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*Attorneys for Plaintiffs*

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

**IN AND FOR THE COUNTY OF YAVAPAI**

ARIZONA FREE ENTERPRISE CLUB, an Arizona nonprofit corporation; RESTORING INTEGRITY AND TRUST IN ELECTIONS, a Virginia nonprofit corporation; Republican Party of Arizona, LLC, a statewide political party committee; and DWIGHT KADAR, an individual,

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as the Secretary of State of Arizona,

Defendant.

No. S-1300-CV-202300202

**FIRST AMENDED VERIFIED  
SPECIAL ACTION COMPLAINT**

Plaintiffs bring this special action and hereby allege as follows:

**SUMMARY OF THE CASE**

1. Qualified voters casting early ballots in an Arizona election must execute an affidavit on the envelope in which the early ballot is returned. Under the governing statute, if the signature on the envelope is “inconsistent with the signature of the elector on the elector’s *registration record*,” the county recorder must contact the voter and attempt to

1 ascertain whether the voter, in fact, personally completed and signed the early ballot  
2 affidavit. The early ballot cannot be tabulated unless and until the voter timely “confirm[s]  
3 the inconsistent signature.” A.R.S. § 16-550(A) (emphasis added).

4 2. The signature presented on an early ballot affidavit is the fulcrum on which  
5 the integrity of that ballot pivots; it is the only means by which the county recorder can  
6 verify that a person casting an early ballot by mail is, in fact, a duly qualified elector. And  
7 given the centrality of early ballots to elections in this state, signature verification is also  
8 foundational to the overall integrity of Arizona’s elections.

9 3. Contrary to the unambiguous statutory directive of A.R.S. § 16-550(A), the  
10 Secretary of State has instructed county recorders to validate early ballot affidavits if the  
11 signature is deemed to match *any* signature in *any* election-related document available to  
12 the county recorder. *See* Ariz. Sec’y of State, ELECTIONS PROCEDURES MANUAL (rev. Dec.  
13 2019) [hereafter, “EPM”] at 68, available at  
14 [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APP](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)  
15 [ROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf). Certain of these materials, and particularly early ballot envelopes submitted  
16 in prior elections, however, are not “registration records,” and hence are not a lawful  
17 comparative reference for conducting signature validation.

18 4. By issuing instructions that nullify or amend an express statutory provision  
19 through a subsidiary regulation in the EPM, the Secretary has exceeded his lawful  
20 jurisdiction to prescribe procedures for early voting pursuant to A.R.S. § 16-452 and other  
21 applicable law.

22 5. Plaintiffs lack an equally plain, speedy and adequate remedy at law to compel  
23 the Secretary to carry out his nondiscretionary legal duties in a manner consistent with  
24 controlling statutory law. Special action relief thus is necessary to ensure that the signature  
25 validation protocols prescribed by the EPM align with, and do not exceed, the plain terms  
26 of A.R.S. § 16-550(A). *See* Ariz. R. Spec. Action P. 3(b).

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**JURISDICTION**

6. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the Arizona Constitution, A.R.S. §§ 12-1831, 12-2021, and Arizona Rule of Special Action Procedure 4.

7. Venue lies in Yavapai County pursuant to Arizona Rule of Special Action Procedure 4(b) because Plaintiff Dwight Kadar resides in Yavapai County.

**PARTIES**

8. Plaintiff Arizona Free Enterprise Club is an Arizona nonprofit social welfare corporation that is organized and operated pursuant to section 501(c)(4) of the Internal Revenue Code. Its mission is to advance a pro-growth, limited government agenda in Arizona that includes enhancing and safeguarding election security.

9. Plaintiff Restoring Integrity and Trust in Elections is a Virginia nonprofit social welfare corporation that is organized and operated pursuant to section 501(c)(4) of the Internal Revenue Code. Its mission is to protect the rule of law in the qualifications for, process and administration of, and tabulation of voting in the United States.

10. Plaintiff Republican Party of Arizona, LLC is a statewide political party committee; an affiliate of the Republican National Committee; and the organizing body of Arizona electors who are registered members of the Republican Party, the largest political party in Arizona. Its purposes include protecting the procedural integrity of Arizona elections.

11. Plaintiff Dwight Kadar is a citizen of the United States of America, and a resident and qualified elector of Yavapai County and the State of Arizona.

12. Defendant Adrian Fontes is the Secretary of State of Arizona and is named in this action in his official capacity only. The Secretary of State is responsible for promulgating an elections procedures manual, which, upon approval by the Governor and the Attorney General, has the force of law. *See* A.R.S. § 16-452.

1 GENERAL ALLEGATIONS

2 13. “Arizona law generally makes it very easy to vote.” *Brnovich v. Democratic*  
3 *Nat’l. Comm.*, 141 S. Ct. 2321, 2330 (2021). The overwhelming majority of qualified  
4 electors who participate in Arizona elections utilize the State’s permissive early voting  
5 regime, which allows eligible voters to cast a ballot either in person or by mail during the  
6 27-day period preceding an election. *See* A.R.S. § 16-542(C).

7 14. Most early ballots in Arizona elections are cast by mail. A completed early  
8 ballot must be submitted in a sealed envelope. The exterior of the envelope contains a pre-  
9 drafted affidavit form that declares that the individual casting the early ballot has registered  
10 to vote in the relevant county, has not voted and will not vote in any other jurisdiction,  
11 understands that multiple voting is a felony offense, and personally voted the enclosed  
12 ballot and signed the affidavit. *See* A.R.S. § 16-547(A). In signing his name, the individual  
13 attests to the truth of these statements under penalty of perjury.

14 15. The affidavit signature presented on the exterior of the envelope  
15 accompanying an early ballot submitted by mail or in a designated drop box is the sole item  
16 of information available for the county recorder to use to perform her duty to corroborate  
17 that the person submitting the ballot is the same qualified elector appearing on the county’s  
18 voter rolls. Voters are not required to provide documentary proof of identity or any  
19 additional personal information—such as a date of birth or Social Security number—that  
20 would enable the county recorder to verify a congruity of identity.

21 16. Upon receiving an early ballot, the county recorder (or his or her staff) is  
22 required by law to “compare the signatures thereon with the signature of the elector on the  
23 elector’s registration record.” A.R.S. § 16-550(A). If the signatures “correspond,” the  
24 ballot is forwarded for further processing and eventual tabulation. *Id.* If the signatures are  
25 “inconsistent,” the county recorder’s office must attempt to contact the voter, advise him or  
26 her of the inconsistent signature, and “allow the voter to correct or the county to confirm  
27 the inconsistent signature.” *Id.*



**Definition of a “Registration Record”**

17. Arizona law does not explicitly define the term “registration record.” But it is most naturally understood to be a document upon which an individual furnishes information required by federal and Arizona law to effectuate or amend her voter registration. The document includes a signed certification attesting to the accuracy of the information provided.

18. Individuals wishing to register to vote or to amend an existing registration may submit either a “federal form” formulated by the U.S. Election Assistance Commission or a “state form” prescribed by Arizona law.<sup>1</sup>

19. The “federal form” requires the registrant to provide her full name, residential address, date of birth, government-issued ID number (such as a driver’s license number or the last four digits of a Social Security number), political party affiliation information (if applicable), and a signed, sworn attestation that she satisfies all enumerated eligibility prerequisites, including U.S. citizenship. *See* 52 U.S.C. § 20508(b); 11 C.F.R. § 9428.4.

20. The “state form” requires the same information as the “federal form,” as well as fields for the registrant’s telephone number, location of birth, occupation, father’s last name or mother’s maiden name, and check boxes for the registrant to confirm his or her U.S. citizenship, and age. The “state form” also includes statements affirming the registrant’s residency, status of any other existing registration, and absence of any disqualifying felony conviction. Arizona law also requires registrants using the “state form” to supply documentary proof of U.S. citizenship. *See* A.R.S. §§ 16-121.01, 16-152, 16-166(F).

21. A registrant who wishes to update or amend information presented in his or her registration may do so by submitting a new “federal form” or “state form.”

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<sup>1</sup> Additional registration mechanisms are available to eligible individuals who reside abroad or who are deployed members of the United States armed services. *See* 52 U.S.C. § 20301(b); A.R.S. §§ 16-103, 16-543.02(D).

1           22. Eligible individuals may register to vote or update an existing registration  
2 when engaging in transactions with the Arizona Department of Transportation’s Motor  
3 Vehicle Division (“MVD”), such as a driver’s license renewal. Registrants who amend  
4 their existing registration through the MVD must reaffirm their legal eligibility to vote in  
5 federal and/or Arizona elections. *See* 52 U.S.C. § 20504(c)(2); A.R.S. §§ 16-112, 16-  
6 121.01, 16-136. Further, registrants who have changed their residence location within the  
7 same county may provide the updated address information to the county recorder by  
8 disclosing it on an early ballot request form, a response to an Active Early Voting List  
9 notification, or a provisional ballot envelope at a polling location on Election Day. *See*  
10 A.R.S. §§ 16-135(E), 16-542(F), 16-584(C), (D). A registrant’s change of name also may  
11 be submitted on a provisional ballot envelope. *See id.* § 16-137. Each of these alternative  
12 methods contributes to a registrant’s updated registration record.

13           23. A properly executed and submitted registration form, as may be amended and  
14 updated by the registrant from time to time, “constitute[s] an official public *record of the*  
15 *registration* of the elector.” A.R.S. § 16-161 (emphasis added).

16           24. Accordingly, the “record of the registration of the elector—*i.e.*, her  
17 “registration record,” consists of the complete and facially valid federal and state forms  
18 submitted by that individual, and any amendments thereto made by the submission of new  
19 forms, an early ballot request form, a response to an Active Early Voting List notice, or a  
20 provisional ballot envelope.

21                           **EPM Provisions Governing Signature Verification**

22           25. The Secretary of State is required to promulgate an elections procedures  
23 manual that prescribes, *inter alia*, “procedures for early voting and voting” and “producing,  
24 distributing, collecting, counting, tabulating and storing ballots,” as well as procedures. *See*  
25 A.R.S. § 16-452(A). The Attorney General and the Governor each must approve the manual  
26 before its provisions can take effect. *Id.* § 16-452(B).

27           26. It is well established that “an EPM regulation that contradicts statutory  
28 requirements does not have the force of law.” *Leibsohn v. Hobbs*, 254 Ariz. 1, ¶ 22 (2022).

1           27. The most recent EPM approved by all three of the Secretary of State, the  
2 Governor and the Attorney General was published in December 2019.

3           28. The 2019 EPM instructs that, “[i]n addition to the voter registration form, the  
4 county recorder should also consult additional known signatures from other official election  
5 documents in the voter’s registration record, such as signature rosters or early  
6 ballot/[Permanent Early Voting List]<sup>[2]</sup> request forms, in determining whether the signature  
7 on the early ballot affidavit was made by the same person who is registered to vote.” EPM  
8 at p. 68. Upon information and belief, the Secretary interprets this provision as authorizing  
9 county recorders also to use signatures on early ballot envelopes submitted by the putative  
10 voter in prior elections as comparative references when verifying an early ballot affidavit  
11 signature.

12           29. The interpretation of the term “registration record” in the EPM conflicts with  
13 controlling law because it contemplates verifying the identity of a putative early voter  
14 through the use of signatures upon documents—including signature rosters and prior early  
15 ballot affidavits—that are not part of the “registration record.” That is because the  
16 signatures encompassed within the EPM’s errant instruction cannot be used either to  
17 effectuate the registration of an individual or to lawfully amend an existing registration.

18           30. Although any provision of the EPM, like its instruction expanding the types  
19 of signatures against which early ballot affidavit signatures may be compared, that exceeds  
20 or is inconsistent with its statutory predicate is *per se* invalid, the Secretary’s  
21 misconstruction of the term “registration record” is also unreasonable. It increases, in a  
22 non-linear fashion, the risk of erroneous signature verifications.

23           31. The likelihood of a reviewer mistakenly determining that an affidavit  
24 signature corresponds to a signature in the registration record increases with each additional  
25 signature added. This is true even if all added signatures are known with certainty to have  
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27 <sup>2</sup> The Legislature has since supplanted the Permanent Early Voting List with the  
28 Active Early Voting List. *See* A.R.S. § 16-544, as amended by 2021 Ariz. Laws ch. 359, §  
6 (S.B. 1485).

1 come from the registrant. This problem grows even worse, however, when there is some  
 2 chance—even a small chance—that an added signature might not have come from the  
 3 registrant. This is precisely the situation created when past affidavit signatures or signature  
 4 rosters are added to the registration record. When reviewers have determined that an  
 5 affidavit signature, for example, “corresponds” to a signature in the registration record, they  
 6 have made a probabilistic determination that the affiant and the registrant are *likely enough*  
 7 the same person. But there is always a chance that the affiant and the registrant are, in fact,  
 8 different people. In that instance, under the EPM’s interpretation, the registration record is  
 9 degraded not just by the addition of another signature but corrupted by the addition of an  
 10 invalid signature.

11 32. The unreasonably permissive criteria by which correspondence  
 12 determinations are often made exacerbates these risks. Upon information and belief, an  
 13 affidavit signature often will be deemed to “correspond[]” if any portion of it—any loop,  
 14 jot, or tiddle—matches any portion of any signature in the record. That means that an  
 15 invalid affidavit signature would nevertheless be accepted if reviewers determine, for  
 16 example, that it shares a single loop in common with a previously submitted affidavit  
 17 signature that itself may be unreliable. The EPM’s misconstruction of the statutory  
 18 signature matching requirement thus erodes the utility of signature matching as an identity  
 19 verification mechanism. This compounding of error upon error inherent in the Secretary’s  
 20 scheme simply reinforces the conclusion that the EPM’s construction is inconsistent with  
 21 the statute.

22 33. For example, assume that Voter X casts an early ballot by mail for the first  
 23 time in the 2020 general election; the only signature for comparative reference for Voter X  
 24 in the county recorder’s database is the signature presented on his voter registration card.  
 25 The initial signature review by the recorder’s staff determines that the two signatures are  
 26 characterized by inconsistencies in some broad characteristics (*e.g.*, the spacing or slant of  
 27 letters). The signature is elevated for further review by another staff member, who decides  
 28 that, in her subjective judgment, “the differences can be reasonably explained,” and



1 validates the signature. *See* Ariz. Sec’y of State, SIGNATURE VERIFICATION GUIDE (July  
 2 2020) at pp. 2–3. Another individual subsequently casts an early ballot by mail in the 2022  
 3 general election purporting to be Voter X. Upon comparing the signature on the new  
 4 affidavit with that on Voter X’s registration form, the recorder’s office deems the signature  
 5 questionable, but ultimately validates the signature because it is loosely similar to the  
 6 unreliable signature on Voter X’s early ballot affidavit in the 2020 general election.

7 34. In other words, the EPM’s extra-statutory, unreasonable interpretation of a  
 8 “registration record” improperly and unreliably expands the corpus of signatures to which  
 9 an early ballot affidavit signature may be compared. This continuous dilution of the pool  
 10 of signature specimens increases the probability of a false positive—*i.e.*, an erroneous  
 11 determination that an early ballot affidavit signature is valid because it bears a minimally  
 12 sufficient resemblance to the signature on a historical early ballot affidavit, even though it  
 13 is dissimilar to the signature in the voter’s actual registration. That, in turn, degrades the  
 14 integrity of the signature verification protocol specified by the Legislature in A.R.S. § 16-  
 15 550(A).

16  
 17 **COUNT I**

18 **Invalidation of the EPM’s Unlawful Definition of “Registration Record”**  
 19 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-2021, 16-452, 16-550; Ariz. R. Civ. P. 65)**

20 35. The Plaintiffs incorporate by reference the foregoing allegations as if fully set  
 21 forth herein.

22 36. When validating a signature presented on an early ballot affidavit, the county  
 23 recorder must “compare the signature[] presented thereon with the signature of the elector  
 24 on the elector’s registration record.” A.R.S. § 16-550(A).

25 37. A “registration record” consists of documents that, if facially complete and in  
 26 proper form, are legally sufficient to effectuate the registration of an individual to vote or  
 27 to formally amend that individual’s existing voter registration pursuant to applicable federal  
 28 or state law. *See* 52 U.S.C. § 20508(b); 11 C.F.R. § 9428.4; A.R.S. §§ 16-121.01, 16-  
 135(E), 16-136, 16-137, 16-152, 16-542(F), 16-584(C), (D).

1           38. The EPM authorizes county recorders to verify early ballot affidavit  
2 signatures by comparing signature references contained in documents—including without  
3 limitation polling place signature rosters and historical early ballot affidavits—that are not  
4 documents by which an individual may register to vote or amend an existing voter  
5 registration associated with that individual. Such documents accordingly are not  
6 components of the “registration record” as a matter of law.

7           39. An EPM provision that is inconsistent with, or that exceeds the authorizing  
8 scope of, a governing statute is invalid and carries no legal force or effect. *See Leibsohn v.*  
9 *Hobbs*, 254 Ariz. 1, ¶ 22 (2022); *Leach v. Hobbs*, 250 Ariz. 572, 576, ¶ 21 (2021) (“[A]n  
10 EPM regulation that exceeds the scope of its statutory authorization or contravenes an  
11 election statute’s purpose does not have the force of law.”); *McKenna v. Soto*, 250 Ariz.  
12 469, 473, ¶¶ 20–21 (2021).

13           40. The EPM’s authorization of early ballot signature validation using documents  
14 that are not within the putative voter’s “registration record” denotes an act that is in excess  
15 of the Secretary’s legal authority. *See* Ariz. R. Special Action Proc. 3(b).

16           41. In addition, the Secretary has a nondiscretionary legal duty to implement and  
17 effectuate the signature verification process prescribed by A.R.S. § 16-550(A) in a manner  
18 consistent with the statute. *See* Ariz. R. Special Action Proc. 3(a); A.R.S. § 12-2021.

19           42. Each of the Plaintiffs has a beneficial interest in ensuring that the Secretary  
20 of State carry out his nondiscretionary legal duty to implement and act in a manner  
21 consistent with the terms of controlling Arizona statutes. *See* A.R.S. § 12-2021; Ariz. R.  
22 Special Action P. 3; *Ariz. Public Integrity All. v. Fontes*, 250 Ariz. 58, 62, ¶¶ 10–11 (2020).

23           43. In addition, because the Secretary “has acted unlawfully and exceeded his . .  
24 . statutory authority,” the Plaintiffs are entitled to injunctive relief. *Ariz. Public Integrity*  
25 *All.*, 250 Ariz. at 64, ¶ 26.

26           44. The Plaintiffs accordingly are entitled to special action relief and injunctive  
27 remedies providing that the provisions of the EPM that instruct county recorders to validate  
28 early ballot affidavit signatures by reference to documents—including without limitation

1 polling place signature rosters and historical early ballot affidavits—that are not  
2 components of the “registration record” are invalid, *ultra vires*, and unenforceable.

3 **COUNT II**  
4 **Declaratory Relief**  
5 **(A.R.S. §§ 12-1831, *et seq.*, 16-452, 16-550(A))**

6 45. The Plaintiffs incorporate by reference the foregoing allegations as if fully set  
7 forth herein.

8 46. When validating a signature presented on an early ballot affidavit, the county  
9 recorder must “compare the signature[] presented thereon with the signature of the elector  
10 on the elector’s registration record.” A.R.S. § 16-550(A).

11 47. A “registration record” consists of documents that, if facially complete and in  
12 proper form, are legally sufficient to effectuate the registration of an individual to vote or  
13 to formally amend that individual’s existing voter registration pursuant to applicable federal  
14 or state law. *See* 52 U.S.C. § 20508(b); 11 C.F.R. § 9428.4; A.R.S. §§ 16-121.01, 16-  
15 135(E), 16-136, 16-137, 16-152, 16-542(F), 16-584(C), (D).

16 48. The EPM authorizes the county recorders to verify early ballot affidavit  
17 signatures by comparing signature references contained in documents—including without  
18 limitation polling place signature rosters and historical early ballot affidavits—that are not  
19 documents by which an individual may register to vote or amend an existing voter  
20 registration associated with that individual. Such documents accordingly are not within the  
21 putative voter’s “registration record” as a matter of law.

22 49. An EPM provision that is inconsistent with, or that exceeds the authorizing  
23 scope of, a governing statute is invalid and carries no legal force or effect. *See Leibsohn*,  
24 254 Ariz. 1, ¶ 22; *Leach*, 250 Ariz. at 576, ¶ 21; *McKenna*, 250 Ariz. at 473, ¶¶ 20–21.

25 50. The Republican Party of Arizona, LLC (as an organization representing  
26 Arizona electors and candidates who are members of the Republican Party) and the  
27 individual plaintiff (as a resident and qualified elector of Arizona) have an “interest[]” in  
28 the proper and uniform enforcement by the county recorders of statutory strictures

1 governing the verification of early ballot affidavit signatures. A.R.S. § 12-1832; *see also*  
2 *Ariz. Sch. Bds. Ass’n. v. State*, 252 Ariz. 219, 225, ¶ 20 (2022).

3 51. There is a controversy between the parties concerning the lawfulness of the  
4 Secretary’s construction in the EPM of the phrase “registration record” within the meaning  
5 of A.R.S. § 16-550(A), and a judgment of the Court will resolve that controversy.

6 **DEMAND FOR RELIEF**

7 WHEREFORE, the Plaintiffs demand relief in the following forms:

8 A. Special action relief pursuant to A.R.S. § 12-2021, Arizona Rule of  
9 Special Action Procedure 3 or other applicable law providing that the  
10 provisions of the EPM that instruct the county recorders to validate early  
11 ballot affidavit signatures by reference to documents—including without  
12 limitation polling place signature rosters and historical early ballot  
13 affidavits—that are not a “registration record” within the meaning of  
14 A.R.S. § 16-550(A) exceed the Secretary of State’s lawful authority under  
15 A.R.S. § 16-452, and that the Secretary has to that extent failed to carry  
16 out a nondiscretionary duty to implement the EPM in a manner consistent  
17 with A.R.S. § 16-550(A) .

18 B. An injunction pursuant to Ariz. R. Civ. P. 65 or other applicable law  
19 prohibiting the Secretary of State from enforcing or implementing any  
20 provision of the EPM that instructs county recorders to validate early  
21 ballot affidavit signatures by reference to documents—including without  
22 limitation polling place signature rosters and historical early ballot  
23 affidavits—that are not a “registration record” within the meaning of  
24 A.R.S. § 16-550(A).

25 C. A declaration pursuant to A.R.S. §§ 12-1831, 12-1832 that any provision  
26 of the EPM that instructs county recorders to validate early ballot affidavit  
27 signatures by reference to documents—including without limitation  
28 polling place signature rosters and historical early ballot affidavits—that



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are not a “registration record” within the meaning of A.R.S. § 16-550(A)—is inconsistent with A.R.S. § 16-550(A), and hence invalid and unenforceable.

D. An award of reasonable attorneys’ fees and costs pursuant to A.R.S. §§ 12-341, 12-2030, the private attorney general doctrine, and other applicable law.

E. Such other relief as the Court deems necessary, equitable, proper, and just.

DATED this 17th day of April, 2023.

STATECRAFT PLLC

By: /s/ Kory Langhofer  
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**Verification**

I, Scot Mussi, a representative of the Arizona Free Enterprise Club, certify that I have read the foregoing First Amended Verified Special Action Complaint and know the contents thereof by personal knowledge. I know the allegations of the First Amended Verified Special Action Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 10th day of April 2023.

  
\_\_\_\_\_

Scot Mussi

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 17, 2023, I electronically transmitted the attached  
3 document to the Clerk's Office using the TurboCourt System for filing and transmittal of  
4 a Notice of Electronic Filing to the following TurboCourt registrants:

5 Craig A. Morgan  
6 Shayna Stuart  
7 Jake T. Rapp  
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15 *Adrian Fontes*

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