

1 **THE VALLEY LAW GROUP, PLLC**

2 Bryan James Blehm, #023891  
3 3101 N. Central Avenue, Ste 1470

4 Phoenix, Arizona 85012

5 Phone: (480) 300-6012

6 Fax: (480) 781-0722

7 bryan@thevalleylawgroup.com

8 *Attorneys for Plaintiffs*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
10 **IN AND FOR THE COUNTY OF COCHISE**

11 **TOM CROSBY and PEGGY JUDD, in CASE NO. Cv202200533**  
12 **their official capacities as elected**  
13 **members of the Cochise County Board**  
14 **of Supervisors, DOE X;**

15 **CERTIFICATE OF COMPULSORY**  
16 **ARBITRATION**

17 **Plaintiffs,**

18 **vs.**

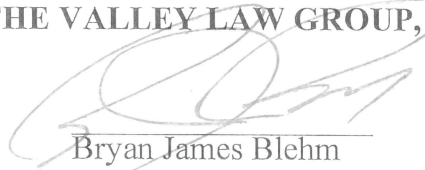
19 **LISA MARRA, Cochise County**  
20 **Elections Director;**

21 **Defendant.**

22 The undersigned certifies that he knows the dollar limits and any other limitations set  
23 forth by the local rules of practice for the Cochise County Superior Court, and further certifies  
24 that this case is not subject to compulsory arbitration, as provided for by Rules 72 through 76  
25 of the Arizona Rules of Civil Procedure.

26 **RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of November 2022.

27 **THE VALLEY LAW GROUP, PLLC**

28   
Bryan James Blehm  
*Attorney for Plaintiffs*

1 Bryan James Blehm (023891)  
2 **The Valley Law Group, PLLC**  
3 3102 N. Central Ave. Ste. 1470  
4 Phoenix, AZ 85012  
5 Phone: (480) 300-6012  
6 Fax: (480) 781-0722  
7 bryan@thevalleylawgroup.com  
8 *Attorney for Plaintiffs*

FILED  
2022 NOV 14 PM 3:00  
AMY J HUNLEY  
CLERK OF SUPERIOR COURT  
BY \_\_\_\_\_  
DEPUTY

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **IN AND FOR THE COUNTY OF COCHISE**

8 **TOM CROSBY and PEGGY JUDD, in Case NO. Cv202200533**  
9 **their official capacities as elected**  
10 **members of the Cochise County Board APPLICATION FOR ORDER TO**  
11 **of Supervisors, DOE X; SHOW CAUSE**

12 **Plaintiffs,**

13 **vs.**

14 **LISA MARRA, Cochise County**  
15 **Elections Director;**

16 **Defendant.**

17 Plaintiffs pursuant to Rule 4(c), Arizona Rules of Procedure for Special Actions, Plaintiffs  
18 hereby apply for the issuance of an order to show cause why the relief sought in Plaintiffs'  
19 **VERIFIED COMPLAINT FOR A SPECIAL ACTION REQUESTING: *Mandamus relief***  
20 ***compelling Defendant to administer the counting of votes for the 2022 general election as***  
21 ***lawfully commanded*** should not be granted, Because Rule 4(c) requires that "the court shall  
22 set a speedy return date" where the show cause procedure is used, plaintiffs move this Court to  
23 issue an order requiring Defendant to immediately show cause why the relief sought in the  
24 Verified Petition should not be granted.

25 **RESPECTFULLY SUBMITTED** this 14th day of November 2022.

26 By: 

27 **THE VALLEY LAW GROUP, PLLC**  
28 Bryan James Blehm  
*Attorney for Plaintiffs*

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NOV 14 2022

Cochise County  
Court of the Superior Court

**THE VALLEY LAW GROUP, PLLC**

Bryan James Blehm, #023891  
3101 N. Central Avenue, Ste 1470  
Phoenix, Arizona 85012  
Phone: (480) 300-6012  
Fax: (480) 781-0722  
[bryan@thevalleylawgroup.com](mailto:bryan@thevalleylawgroup.com)  
*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCHISE**

**CV202200533**

**TOM CROSBY and PEGGY JUDD, Case NO.**

**in their official capacities as elected  
members of the Cochise County Board  
of Supervisors, DOE X;**

**ORDER TO APPEAR AND SHOW  
CAUSE**

**Plaintiffs,**

**vs.**

**LISA MARRA, Cochise County  
Elections Director;**

**Defendant.**

Upon the filing of Plaintiffs' Application for Order to show Cause and **VERIFIED**  
**COMPLAINT FOR A SPECIAL ACTION REQUESTING: Mandamus relief**  
**compelling Defendant to administer the counting of votes for the 2022 general election**  
**as lawfully commanded, and good cause appearing,**

IT IS ORDERED that all parties named in the action appear before the following judge  
at the date, time, and location indicated below:

Judge: \_\_\_\_\_

Courtroom: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

///

1 At the hearing, the Court will determine whether the matter can be resolved by agreement  
2 and, if not, will assign the matter to a judge for further proceedings.

3  
4 Dated: \_\_\_\_\_, 2022

5  
6 Honorable \_\_\_\_\_  
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4 Phoenix, Arizona 85012  
5 Phone: (480) 300-6012  
6 Fax: (480) 781-0722  
7 bryan@thevalleylawgroup.com  
8 *Attorneys for Plaintiffs*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF COCHISE**

11 **TOM CROSBY and PEGGY JUDD, in CASE NO. CV202200533**  
12 **their official capacities as elected**  
13 **members of the Cochise County Board**  
14 **of Supervisors, DOE X;**

15 **PROPOSED ORDER**

16 **Plaintiffs,**

17 **vs.**

18 **LISA MARRA, Cochise County**  
19 **Elections Director;**

20 **Defendant.**

21 Having considered Plaintiff Tom Crosby and Peggy Judd's **VERIFIED**  
22 **COMPLAINT FOR A SPECIAL ACTION REQUESTING: *Mandamus relief***  
23 ***compelling Defendant to administer the counting of votes for the 2022 general election as***  
24 ***lawfully commanded*, and good cause appearing:**

25 **IT IS ORDERED** granting the Motion.

26 Dated: \_\_\_\_\_, 2022

27 \_\_\_\_\_  
28 Honorable

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NOV 14 2022

Cochise County  
Clerk of the Superior Court

1 Bryan James Blehm (023891)  
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4 Phoenix, AZ 85012  
5 Phone: (480) 300-6012  
6 Fax: (480) 781-0722  
7 bryan@thevalleylawgroup.com  
8 *Attorney for Plaintiffs*

FILED  
2022 NOV 14 PM 3:00  
AMY J HUNLEY  
CLERK OF SUPERIOR COURT  
BY \_\_\_\_\_ DEPUTY

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **IN AND FOR THE COUNTY OF COCHISE**

8 **TOM CROSBY and PEGGY JUDD, in**  
9 **their official capacities as elected**  
10 **members of the Cochise County Board**  
11 **of Supervisors, DOE X;**

Case NO. **CV202200533**

**VERIFIED COMPLAINT FOR A**  
**SPECIAL ACTION REQUESTING:**

12 **Plaintiffs,**

13 **vs.**

14 **LISA MARRA, Cochise County**  
15 **Elections Director;**

16 **Defendant.**

*Mandamus relief compelling Defendant*  
*to administer the counting of votes for the*  
*2022 general election as lawfully*  
*commanded.*

**(SHOW CAUSE HEARING**  
**REQUESTED)**

17 Plaintiffs Tom Crosby and Peggy Judd, in their official capacities as elected  
18 members of the Cochise County Board of Supervisors, ("Plaintiff"), hereby submit this  
19 Verified Complaint pursuant to Arizona Rules of Procedure for Special Actions, Rules  
20 1-6:

21 **SUMMARY OF CASE**

22 1. On October 24, 2022, the Cochise County Board of Supervisors passed a  
23 resolution directing the County Recorder or the Elections Director to conduct a hand  
24 count audit of the 2022 general election.

25 2. On November 1, 2022, Plaintiffs in Civil Action Number CV2022-00518  
26 filed suit against the Cochise County Board of Supervisors, the Cochise County  
27 Recorder, and the Elections Director seeking to enjoin them from hand counting all  
ballots.

1           3.     By Order dated November 7, 2022, this Court ruled that a hand count audit  
2 of all ballots was not allowed under Arizona law.

3           4.     The Order does not enjoin the County Recorder or Elections Director from  
4 conducting an expanded hand count of fewer than 100% of election day ballots. Pursuant  
5 to the terms of the Order and Arizona law, the County Recorder randomly selected  
6 sixteen out of seventeen vote centers to conduct an expanded hand count of election day  
7 ballots only.

8           5.     Defendant Marra has refused to comply with the Board's lawful command  
9 to conduct an expanded hand count, to the extent authorized by this Court's Order, by:

- 10           a.     Conducting an expanded hand count herself,  
11           b.     Permitting the Recorder and his personnel from accessing the  
12                 counting center to comply with the Board's lawful command and  
13                 exercise his independent legal authority, or  
14           c.     Turning the ballots over to the County Recorder so that he can  
15                 comply with the Board's lawful command and exercise his  
16                 independent legal authority.

17           6.     A writ of mandamus properly lies to compel such compliance.

18                                 **JURISDICTION**

19           7.     The other portions of this complaint are incorporated herein by reference.

20           8.     This Court has jurisdiction over this action pursuant to Article 6, § 14 of  
21 the Arizona Constitution, A.R.S. §§ 12-2021, 39-121.02, and Arizona Rule of Special  
22 Action Procedure 4.

23           9.     Venue lies in Cochise County pursuant to Arizona Rule of Special Action  
24 Procedure 4(b) and pursuant to A.R.S. § 12-401(16) because the Defendant holds office  
25 in or is employed by that county.

26           ///

1 **PARTIES**

2 10. The other portions of this complaint are incorporated herein by reference.

3 11. Plaintiffs, Tom Crosby and Peggy Judd, in their capacities as members of  
4 Cochise County Board of Supervisors, perform their principal duties and functions for  
5 Cochise County.

6 12. Because not a single business day has elapsed since the necessity of this  
7 suit became apparent, the Cochise County Board of Supervisors has not yet been able to  
8 hold a formal meeting to authorize its participation as a plaintiff and is named here with  
9 the placeholder "Doe X." Plaintiffs understand that as soon as the Board meets and  
10 formally authorizes such participation, the Board will file a request to amend the  
11 caption. This need not delay adjudication of this proceeding.

12 13. Defendant Lisa Marra is the Cochise County Elections Director and has  
13 custody of the 2022 general election ballots. She is sued here in her official capacity.  
14 However, because, "official-capacity suits generally represent only another way of  
15 pleading an action against an entity of which an officer is an agent[,]" *Monell v. Dep't of*  
16 *Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978), and Defendant Marra is an agent of the  
17 Board yet is refusing to follow its lawful commands, she alternatively sued here in her  
18 personal capacity.

19 **FACTUAL AND PROCEDURAL BACKGROUND**

20 14. The other portions of this complaint are incorporated herein by reference.

21 *The Resolution*

22 15. On October 24, 2022, the Cochise County Board of Supervisors issued a  
23 resolution directing the County Recorder or the Elections Director to conduct a hand  
24 count audit of all ballots believing the action was permitted under the Election  
25 Procedures Manual and an Informal Opinion drafted by the Arizona Attorney General's  
26 Office.

16. Defendant Marra, the Elections Director, refused to conduct the hand count audit.

17. Because Defendant Marra refuses to perform her duty as directed by the Board of Supervisors, the County Recorder lawfully assumed the duties of Elections Director for purposes of the hand count audit ordered by the Board of Supervisors.

### *This Court's Ruling*

18. On November 1, 2022, Plaintiffs filed Civil Action Number CV2022-00518 against the Cochise County Board of Supervisors, the Cochise County Recorder, and the Elections Director seeking to compel Defendants to hand audit ballots in conformance with their reading of Arizona law and/or for an injunction to enjoin the County from conducting a hand count audit of all ballots.

19. By Order dated November 7, 2022, the trial court found that the Cochise County Board of Supervisors lacked legal authority to hand count audit 100% of all ballots cast in the 2022 general election.

20. The trial court's November 7, 2022, Order did not find that the Board of Supervisors lacked the authority to direct the Election Director or the County Recorder audit more than the minimum number of ballots allowed by A.R.S. § 16-602(B) so long as they did not hand count 100% of election day ballots so as to allow for random selection.

21. Nor did the Order enjoin the Defendants from conducting a hand count audit in accordance with Arizona Revised Statutes, the Election Procedures Manual, and the courts November 7, 2022, Order.

22. The trial court's November 7, 2022, Order is limited to the issue of whether a hand count audit of 100% of 2022 general election ballots is allowed under Arizona law.

1           23.     Particularly, this Court’s Order commanded that “the Cochise County  
2 Recorder, Cochise County Director of Elections, or any other officer in charge elections  
3 for Cochise County shall conduct any hand count of precinct ballots or hand count audit  
4 of early ballots strictly in accordance with A.R.S. 16-602, as described in this Ruling.”  
5 See Ruling at 11 [CV2022-00518]. As described in the Ruling, A.R.S. 16-602(B)  
6 provides a floor for the number of election day ballots that may be recounted by hand.  
7 See *Id.* at 9 (“Thus, **instead of establishing a minimum number of ballots which can**  
8 **be initially reviewed (as is the case with §16-602(B))** §16-602(F)'s plain language  
9 establishes that the maximum number of early ballots which can be initially audited in  
10 an election is 5,000.”).

11           24.     Nonetheless, though this Court found that that “plain reading of [160-  
12 602(B)] permits elections officials to lawfully choose to hand count a higher number of  
13 ballots simply by selecting a higher percentage of the precincts in that county[,]” *id.* at 8,  
14 it found that this discretion was limited by the requirement that the selection be made  
15 randomly, saying: “However, in addition to the number requirement, there is a  
16 requirement that the ballots be *randomly* selected for a hand count. By common  
17 definition, a selection of precincts is not random if all precincts are chosen.” *Id.*

18                                 *Subsequent Developments*

19           25.     On November 10, 2022, the Cochise County Attorney drafted  
20 correspondence seeking to forestall the Recorder’s efforts to comply with the Board of  
21 Supervisors, and to prevent Defendant Marra from complying, by threatening potential  
22 criminal sanctions if any “expanded hand count” was conducted at all.

23           26.     On November 10, 2022, Plaintiff County Recorder sent correspondence to  
24 the County Attorney making clear that he intended to fully comply with the Court’s  
25 November 7, 2022, Order and explaining that this Court’s Order did not prohibit the  
26 County from counting more election day ballots than it has counted historically.

1       27.     Nonetheless, the County Attorney reiterated the threat and further stated  
2 that any effort to take custody of the ballots would be met with law enforcement  
3 sanctions.

4       28.     As a consequence, Defendant Marra cannot reasonably be expected to  
5 comply with the lawful commands of the Board and Recorder, to the extent allowed by  
6 this Court's Order, absent a writ of mandamus compelling her to do so.

7       29.     This suit, **which is being filed the morning of the first judicial day after**  
8 **the correspondence from the County Attorney described above**, follows.

9                     **FIRST CAUSE OF ACTION FOR MANDAMUS**

10       30.     The other portions of this complaint are incorporated herein by reference.

11                     *The Authority of the Board and Recorder*

12       31.     County Boards of Supervisors derive their powers from Articles 2, and 12  
13 of the Arizona Constitution, and Titles 11 and 13 of the Arizona Revised Statutes.

14       32.     Article II, Section 2 of the Arizona constitution provides: "All political  
15 power is inherent in the people, and governments derive their just powers from the  
16 consent of the governed[.]"

17       33.     In conformity with this principle, in Cochise County, the only "officer[s]  
18 in charge of elections" are the members of the Board and the Recorder. *See* ARS 11-  
19 401(A) (Title: Enumeration of officers). As elected officials, they derive just powers  
20 from the consent of the governed.

21       34.     Defendant Marra, being unelected, has only those powers delegated to her  
22 by the people's elected representatives. The election director is not an officer of Cochise  
23 County and exercises authority delegated by the Recorder and Board only. *Id.*, *see also*  
24 *Falcon v. Maricopa Cty.*, 213 Ariz. 525, 528 (2006) ("The county manager is appointed  
25 by the board and serves at the will of the board. The county manager, accordingly, is  
26  
27



1 plainly not the chief executive officer of the county; rather, the board remains ultimately  
2 responsible for ensuring the proper operation of county government.”).

3 35. The County Board of Supervisors and the Recorder have the power and  
4 duty to direct all counting center operations. ARS 16-602(A).

5 36. The hand count contemplated by ARS 16-602(B) is a counting center  
6 operation. ARS 16-602(B)(1).

7 37. The Recorder has the power and duty to “maintain records that record the  
8 chain of custody for all election equipment and ballots[.]” ARS 16-621(E).

9 38. The County Board of Supervisors has the power to certify the official  
10 canvas. *See* ARS 16-622(A).

11 39. The act of certifying the canvas is not ministerial. Rather, according to the  
12 U.S. Election Assistance Commission:

13 *The purpose of the canvass is to account for every ballot cast and to ensure*  
14 *that each valid vote is included in the official results. For an election*  
15 *official, the canvass means aggregating or confirming every valid ballot*  
16 *cast and counted—absentee, early voting, Election Day, provisional,*  
17 *challenged, and uniformed and overseas citizen. The canvass enables an*  
*election official to resolve discrepancies, correct errors, and take any*  
*remedial actions necessary to ensure completeness and accuracy before*  
*certifying the election.*<sup>1</sup>

18 40. The Board of Supervisors has the power to “[d]o and perform all ... acts  
19 and things necessary to the full discharge of its duties as the legislative authority of the  
20 county government.” ARS 11-251(30).

21 41. In the judgement of the Board, the expanded hand count is “necessary to  
22 ensure completeness and accuracy before certifying the election.”

23 42. Pursuant to their constitutional and statutory authority, the Board voted to,  
24 among other things, direct “the County Recorder or other officer in charge of  
25

26  
27 <sup>1</sup> [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/EMG\\_chapt\\_13\\_august\\_26\\_2010.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/EMG_chapt_13_august_26_2010.pdf)



1 elections[,]” to “take such action necessary to perform” an expanded hand count to the  
2 maximum extent allowed by ARS 16-602(B).

3 43. The Board further commanded that "such audit [is to be] completed prior  
4 to the canvas of the general election Results by the Board of Supervisors.”

5 *A Writ of Mandamus Properly Lies to Compel Defendant Marra to Perform Her Lawful*  
6 *Duties*

7 44. Defendant Marra refuses to perform the duty jointly assigned to her and  
8 the Recorder by the Board’s lawful command to the extent it does not conflict with this  
9 Court’s Order.

10 45. There is no equally plain, adequate, and speedy remedy at law:

- 11 a. Director Marra has begun the hand count process on time, but she  
12 must also finish it on time. Though even an expanded hand count  
13 can be completed in a few days given the limitations of this Court’s  
14 Order, the last day that it can lawfully be completed is November  
15 23<sup>rd</sup>. Arrangements will also need to be made at least a few days in  
16 advance of the beginning of the expanded portion of the count.
- 17 b. Further, the County Attorney has made clear that he will prosecute  
18 any attempt by the Board and Recorder to exercise their lawful  
19 authority to take custody of the ballots to complete an expanded  
20 hand count themselves.

21 46. Therefore, Plaintiff is entitled to a writ of mandamus to compel Defendant  
22 Marra to comply with the Board’s lawful command to the full extent permitted by this  
23 Court’s Order.

24 *In the Alternative, a Writ of Mandamus Properly Lies to Compel Defendant Marra to*  
25 *Provide Access to the Ballots*

1        47. Defendant Marra refuses to surrender the ballots so that the Recorder may  
2 perform the duties jointly assigned to him by the Board's lawful command, and which  
3 the Recorder is independently authorized by law to undertake, to the extent it does not  
4 conflict with this Court's order.

5        48. Defendant Marra also refuses to allow the Recorder to access the location  
6 where the ballots are stored so that the Recorder may perform those duties without the  
7 necessity of relinquishing custody.

8        49. Therefore, in the alternative, a writ of mandamus properly lies to compel  
9 Defendant Marra to cease precluding the Recorder from "the use and enjoyment of a  
10 right or office to which he is entitled and from which he is unlawfully precluded by such  
11 inferior tribunal, corporation, board or person." A.R.S. 12-2021.

12        WHEREFORE, Plaintiff prays:

13        A. That this Court order Defendant Marra to speedily appear and show cause  
14 why the requested relief should not be granted.

15        B. That this Court enter a writ of mandamus compelling Defendant Marra to  
16 conduct an expanded hand count of election day ballots cast in sixteen out  
17 of seventeen of the County's vote centers, as chosen by the Recorder by  
18 random selection, or otherwise conduct an expanded hand count to the  
19 maximum extent permitted by this Court's Order.

20        C. Alternatively, that this Court enter a writ of mandamus compelling  
21 Defendant Marra to relinquish custody of the ballots to the Recorder so  
22 that he may conduct an expanded hand count of election day ballots as  
23 described above.

24        D. Alternatively, that this Court enter a writ of mandamus compelling  
25 Defendant Marra to allow the Recorder, and his personnel, access to the  
26 counting center where the ballots are held and processed, and from which  
27

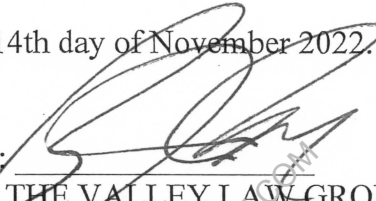
1 she is unlawfully precluding him despite his authority over the operations  
2 therein, so that he may conduct an expanded hand count as described  
3 above.

4 E. That this Court award the Recorder his taxable costs of suit.

5 F. That this Court award the Recorder his reasonable attorney's fees to the  
6 extent authorized by law.

7 G. For such other relief as is just and proper.

8 **RESPECTFULLY SUBMITTED** this 14th day of November 2022.

9  
10 By: 

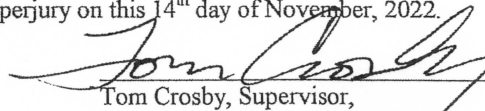
11 THE VALLEY LAW GROUP, PLLC  
12 Bryan James Blehm  
13 *Attorney for Plaintiffs*  
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**VERIFICATION**

I, **TOM CROSBY**, depose and say I have read the foregoing **VERIFIED COMPLAINT FOR A SPECIAL ACTION REQUESTING** and know the contents thereof by personal knowledge. I know the allegations of the **VERIFIED COMPLAINT FOR A SPECIAL ACTION REQUESTING** to be true, except the matters therein on information and belief, which I believe to be true.

Signed under penalty of perjury on this 14<sup>th</sup> day of November, 2022.

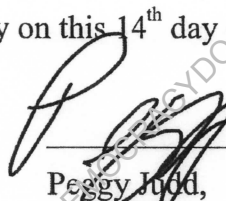
  
Tom Crosby, Supervisor,  
Cochise County Board of Supervisors

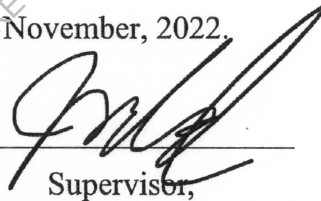
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## VERIFICATION

I, **PEGGY JUDD**, depose and say I have read the foregoing **VERIFIED COMPLAINT FOR A SPECIAL ACTION REQUESTING** and know the contents thereof by personal knowledge. I know the allegations of the **VERIFIED COMPLAINT FOR A SPECIAL ACTION REQUESTING** to be true, except the matters therein on information and belief, which I believe to be true.

Signed under penalty of perjury on this 14<sup>th</sup> day of November, 2022.

  
Peggy Judd,  
Cochise County Board of Supervisors

  
Supervisor,  
Cochise County Board of Supervisors