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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 MONICA EISENSTECKEN,) **No. 2:20-CV-02349-TLN-CKD**
16 TAHOE STEWARDS, LLC,) **AMENDED PETITION FOR**
17 TAHOE FOR SAFER TECH, and) **WRIT OF MANDATE, AND**
18 ENVIRONMENTAL HEALTH TRUST) **COMPLAINT FOR**
19 Plaintiffs,) **DECLARATORY RELIEF**

20 vs.)

21 TAHOE REGIONAL PLANNING AGENCY,)
22 JOANNE MARCHETTA, in her official and)
23 individual capacities, MARSHA BERKBIGLER,)
24 in her official and individual capacities,)
25 SUE NOVASEL, in her official and)
26 representative capacities, GUILLIAM NEL,)
27 TAHOE PROSPERITY CENTER, INC.,)
SACRAMENTO-VALLEY LIMITED)

1 PARTNERSHIP dba VERIZON WIRELESS,)
 2 and DOES 1-100)
 3 Defendants.)
 4 _____)

5
6 Plaintiffs, by and through their counsel of record, Mark S. Pollock, allege:

7
8 **JURISDICTION AND VENUE**

9 This action arises under the Compact Clause of the United States Constitution, Article 1,
10 section 10, clause 3; and the [Tahoe Regional Planning \(“TRPA”\) Compact](#), Public Law No. 96-
11 551, 94 Statute 3233 (1980), Cal. Gov. Code §66801, Nev. Rev. Stat. 277.200 (copy of Compact
12 attached as Exhibit A). Jurisdiction of this Court is conferred by 28 U.S.C. §1331 (federal
13 question), 28 U.S.C. §1367(a) (pendent jurisdiction over state claims), and Article VI(j) of the
14 Compact. Declaratory relief is available pursuant to 28 U.S.C. §2201-02 and Rule 57 of the
15 Federal Rules of Civil Procedure.

- 16 1. Venue is proper in this Court pursuant to Article IV(j)(2)(A) and (B) of the Compact,
 17 because the specific action challenged relates to a project area in the City of South Lake
 18 Tahoe, within this Court’s judicial district, and the more general allegations all relate to
 19 the Tahoe Region and the extensive wireless infrastructure proposed to be added or
 20 modified which, all together, constitute one major federal/state action fragmented into
 21 many piecemeal projects, as these terms are defined and interpreted under the National
 22 Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA)
 23 the TRPA and other federal and state statutes.
- 24 2. The Compact is a federal law for the purposes of jurisdiction.
- 25 3. This Court has supplemental jurisdiction for state law claims set forth in this Complaint
 26 pursuant to 28 U.S. C. Sec. 1387.

SUMMARY

1
2 4. The Tahoe Regional Planning Agency (TRPA) is an Interstate Compact established by a
3 special act of Congress in 1980 involving the states of California and Nevada, in close
4 and continuing collaboration with various agencies of the federal government “to ensure
5 an equilibrium between the region’s natural environment and its man-made
6 environment.”

7 5. TRPA is actively engaged in licensing a few telecom companies to blanket the Tahoe
8 Region with Radiofrequency Radiation (RFR) emitting small and large cell towers,
9 without any consideration or assessment of the risks to Tahoe’s unique environment, the
10 increased fire hazard, and the danger from increased and untested RFR exposures to
11 thousands of Tahoe’s residents, especially our most vulnerable communities — children,
12 the elderly, disabled persons, and minorities.

13 6. Plaintiffs contend that the piecemeal approval and implementation of the TRPA’s
14 wireless infrastructure program flagrantly violates the terms of the Compact itself,
15 TRPA’s own Regional Plan, and several relevant federal and state laws, prominently the
16 Administrative Procedure Act (APA), the National Environmental Policy Act (NEPA),
17 the Americans with Disabilities Act (ADA), the Fair Housing Amendments Act (FHAA),
18 the California Environmental Quality Act (CEQA), among many others. The fact that a
19 number of TRPA Governing Board members named in this lawsuit are under a clear
20 conflict of interest as defined in the Compact makes the review of their decisions even
21 more urgent.

22 7. Plaintiffs are requesting the court to issue a series of Declarations, a writ of Mandamus to
23 compel compliance with federal and state established procedures, and to establish a
24 moratorium on the proposed expansions of antennas, as other federal courts have done in
25 the past; in this case halting further piecemeal blanket implementation of cell tower and
26 antenna approvals and installations, until TRPA complies fully with all applicable federal
27 and state laws, and is consistent with the terms of its Compact and Regional Plan.

INTRODUCTION

1
2 8. TRPA has a long and distinguished history of upholding its mandate to protect Tahoe’s
3 incomparable scenic beauty and water quality, which is recognized nationally and
4 internationally as, in the words of Mark Twain, “the fairest picture the whole world
5 affords.” Crucially, however, at the time the Amended Compact was adopted in 1980,
6 few could have foreseen the explosion of wireless infrastructure that has taken place in
7 recent decades.

8 9. In approving the TRPA Compact Congress had the foresight to recognize the
9 environmental fragility of the Tahoe Region, especially in light of the propensity of state
10 and local governments to succumb to powerful industrial interests, as witnessed in earlier
11 environmental disasters in California such as the sacrifice of the Hetch-Hetchy Valley.
12 There are numerous provisions in the Compact that indicate strong and continuing federal
13 stewardship, purpose, and involvement through this unique federal-state hybrid agency,
14 compared with other interstate compacts such as the Delaware River Basin Compact. For
15 example, the TRPA Compact actively involves federal agencies, including the
16 Departments of Defense, Interior, Agriculture, Commerce, Transportation, Health and
17 Human Services, Housing and Urban Development, the U.S. Forest Service, and the
18 Environmental Protection. It makes clear in Article I Section (a) (8) and (9) the
19 continuing responsibilities and interest of the federal government; it explicitly states that
20 TRPA is to consult with the President’s Council on Environmental Quality in
21 determining environmental threshold carrying capacities (Article V Planning, Section (b))
22 in developing TRPA’s Regional Plan; and mandates collaborative planning with the
23 federal government (Article V Planning, Section (i)); it clearly incorporates the basic
24 structure of the National Environmental Policy Act (NEPA) and then specifies
25 coordination with the federal government in the preparation of environmental impact
26 statements (Article VII. (b) and (c)). In Article X the Compact explicitly exempts
27 decisions affecting impacts on the “allocation, distribution, or storage” of interstate

1 waters (Tahoe Lake) which are reserved to the federal government (subsection (d)); it
2 engages the Secretary of Agriculture and other appropriate agencies (Section 2); it
3 includes a non-voting member appointed by the President (Section 3); it limits TRPA
4 authority by additional powers reserved to the U.S. government and Congress (Section
5 4); and most significantly, it clearly states in the Compact that “nothing shall affect” the
6 federal prerogative and powers of the United States over the region and its waters, or
7 rights held by Indian nations. (Section 5). Section 6 stipulates that Congress and the
8 federal government (and presumably the general public) retain the right to receive full
9 disclosure of information pertinent to the public mandate and federal constraints on the
10 TRPA as set forth in the Compact. Finally, the federal government has continued to
11 provide funding to TRPA through various federal programs.

12 10. Unfortunately, while TRPA’s initial institutional blindness to the hazards of pulse-
13 modulated wireless radiation might have been understandable in 1980, its continuing
14 blindness is now inexcusable. TRPA has steadfastly refused even to address the known
15 and potential environmental hazards of wireless facilities, has performed no
16 comprehensive planning, and routinely approves new wireless infrastructure with
17 essentially no environmental review whatsoever, often at the staff level and commonly
18 without notice to adjacent property owners. Multiple studies show that Radiofrequency
19 Radiation (RFR) is harmful to endangered species, birds, insects, riparian vegetation
20 crucial to preserving Tahoe’s famed water clarity, and dozens of other TRPA-adopted
21 thresholds which measure environmental benchmarks and mandated environmental goals.
22 There are over 2,000 peer reviewed studies from around the world on the negative health
23 and environmental impacts of locating cell towers near private residences, workplaces,
24 and especially near schools, hospitals, retirement homes, and other vulnerable
25 communities.

26 11. TRPA actively promotes hazardous wireless infrastructure with no evaluation of the
27 environmental impacts, ignoring requirements of the Compact, NEPA and CEQA. TRPA

1 blatantly supports a pro-telecom lobbying entity, the Tahoe Prosperity Center (“TPC”).
2 Not only does TRPA directly contribute funding to TPC, but its Executive Director,
3 Defendant Joanne Marchetta, and two TRPA Board members, Defendants Marcia
4 Berkbigler and Sue Novasel, as well as a former key TRPA staff member, are also on the
5 Board of TPC. The majority of TPC’s budget goes directly or indirectly to promoting
6 their “Connected Tahoe” agenda - - which is being pushed by the major telecom
7 providers at Tahoe, including Defendant Verizon, AT&T, and others. Plaintiffs contend
8 that the present situation represents a patent and egregious conflict of interest, in direct
9 violation of the terms of the Compact, which should disqualify those involved from
10 making critical decisions relating to the health and security of the Tahoe Region.

11 12. The telecom providers, through the California Public Utilities Commission, and also
12 directly, provide major funding for TPC. The telecom providers are actively pushing an
13 agenda to provide voice and data services wirelessly when most of those services could
14 be provided with little or no environmental damage with safe fiber-optic connections. In
15 plain terms, much of the wireless infrastructure that is currently being aggressively
16 implemented within the Tahoe Region is not needed, especially when an alternative, safe,
17 secure, environmentally protective, energy efficient, and cost effective alternative is
18 immediately available. The Tahoe Region has an opportunity to become a showcase for a
19 proven, innovative, already paid for optical fiber wired infrastructure to the home and
20 office for residents and the millions of visitors to Tahoe each year.

21 13. In what appears to be a classic “bait and switch” scheme, the telecoms had promised
22 fiber-optic infrastructure at Tahoe in exchange for massive subsidies but now push their
23 wireless agenda for greater profits. The telecoms routinely claim that further facilities are
24 justified to meet a “coverage gap” and provide for additional capacity, but they have
25 actually created that “gap” and lack of capacity themselves by failing to provide the
26 promised fiber network.

27

1 14. The present litigation is the culmination after several years of many urgent but fruitless
2 appeals at the local municipal, regional, and federal levels, which have resulted in a
3 voluminous record of scientific studies and legal precedents all pointing to the basic
4 responsibility of the TRPA Board to safeguard the Public Trust envisioned by the Tahoe
5 Compact. All of these urgent appeals, attesting to massive violations of federal and state
6 laws, including the Compact itself, have been either ignored, or arbitrarily and
7 capriciously dismissed. Plaintiffs and innumerable other individuals and groups have
8 strenuously objected to unbridled rollout of wireless facilities to TRPA's Board at nearly
9 every one of their meetings over the better part of a year. Demands were made to
10 schedule a public hearing on this subject, but TRPA refused. With no other outlet for
11 their frustration at being ignored, hundreds of commenters utilized their only opportunity
12 to appear and be heard during the Public Comment period, which for decades had always
13 occurred at the beginning of each month's TRPA Governing Board meeting. TRPA's
14 only response was to move the Public Comment period to the end of the agenda last
15 spring, a patently obvious attempt to avoid having to listen to the public's strong feelings
16 on the subject.

17 15. Only one among many examples of how the rapidly expanding wireless infrastructure is
18 personally and intimately affecting, and potentially destroying the lives of individual
19 residents of the Tahoe Region is the case of Plaintiff Eisenstecken. Plaintiff objects to a
20 proposed 112-foot high Verizon cellular tower proposed to be installed on a parcel
21 directly adjacent hers (cell tower approximately 150 feet from her home). According to
22 TRPA's last two Threshold Evaluation Reports for Scenic Roadway Units, the proposed
23 tower will be located in an area which is categorized by TRPA as in the worst 4% of all
24 areas at Tahoe in terms of vulnerability to scenic quality degradation. (TRPA's most
25 recent Threshold Evaluation Report for 2015, see especially Appendix G, Table 9-4,
26 putting this area at the absolute bottom of the list and characterized as "Considerably
27 Worse Than Target"). TRPA's Compact and Regional Plan require that all

1 environmental impacts, including scenic impacts, be fully mitigated to a less than
2 significant level. At a hearing on September 30, 2020, the TRPA Governing Board once
3 again demonstrated its insensitivity, not only to the impacts of wireless radiation, but to
4 even the cherished scenic vistas lauded by Mark Twain and many generations of visitors
5 to Tahoe since. Almost incomprehensibly, the TRPA Board voted, without any evidence
6 that the additional degradation to scenic quality would be mitigated to a less than
7 significant level, to allow the landowner to cut down 31 trees, averaging 70 feet tall, with
8 several trees much taller. Those 31 trees would have provided at least some visual
9 screening to the proposed 112-foot tower in advance of the hearing on the tower project
10 itself. Although no findings were made by the Board, TRPA’s counsel John Marshall
11 (“Marshall”) averred after the vote that the result of the TRPA Board’s action was to
12 reduce the scenic baseline for the tower project to the condition of the project site with
13 the trees already removed. Such an interpretation would effectively foreclose the options
14 to reduce the scenic impacts of Verizon’s unnecessary but highly profitable 10-story tall
15 eyesore. In addition, and as will be explained below, the proposed tower looming over
16 Mrs. Eisenstecken’s home, and the resulting increased and untested RFR exposures will
17 place her health and wellbeing and that of her two young children in immediate jeopardy.
18 She and her family do not consent to this assault and trespass.

19
20 **PARTIES**

- 21 16. Plaintiff Monica Eisenstecken (“Eisenstecken”) is an individual who lives with her
22 family at 3605 Needle Peak Road in South Lake Tahoe, California. Plaintiff and her
23 family are longstanding residents of Tahoe and are directly and immediately affected by
24 the illegal actions alleged herein. Plaintiff Eisenstecken and other plaintiffs to this action
25 are “aggrieved persons” under Article VI (j)(3) of the Compact.
26 17. Plaintiff Tahoe Stewards, LLC is a California Limited Liability Company which focuses
27 on the threat to Tahoe’s environment from wireless infrastructure. It has generated

1 petitions¹ with 4,000 signatories supporting its positions. Tahoe Stewards is a well-
2 recognized representative of many of those who oppose the adverse impacts of wireless
3 technology, which will directly and immediately affect their personal health and the
4 quality of their lives.

5 18. Plaintiff Tahoe for Safer Tech is an unincorporated membership organization that
6 advocates on behalf of its members for fact-based, scientifically founded, and balanced
7 approaches to providing communication and data services in a way that protects Tahoe's
8 unique environment and the health of its residents, which will directly and immediately
9 affect their personal health and the quality of their lives.

10 19. Environmental Health Trust ("EHT") is a non-profit 501(c)(3) scientific and educational
11 organization whose mission is to safeguard human health and the environment by
12 empowering people with state-of-the-art information and working directly with various
13 constituencies to mitigate health and environmental risks. EHT has no parent corporation,
14 and no publicly-held company has a 10% or greater ownership interest in the
15 organization. The environmental and health issues presented in this case are of direct
16 concern to EHT's basic organizational rationale, core mission and purpose, and if they
17 are not remedied will result in major increased costs to promote awareness of the
18 damages associated with these proposed activities.

19 20. Defendant Tahoe Regional Planning Agency (TRPA) is an entity created by a Bi-State
20 Compact, and is the lead regulator in the Tahoe Region as that term is used in the
21 Compact. The Tahoe Region includes portions of El Dorado County and Placer County
22 on the California side, as well as the City of South Lake Tahoe. It also includes portions
23 of Washoe County, Douglas County and Carson City on the Nevada side. TRPA has
24 adopted environmental threshold carrying capacities, and a Regional Plan and
25

26
27 ¹ See Exhibit B, pg. 103 of the [NEPA filing](#).

1 Ordinances, which dictate that no project may be approved unless it is shown that none of
2 the adopted threshold carrying capacities will be exceeded.

3 21. Defendant Joanne Marchetta (“Marchetta”) is the Executive Director of TRPA.

4 22. Defendants Berkgigler and Novasel are both members of the TRPA Governing Board.

5 23. Defendants Sacramento Valley Limited Partnership dba Verizon Wireless and Does 1-
6 100 are affiliated with Verizon, Inc, and/or the other Defendants, and acting on their
7 behalf and as their agents.

8 24. Defendant Tahoe Prosperity Center, Inc. is a Nevada Corporation, and licensed as a
9 foreign corporation in California.

10 25. Defendant Gilliam Nel is an individual, and the owner of the property of the proposed
11 cell tower, adjacent to that owned by Plaintiff Eisenstecken.

12 26. Doe Defendants 1-100 are sued herein by their fictitious names, as Plaintiffs believe that
13 such Doe Defendants are responsible, in whole or in part, for the incident and damage
14 hereinafter alleged, and the Plaintiffs will amend this Complaint to properly identify such
15 Defendants once their identities become known to Plaintiffs.

16 27. Plaintiff is informed and believes and thereon alleges that each named or Doe Defendant
17 is responsible in some manner for the acts, occurrences and liability hereinafter alleged
18 and referred to.

19 28. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein,
20 each named and/or Doe Defendant was the agent, servant or employee of each and every
21 remaining Defendant, and the acts of each Defendant were within the course and scope of
22 said agency and/or employment.

23 **FACTS COMMON TO ALL CAUSES OF ACTION**

24 29. Defendant TRPA was created and exists as a separate legal entity pursuant to Article
25 III(a) of the Compact. The Compact confers on TRPA powers and responsibilities for
26 land use planning and environmental protection in the Lake Tahoe Region. TRPA’s
27

1 decision-making body is its Governing Board, comprised of a seven-member California
2 delegation, each of whom is appointed by a certain designated state or local governmental
3 body or state official of the State of California; a seven-member Nevada delegation, six
4 of whom are variously appointed by certain local governmental bodies or state officials
5 of the State of Nevada, and one of whom is appointed by the other six appointees; and
6 one non-voting member appointed by the President of the United States (as he does not
7 vote, he is not one of the named Defendants herein).

8 30. The Compact requires TRPA to adopt environmental threshold carrying capacities
9 (“threshold standards” or “thresholds”). A threshold standard is “an environmental
10 standard necessary to maintain a significant scenic, recreational, educational, scientific or
11 natural value of the region or to maintain public health and safety within the region.” (See
12 Compact, Art. II(i).) Such standards shall include, but not be limited to, “standards for air
13 quality, water quality, soil conservation, vegetation preservation and noise.” In order to
14 attain the threshold standards, the Compact requires TRPA to adopt and enforce a
15 Regional Plan and implement ordinances that will achieve and maintain the thresholds.
16 (See Compact, Art. I (b), V(b), V(c).)

17 31. Several provisions of the Compact are of particular importance in ensuring that the
18 thresholds will be achieved and maintained in the regional planning process. First, Article
19 V of the Compact requires that “the regional plan... and all its elements, as implemented
20 through agency ordinances, rules and regulations, achieves and maintains the adopted
21 environmental threshold carrying capacities.” (See Art. V(c).)

22 32. Second, Article V(g) of the Compact requires TRPA to make certain other findings that
23 relate to environmental protection before approving any project or activity that may
24 substantially affect the natural resources of the region, to “insure that the project under
25 review will not adversely affect implementation of the Regional Plan and will not cause
26 the adopted environmental threshold carrying capacities of the region to be exceeded.”
27 TRPA’s Code of Ordinances, at Sections 4.4.1 and 2 goes further, and requires that,

1 “Wherever federal, state, or local air and water quality standards apply for the region, the
2 strictest standards shall be attained, maintained, or exceeded pursuant to Article V(d) of
3 the Tahoe Regional Planning Compact.” And very significantly, TRPA is required to,
4 “Identify the nature, extent, and timing or rate of effects of the project, using applicable
5 measurement standards consistent with the available information...”. (emphasis added)

6 33. The consistency principle is a bedrock of California and Nevada land planning law, as
7 well as in most other States. In the present instance, the actions and omissions of the
8 TRPA are wildly inconsistent with the Compact mandate, and violate the National
9 Environmental Policy Act (NEPA), the California Environmental Policy Act (CEQA),
10 and many other federal and state laws enacted to protect the natural environment and the
11 health and wellbeing of communities.

12 34. In fact, TRPA has not adopted any regulations whatsoever that create standards to
13 mitigate the rapidly increasing ambient levels of pulse modulated wireless radiation from
14 the roll-out of new RFR emitting wireless and other electromagnetic radiation
15 infrastructure on the thresholds, the environment, and TRPA’s ability to ensure that there
16 is no significant effect on the goals and objectives of its Regional Plan. Plaintiffs are
17 informed and believe that TRPA is relying on the telecom industry and FCC standards
18 that cover only thermal, not biological effects, and do not address impacts on the
19 environment whatsoever. These standards are currently being challenged and litigated,
20 and at least one foreign court has deemed the studies produced by the wireless industry
21 dominated International Commission on Non-Ionizing Radiation Protection (ICNIRP) are
22 so biased and conflicted, they are deemed inadmissible.

23 35. Plaintiffs, through their representatives and members, have supplied TRPA with
24 references to countless scientific studies detailing the impacts of RFR on the
25 environment. On February 26, 2020, Plaintiffs supplied the TRPA Legal Committee and
26 the Governing Board with a binder filled with peer-reviewed and respected studies on
27 RFR on the environment, which document numerous adverse impacts. Plaintiffs also

1 provided the report of Dr. Martin Pall, a leading RFR researcher on the impacts at Tahoe
2 which further documents dramatic adverse environmental impacts. Plaintiffs have also
3 supplied additional studies and information to TRPA, which are more than sufficient to
4 raise serious concerns about the impacts of RFR on TRPA's ability to carry out its
5 mandates. TRPA is required to work with "available information" (see Code of
6 Ordinances Section 4.4.2), which plaintiffs have furnished. All of these studies point to
7 the adverse impacts on the environment of the proposed wireless infrastructure and the
8 availability of immediately available, environmentally protective and safe alternatives.
9 TRPA has not adduced any scientifically credible evidence to the contrary.

10 36. Article VII of the Compact requires TRPA to prepare a detailed Environmental Impact
11 Statement ("EIS") before approving or carrying out any project that may have a
12 significant effect on the environment. (See Art. VII(a)(2).) The EIS must include, among
13 other things, "[t]he significant environmental impacts of the proposed project... [a]ny
14 significant adverse environmental effects which cannot be avoided should the project be
15 implemented... [a]lternatives to the proposed project... [and] [m]itigation measures
16 which must be implemented to assure meeting standards of the region." (See Art.
17 VII(a)(2)(A)-(D).) Article VII also requires that, before approving a project, TRPA must
18 find that mitigation measures that avoid or reduce significant adverse environmental
19 impacts to a less significant level have been incorporated into the project, or provide
20 proof that such measures are infeasible. (See Art. VII(d)(1), (2)., and Article 6 of TRPA's
21 Rules of Procedure.))

22 37. Plaintiffs are informed and believe that TRPA has never required a telecom cell tower
23 project applicant to participate in TRPA's environmental impact assessment process, in
24 spite of the fact that the available information is compelling that significant impacts are
25 created by such projects. Most projects are handled at the staff level, and unless a
26 "Special Use Finding" (Code of Ordinances Section 21.2.2) needs to be made, or an
27 exemption for additional height (Code of Ordinances Section 37.6.2), no public hearing is

1 held, and very often, no notice is given to adjoining property owners. TRPA must make a
2 finding of no significant effect under Chapter 3 of its Code of Ordinances and all of the
3 required findings under Article V(g) of the Compact or an EIS must be prepared. This is
4 similar to CEQA and NEPA, where government agencies electing not to proceed with a
5 full EIR/EIS must reach a specific finding of little or no adverse environmental effects, or
6 mitigated effects and publish this determination as a Negative Declaration, or Mitigated
7 Negative Declaration. TRPA has not made this specific finding, which even if made
8 would necessarily be arbitrary and capricious under the present facts, as this phrase is
9 defined under the Administrative Procedure Act of 1946.

10 38. Piecemeal decision making by TRPA. The following is an example of the kind of
11 piecemeal decision making that is being permitted by TRPA without any reference to the
12 Regional Plan or the body of Compact, federal, and state law applicable to it. Such
13 piecemeal decision making enables TRPA to avoid and circumvent its fiduciary
14 responsibilities and effectively undermine the purpose and the intent of its own Regional
15 Plan and these applicable laws, discussed below.

16 39. On or about May, 2019, Verizon Wireless, through its agent, SAC Wireless, (collectively
17 “Verizon”) applied to TRPA for a permit to erect a 112-foot tall monopine cell tower on
18 property owned by Defendant Nel at 1360 Ski Run Blvd. in the City of South Lake Tahoe
19 (“the Verizon tower project”). As alleged above, TRPA has not required the applicant to
20 prepare an EIS or any other evaluation of the impacts of RFR on the environment.
21 Plaintiffs are informed and believe that TRPA’s staff has ignored virtually all important
22 environmental issues. It has only required the applicant to complete a cursory checklist
23 relating to “land coverage” on the project site and the scenic impact of the tower. As to
24 the scenic impact, the applicant was only asked to provide a visual simulation. As of this
25 date, we are informed and believe that the application will be deemed complete and ready
26 for hearing once the applicant provides final land coverage numbers, and the TRPA staff
27 intends to recommend approval.

1 40. Plaintiffs are informed and believe that Defendant Verizon and Defendant Nel have
2 entered into a contract to allow location of the proposed cell tower on the Nel property.
3 Said contract requires both parties to cooperate with each other in the effort to obtain all
4 required permitting for the tower project, and also neither party may act in a way that
5 could be detrimental to the eventual approval of the project.

6 41. Defendant Nel, with full knowledge of the application by Verizon, and of the contract
7 with Verizon, applied for and received a permit from TRPA on July 30, 2020 to cut down
8 31 trees on the project site which average about 70 feet tall. No notice was given to
9 adjoining property owners. The 31 trees would have provided at least some screening of
10 the proposed cell tower as viewed from adjoining roadways and properties, including
11 from the property of Plaintiff Eisenstecken. Moreover, these 31 trees could have afforded
12 some margin of protection against RFR contamination. TRPA's arbitrary act and that of
13 Defendant Nel have destroyed Plaintiff Eisenstecken's scenic view and have reduced the
14 value of her property. These damages are, however, small when compared to the risks to
15 her and her family's health and wellbeing after they are exposed to RFR contamination
16 from the proposed Verizon cell tower. The removal of 31 trees also creates a fire risk for
17 Plaintiff Eisenstecken as described in detail below.

18 42. On or about August 19, 2020, Plaintiff Eisenstecken discovered that the tree removal
19 permit had been issued, and on August 20, 2020, duly filed an appeal from the staff
20 approval, and a request for a stay of the project until the appeal could be heard. Shortly
21 thereafter, TRPA informed Plaintiff Eisenstecken that the requested stay of the project
22 would not be granted. Plaintiff Eisenstecken, in her Statement of Appeal, argued that,
23 "Cutting down the trees designated will have a negative impact on scenic quality, water
24 quality, forest health and create loss of habitat. The impacts of the tree removal permit
25 must be considered with the context of the Verizon application. To do otherwise would
26 be to "piecemeal" the project, with excess tree removal in advance of the Verizon project
27 foreclosing opportunities to screen and mitigate visual impacts, as well as other impacts."

1 43. On September 30, 2020, the TRPA Legal Committee and Governing Board heard the
2 appeal. TRPA counsel Marshall strongly urged denial of the appeal. Marshall provided
3 this legal opinion in spite of uncontroverted evidence that the appeal was really about the
4 tower project, and visual simulations presented by Plaintiff Eisenstecken's scenic
5 consultant showed that the tower would become far more visible with the trees removed.
6 Marshall reports directly to Defendant Joanne Marchetta, who is clearly in a conflict of
7 interest resulting from her directorship of the Tahoe Prosperity Center, as described
8 herein.

9 44. The net result will be the foreclosure of opportunities to mitigate the scenic degradation
10 that would occur due to the presence of the tower. The tower is proposed in an area
11 designated in TRPA's thresholds as in "non-attainment" as to scenic quality. Only 4% of
12 roadway scenic units are designated as in "non-attainment," meaning that no further
13 degradation can be allowed under the terms of the Compact, TRPA's Ordinances, and the
14 Regional Plan. Under such circumstances, allowing the tree cutting to be approved
15 separately clearly constituted "piecemealing". The TRPA Governing Board subsequently
16 voted to deny the appeal.

17 45. Although the Board made no findings, Marshall stated on the record that the result of the
18 Board's vote was that the "baseline" for the purposes of the scenic analysis would be the
19 condition of the project site without the 31 trees. After the hearing, all 31 trees were
20 subsequently cut down. Unless enjoined by the Court, therefore, Verizon would be
21 relieved of the necessity to mitigate this scenic atrocity, and may perhaps argue the
22 impacts are unavoidable, in clear violation of TRPA's mandates.

1 **CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **TRPA’s policies and regulations that authorize and explicitly permit wireless**
4 **companies to destroy the Tahoe Region by piecemeal, unplanned cell tower installations**
5 **with no analysis of cumulative effects is a violation of its Public Trust.**

6 46. Plaintiffs reallege paragraphs 1 through 43 of this Complaint, as if fully set forth herein.

7 47. The Public Trust Doctrine has a long-standing history in California that has been
8 recognized and upheld in numerous state court decisions.

9 48. The Public Trust Doctrine affirms that certain public lands such as the sea, the shores,
10 natural forests, lakes, as well the air and running water must be protected by the
11 sovereign for the benefit of everyone, and cannot be sold or allowed to be converted by
12 private enterprise companies for commercial gain.

13 49. The TRPA Compact has incorporated the Public Trust Doctrine as core part of its Policy
14 Declarations in Article 1. a. in particular Sections 6-7.

15 50. The Compact recognizes the federal government’s interest in protecting the Public Trust
16 from aggressive and unbalanced commercial exploitation. (Compact, Article I. a, in
17 particular Section 9.)

18 51. The TRPA is violating its sacred Public Trust by continuously and routinely granting
19 permits to wireless companies without any comprehensive environmental impact
20 analysis; by allowing the entire Tahoe Region to be saturated with cell towers, earth and
21 base stations; by collectively converting the unique scenic beauty, the Lake, the air, and
22 public roads and byways for private commercial gain without the slightest nod toward
23 balance with the public interest; by carelessly allowing the very integrity of the Tahoe
24 Region to be impaired and sacrificed for the narrow commercial profit of a few powerful
25 wireless companies, their management and shareholders.

26 52. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
27

1 **SECOND CAUSE OF ACTION**

2 **TRPA is a federal and state regulatory agency governed under an Interstate**
3 **Compact established, approved, and partially funded by Congress. As such TRPA must**
4 **comply with the Administrative Procedures Act (APA), the National Environmental Policy**
5 **Act (NEPA), the Clean Air and Water Act, the Endangered Species Act, the National**
6 **Historic Preservation Act, and other federal statutes. The TRPA's piecemeal blanket**
7 **licenses for cell towers throughout the Tahoe Region is a major federal action.**

8 53. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

9 54. TRPA is organized under an interstate compact, established, approved and partially
10 funded by Congress, and as such TRPA is a federal agency. Federal agencies are special
11 government organizations set up for a specific purpose such as the management of
12 resources or national security issues. They are created to regulate industries or practices
13 that require close oversight or specialized expertise.

14 55. There is a strong federal interest to ensure that TRPA's operations comply with the
15 Administrative Procedures Act, NEPA, the Clean Air and Water Act, the Endangered
16 Species Act, the National Historic Preservation Act, and other federal statutes in the same
17 manner as the Tennessee Valley Association (TVA), the Potomac River Compact, the
18 Columbia River Gorge Compact, and the Palisades Interstate Park Compact.

19 56. Piecemeal blanket permitting to wireless companies for thousands of cell towers, satellite
20 earth and base stations throughout the Tahoe Region is a major federal action as this term
21 is defined and interpreted by NEPA and many court decisions. NEPA requires a complete
22 and thorough environmental impact and risk assessment by TRPA of this major federal
23 action. The required NEPA evaluation should and must include cumulative impacts. The
24 tree cutting alleged above in advance of hearing the Verizon tower project is a specific
25 instance of impermissible piecemealing.

26 57. Moreover, TRPA's entire helter-skelter wireless program must comply with various risk
27 assessments and permitting requirements under the above federal statutes.

1 58. TRPA is flagrantly and arrogantly refusing to conduct a comprehensive NEPA
2 environmental assessment or to comply with any of the other federal laws noted above.

3 59. Nor can TRPA delegate to private companies any of its statutory responsibilities, as it is
4 currently doing to private, self-interested commercial companies.

5 60. Because TRPA's wireless program is governed by federal as well as state law and
6 constitutes a major federal action, it is not preempted by the Telecommunications Acts of
7 1934 and 1996. Long-standing federal law and precedents confirm that federal laws are to
8 be interpreted together and harmonized, and federal regulatory agencies are to cooperate
9 in setting standards and their enforcement.

10 61. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

11 **THIRD CAUSE OF ACTION**

12 **TRPA's failure to make required findings to protect thresholds violates the terms of**
13 **the Compact.**

14 62. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

15 63. Article V(g) of the Compact and Section 4.4 of TRPA's Code of Ordinances require that
16 specific findings be made to show, in view of the available information, that its
17 thresholds will be attained and maintained. TRPA's thresholds consist of adopted
18 benchmarks and criteria for 178 distinct aspects of the environment within nine broad
19 categories, including air quality, water quality, soil conservation, vegetation, fisheries,
20 wildlife, scenic resources, noise and recreation.

21 64. Plaintiffs are informed and believe, and thereupon allege, that TRPA has never properly
22 assessed nor attempted to measure the costs of the adverse impacts of increased RFR
23 exposures resulting from thousands of additional cell tower and antenna installations
24 upon the fragile environment of the Tahoe Region. The last Threshold Evaluation Report
25 from 2015 is silent on the subject. TRPA is now overdue for another Threshold
26 Evaluation, but again, it appears the effects of RFR exposure to the environment will not
27

1 be evaluated. TRPA seems reluctant to do so, and if anything, is defiant in its refusal to
2 look at the latest scientific information available. Unless relief is granted TRPA will
3 continue to be blind to the effects of RFR and to its own obligations under the Compact
4 and the Regional Plan. Plaintiffs allege that dramatic adverse impacts have been shown
5 from RFR and RFR facilities with respect to water quality, soil conservation, vegetation,
6 wildlife, scenic resources and recreation. By way of example, aspen trees are an indicator
7 species for stream environment zones. The vegetation in stream environment zones is
8 crucial to the process of stripping nutrients out of ground and surface waters before being
9 discharged into Lake Tahoe. Nutrients are strongly implicated in the algal growth that
10 decreases the clarity of the lake. According to peer reviewed studies, RFR visibly
11 damages the health of aspen trees, thereby affecting not only the vegetation threshold, but
12 water quality as well. Similarly, studies show significant adverse impacts on endangered
13 species, birds, wildlife, and dozens more of the 178 indicators.

14 65. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

15
16 **FOURTH CAUSE OF ACTION**

17 **TRPA's piecemeal policies and practices violate the Compact and its own Regional**
18 **Plan, implementing regulations, and well-established California, Nevada, and federal land**
19 **use planning laws requiring that TRPA's resulting actions be coherent, integral and**
20 **consistent with the Regional Plan.**

21 66. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

22 67. TRPA has produced a series of plans, databases, and mapping pursuant to its Regional
23 Plan for the protection, conservation, and balanced development of the Tahoe Region.

24 68. A well-established principle under California, Nevada, and federal jurisprudence is all
25 subsequent decisions taken by the lead regulator at Tahoe, in this case TRPA, and the
26 counties, cities, and other political subdivisions must be consistent, and not in conflict
27 with the spirit and substance of the Regional Plan.

1 69. In fact, the erratic policies and actions adopted by the TRPA are in direct contravention
2 and in conflict with this basic axiom of California, Nevada, and federal land use planning
3 laws, and a large number of judicial precedents.

4 70. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

5
6 **FIFTH CAUSE OF ACTION**

7 **TRPA's failure to assess, plan, and implement policies, plans, and programs to**
8 **address adverse environmental impact of RFR contamination, and further the unique and**
9 **unaddressed fire hazards presented by proliferated cell tower installations, violates its own**
10 **regulations.**

11 71. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

12 72. The heavily wooded Tahoe Region is a tinderbox and the massive reckless proliferation
13 of cell towers presents a unique fire risk from malfunctions, explosions, and lightning
14 strikes. Peer reviewed studies show cell towers attract lightning strikes and thereby
15 increase fire risk. Studies also show that RFR causes conifer trees to greatly increase
16 production of terpenes, which are highly flammable hydrocarbons, making each tree
17 subjected to RFR more flammable.

18 73. TRPA has performed absolutely no programmatic planning or evaluation of RFR
19 facilities at all, and has adopted no standards (other than limited scenic standards for
20 public utilities generally) to guide new RFR facility roll out, the overall environmental
21 impact of cell tower proliferation or the specific fire risks directly related thereto. TRPA
22 has encouraged, funded and promoted such infrastructure, but has abandoned its
23 obligation to look impartially and critically at the available science which reveals serious
24 threats to the environment from the projects it is permitting and actively promoting.

25 74. Without the adoption of ordinances, based upon a master EIS, TRPA must place the
26 burden of proof upon applicants to study extensively not only the impacts of each
27 individual project through the EIS process, but also their cumulative impacts along with

1 other projects, in order to make the findings required under Article V(g-i) of the
2 Compact, and otherwise as required by the Regional Plan.

3 75. Plaintiffs are informed, and thereupon allege, that RFR is by its nature cumulative. RFR
4 facilities are networks, not closed systems with isolated effects. Each telecom network
5 consists not only of transmission devices, but of end user equipment that also emits
6 radiated power in close proximity to environmentally sensitive areas. The EMF networks
7 of each telecom company may be redundant, and duplicative, and opportunities to
8 mitigate such duplication exist. Individual projects cannot be evaluated under the
9 Compact without looking at these aggregate, cumulative, and indeed negatively
10 synergistic effects, along with science-based strategies to mitigate them.

11 76. Plaintiffs are informed, and thereupon allege, that each telecom network has the
12 alternative of utilization of RFR-free fiber optic cable for many applications. TRPA must
13 require a complete EIS for every project, with a strong mandate to look at RFR free
14 alternatives for the protection of Lake Tahoe's sensitive environment.

15 77. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

16 **SIXTH CAUSE OF ACTION**

17 **TRPA is failing to assess immediately available, safe, secure, environmentally**
18 **protective, energy efficient, and cost-effective alternatives to a massive wireless**
19 **infrastructure in the Tahoe Region. This failure to identify and to explore viable and**
20 **practical alternatives, and to include its findings in the Regional Plan, violates TRPA's**
21 **obligations under NEPA, CEQA, and its own Regional Plan.**

22 78. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

23 79. There is a substantial body of evidence and practice that an optical fiber wired
24 infrastructure offers an immediately available, proven, safe, secure, environmentally
25 protective, more energy efficient, cost effective alternative to the currently implemented
26 wireless infrastructure. Indeed, as the *Irregulators v. FCC* case has documented there is a
27

1 strong likelihood that U.S. taxpayers, including Tahoe residents have already paid for this
2 optical fiber wired infrastructure, and local rate payers have been overcharged by telecom
3 companies to subsidize wireless to the competitive disadvantage of optical fiber wired
4 companies. Verizon and the other telecom purveyors should bear the cost of the optical
5 fiber build-out since they have been overcharging local ratepayers for years for this
6 service, but have not used the funds for it.

7 80. TRPA has never considered the perverse economics of the present regulatory subsidy it is
8 actively extending to the wireless companies, and certainly has not commissioned a
9 forensic audit to determine who paid for what part of the present optical fiber wired
10 backhaul, which supports the wireless infrastructure, and who currently owns this
11 infrastructure.

12 81. By failing to adopt an Ordinance regulating wireless infrastructure, including a
13 comprehensive EIS that carefully reviews more environmentally protective and
14 economically feasible alternatives, TRPA is in violation of the Compact (Article VII),
15 Chapter 3 of its Code of Ordinances, and Article 6 of its Rules of Procedure.

16 82. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

17 **SEVENTH CAUSE OF ACTION**

18 **The actions of officers and directors of TRPA and Defendant Tahoe Prosperity**
19 **Center reflect undisclosed conflicts of interest, violate California’s open meeting laws, and**
20 **must be voided and remanded for reconsideration.**

21 83. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

22 84. Plaintiffs are informed and believe, and thereon allege, that if any comprehensive
23 planning was done at all in the Tahoe Region with regard to wireless facilities, it was
24 done behind closed doors under the auspices of Defendant Tahoe Prosperity Center
25 (“TPC”). TPC is funded in part directly by governmental entities with regulatory
26 authority in the Tahoe Region, including TRPA, El Dorado County, Placer County, and
27

1 the City of South Lake Tahoe. TPC’s Board of Directors includes two members of the
2 TRPA Board, Defendant Novasel (currently an El Dorado County Supervisor) and
3 Defendant Berkbigler (currently a Washoe County Supervisor), TRPA’s Executive
4 Director, Defendant Marchetta, and a former TRPA employee and current member of the
5 City Council of the City of South Lake Tahoe, Devin Middlebrook. The Verizon tower
6 project is located in the City of South Lake Tahoe.

7 85. TPC has as a core part of its primary mission reflected in its “Connected Tahoe” Project,
8 the goal to bring the highest levels of broadband and cellular service to the Tahoe Region.
9 Plaintiffs are informed and believe, and thereon allege, that as part of its planning
10 process, TPC solicited each of the primary telecoms, including Defendant Verizon, to
11 provide TPC with the telecoms’ preferred locations for all cell towers and other facilities.
12 This information was provided on the understanding that it would not be made public to
13 protect the competitive advantage of each telecom. TPC then prepared internal
14 documents, including maps, which included the aggregated wish lists of each telecom in
15 terms of project sites, and their priority in terms of timing.

16 86. Plaintiffs are informed and believe and thereon allege that TPC actively lobbied the
17 regulators in the Tahoe Region, including the City of South Lake Tahoe, and the TRPA,
18 to streamline their regulatory processes to allow each telecom, including defendant
19 Verizon, to implement their projects as quickly as possible.

20 87. The TRPA Compact, at Article III(a)(5) sets forth standards to govern conflicts of
21 interests by its Board members and employees:

22 “5) Each member and employee of the agency shall disclose his
23 economic interests in the region within 10 days after taking his seat
24 on the governing board or being employed by the agency and shall
25 thereafter disclose any further economic interest which he acquires,
26 as soon as feasible after he acquires it. As used in this paragraph,
27 “economic interests” means:

(A) Any business entity operating in the region in which the member
or employee has a direct or indirect investment worth more than
\$1,000.

(B) Any real property located in the region in which the member or
employee has a direct or indirect interest worth more than \$1,000.

1 (C) Any source of income attributable to activities in the region,
2 other than loans by or deposits with a commercial lending institution
3 in the regular course of business, aggregating \$250 or more in value
4 received by or promised to the member within the preceding 12
5 months; or

6 (D) Any business entity operating in the region, which the member
7 or employee is a director, officer, partner, trustee, employee or holds
8 any position of management.

9 No member or employee of the agency shall make, or attempt to
10 influence, an agency decision in which he knows or has reason to
11 know he has an economic interest. Members and employees of the
12 agency must disqualify themselves from making or participating in
13 the making of the agency when it is reasonably foreseeable that the
14 decision will have a material financial effect, distinguishable from
15 its effect on the public generally, on the economic interests of the
16 member or employee.”

17 88. Chapter 8 of TRPA’s Rules of Procedure echo the above requirements, and at Section
18 8.4, at least as to employees, clarifies that the intent is to prevent anything that gives rise
19 to “an actual conflict of interest, or that creates the appearance of an actual conflict of
20 interest”. Plaintiffs are informed and believe that TPC is functioning as a business entity,
21 notwithstanding its non-profit status, at least in part to advance the interests of the
22 telecom industry. As members of TPC’s Board of Directors, Defendants Marchetta,
23 Berkbigler and Novasel owe a fiduciary duty to TPC that creates an actual conflict and/or
24 an appearance of a conflict of interest with their fiduciary duties as members of the Board
25 or employees of TRPA to follow the dictates of the Compact and the Regional Plan.
26 TRPA’s Rules of Procedure also prohibit ex-parte communications for its Board
27 members when they act upon a matter in their quasi-judicial capacity. To the extent that a
28 TPC Board member, or any other TRPA Board member, receives specific information
29 about preferred wireless sites and the reasoning therefore, prior to a hearing in their
30 capacity as a TRPA Board member, that information must be disclosed or the TRPA
31 Board member is in violation of Section 2.15.1 of the Rules of Procedure. That provision
32 requires “Prior to taking action on a quasi-adjudicative matter, a Board member shall
33 publicly disclose on the record the existence and essential content of any material ex
34 parte communications on the matter under consideration.” Plaintiffs are informed and

1 believe that Defendants Berkbigler and Novasel and any other TRPA Board members
2 that have received such information have not complied with this requirement.

3 89. Defendant Marchetta is TRPA’s Executive Director, and therefore an
4 employee of TRPA. According to TRPA’s Rules of Procedure, the
5 Executive Director administers all affairs of TRPA, directs and hires
6 staff, directs Legal Counsel for TRPA, and creates the staff summary for
7 projects to be heard, including recommendations for approval or
8 rejection. (Rules of Procedure at Section 1.5, and Section 5.11.) Because
9 Defendant Marchetta is also on the Board of TPC, her recommendations
10 to approve applications by telecoms at the very least do “create the
11 appearance of an actual conflict of interest” (Rules of Procedure at
12 Section 8.4).

13 90. Plaintiffs allege that defendants stonewalled, then harassed them simply because
14 plaintiffs, in their exercise of their First and Fourth Amendments and other statutory
15 rights, objected in a public hearing to cell tower installations by presenting science-based
16 factual information on their adverse impacts. Plaintiffs were branded by these defendants,
17 who are under a conflict of interest, as “conspiracy theorists.” They were referred to as
18 “crazies”, When Mrs. Eisenstecken and her neighbors tried to reason with Defendant Nel,
19 he told them to “go to hell” and other profane epithets. On another occasion when a
20 scenic consultant was taking pictures from city property, Defendant Nel called the police,
21 who then sent an imposing police officer who threatened Mrs. Eisenstecken’s 81-year-old
22 father. This abuse of process and climate of harassment has been actively encouraged,
23 aided, and abetted by TRPA that has permitted this intolerable and degrading situation to
24 continue. As set for the in greater detail in the EIGHTH CAUSE OF ACTION, Plaintiffs
25 allege that this entire course of conduct by defendant TRPA is in violation of Mrs.
26 Eisenstecken’s civil rights under the Americans with Disabilities Act, and other federal
27

1 and state laws that guarantee the civil rights of disabled persons, in particular the right to
2 freely express grievances and to be free from such intimidation and retaliation. In light of
3 the fact that Mrs. Eisenstecken's neighbor, who has been subjected to constant irradiation
4 from a Verizon small cell facility has just recently been diagnosed with blood cancer,
5 Mrs. Eisenstecken and her family are in reasonable apprehension that their lives are in
6 jeopardy.

7 91. Plaintiffs are informed and believe that it is in the best interests of paid elected officials
8 and key staff members to appear to support TPC's agenda in order to maintain the
9 economic advantages of employment and the support of the pro-economic growth faction
10 as an elected official. This inherent conflict is magnified by voluntarily agreeing to be on
11 the Board of an unapologetically pro-telecom lobbying business entity like TPC. Once
12 again, the façade of TPC as a publicly spirited, tax-exempt, non-profit entity is directly
13 contradicted by the promotional actions it takes on behalf of the telecom companies.

14 92. By way of example, this conflict of interest would inhibit conflicted individuals from
15 calling for a proper needs assessment, including a forensic audit of the extent of existing
16 fiber optic infrastructure, who owns it, who paid for it, and whether such data and
17 communications services can be provided without more wireless facilities that create
18 adverse impacts (See, e.g. *Irregularators v FCC* ruling). Under Subsection (D) of Article
19 III(a)(5), therefore, Defendants Marchetta, Berkbigler, and Novasel have an economic
20 interest that is required to be disclosed. Plaintiffs are informed and believe that no such
21 disclosures have been made as required.

22 93. TPC is subject to the Brown Act, California Government Code Section 54950 et seq.,
23 also commonly referred to as California's open meeting laws. Under California
24 Government Code Section 54952(c)(1)(B), the TPC is a "legislative body" if it,
25 "Receives funds from a local agency and the membership of whose governing body
26 includes a member of the legislative body of the local agency appointed to that governing
27 body as a full voting member by the legislative body of the local agency." As previously

1 alleged, TPC receives funding from multiple local agencies, and one or more of those
2 agencies have formally appointed Supervisors and/or Council members as full voting
3 members of the TPC Board. Accordingly, the TPC is subject to the Brown Act and/or its
4 Nevada counterpart open meetings laws, whichever is stricter. (TRPA Rules of
5 Procedure, Section 2.6). TPC has not complied with these laws, even though it openly
6 makes recommendations and creates policy that it lobbies for and in close collaboration
7 with TRPA and local jurisdictions within the Tahoe Region. This is precisely the type of
8 conduct the open meeting laws are designed to prohibit.

9 94. Plaintiffs therefore allege that all decisions made on wireless projects by TRPA, from the
10 date that TPC began the conflicted activities complained of and up to the present time, at
11 either the staff, Hearings Officer or Board level, are flawed and void as of the date of
12 final action on the project in question.

13 95. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

14 **EIGHTH CAUSE OF ACTION**

15 **TRPA's failure to develop a coherent policy and program to protect persons with**
16 **recognized disabilities, and TRPA's flagrant disrespect and disregard for persons suffering**
17 **from disabilities, violates the Americans with Disabilities Act of 1990, the Fair Housing**
18 **Amendments Act (FHAA) of 1989, (42 U.S.C. 3601 et seq.) and other federal and state laws**
19 **requiring reasonable accommodation.**

20 96. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

21 97. Congress has recognized that persons suffering from disabilities within the U.S. deserve
22 special protection, and that it is a civil rights violation to discriminate against such
23 persons based on such disabilities. For this reason Congress passed special statutes, the
24 Americans with Disability Act, the Fair Housing Amendments Act, and other laws
25 specifically to shield these vulnerable populations.
26
27

1 98. Heightened sensitivity to RFR contamination is an officially recognized disability under
2 US and international guidelines and regulations. The fact RFR exposure can seriously
3 aggravate pre-existing conditions involving cancers, neurological disorders, cardiac
4 illnesses, diabetes, and serious behavioral/ psychiatric/somatic maladies is also
5 increasingly documented in the medical literature.

6 99. The special sensitivity and vulnerability of children to RFR exposure at home and in
7 schools is also well documented.

8 100. Given the levels of RFR exposure announced, planned, and rapidly being implemented
9 by the telecom companies across the Tahoe Region, it is virtually certain that vulnerable
10 populations (elderly persons, minorities, patients in hospitals, burned out health care
11 providers, and especially large numbers of children in schools and at home) will be
12 immediately and irreparably harmed.

13 101. The TRPA has a legal obligation to address the vulnerability of disabled persons to RFR
14 exposure in its Regional Plan and to develop and to implement guidelines and regulations
15 specifying the procedures for reasonable accommodation for disabled persons to be
16 implemented by cities and throughout local communities within the Tahoe Region.

17 102. Instead, and directly as a result of some TRPA Board members and staff's conflict of
18 interest involving the TPC, the exact opposite is happening. These conflicted defendants
19 are permitting and actually encouraging the accelerated diffusion of cell tower
20 installations and RFR contamination of the TRPA Region and its most vulnerable
21 communities for their own narrow parochial interests, and that of their patron wireless
22 companies.

23 103. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

24 **NINTH CAUSE OF ACTION**

25 **TRPA's arbitrary and capricious dismissal of Plaintiff Monica Eisenstecken's**
26 **request for reasonable accommodation to halt the construction of a dangerous Verizon cell**
27

1 **tower and antennas 150 feet from her residence is a specific instance of the continuous**
2 **violations of the Americans with Disabilities Act of 1990 and the Fair Housing**
3 **Amendments Act of 1989, as identified in the EIGHTH CAUSE OF ACTION.**

4 104. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

5 105. Mrs. Eisenstecken lives at 3605 Needle Peak Road in South Lake Tahoe and suffers from
6 electromagnetic illness, degenerative disc disease, arthritis, spinal stenosis, sleep
7 disruption, anxiety, pain and other related conditions. Because these conditions interfere
8 with several major life activities, Mrs. Eisenstecken is considered disabled under the
9 applicable laws. The U.S. Access Board recognizes electromagnetic sensitivities as a
10 qualifying disabling condition under federal disability laws.²

11 106. Due to her existing disability, her physicians have stated in letters expressing their
12 concern that the proposed cell tower will severely aggravate her symptoms, including:
13 extreme scalp and neck pain with severe headaches, shoulder pain, sleeplessness,
14 dizziness with vertigo and disorientation and poor balance. The operation of a proposed
15 Radio Frequency Radiation (RFR) emitting facility at 1360 Ski Run Boulevard in South
16 Lake Tahoe 150 FEET AWAY with antennas that may emit RFR directly into her
17 bedroom and living areas will interfere with Mrs. Eisenstecken's use and enjoyment of
18 her home on account of her disability.

19 107. In addition to her own disability one of Mrs. Eisenstecken's sons is also disabled, and her
20 father is 81 years of age. The Eisenstecken family therefore comes within the protection
21 of both the Americans with Disabilities Act as well as the [Fair Housing Amendments](#)
22 [Act \(FHAA\)](#).

23 108. The proposed Verizon cell tower will emit a maximum of 42 kW of power. This level of
24 RFR exposure will produce cumulative, aggravated, and peak pulse effects that have been

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26
27 ² See 69 Fed. Reg. 44087, July 23, 2004, and "[Recognition of the Electromagnetic Sensitivity as a Disability Under the ADA](#)".

1 determined by her family physician as extremely dangerous in light of her disability and
2 that of one of her children.

3 109. Mrs. Eisenstecken has sought to protect her 81-year-old father, husband, and two children
4 from the certain harms from the RFR exposure of the Verizon cell tower by duly filing an
5 Appeal under the Americans with Disabilities Act (ADA) to the TRPA Board. As noted
6 in the previous EIGHTH CAUSE OF ACTION, Mrs. Eisenstecken, and others who have
7 protested the cell tower installations to the TRPA and local city council, have been
8 subjected to slander, threats, and other forms of subsequent intimidation, abuse, and
9 retaliation. Mrs. Eisenstecken's First Amendment rights of freedom of expression have
10 been grossly violated. In addition to her rights under the ADA, Mrs. Eisenstecken has
11 further Fourth Amendment, Fifth Amendment, and Fourteenth Amendment rights to
12 defend and to secure the integrity and sanctuary of her family's home.

13 110. Plaintiff Eisenstecken explicitly invokes [Section 1983 of the Civil Rights Act](#) which
14 provides "an individual the right to sue state government employees and others acting
15 'under color of state law' for civil rights violations.

16 111. The RFR contamination of Mrs. Eisenstecken's home by the proposed power Verizon
17 cell tower, located only 150 feet away, will surely render her property uninhabitable and
18 unsaleable, as it has for many other victims of RFR poisoning across the U.S. and other
19 countries. Mrs. Eisenstecken has also formally requested by letter Defendants Nel and
20 Verizon to provide a reasonable accommodation in light of her and her child's disability.
21 Defendants Nel's and Verizon's obdurate refusal to make any reasonable accommodation
22 for plaintiff's and her family's disability, either by removing the tower or installing it in a
23 safer location, is a blatant violation of the FHA.

24 112. Defendants' refusal to make a reasonable accommodation violates 42 USC 3604 Section
25 (3)B, which addresses precisely Mrs. Eisenstecken's present predicament:

26 "a refusal to make reasonable accommodations in rules, policies,
27 practices, or services, when such accommodations may be necessary

1 to afford such person equal opportunity to use and enjoy a
2 dwelling.”

3 113. Mrs. Eisenstecken and her family have no other residence, no path of escape. She is
4 reasonably fearful of removing her family to a hotel in the midst of a corona pandemic
5 where there is no guarantee of the effectiveness of sanitary and corona protective
6 measures by the hotel proprietors. If the Court does not mandate some fair and
7 reasonable accommodation, Mrs. Eisenstecken's only option is to await and resign herself
8 to a serious, quite possibly deadly harm. This Court is quite starkly Mrs. Eisenstecken
9 and her family’s last sanctuary, hope, and recourse.

10 114. Mrs. Eisenstecken is seeking an injunction against both Defendants Nel and Verizon –
11 Verizon as the cell tower provider, and Nel as the landowner enabling the activity.

12 115. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

13 **TENTH CAUSE OF ACTION**

14 **Defendants TRPA, Nel, and Verizon’s refusal to extend a reasonable**
15 **accommodation and the installation of a dangerous cell tower 150 feet from her property**
16 **will result in a Public Nuisance, a tortious act under California and Nevada law.**

17 116. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

18 117. The [California Civil Code on Public Health GENERAL PRINCIPLES \(3479\)](#) defines a
19 Public Nuisance as follows:

20 “Anything which is injurious to health...(that) is indecent or
21 offensive to the senses, or an obstruction to the free use of property,
22 so as to interfere with the comfortable enjoyment of life or property,
23 or unlawfully obstructs the free passage or use, in the customary
24 manner, of any navigable lake, or river, bay, stream, canal, or basin,
25 or any public park, square, street, or highway, is a nuisance.”

26 118. Under Section 2020, Public Nuisance requires that an injured party prove the following
27 Essential Elements:

1. The defendant by acting or failing to act, created a condition or
permitted a condition to exist that was harmful to health; or was
indecent or offensive to the senses; or was an obstruction to the free

1 use of property, so as to interfere with the comfortable enjoyment of
2 life or property; or unlawfully obstructed the free passage or use, in
3 the customary manner, of any navigable lake, or river, bay, stream,
4 canal, or basin, or any public park, square, street, or highway; or was
5 a fire hazard/specify other potentially dangerous condition
6 plaintiff's property;

7 119. **Facts:** In the present case ALL of these statutory conditions are met.

8 2. That the condition affected substantial number of people at the
9 same time.

10 120. **Facts:** The installation of cell towers and antennas by Verizon and other telecom
11 companies in close proximity to human habitation and in sensitive ecosystems is
12 endangering the lives of hundreds, potentially thousands of residents of the Tahoe
13 Region. One example: Plaintiff Eisenstecken spoke with a Mexican lady with a baby who
14 is concerned that a small cell installed 20 feet from her child's bedroom will injure her
15 child. She has nowhere to turn for help. A second example: Plaintiff's neighbors are both
16 84 years old. They also objected to the siting of antennas and a tower, and the City did
17 nothing to help them. There are hundreds of other such cases.

18 3. That an ordinary person would be reasonably annoyed or
19 disturbed by the condition;

20 121. **Facts:** The dangers facing Plaintiff Eisenstecken and her family, and that of hundreds of
21 others far exceed **annoyance**. The dangers presented are truly life-threatening, and utterly
22 destroying the quality of life she and her family have enjoyed as residents of Tahoe for
23 over forty years.

24 4. That the seriousness of the harm outweighs the social utility of
25 Defendant's conduct;

26 122. **Facts:** The harms, including health risks and fire hazards greatly exceed the social utility
27 of wireless. Moreover, as pleaded, there are immediately available safe, secure, and
environmentally protective alternatives in the form of optical fiber to the home and
office.

5. That Plaintiff did not consent to Defendant's conduct;

1 123. **Facts:** Plaintiff has repeatedly objected in TRPA hearings and directly to defendants Nel
2 and Verizon her **objection.**

3 6. That Plaintiff suffered harm that was different from the type of
4 harm suffered by the general public;

5 124. **Facts:** Each person's harm from RFR contamination, based on her or his disability, is
6 unique.

7 7. Defendants' conduct was a substantial factor in causing plaintiff's
8 harm.

9 125. **Facts:** Defendants, Nel's and Verizon's conduct is in fact the sole cause of plaintiff's
10 harm.

11 126. Defendants Nel and Verizon are now well aware, and cannot claim ignorance of the
12 foreseeable harms that they intend to commit by causing a tortious nuisance against
13 Plaintiff Eisenstecken and her family. They intend, willfully, to endanger her and her
14 family's lives , and to violate the safe, healthy, enjoyable, and happy use of her property.
15 Moreover, the public nuisance to be caused by defendants Nel is not barred by any statute
16 of limitations.

17 127. During the past two years, Defendant TRPA permitted, enabled and encouraged this
18 tortious course of conduct.

19 128. For the above reasons, Mrs. Eisenstecken and her family are asking this Court to prevent
20 and enjoin these harms that are well documented, foreseeable, and irreparable, for which
21 monetary relief cannot offer adequate and fair compensation.

22 129. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
23

24 **ELEVENTH CAUSE OF ACTION**

25 **Defendant TRPA, Nel and Verizon's installation of a dangerous cell tower 150 feet**
26 **from Plaintiff's property will result in a Private Nuisance, a tortious act under California**
27 **law.**

1 130. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

2 131. A private nuisance is an activity that injures health, affecting less than a considerable
3 number of people, that satisfies the following elements:

4 1. Plaintiff owns the property;

5 132. **Facts:** Mrs. Eisenstecken and her family are the owner of the property located at XXX.

6 2. Defendants, by acting or failing to act, created a condition or
7 permitted a condition to exist that is harmful to health; indecent or
8 offensive to the senses; is an obstruction to the free use of property,
9 so as to interfere with the comfortable enjoyment of life or property;
or is a fire hazard and other potentially dangerous condition] to
Plaintiff's property.

10 133. **Facts:** This standard perfectly fits the present situation. RFR emanating from the Verizon
11 cell tower will directly harm Plaintiff Eisenstecken and her family. The destruction of 31
12 trees and the penetration of Plaintiff's skin by RFR contamination is directly offensive to
13 the senses. RFR contamination of her property will render it uninhabitable. As noted
14 previously, the Verizon cell tower is a fire hazard.

15 3. That Defendant's conduct in acting or failing to act was
16 [intentional and unreasonable/unintentional, but negligent or
17 reckless]/[the condition that [name of defendant] created or
permitted to exist was the result of an abnormally dangerous
activity]].

18 134. **Facts:** The installation of the Verizon cell tower, especially after repeated warnings of
19 the foreseeable and preventable harms, is a reckless and intentional action to cause an
20 abnormally dangerous activity.

21 4. That this condition substantially interfered with [name of
22 plaintiff]'s use or enjoyment of [his/her/nonbinary pronoun] land;

23 135. **Facts:** Plaintiff's property will be rendered uninhabitable.

24 5. That an ordinary person would reasonably be annoyed or
25 disturbed by [name of defendant]'s conduct;

26 136. **Facts:** This is not a matter of reasonable annoyance. Plaintiff Eisenstecken and her
27 family are being placed in immediate jeopardy of life.

1 144. Both present FCC regulations and the Guideline of the International Commission on
2 Non-Ionizing Radiation Protection (ICNIRP), a leading wireless industry association
3 officially recognize that RFR penetrates the skin. The Federal Communications
4 Commission (FCC) [RF limits](#) for exposures are measured in terms of absorption into the
5 skin (Specific Absorption Rate, or SAR). “The new FCC exposure limits are also based
6 on data showing that the human body absorbs RF energy at some frequencies more
7 efficiently than at others.” The ICNIRP [Guidelines](#) confirm that RFR at a frequency of 6
8 GHz penetrates the skin to a depth of 8.1 millimeters (0.32 inches), and the penetration
9 deepens as the frequency decreases below 6 GHz (which the Verizon antennas will be
10 emitting).

11 145. The projected maximum power Radiating from the Verizon Cell tower is approximately
12 50 kW. This will bathe the entire area in RFR. Plaintiff Eisenstecken’s residence, place of
13 work, and children are all within an average of 150 feet from the proposed tower.

14 146. Plaintiff Eisenstecken explicitly denies permission and that of her family to allow
15 defendants to commit this invasion of her person, and willful assault on her person, her
16 children, her father, and husband.

17 147. The common law definition of Assault is an unlawful attempt, coupled with a present
18 ability, to commit a violent injury on the person of another. It is well established that an
19 actual violence need not be perpetrated. An imminent act of serious violence and a
20 reasonable apprehension by the victim of such violence is adequate.

21 148. This standard fits Plaintiff Eisenstecken’s circumstances perfectly. The apprehension of
22 immediate harm that Plaintiff and her family are experiencing concerning the
23 Nel/Verizon cell tower is not idiosyncratic, but rather is based on regular pattern of
24 illnesses that Plaintiffs and others are experiencing with cell towers in the Tahoe Region.
25 Plaintiff affirms and believes there is a close connection of continuous, chronic, and
26 cumulative RFR exposure with one neighbor’s blood cancer, two other neighbors’ deaths
27

1 from cancer, and another's resident's vertigo and subsequent fall down the stairs leading
2 to a resulting heart attack.

3 149. Defendants Nel and Verizon are now well aware based on all the evidence that Plaintiff
4 Eisenstecken and many others have presented to the TRPA and in letters seeking
5 reasonable accommodation under the ADA and FHA of the foreseeable harms.

6 Defendants cannot claim ignorance of the risks, and harms they will surely inflict upon
7 Mrs. Eisenstecken and her family.

8 150. For the above reasons, Mrs. Eisenstecken and her family are asking this Court to prevent
9 and to enjoin these harms that are well documented, foreseeable, and irreparable, for
10 which monetary relief cannot offer compensation.

11 151. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

12
13 **THIRTEENTH CAUSE OF ACTION**

14 **Defendants Nel's and Verizon's imminent placement of a dangerous cell tower and**
15 **antennas 150 feet from Plaintiff's home will cause a Trespass to Property.**

16 152. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

17 153. The elements of the Tort of Trespass are clearly stated in the [California Civil Code](#) and
18 include the following:

19 1. Plaintiff is the owner or renter of the property.

20 21 154. **Facts:** Plaintiff Eisenstecken and her family are clearly the owners of her property.

22 2. Defendant intentionally or recklessly entered the property.

23 155. **Facts:** That is the clear intention of defendants Nel and Verizon.

24 3. Plaintiff did not give permission

25 156. **Facts:** The instant Trespass is directly against Plaintiff's objection and without her
26 consent.

27

4. The Plaintiff is actually harmed.

1
2 157. **Facts:** The imminent installation of the cell tower, the cutting down of 31 protective trees
3 that will create a fire hazard has caused Plaintiff Eisenstecken, her 81-year old father and
4 other family members extraordinary stress, apprehension, sleeplessness, and anxiety. The
5 implementation of installation and consequent trespass will cause her and her family
6 irreparable harm.

7 158. For the above reasons, Mrs. Eisenstecken and her family are asking this Court to prevent
8 and enjoin these harms that are well documented, foreseeable, and irreparable, for which
9 monetary relief cannot offer adequate and fair compensation.

10 159. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

11
12 **PRAYER**

13 Prayer for Requested Relief: Plaintiffs respectfully request the following relief:

- 14 1. Declaratory Relief affirming the TRPA's fiduciary responsibilities as stewards of the
15 Public Trust for the Tahoe Region.
- 16 2. Declaratory Relief affirming the TRPA's helter-skelter and piecemeal wireless program
17 is a major federal action, and TRPA as a federal agency is bound by NEPA and other
18 federal laws.
- 19 3. Declaratory Relief that the Telecommunications Acts of 1934 and 1996 do not preempt
20 the Americans with Disabilities Act and the Fair Housing Amendments Act.
- 21 4. Declaratory Relief that the named Defendants, Directors, and Officers of TRPA are under
22 a conflict of interest; and therefore all TRPA actions in which they participated,
23 commented, or voted upon based on this conflict of interest are null and void; and this
24 Court is respectfully requested to remand such actions to the TRPA for reconsideration
25 without the participation of those named defendants, and possibly others as yet unnamed,
26 who are subject to said conflict of interest.
- 27

- 1 5. Declaratory Relief that TRPA is required to comply with the Americans with Disabilities
2 Act, the Fair Housing Amendments Act, and other federal and state laws protecting the
3 civil rights of people with disabilities, and to develop in its Regional Plan and
4 supplemental plans adequate rules and procedures to ensure reasonable accommodation
5 for persons with disabilities who are exposed to RFR contamination.
- 6 6. Declaratory Relief that TRPA is required to consider the impacts of the cutting of 31
7 trees within the context of the Verizon tower project, and that the scenic baseline is the
8 condition of the project area before the cutting of the trees and not after.
- 9 7. A Writ of Mandamus requiring TRPA to comply with all federal and state laws as well as
10 its own General Plan and regulations.
- 11 8. In particular, a Writ of Mandamus to compel TRPA to prepare a comprehensive
12 environmental impact assessment covering its blanket licenses of a wireless infrastructure
13 throughout the Tahoe Region, as well as a careful evaluation of immediately available
14 safe, secure, environmentally protective, energy efficient, and more cost-effective
15 alternatives, as required by NEPA and CEQA.
- 16 9. Injunction imposing a moratorium on all further wireless installations and modifications
17 on existing installations throughout the Tahoe Region.
- 18 10. Specific injunction preventing the erection of a cell tower approximately 150 feet from
19 Plaintiff Monica Eisenstecken's property until proper reasonable accommodation is made
20 by Verizon, the owner of the property, and TRPA in full compliance with the ADA and
21 other federal and state laws.
- 22 11. Attorney's fees, expert witness fees, and other costs as provided under [42 U.S. Code §](#)
23 [1988 - Proceedings in vindication of civil rights](#) under Section 1983; as well as under the
24 ADA and the FHAA (42 USC Section 12205 (b) and (c)).
- 25 12. Award any such other and further relief as this Court may deem appropriate.

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27 Date: December 10, 2020

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Pollock & James, LLP

/s/ Mark S. Pollock

Mark S. Pollock, Attorney for Plaintiffs