Salome, AZ 85348.
- 25. Fondomonte is registered to conduct business within the State of Arizona and maintains an agent for service of process: Rose Law Group, PC, 7144 E Stetson Dr. Ste. 300, Scottsdale, AZ 85251.

#### IV. <u>ALLEGATIONS</u>

- 26. Fondomonte has continuously operated in the Ranegras Basin since 2014. During this period, Fondomonte has massively increased the amount of alfalfa grown in the Ranegras Basin.
- 27. Based on information and belief, Fondomonte currently owns and/or operates at least 36 wells in the Ranegras Basin.
- 28. The wells owned and/or operated by Fondomonte in the Ranegras Basin are equipped with pumps capable of pumping up to 4,000 gallons of water per minute, per well.
- 29. Since 2014, the groundwater elevation in wells throughout the Ranegras Basin have rapidly declined.
- 30. Based on information and belief, a well less than one (1) mile to the east of Fondomonte's land went dry approximately five (5) years ago.
- 31. Approximately 1.8 miles away from Fondomonte, the well for the Friendship Baptist Church<sup>4</sup> went dry in late 2017.
- 32. Community members from across the Ranegras Basin have expressed concern that they will lose access to water due to Fondomonte's excessive pumping.

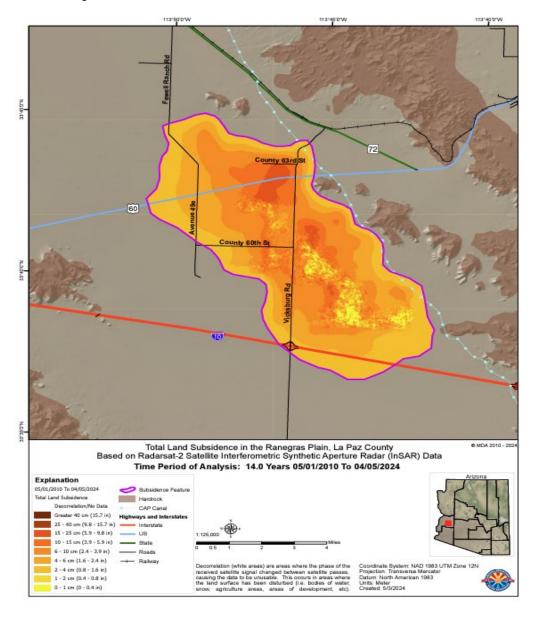
<sup>&</sup>lt;sup>4</sup> 42951 Vicksburg Rd., Salome, AZ 85328

- 33. By pumping enormous amounts of water out of the ground, Fondomonte has caused the Ranegras Basin's groundwater level to decline, threatening the water supply of the people, neighborhoods, and communities within the Ranegras Basin. Lack of access to water has a substantial adverse effect on public health and safety of the community within the Ranegras Basin.
- 34. Fondomonte's extraction of enormous amounts of water is likely to cause, or has already caused, a deterioration in water quality. Poor water quality has a substantial adverse effect on public health and safety and is injurious to the health of the people, neighborhoods, and communities that rely on groundwater from the Ranegras Basin.
- 35. Groundwater decline caused by Fondomonte's pumping of enormous amounts of water has caused escalating land subsidence in the Ranegras Basin sinking the land beneath the Ranegras Basin's community and threatening sediment buildup and damage to infrastructure, appliances, well pumps, pipes, and water extraction equipment.<sup>5</sup>
- 36. Land subsidence occurs when subsurface soil and rock layers compact due to the removal of groundwater that had helped support the ground surface above.
- 37. Land subsidence irreversibly lowers the ground surface elevation and, in some systems, triggers permanent destruction of aquifer water storage capacity.
- 38. Land subsidence and any accompanying damage caused by Fondomonte's pumping of tremendous amounts of water constitutes a public nuisance and presents a substantial adverse effect on public health and safety.

<sup>&</sup>lt;sup>5</sup> This is not an exhaustive list of damage that can be caused by the nuisance created by Fondomonte's conduct.

39. The Arizona Department of Water Resources has documented as much as 9.8

inches of subsidence in the Ranegras Basin since 2010.



40. Fondomonte's pumping of substantial amounts of water has caused land subsidence that is permanent.

- 41. Alfalfa is one of the most water-intensive crops to grow.<sup>6</sup>
- 42. Fondomonte's operations in the Ranegras Basin consist primarily of growing alfalfa that is exported out of the United States. Since 2014, Fondomonte's alfalfa production within the Ranegras Basin has substantially increased.
- 43. In 2023, Fondomonte was responsible for growing over 85% of the total alfalfa grown in the Ranegras Basin.
- 44. In 2023 alone, Fondomonte used approximately 31,196 acre-feet of groundwater within the Ranegras Basin, constituting over 81% of *all* groundwater extracted in the Ranegras Basin that year.
- 45. A single acre-foot of water can supply water to three single-family homes for an entire year.
- 46. Left unaddressed, Fondomonte's excessive pumping will continue to gravely affect the people, neighborhoods, and communities living on the Ranegras Basin and relying on the Ranegras Basin for water. These consequences include, but are not limited to, substantial adverse effects to public health and safety.
- 47. Recovery from damage caused by Fondomonte's conduct could take centuries and, in some circumstances, the damage is permanent and catastrophic.

## V. <u>CLAIM FOR RELIEF</u>

**COUNT ONE** 

**Public Nuisance** 

A.R.S. § 13-2917

<sup>&</sup>lt;sup>6</sup> See U.S. Dep't Agric., Consumptive Use of Water by Major Crops in the Southwestern United States at 11 (May, 1982), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://cales.arizona.edu/crops/irrigation/consumuse/conusefinal.pdf.

- 48. The State realleges and incorporates by reference all preceding paragraphs in this Complaint, as though set forth fully herein.
- 49. Pursuant to A.R.S. § 13-2917(A)(1), "[i]t is a public nuisance . . . for anything [] [t]o be injurious to health, indecent, . . . or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons."
- 50. Fondomonte's conduct alleged in this Complaint is the cause of a public nuisance that is wide-reaching and has a significant and negative impact on the individuals, neighborhoods, and communities with the Ranegras Basin.
- 51. Fondomonte's conduct has contributed to, will continue to contribute to, and may cause individuals, neighborhoods, and communities within the Ranegras Basin to suffer harms including but not limited to:
  - a. Decline in groundwater supply;
  - b. Decline in groundwater elevation in wells;
  - c. Inability to access water;
  - d. Land subsidence;
  - e. Sediment buildup;
  - f. Damage to infrastructure;
  - g. Deterioration in water quality; and
  - h. Injury to health.
- 52. Fondomonte knowingly conducted excessive pumping of groundwater in the Ranegras Basin that is injurious to health such that it interferes with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons.

53.

Ranegras Basin that is indecent such that it interferes with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons.

54. Fondomonte knowingly conducted excessive pumping of groundwater in the

Fondomonte knowingly conducted excessive pumping of groundwater in the

- 54. Fondomonte knowingly conducted excessive pumping of groundwater in the Ranegras Basin that is an unlawful obstruction of the free use of property such that it interferes with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons.
- 55. Fondomonte's conduct alleged in this Complaint creates a substantial adverse effect on public health and safety.
- 56. Already-observed instances of land subsidence, water quality degradation, and a rapidly dropping water table are only the beginning. As Fondomonte continues to extract enormous amounts of groundwater, the very survival of the Ranegras Basin and the community relying on the Ranegras Basin for groundwater is at risk. Without intervention, the Ranegras Basin's community is vulnerable to continued and worsening groundwater shortages, water quality decline, subsiding land, damage to infrastructure, and degraded equipment.

## VI. PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court grant the following relief:

- A. Declare that Fondomonte's conduct in the Ranegras Basin constitutes a public nuisance in violation of A.R.S. § 13-2917.
- B. Enjoin Fondomonte from excessively pumping groundwater in violation of A.R.S.§ 13-2917.
- C. Require Fondomonte to establish an abatement fund.
- D. Award the State its costs and attorneys' fees; and
- E. Grant such further relief as the Court deems just and proper.

**RESPECTFULLY SUBMITTED** this 11<sup>th</sup> day of December, 2024.

KRISTIN K. MAYES

Attorney General

ву:

Kristin Wrobel Alexandria Gordon

Assistant Attorneys General Attorneys for State of Arizona