

Christina Sloan (Bar No. 11963)
GRAND COUNTY, UTAH
125 E. Center Street
Moab, Utah 84532
Office: (435) 259-1324
Email: csloan@grandcountyutah.net
Attorney for County Defendants

**IN THE SEVENTH JUDICIAL DISTRICT COURT
GRAND COUNTY, STATE OF UTAH**

BLUERIBBON COALITION, INC., a nonprofit corporation; MOAB SIDE X SIDE ADVENTURES, a Utah limited liability company; HELLMAN'S XTREME 4X4 TOURS, LLC, a Utah limited liability company; GANDM LLC, a Utah limited liability company d/b/a ULTIMATE UTV ADVENTURES; GRAND COMPANY LLC, a Utah limited liability company; TRAPAX, INC., a Utah corporation d/b/a CANYONLANDS BY NIGHT AND BY DAY; OUTLAW JEEP ADVENTURES, LLC, a Utah limited liability company; CLIFFHANGER, INC., a Utah corporation d/b/a CLIFFHANGER JEEP RENTAL; MOAB COWBOY OFF ROAD ADVENTURES, LLC, a Utah limited liability company d/b/a MOAB COWBOY OFF-ROAD; MOAB TOUR COMPANY, a Utah corporation; EPIC 4X4 ADVENTURES, INC., a Utah corporation; F AND L LLC, a Utah limited liability company, d/b/a SLICK ROCK OFF-ROAD RENTALS AND AUTO SPA; SLM CORPORATION, a Utah corporation d/b/a HIGH POINT HUMMER & ATV TOURS AND RENTALS,

Plaintiffs,

**GRAND COUNTY ANSWER TO THE
VERIFIED COMPLAINT**

TIER 3

Civil No.: 220700040

Judge: Don Torgerson

Vs.

GRAND COUNTY;
CHRISTINA SLOAN, in her capacity as
Grand County attorney; CHRIS BAIRD, in
his capacity as Strategic Development
Director; MARY MCGANN, in her capacity
as County Commission member; SARAH
STOCK, in her capacity as County
Commission member; TRISHA HEDIN, in
her capacity as County Commission
member; KEVIN WALKER, in his capacity
as County Commission member; EVAN
CLAPPER, in his capacity as County
Commission member; JACQUES
HADLER, in his capacity as County
Commission member; GABRIEL
WOYTEK, in his capacity as County Clerk;
CITY OF MOAB; CARLY CASTLE, in her
capacity as City Manager; EMILY
NIEHAUS, in her capacity as Mayor;
JOETTE LANGIANESE, in her capacity as
Mayor; RANI DERASARY, in her capacity
as City Council member; KALEN JONES,
in his capacity as City Council member;
TAWNY KNUTESON-BOYD, in her
capacity as City Council member; JASON
TAYLOR, in his capacity as City Council
member; LUKE WOJCIECHOWSKI, in his
capacity as City Council member; and DOE
INDIVIDUALS 1-99, whose names are
currently unknown,

Defendants.

Defendants Grand County, Christina Sloan, Chris Baird, Mary McGann, Sarah Stock, Trisha Hedin, Kevin Walker, Evan Clapper, Jacques Hadler, Gabriel Woytek, and Doe Individuals 1-99 serving or working for Grand County (collectively the “**County Defendants**”) by and through their undersigned counsel, hereby Answers the Complaint filed by the Blue Ribbon Coalition (“**BRC**”) and the ATV business Plaintiffs (“**ATV Business Plaintiffs**”) as follows:

INTRODUCTION

1. This case *is* simple. As noise pollution has increased dramatically in recent years, Grand County has enacted lawful regulations to protect the safety, health, and welfare of County inhabitants and visitors as well as the County’s tourism economy.

Recreation involving all-terrain vehicles (“**ATVs**”) constitutes only 15% of the outdoor recreation tourism sector (and a still smaller percentage of the overall tourism economy).¹ However, the noise emitted by ATVs, in both magnitude (*i.e.* decibels) and frequency, is louder and more impactful than noise created by other outdoor recreational users, which detrimentally affects front-country (aka residential) and backcountry experiences for everyone else. As Dr. Kelly Bricker, Chair of the Department of Parks, Recreation, and Tourism at the University of Utah, said: ATVs are “the top predator in an ecosystem . . . Once you introduce [ATVs] into a landscape, all of the other uses become secondary.”²

2. In 2020, the County received more comments from residents complaining about noise (and ATV noise in particular) than any other issue ever. Complaints included stress related

¹ Utah Department of Natural Resources and Utah Division of Parks and Recreation, *Utah’s Outdoor Recreation Plan - 2019*,

<https://site.utah.gov/stateparks/wp-content/uploads/sites/13/2019/01/UtahsOutdoorRecreationPlanSCORP2019.pdf>.

² Modlin, Daniel, *Utah’s ATV Wars Put Greens and Gas Guzzlers on a Collision Course*, the Daily Beast March 13, 2021, <https://www.thedailybeast.com/utahs-atv-wars-put-greens-and-gas-guzzlers-on-a-collision-course>.

illnesses, high blood pressure, hearing loss, sleep disruption, and lost productivity. Since 2020, the County has received hundreds of additional public comments³ opposing noise pollution (and ATV noise pollution in particular) with additional complaints including feelings of isolation, annoyance, lowered morale; severe emotional trauma; multiple sclerosis; harassment; torture; and murder.⁴

In fact, noise pollution affects Grand County uniquely: this is because 1) hard surfaces such as rocks and canyons reflect noise which increases noise pollution; 2) noise has a larger acoustic impact in canyon country which has lower ambient noise and fewer absorptive landscape features, such as vegetation and trees; 3) visitor populations are large and often far exceed local populations; and 4) many trailheads are accessible only through residential neighborhoods. The County has adopted ordinances and resolutions for the purpose of mitigating the impact of noise pollution in the Moab area, particularly in residential zones.

Despite multiple meetings, efforts, conversations, and letters to attempt to reduce and solve noise pollution issues as a community, Plaintiffs have refused to acknowledge the detrimental health impacts caused by noise pollution, the unique noise impacts suffered by the Moab community due to the surrounding landscape, and the role ATVs play in perpetuating or increasing noise pollution.

RESPONSES TO NUMBERED ALLEGATIONS OF THE VERIFIED COMPLAINT

JURISDICTION, AND VENUE

3. Admit.

4. Admit.

³ Not including thousands of signatures on petitions.

⁴ June 21, 2022 Noise Workshop, <https://www.youtube.com/watch?v=pa44HXIpnxQ&t=2588s>.

PARTIES

5. Admit.

6. Admit.

7. Admit.

8. Admit that GANDM L.L.C. is a Utah limited liability company with its principal place of business in Moab, Utah. Grand County is without knowledge sufficient to admit or deny whether GANDM L.L.C. owns the registered DBA "Ultimate UTV Adventures."

9. Admit.

10. Admit that Trapax, Inc. is a Utah corporation with its principal place of business in Moab, Utah. Grand County is without knowledge sufficient to admit or deny whether Trapax, Inc. owns the registered DBA "Canyonlands by Night and by Day."

11. Deny. Outlaw Jeep Adventures, LLC is a Utah limited liability company, not a corporation, with its principal place of business in Moab, Utah.

12. Admit that Cliffhanger Inc. is a Utah corporation with its principal place of business in Moab, Utah. Grand County is without knowledge sufficient to admit or deny whether Cliffhanger Inc. owns the registered DBA "Cliffhanger Jeep Rental."

13. Deny. Moab Cowboy Off-Road Adventures, LLC is not a Utah limited liability company in good standing in the State of Utah. Grand County is without knowledge sufficient to admit or deny who owns the registered DBA "Moab Cowboy Off-Road."

14. Admit.

15. Admit.

16. Deny to the extent Plaintiffs imply Slick-Rock Off Road is a Grand County business. Slick-Rock Off Road operates out of a retail shop in San Juan County and is not licensed by

Grand County.⁵ Grand County is without knowledge sufficient to admit or deny who owns the registered DBA “Slick Rock Off-Road Rentals & Auto Spa.”

17. Deny. SLM Corporation is a Utah corporation, not a limited liability company, with its principal place of business in Moab, Utah. Grand County is without knowledge sufficient to admit or deny who owns the registered DBA “High Point Hummer & ATV Tours and Rentals.”

18. Admit.

19. Admit in part; deny in part. Christina Sloan is an elected, not appointed, official.

20. Admit.

21. Admit.

22. Admit in part; deny in part. Sarah Stock was appointed to the Grand County Commission to fill a vacancy in an elected office.

23. Admit.

24. Admit.

25. Admit.

26. Admit.

27. Admit in part; deny in part. Gabriel Woytek was appointed as the Grand County Clerk/Auditor to fill a vacancy in an elected office.

28. Admit.

29. Admit.

30. Admit.

31. Admit.

32. Admit.

⁵ <https://www.slickrockoffroadrental.com/>

33. Admit.

34. Admit.

35. Admit.

36. Admit.

37. Deny as to the relevance of naming additional County officials or employees as parties to this Complaint.

GENERAL ALLEGATIONS

1. Grand County is without knowledge sufficient to admit or deny.

2. Admit.

3. Admit.

4. Admit generally, but deny that each of these motor vehicles are distinct vehicle types.

5. Deny. Non-commercial, non-competitive ATV gatherings continue to be held regularly in Grand County and the City of Moab. Special events for other motorized groups are and have continued to be held regularly in Grand County, as regulated by the County and its special event process.

6. Admit.

7. Admit.

8. Admit.

9. Deny. See County Introductory Paragraphs 1 and 2.

10.

a. Admit in part; deny in part. The County enacted the Resolution No. 3245, to impose a moratorium on ATV special events and ATV business licensing, on October 20, 2020; after repealing and re-enacting Title 5 on May 3, 2022 and

overhauling its special event procedure, a long public process, the County rescinded the ATV Moratorium on October 4, 2022;

- b. Admit in part; deny in part. Title 5 (Business Licenses) of Grand County Code has been in effect long before 2019. The County repealed and re-enacted it on April 15, 2021 via Ordinance No. 632 (2021) and again on May 3, 2022 via Ordinance No. 659 (2022).
- c. Admit in part; deny in part. The County repealed and re-enacted Title 11 on April 20, 2021 via Ordinance No. 633 (2021) and again on July 20, 2021 via Ordinance No. 638 (2021).
- d. No response necessary by the County.
- e. No response necessary by the County.

i. ATV Special Events Moratorium

11. Admit.

12. Admit. Note that the ATV Moratorium was rescinded on October 4, 2022 via majority vote of the Grand County Commission at a regular meeting.

13. Deny to the extent Plaintiffs imply the Moratorium is currently in effect. See County Paragraph 10(a).

14. Deny to the extent Plaintiffs imply the Moratorium is currently in effect. Further, it was originally adopted to help mitigate noise pollution. See County Introductory Paragraphs 1 and 2.

15. Deny to the extent Plaintiffs imply the Moratorium is currently in effect.

16. Deny to the extent Plaintiffs imply the Moratorium is currently in effect. See also County Paragraph 10(b), which addresses business licensing.

17. Deny to the extent Plaintiffs imply the Moratorium is currently in effect.

18. Deny to the extent Plaintiffs imply the Moratorium is currently in effect.

19. Deny to the extent Plaintiffs imply the Moratorium is currently in effect. Further, this statement calls for a legal conclusion.

20. Deny to the extent Plaintiffs imply the Moratorium is currently in effect.

21. Deny to the extent Plaintiffs imply the Moratorium is currently in effect. Further, it was originally adopted to help mitigate noise pollution. See County Introductory Paragraphs 1 and 2.

22. Deny to the extent Plaintiffs imply the Moratorium is currently in effect.

ii. Title 11

23. Admit.

24. Deny.

25. Deny. The County hired a lobbyist to advocate for its varied interests with the Utah Legislature.

26. Admit in part; deny in part. The County's process to update its Title 11 Noise Pollution Ordinance was long and thorough and included public hearings and meetings, workshops and meetings with ATV Businesses mediated by USU and the Moab Chamber of Commerce, consultation with a noise expert and motorized groups, such as the Motorized Trail Committee, and testing of numerous vehicles on many days throughout a calendar year.

27. Admit in part; deny in part. After no ATV Businesses or users participated in or provided public comment at the April 6, 2021 public hearing on the proposed updates to Titles 5 and 11 of Grand County Code, the County initiated a workshop with ATV Businesses on April 12, 2021. Thereafter, the Commission passed updates to these Titles on April 15 and 20, 2021, respectively, after receiving approximately 337 comments⁶ in favor of the regulations from local

⁶ Not including 889 signatures from local residents (and 2,887 signatures from visitors) on petitions.

residents and only approximately 4 comments in opposition of the regulations from local residents.

28. Admit in part; deny in part. On April 6, 2021, the County Commission held a public hearing to consider proposed revisions to Title 11.

29. Deny; the articulated justifications relate to noise pollution in the Moab desert, which are grounded in science.

30. Admit in part; deny in part. The recitals were included in the proposed Ordinance, not a Motion.

31. Admit in part; deny in part. The recitals were included in the proposed Ordinance, not a Motion.

32. Admit in part; deny in part. The recitals were included in the proposed Ordinance, not a Motion.

33. Deny.

34. Admit to the extent a response is necessary.

35. Deny. On July 20, 2021, at a regular public meeting, the County Commission amended Section 11.04.010, and its related Ordinance No. 633 (2021), to correct an erroneous reference to the Range and Grazing zone.

36. Admit.

37. Deny to the extent Plaintiffs omit part of the definition. Under Title 11: "Loud Noise" means any Sound or Noise that annoys or disturbs a reasonable person(s) with normal sensitivities or that injures or endangers the comfort, repose, health, hearing, peace or safety of another person(s), including any Sound or Noise that exceeds the "Maximum Sound Pressure Levels, dBA, during Restricted Hours" set forth in Chapter 11.05 when measured at the distances provided therein as measured on a Sound Level Meter." 11.02.010 (I)

38. Admit.

39. Admit in part; deny in part. The noise test known as “SAE J1492” developed by the Society of Automotive Engineers (“SAE”) shall be used to test all other Motor Vehicles with a manufacturer’s gross vehicle weight rating of less than 9,000 pounds. 11.05.010 (Table 1).

40. Admit.

41. Admit in part; deny in part. The recital referenced by Plaintiffs is a nonsensical drafting error. As recitals are non-binding, this error is non-consequential. The SAE tests require stationary vehicles and specific RPMs. During “operation on streets and roads,” the vehicles are not stationary and very likely not at the specified RPMs. So they are not producing any decibels "as measured ... by the SAE J1287 stationary test." In addition, given the extensive testing performed over the prior year, the County adopted Title 11 with the knowledge that most stock models of ATVs can meet the maximum sound pressure levels in Title 11.

The Plaintiffs were also aware that the County’s data proved that most ATV models could meet the County’s maximum sound pressure level. In fact, County Attorney Sloan provided this information to Plaintiff BRC by email dated April 19, 2021:

Since the ATV industry won't release data, the County has spent a lot of time doing its own noise measurements to determine both a legal and reasonable maximum sound pressure level.

Specifically, the County is holding its 3rd noise demo this year this afternoon. We are also relying on data from the County's Motorized Trail Committee, whose members have been taking ATV dbA measurements on a Type II sound meter for a few years now. **Based on all of these noise measurements, the data we have is that all stock machines (plus the Polaris RZR with the twinloop muffler) can meet a 92 dbA standard under the 20" stationary test.** Do you have different evidence?

In addition, **there is no federal regulation of four-wheeled ATVs and the most comprehensive noise study to date, out of CA in 2005, shows that all motorcycles that meet the EPA full acceleration test can meet a 90 dbA standard under the 20" stationary test.**

Further, we are also relying on information from **Polaris** indicating they do not support street-legal regulations anyway as their machines were not designed/engineered to be driven on streets.

Finally, I have also publicly disclosed that the **GCAO/GCSO year 1 soft**

enforcement plan is focused on education and data collection. Accordingly, we will issue warnings only in the first year, except for those "outliers with extreme modifications" as you mention in your letter. Accordingly, the County has also committed to revisiting and possibly revising the dbA levels in a year (and before our Year 2 hard enforcement plan goes into effect) after collecting more data and working with industry on their timeline for exhaust system improvement. (emphasis in original)

42. Deny.

43. Admit.

44. Admit.

45. Deny; Tables 1 and 2, titled "Motor Vehicles," apply to Noise emitted from motor vehicles, including ATVs; Table 3, titled "Land Uses" applies to Noise emitted from land uses.

46. Admit.

47. Deny. Given extensive testing of ATVs since Fall 2020, the County passed Title 11 with the knowledge that most street-legal ATVs can meet the maximum sound pressure levels in Title 11.

48. Admit in part; deny in part. The recitals were included in the proposed Ordinance, not a Motion.

49. Deny.

50. Admit.

51. Admit in part; deny in part. It is illegal to operate an ATV that violates the decibel levels set forth in Tables 1 and 2 of Title 11.

52. Deny.

53. Admit in part; deny in part. Section 11.08.020 prohibits nuisances: "As an additional remedy, the operation or maintenance of any device, instrument, Vehicle or machinery in violation of any provisions of this chapter, or which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or

peace of residents in the area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement as provided by law.”

54. Deny. Under Title 11, it is illegal to cause a nuisance.

55. Admit.

56. Admit.

57. Admit in part; deny in part. The Agenda Summary states, under the fiscal impact section, which is required for all agenda items: “Unknown fiscal impact for enforcement. *If* we increase the Justice Court caseload dramatically, we will need a new Deputy County Attorney in GCAO to handle misdemeanor cases.” (emphasis added)

58. Deny.

iii. Moab Sound Ordinance.

59. - 64. No response necessary by the County.

iv. Title 5.

66. Admit in part; deny in part. The County most recently repealed and re-enacted Title 5 on May 3, 2022 via Ordinance No. 659 (2022).

67. Admit in part; deny in part. On April 6, 2021, the County Commission considered proposed revisions to Title 5, which were further discussed in public meetings on April 12, 13 and 15, 2021.

68. Admit in part; deny in part. The excerpt is from the Agenda Summary for Agenda Item Z at the April 6, 2021 County Commission meeting.

69. Admit in part; deny in part. The excerpt is from the proposed Ordinance presented on April 6, 2021.

70. Deny. 5.02.010 (Purpose) states:

With this Chapter 5.02, the County’s primary purpose is to protect and preserve its

residential areas and Community Zones from avoidable noise impacts caused by street-legal ATVs which create Excessive or Unusual Noise. The County's secondary purpose is to balance the natural quiet of the surrounding desert landscape with its world-class recreation economy that depends on a variety of users and recreational experiences including mountain bikers, motorized Jeep/4x4 users, hikers, equestrians, hunters, boaters, climbers, dirt bikers, motorcyclists, bird watchers, road bikers, and adventure athletes such as base jumpers and slackliners.

71. Admit.

72. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

73. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

74. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

75. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

76. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

77. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

78. Admit; however, the County has initiated a land use code update process to eliminate this cap on July 14, 2022.

79. Deny.

80. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

81. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

82. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

83. Deny; this requirement was removed on May 3, 2022 via Ordinance No. 659 (2022).

84. Deny.

v. Ramifications

85. Deny.

86. Admit. See also County Paragraphs 26 and 27.

87. Deny.

88. Deny. For good or bad, the City and County did not coordinate their noise pollution ordinances or their collection of noise data. And, in fact the City and County ordinances on noise pollution and business licensing are different in material ways.

89. Deny.

90. Deny. In an earlier version of Title 5 (Business Licensing), the County required proof of compliance via testing by the County, at the County's cost. The County held sound testing on multiple days on February 9 and 16, 2022 and March 2, 2022 at the Old Spanish Trail Arena and organized sound testing appointments for each ATV Business Plaintiff. In doing so, the County accommodated the scheduling needs of every single ATV Business Plaintiff. 69 ATVs were tested, which represented like kind machines (per year, make, model, and miles) in each fleet. 68 of 69 ATVs passed the County's noise testing and were issued Certificates of Compliance with Title 11 (Noise Pollution). The one ATV that did not pass, a 2019 Polaris RZR Turbo ATV owned by Ultimate UTV Adventures, was still permitted to be used on trail so long as it was trailered to the trailhead. On information and belief, Ultimate UTV later voluntarily sold that ATV. Noise testing is no longer required in Title 5; see County Paragraph 10(b).

91. Deny. While an earlier version of Title 5 (Business Licensing) required compliance by January 31, 2022, based on the schedules of the Grand County Sheriff's Office, Grand County Code Compliance, and the ATV Business Plaintiffs, the County was unable to complete testing on that date. The week of January 9, 2022, Grand County Compliance Officer Josh Green reached out to the ATV Business Plaintiffs by phone and in person to notify them that testing would be

late and that their business license would be temporarily extended until testing could be completed. On or about January 21, 2022, County Attorney Sloan confirmed the same by email to those ATV Business Plaintiffs that reached out to her. On January 21, 2022, the Grand County Deputy Clerk Janna Kyle notified the ATV Business Plaintiffs that testing would be late and that their business license would be temporarily extended until testing could be completed. Soon thereafter, Mr. Green scheduled the noise testing with each ATV Business Plaintiff for the February and March dates identified in County Paragraph 90.

92. Deny. See County Paragraphs 90 and 91.

93. Deny. The County offered two opportunities for the ATV Business Plaintiffs to test their ATV fleets prior to the official testing event: 1) at the County's voluntary noise testing event at Sand Flats on May 27, 2021. Not a single ATV Business Plaintiff stopped by the event; and 2) at the ATV Business Plaintiff's convenience, Mr. Green offered to do a sample testing upon request. Only one ATV Business Plaintiff, High Point Hummer, requested early testing, which occurred in December 2021 and at which, all of High Point Hummer's ATVs passed noise testing.

94. Grand County is without knowledge sufficient to admit or deny.

95. Deny.

96. Deny.

97. Grand County is without knowledge sufficient to admit or deny.

98. Grand County is without knowledge sufficient to admit or deny.

99. Deny. The ATV Business Plaintiffs could have consulted with their ATV manufacturers to make informed choices. In addition, by August 2021, the County had tested many dozens of ATVs at various times, including during the public voluntary noise testing event at Sand Flats on May 27, 2021, which information was also discussed at numerous public meetings and workshops and with the Plaintiffs directly. Further, the chair of the Grand County

Motorized Trail Committee, Clif Koontz, who is also the Executive Director of the motorized non-profit organization, had tested hundreds of ATVs by August 2021. The ATV Business Plaintiffs could have and should have requested this data from the County or Mr. Koontz if they wanted to determine which makes and models were quietest.

100. Grand County is without knowledge sufficient to admit or deny.

101. Grand County is without knowledge sufficient to admit or deny.

102. Deny. On October 28, 2021, the Grand County Deputy Clerk Janna Kyle mailed courtesy notices to the Plaintiff ATV Businesses headquartered in the City to remind them of the County's reciprocal licensing regulations, which honor a business license issued by the City so long as the business provides a copy of the license to the County and complies with County law.

103. Admit in part; deny in part. On November 30, 2021, Plaintiff High Point asked the County Code Compliance Officer Josh Green for an early sound test of their machines. In response, Grand County Sheriff Deputy (now Sgt) Michael Palmer early tested 6 of High Point's ATVs (different years, makes, and models). All passed noise testing. Grand County has no record of Plaintiff High Point requesting clarification of the Directives except a January 21, 2021 request for a copy of the Title 5 business regulations.

104. Deny. At the time of Plaintiff High Point's request, the only County employees trained in noise testing were Sheriff deputies. Thus, the County organized early testing for High Point with the Grand County Sheriff's Department. Due to the holidays and scheduling issues for all parties, the early noise testing occurred on January 11, 2022, prior to deadline.

105. Deny. The County's testing procedure was reliant on the Grand County Sheriff's Office ("GCSO"). The County was ready to conduct the noise testing in December when Plaintiff ATV Businesses made the point that ATV Businesses were then turning over their 2021 fleets, or parts of the fleet, for the 2022 season, which meant the County would be testing ATVs that would

not necessarily be in the 2022 ATV fleet. The County then delayed the testing while it considered whether a different testing window made more sense. Direction was provided to the Clerk's office to provide notice to the ATV Businesses, but that notice failed to go out due to a miscommunication. On January 21, 2022, Plaintiffs Epic 4x4, Ultimate UTV Adventures, and Moab Tour Company wrote the County concerned that the late testing would affect their business license status. In response, on January 21, 2022, Grand County Chief Deputy Clerk Janna Kyle notified ATV Businesses that the County was extending the deadline for testing and that upon request, the County would issue temporary business licenses to the ATV Businesses pending testing. Similarly, on the same day, County Attorney Sloan emailed with all of the Plaintiff ATV Businesses who had contacted the County as follows:

The County is not canceling any ATV business licenses. We were ready to conduct the noise testing in December to meet the January deadline, and then it came to our attention that ATV Businesses were then turning over their 2021 fleets, or parts of the fleet, for the 2022 season, which means we would be testing ATVs that would not necessarily be in the 2022 ATV fleet - not efficient or sensical.

We've needed time to work with the Sheriff's office, Code Compliance, and Clerk's office to propose a revision to Title 5 to revise the testing window (and related business renewal) to a period of time that works for everyone. In the end, we are merely going to require testing/licensing by the end of February instead of the end of January as currently written.

I understood that County staff was going to relay this information to ATV Businesses and assure them they will get extensions to the end of February. I apologize if you did not get this information. If this email is not sufficient proof of the extension and you need a temporary business license for one month, let us know.

106. Deny. Grand County has no record of a testing request from Plaintiff High Point other than the November 30, 2021 request. See County Paragraph 103.

107. Deny. On January 11, 2022, GCSO Deputy (now Sgt) Michael Palmer performed the testing as part of his official duties. He had completed noise training at that time and was trained on the official parameters of the test, which - as stated clearly in the County's Noise Pollution

Ordinance - is the Society of Automotive Engineers' ("SAE") J1287 testing, developed by the industry. Deputy Palmer performed the early testing for Plaintiff High Point's convenience and did not provide certificates of compliance at that time.

108. Deny. See Paragraph 107. In addition, Plaintiff High Point generously participated in at least two of the County's data collection tests in early 2021 and allowed the County to test their machines. In all instances, the County used the SAE J1287 test, which County staff and electeds discussed with owners and employees of High Point during the data collection testing. In addition, the Chair of the Motorized Trail Committee, Clif Koontz, was present at each of those tests with High Point. Thus, if Plaintiff High Point did not understand the SAE J1287 test or didn't know how to find more information about it, it could have requested information from the Code Compliance Officer, the County Attorney, or Mr. Koontz.

109. Admit in part; deny in part. On February 1, 2022, the Grand County Commission held a regular public meeting. A Title 5 update was included in the Agenda as a possible action item. State law does not require a public hearing on the Title 5 update, and the Grand County Commission provides two opportunities for public comment at 4 and 6 pm at every regular meeting on any topic. In fact, that evening, 7 citizens made public comment on the Title 5 update, which was discussed by the Commission and tabled.

110. Deny.

111. Deny.

112. Admit.

113. Admit.

114. Deny. Utah law does not require that Grand County respond to the Notice.

115. Admit.

FIRST CAUSE OF ACTION

(Gross Negligence - Against Grand County and Grand County Officials and Employees)

116. No response necessary.

117. Deny. The County does not have a special relationship with Plaintiffs that give rise to a specific duty.

118. Deny that the County owes the Plaintiffs a duty of care beyond that owed to all members of the public: to “preserve the health, promote the prosperity, improve the morals, peace, and good order, comfort, and convenience of *all inhabitants*.” Utah Code § 17- 53-223 (emphasis added). See also County Paragraph 119.

119. Deny. The County enacted its policies and laws to further the legitimate governmental interest of protecting its inhabitants and visitors from noise pollution. Chapter 27a of Title 17 of the Utah Code requires the County to provide for the health, safety, and welfare of its residents and to improve the peace and good order, comfort, convenience, and aesthetics of the County, among other duties. Specifically, Utah Code § 17-53-216 permits the County’s legislative body, by ordinance, to provide for the licensing of businesses for the purpose of regulation. Further, as provided in Utah Code § 17-50-302, the County may exercise powers and perform functions that are reasonably related to the “safety, health, morals, and welfare of County inhabitants.” *See also* Utah Code § 17- 53-223. And, as provided in Utah Code § 17-53-216, the County may adopt ordinances which provide for the licensing of businesses defined as “any enterprise carried on for the purpose of gain or economic profit,” within their jurisdictions for the purpose of regulation and includes the power to deny, revoke, or suspend such license.

120. Deny. Data collected at the entrance booth at the Sand Flats Recreation Area (“SFRA”), a recreation area managed by the County and the Bureau of Land Management, which booth is accessed only through East Moab neighborhoods, show that the large majority of ATVs

entering SFRA are owned by the Plaintiff ATV Businesses. In 2022, year to date, data shows that approximately 69% of the ATVs entering SFRA are owned by the Plaintiff ATV Businesses and used for rentals or tours; in 2021, approximately 68% of the ATVs that entered SFRA were owned by the Plaintiff ATV Businesses.⁷ Thus, the County passed the Title 5 regulations as a measure to effectively reduce noise pollution in residential areas created by Plaintiff ATV Businesses. See also County Introductory Paragraphs 1 and 2 and County Paragraphs 27, 29, and 118-125.

121. Deny. The County's policies and laws do not limit ATVs from driving on City streets or County roads.

122. Deny. The County notified the Plaintiff ATV Businesses in writing and at many public meetings that it would implement a soft enforcement plan of its ordinances passed to combat noise pollution for the first year after passage in an effort to continue to work with all parties and collect data. See County Paragraph 41. In fact, to the great frustration of the majority of the community, Grand County has yet to move to a hard enforcement phase - the County has not issued, or even threatened to issue, any violation notices to the Plaintiff ATV Businesses and GCSO has yet to cite a single ATV owner/driver for a violation of local ordinance.

123. Deny. See County Paragraphs 118 and 119.

124. Deny. The County enacted its policies and laws to protect the health, safety, and welfare of all its inhabitants and its visitors. On this point, a Fall 2021 survey conducted by the Utah Office of Tourism and the University of Utah, found positive attitudes toward tourism in many parts of Utah, but not in Moab:

- 59% of Moab area residents reported that quality of life in Moab has declined due to tourism (and only 21% said it had improved);
- 68% of Moab area residents reported that tourism had exceed local capacity;

⁷ Sand Flats Recreation Area Entrance Booth Data, 2021 and 2022.

- 67% of Moab area residents reported that the effects of tourism on the natural environment are negative or very negative;

- 49% of Moab area residents reported that the effects of tourism on human health and safety are negative or very negative (and 18% said it was positive or very positive).⁸

Similarly, in 2021, the County commissioned Love Communication to conduct a survey of 2,600 potential Moab visitors identified as people who have visited a western national park recently. The survey found that respondents placed significantly greater weight on quiet streets and quiet nights than they did ATV driving opportunities. The survey also showed a strong preference for quiet recreation over ATV riding opportunities held in every single subgroup of the respondents. And ATV riding rated very low as a desired vacation activity in comparison to hiking, eating and dining, visiting national parks, wildlife viewing, etc. This preference for quiet spaces and quiet recreation was even more pronounced among desirable visitor demographics (longer stays, higher incomes, higher vacation spends per day).⁹ See also County Introductory Paragraphs 1 and 2 and County Paragraphs 27 and 29.

125. Deny. Grand County has acted at all times to further the legitimate governmental interest of protecting the health, safety, and welfare of its inhabitants and its visitors. And its actions are grounded in science, law and equity.

126. Deny.

127. Deny.

⁸ Ball and Meppen, *Utah Resident Opinions on Tourism*, February 2022, <https://gardner.utah.edu/wp-content/uploads/Utah-Resident-Survey-Statewide-Brief-Feb-2022.pdf?x71849>

⁹ Love Communications, *Audience Segmentation Study Results*, summarized and presented at the January 18, 2022 County Commission meeting: https://www.grandcountyutah.net/AgendaCenter/ViewFile/Agenda/_01182022-1461

SECOND CAUSE OF ACTION

(Gross Negligence - Against the City of Moab and Moab City Officials and Employees)

128 - 139. No response necessary by the County.

THIRD CAUSE OF ACTION

(Alternative Claim: Ordinary Negligence - Against Grand County and Grand County Officials and Employees)

140. No response necessary.

141. No response necessary.

142. Deny. See County Paragraph 117.

143. Deny. See County Paragraphs 118-125.

144. Deny. Grand County enacted its policies and laws to further the legitimate governmental interest of protecting its inhabitants and visitors from noise pollution. See also County Paragraphs 118-125.

145. Deny.

146. Deny.

FOURTH CAUSE OF ACTION

(Alternative Claim: Ordinary Negligence - Against the City of Moab and Moab City Officials and Employees)

147 - 153. No response necessary by the County.

FIFTH CAUSE OF ACTION

(Against All Defendants Intentional Interference with Economic Relations)

154. No response necessary.

155. Deny as to Plaintiff BRC and Slick Rock Off-Road; admit as to other Plaintiff ATV Businesses.

156. Deny to the extent the Plaintiffs claim their interests are absolute.

157. Deny. See County Paragraphs 118-125

158. Deny. See County Paragraphs 118-125.

159. Deny.

160. Deny.

SIXTH CAUSE OF ACTION
(Against All Defendants – Civil Conspiracy)

161. No response necessary.

162. Deny. See County Paragraph 88.

163. Deny. See County Paragraphs 118-125.

164. Deny. See County Paragraphs 118-125.

165. Deny.

166. Deny.

SEVENTH CAUSE OF ACTION

(Against All Defendants – Violation of the First Amendment: Free Speech)

167. No response necessary.

168. Deny to the extent the Plaintiffs claim these rights are absolute.

169. Deny. See County Paragraphs 118-125.

170. Deny. See County Paragraphs 10(b), 118-125.

171. Deny.

172. Deny.

EIGHTH CAUSE OF ACTION

(Against All Defendants – Violation of the First Amendment: Free Association)

173. No response necessary.

174. Deny to the extent the Plaintiffs claim these rights are absolute.

175. Deny. See County Paragraphs 118-125.

176. Deny. See County Paragraphs 10(b), 118-125.

177. Deny. Except for Plaintiff Slickrock Off-Road, which has never operated a legally licensed ATV Business in Grand County, the Plaintiff ATV Businesses have each remained licensed and in good standing with Grand County since they opened for business. See also County Paragraphs 5, 16, and 122.

178. Deny.

NINTH CAUSE OF ACTION
(Against All Defendants – Violation of Due Process)

179. No response necessary.

180. Deny to the extent the Plaintiffs claim these rights are absolute.

181. Deny. See County Paragraphs 118-125 and 177.

182. Deny to the extent that Plaintiffs claim the right to do business in Grand County is absolute.

183. Deny. The fact that 68 of 69 Plaintiff ATVs, representing many dozens more like-kind machines in the Plaintiffs' ATV Fleets, passed the County's noise testing demonstrates alone the reasonability of the County's Noise Pollution Ordinance. See also County Paragraphs 90 and 103.

184. Deny. Grand County has not withheld licenses from the Plaintiffs.

185. Deny.

186. Deny.

TENTH CAUSE OF ACTION
(All Defendants - Right to Employment and the Free Market)

187. No response necessary.

188. Deny to the extent the Plaintiffs claim their interests are absolute.

189. Deny.

190. Deny. See County Paragraphs 118-125.

191. Deny.

ELEVENTH CAUSE OF ACTION
(Declaratory Relief)

192. No response necessary.

193. Deny as to Plaintiff BRC and Slick Rock Off-Road; admit as to other Plaintiff ATV Businesses.

194. Deny. See County Paragraph 121.

195. Deny. See County Introductory Paragraphs 1 and 2 and County Paragraphs 27, 29, 118-125.

196. Deny to the extent the Plaintiffs claim their interests are absolute.

197. Admit.

198. Deny. See also County Paragraph 10(a).

TWELFTH CAUSE OF ACTION
(Attorney Fees)

199. No response necessary.

200. Admit.

201. Deny. See County Introductory Paragraphs 1 and 2 and County Paragraphs 27, 29, 118-125.

202. Deny. See County Introductory Paragraphs 1 and 2 and County Paragraphs 27, 29, 118-125.

203. Deny. See County Introductory Paragraphs 1 and 2 and County Paragraphs 27, 29, 118-125.

204. Deny. See County Introductory Paragraphs 1 and 2 and County Paragraphs 27, 29, 118-125.

205. Deny.

PRAYER FOR RELIEF

Wherefore, Defendants respectfully request this Court to dismiss Plaintiffs' claims, uphold the validity of the County's Ordinances Nos. 638 (2021) and 659 (2022), and for all other relief in favor of Defendants as the court deems just and equitable.

DATED this 17th day of October 2022.

GRAND COUNTY, UTAH

/s/ Christina R. Sloan

Christina R. Sloan
Grand County Attorney

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2022, I efiled the foregoing **GRAND COUNTY ANSWER TO THE VERIFIED COMPLAINT** with the Court and served as follows:

Suzette Rasmussen
Attorney for Plaintiffs
via Efiling

/s/ Cristin Hofhine

Cristin Hofhine