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To: [Tahoe Regional Planning Agency and the Marlette Lake Water System](#)
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Subject: TRPA Federal Lawsuit
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Attachments: [Eisenstecken - Proposed Third Amended Complaint\[15895\].pdf](#)

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To whom it may concern.

I would like to Thank the legislative Bureau and Committee for this very important meeting.

Please add this PDF to the record for your upcoming Tuesday meeting,
regarding review and oversight of the TRPA.

Thank you.

Robert Aaron

Sent from [Mail](#) for Windows

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

MONICA EISENSTECKEN,
TAHOE STEWARDS, LLC,
DAVID BENEDICT,
TAHOE FOR SAFER TECH,
ENVIRONMENTAL HEALTH TRUST
Plaintiffs,

vs.

TAHOE REGIONAL PLANNING AGENCY,
JOANNE MARCHETTA, in her official and
individual capacities, MARSHA BERKBIGLER,
in her official and individual capacities,
SUE NOVASEL, in her official and
representative capacities, GULLIAM NEL,
SACRAMENTO VALLEY LIMITED
PARTNERSHIP dba VERIZON WIRELESS,
THE CITY OF SOUTH LAKE TAHOE,
and DOES 1-100,
Defendants.

) **No. 2:20-CV-02349-TLN-CKD**
) [PROPOSED] THIRD AMENDED
) COMPLAINT, PETITION FOR
) WRIT OF MANDATE, DECLARATORY
) RELIEF, INJUNCTIVE RELIEF, AND
) DAMAGES

)
)
)
) JURY TRIAL REQUESTED ON
) ALL ISSUES SO TRIABLE

1
2 Plaintiffs, by and through their counsel of record, allege:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Compact Clause of the United States Constitution,
5 Article 1, section 10, clause 3; the [Tahoe Regional Planning \(“TRPA”\) Compact](#), Public Law No.
6 96-551, 94 Statute 3233 (1980), Cal. Gov. Code §66801, Nev. Rev. Stat. 277.200, the Americans
7 with Disabilities Act, 42 U.S.C. §12101, *et seq.*, the Fair Housing Amendments Act, 42 U.S.C.
8 §3601, *et seq.*, 42 U.S.C. §1983, and numerous California state law causes of action. Jurisdiction
9 of this Court is conferred by 28 U.S.C. §1331 (federal question), 28 U.S.C. §1367(a)
10 (supplemental jurisdiction over state claims), and Article VI(j) of the Compact. Declaratory relief
11 is available pursuant to 28 U.S.C. §2201-02 and Rule 57 of the Federal Rules of Civil Procedure.
Injunctive relief is available pursuant to Rule 65 of the Federal Rules of Civil Procedure.

12 2. Venue is proper in this Court pursuant to (1) 28 U.S.C. §1391(b)(2), because a
13 substantial part of the acts and omissions giving rise to the action occurred in this District and
14 many of the real properties at issue are located within this District; and (2) Article IV(j)(2)(A)
15 and (B) of the Compact, because the specific actions challenged relate to a project area in the
16 City of South Lake Tahoe, within this Court’s judicial district, and the more general allegations
17 all relate to the Tahoe Region and the extensive wireless infrastructure proposed to be added or
18 modified which, all together, constitute one major federal/state action fragmented into many
19 piecemeal projects, as these terms are defined and interpreted under the National Environmental
20 Policy Act (NEPA), the California Environmental Quality Act (CEQA), the Compact, the
21 TRPA’s Plan, Rules, and Ordinances promulgated thereunder, and other federal and state statutes.

3. The Compact and the TRPA's Plan, Rules, and Ordinances promulgated thereunder are federal law for all purposes, including for the purposes of jurisdiction.

4. This Court has supplemental jurisdiction over the state law claims set forth in this Complaint pursuant to 28 U.S. C. §1367(a).

SUMMARY

5. The Tahoe Regional Planning Agency (TRPA) was created pursuant to an Interstate Compact first established by a special act of Congress in 1969, later revised in 1980, and amended again in 2016, involving the states of California and Nevada, in close and continuing collaboration with various agencies of the federal government “to insure an equilibrium between the region’s natural environment and its manmade environment.” Tahoe Regional Planning Compact, Article I – Findings and Declarations of Policy, (a)(10).

6. TRPA is actively engaged in licensing a few telecommunications companies to blanket the Tahoe Region with Radiofrequency Radiation (RFR) emitted from small and large cell towers, without any consideration or assessment of the risks and harms to the Tahoe Region's unique environment, the increased fire hazard, and the danger from increased and untested RFR exposures to thousands of the Tahoe Region's residents, especially our most vulnerable communities — children, the elderly, disabled persons, minorities, pregnant women and fetuses

7. Plaintiffs contend that the piecemeal approval and implementation of the TRPA's wireless infrastructure program flagrantly violates the terms of the Compact itself, TRPA's own Regional Plan, TRPA's Rules and Ordinances, and several relevant federal and state laws, prominently among these the Administrative Procedure Act (APA), the National Environmental Policy Act (NEPA), the Americans with Disabilities Act (ADA), the Fair Housing Amendments

1 Act (FHAA), the federal Water Quality Act of 1965 and as amended in the Clean Water Act of
2 1972, the California Porter-Cologne Act of 1969, and the California Environmental Quality Act
3 (CEQA). The fact that two TRPA Governing Board members, former member Marsha
4 Berkbigler and current member Sue Novasel, and TRPA's Executive Director, Joanne Marchetta,
5 all named in this lawsuit, are under a clear conflict of interest as defined in the Compact, and
6 under State and federal law, makes the review of their decisions even more urgent.

7 8. Plaintiffs are requesting the court to issue a series of Declarations and a Writ of
8 Mandamus to compel compliance with federal and state established procedures, and to establish
9 a moratorium on the proposed expansions of antennas, as the California Federal Court Eastern
10 District has done in other situations in the past;¹ in this case halting further piecemeal blanket
11 implementation of cell tower and antenna approvals and installations, until TRPA complies fully
12 with all applicable federal and state laws, and is consistent with the terms of its Compact and
13 Regional Plan. Plaintiffs David Benedict and Tahoe Stewards LLC are also seeking injunctive
14 relief to prevent further action towards the permitting and/or construction of a 112 foot tall
15 Verizon cell tower at 1360 Ski Run Boulevard, on Defendant Gilliam Nel's property, which
16 would cause irreparable harm to these Plaintiffs, their neighbors, and the general public. Plaintiff
17 Benedict further seeks declaratory and injunctive relief against the City of South Lake Tahoe and
18 the TRPA, revoking the special use permit for the Verizon small cell facility installed across
19 Needle Peak Road from his residence in the vicinity of 3565 Needle Peak Road, and injunctive
20 relief and monetary and punitive damages against Verizon Wireless and the City of South Lake
21 Tahoe for injuries he has sustained to date and will continue to sustain from the wireless
radiation being transmitted from the Verizon small cell facility towards and into his residence

¹ See League to Save Lake Tahoe v. Tahoe Regional Planning Agency, 739 F. Supp. 2d 1260 (2010), Sept. 16, 2010 · United States District Court for the Eastern District of California · No. CIV. S-08-2828 LKK/GGH, 739 F. Supp. 2d 1260.

1 and property, and into his body, all against his will and without his permission, where he is
2 attempting to convalesce and recover from his continuing medical treatments for a serious
3 medical condition.

4 INTRODUCTION

5 9. TRPA has a long and distinguished history of upholding its mandate to protect the
6 Tahoe Basin's incomparable scenic beauty and water quality, which is recognized nationally and
7 internationally as, in the words of Mark Twain, "the fairest picture the whole world affords."
8 Mark Twain, *Roughing It* (1872), Ch. 22. Crucially, however, at the time the Amended Compact
9 was adopted in 1980, no one could have foreseen the explosive growth and densification of
10 wireless infrastructure that has taken place in recent decades.

11 10. In approving the TRPA Compact, Congress had the foresight to recognize the
12 environmental fragility of the Tahoe Region, especially in light of the propensity of State and
13 local governments to succumb to powerful industrial and commercial interests, as witnessed in
earlier environmental disasters in California, such as the sacrifice of the Hetch-Hetchy Valley.

14 11. Numerous provisions in the Compact demonstrate strong and continuing federal
15 stewardship, purpose, and involvement through this unique federal-state hybrid agency,
16 compared with other interstate compacts such as the Delaware River Basin Compact. For
17 example, the TRPA Compact actively involves federal agencies, including the Departments of
18 Defense, Interior, Agriculture, Commerce, Transportation, Health and Human Services, Housing
19 and Urban Development, the U.S. Forest Service, and the Environmental Protection Agency. The
20 Compact makes clear in Article I Section (a) (8) and (9) the continuing responsibilities and
21 interest of the federal government. The Compact explicitly states that TRPA is to consult with
the President's Council on Environmental Quality in determining environmental threshold

1 carrying capacities (Article V Planning, Section (b)) in developing TRPA’s Regional Plan; and
2 mandates collaborative planning with the federal government (Article V Planning, Section (i)).
3 Very importantly, the Compact clearly incorporates the basic structure of the National
4 Environmental Policy Act (NEPA), and then specifies coordination with the federal government
5 in the preparation of Environmental Impact Statements (Article VII, (b) and (c)). In Article X,
6 the Compact expressly exempts decisions affecting impacts on the “allocation, distribution, or
7 storage” of interstate waters (Tahoe Lake) which are reserved to the federal government
8 (subsection (d)); it engages the Secretary of Agriculture and other appropriate agencies (Section
9 2). The Compact includes a non-voting member appointed by the President (Section 3); it limits
10 TRPA authority by additional powers reserved to the U.S. government and Congress (Section 4).
11 Most significantly, the Compact states that “nothing shall affect” the federal prerogative and
12 powers of the United States over the region and its waters, or rights held by Indian nations.
13 (Section 5). Section 6 stipulates that Congress and the federal government (and presumably the
14 general public) retain the right to receive full disclosure of information pertinent to the public
15 mandate and federal constraints on the TRPA as set forth in the Compact. Finally, the federal
16 government has continued to provide [funding](#) to TRPA through various federal programs.

17 12. Unfortunately, while TRPA’s initial institutional blindness to the hazards of
18 pulse-modulated wireless radiation might have been understandable in 1980, its continuing
19 cecity is now inexcusable and in direct contravention of the Compact. TRPA has steadfastly
20 refused even to address the known and potential environmental hazards of wireless facilities, has
21 performed no comprehensive planning, and routinely approves new wireless infrastructure with
essentially no environmental review whatsoever, often at the staff level and commonly without
notice to adjacent property owners. Multiple peer-reviewed, published scientific studies show

1 that Radiofrequency Radiation (RFR) is harmful to endangered species, birds, insects, riparian
2 vegetation crucial to preserving Tahoe's famed water clarity, and dozens of other TRPA-adopted
3 thresholds which measure environmental benchmarks and mandated environmental goals. There
4 are over 2,000 peer-reviewed studies from around the world on the negative health and
5 environmental impacts of locating cell towers near private residences, workplaces, and especially
6 near schools, hospitals, retirement homes, and other vulnerable communities; many of the studies
7 were submitted to TRPA and are in the TRPA record.

8 13. Moreover, just days after TRPA Hearing Officer Marsha Burch granted the TRPA
9 permit for the construction of the monopine cell tower proposed at 1360 Ski Run Boulevard at
10 the conclusion of the hearing on October 14, 2021, Plaintiffs learned that nearly identical
11 monopine cell towers already approved by TRPA and installed and operating in the Lake Tahoe
12 Basin are illegally "shedding" enormous quantities of polyvinyl chloride ("PVC") faux pine
13 needles and faux pine branches from their tower heights. These faux PVC pine needles and pine
14 branches are added to the cell towers to camouflage the otherwise unsightly industrial-looking
15 tall steel towers and their accompanying antennae, wires, and apparatus. Indeed, the
16 telecommunications companies proclaim that these monopine cell towers mitigate the visual
17 impairment to the scenic viewshed that otherwise "bare" monopole cell towers would cause,
18 thereby allowing the monopine cell towers to meet TRPA's strict criteria for maintaining and
19 preserving the Lake Tahoe Region's unique scenic resources. But there's no "free lunch." Each
20 monopine cell tower is cloaked with several tons of PVC faux pine needles and faux pine
21 branches. The environmental conditions which these monopines endure can be exceptionally
harsh. The monopines are subjected to severe winds, extraordinary snow and ice loads, extreme
temperature variations, and high UV exposure. As a consequence, pieces of the PVC branches

1 and sprigs of PVC pine needles and individual PVC pine needles break off the monopine
2 frequently, especially during severe weather events, and are carried away from the monopine by
3 wind and gravity, falling across a wide debris field below. The discharge of PVC material from
4 these monopine towers constitutes an uncontrolled solid waste discharge that is prohibited under
5 TRPA ordinances, California law, and the federal Clean Water Act. The PVC waste breaks down
6 into smaller and smaller fragments, carried by the wind and water through the stormwater
7 drainages and drainage basins in the Lake Tahoe Region. These PVC fragments, which further
8 degrade into microplastics, eventually are deposited into Lake Tahoe through the drainage
9 systems.

10 14. Plaintiffs expressed their concerns about the serious potential for illegal
11 microplastic pollution that Verizon's proposed monopine at 1360 Ski Run Boulevard to the
12 attention of TRPA in their appeal papers filed in support of the Appeal of the Hearing Officer's
13 Decision, dated October 14, 2021, granting Verizon's application for the TRPA permit to
14 construct and operate the monopine at that location. Plaintiffs demonstrated in their Statement of
15 Appeal and supporting papers to the TRPA Governing Board that Verizon's monopine likely
16 would be sheathed in 5,000 pounds or more of PVC faux pine branches and PVC faux pine
17 needles; substantial quantities of these PVC materials likely will "shed" from the monopine in
18 the extreme environmental conditions present; the PVC materials will likely fragment into tiny
19 pieces and be transported off location and into the surrounding stormwater system and stream
20 drainage basins, before eventually being discharged as microplastics into Lake Tahoe. Plaintiffs
21 cited numerous scientific studies finding PVC microplastics present in freshwater ecosystems
and concluding that PVC microplastics pose a serious toxic threat therein. Indeed, recent
studies² have found microplastics present in human blood and lung tissue.

² e.g. [Radiofrequency and Extremely Low Frequency Electromagnetic Field Effects on the Blood Brain Barrier](#)

1 15. TRPA, working jointly with Verizon, proclaimed to the Board of Governors at the
2 hearing on the appeal that they have “solved” this monopine major pollution threat to the Lake
3 Tahoe Basin by adding a condition to Verizon’s Ski Run Blvd. tower permit requiring Verizon to
4 “clean up” the monopine site twice each year and to dispose of any fallen PVC material
5 “properly.” In open hearing, Verizon’s counsel admitted that Verizon has not performed any
6 toxicity analysis on monopine-generated microplastics, and therefore is clueless about the
7 contents of the hazardous waste Verizon’s monopine will cause to be discharged into Lake
8 Tahoe. The absurdity of Verizon’s proposed “solution” ignores the reality that the shedding PVC
9 fragments are dispersed by the wind and waters over a very broad area, beyond the small
10 footprint of the tower site; the PVC fragments are, in many cases, too small to be collected, even
11 if located; and the proposed twice per year collection period is limited to the snowless season,
12 after the fierce winter storms and snowmelt have transported much of the PVC offsite and
13 beyond possible retrieval. Nevertheless, the TRPA Governing Board accepted this condition and
14 denied Plaintiffs’ appeal on March 23, 2022. Plaintiffs are appealing the TRPA Governing
15 Board’s denial of the appeal through this Complaint.

16 16. TRPA actively promotes and grants permits for the construction and operation of
17 hazardous wireless infrastructure with no evaluation of the environmental impacts, including the
18 monopine waste issue, ignoring the explicit requirements of Article VII in the Compact and the
19 basic procedures required by NEPA and CEQA which are adopted and incorporated as TRPA’s
20 own practices in its Regional Plan and in its ordinances. TRPA blatantly supports a pro-telecom
21 lobbying entity, the Tahoe Prosperity Center (“TPC”). Not only does TRPA directly contribute
funding to TPC, but its Executive Director, Defendant Joanne Marchetta (“Marchetta”), and one
immediate past and one current TRPA Board members, Defendants Marcia Berkbigler

1 (“Berkbigler”) and Sue Novasel (“Novasel”), as well as a former key TRPA staff member, are
2 also on the Board of Directors of TPC. Another member of the TPC Board is Devin
3 Middlebrook, the current Mayor of the City of South Lake Tahoe. The majority of TPC’s budget
4 goes directly or indirectly to promoting its “Connected Tahoe” agenda — which is being
5 promoted by the three major telecom providers in the Tahoe region, Defendant Verizon and
6 AT&T and T-Mobile. Plaintiffs contend that the present situation represents a patent and
7 egregious conflict of interest, in direct violation of the terms of the Compact. The service of
8 Defendants Marchetta, Berkbigler, and Novasel on the Board of Directors of the Tahoe
9 Prosperity Center, an organization that actively lobbies local government and the TRPA to issue
10 permits to support broadband expansion in the Lake Tahoe Basin through, among other things,
11 widespread deployment of macro cell towers and small cell wireless facilities requires their
12 immediate disqualification and recusal from any TRPA decision-making regarding such
13 facilities, and the voiding of any such policies, permits, or decisions made with respect to such
14 facilities in which they participated.

14 17. The telecom providers, through the California Public Utilities Commission, and
15 also directly, provide major funding for TPC. The telecom providers are actively pushing an
16 agenda to provide voice and data services wirelessly, when most of those services could be
17 provided with little or no environmental damage with safe fiber-optic to the premises
18 connections. In plain terms, much of the wireless infrastructure that is currently being
19 aggressively and dangerously implemented within the Tahoe Region is not needed, especially
20 when an alternative, safe, fast, secure, environmentally protective, energy efficient, cost-effective
21 and balanced alternative – fiber-optic to the premises – is immediately available throughout the
Tahoe Region. TRPA never bothered to examine these alternative technologies, which in and of

1 itself constitutes a violation of Article VII of the Compact. The Tahoe Region has an
2 opportunity to become a showcase for a proven, innovative, already paid for optical fiber wired
3 infrastructure to the home and workplace for residents and the millions of visitors to Tahoe each
4 year.

5 18. In what appears to be a classic “bait and switch” scheme, the telecoms had
6 promised fiber-optic infrastructure in the Tahoe Region in exchange for massive subsidies paid
7 for by their customers, but instead of building out the full fiber-optic network they had promised,
8 and for which they had been funded, the telecoms now push their wireless infrastructure agenda
9 for greater profits for themselves. The telecoms routinely claim that further wireless facilities are
10 justified to meet a “coverage gap” and to provide for additional wireless capacity, but they have
11 actually created that “gap” and lack of capacity themselves by failing to provide the promised
12 fiber-optic network. Similar wireless industry claims that the accelerated establishment of a
13 wireless infrastructure will bridge the Digital Divide, fortify power grid resilience during
14 wildfires, earthquakes, and cyberattacks, and promote climate change friendly policies are
15 equally specious and a form of greenwashing. Plaintiffs have already cited in the record critical
16 scientific and technical studies confirming that the exact opposite is the case. The so-called
17 “Tahoe Prosperity Center” is instead bringing a wireless radiation induced dystopia to the Lake
18 Tahoe region.

19 19. The present litigation is the unfortunate, but necessary culmination of efforts to
20 hold the TRPA accountable, after several years of many urgent but fruitless appeals at the local
21 municipal, regional, and federal levels, which have resulted in a voluminous record of scientific
studies and legal precedents all pointing to the utter failure of the TRPA Board to safeguard the
Public Trust envisioned by the Tahoe Compact. In particular, over the past few years, within the

1 Tahoe Basin, Plaintiffs, along with many concerned residents and members of the public, have
2 attended many meetings of local government bodies, including the City of South Lake Tahoe
3 Planning Commission and the City Council, and public meetings of the TRPA, attesting to
4 massive violations of federal and state laws, including the Compact itself and its Ordinances,
5 regarding the approval and deployment of wireless transmission facilities. Plaintiffs' and the
6 public's concerns have been either arbitrarily and capriciously ignored or dismissed, or actively
7 rebuked by wireless representatives and TRPA officials. Plaintiffs and many other individuals
8 and groups have strenuously objected to the unbridled rollout of wireless facilities within the
9 Lake Tahoe Basin to TRPA's Board at nearly every one of the TRPA Board meetings over the
10 better part of a year. Plaintiffs and the public have requested that the TRPA schedule a public
hearing on this subject, but TRPA has refused and/or willfully ignored these requests.

11 20. With no other outlet for their frustration at being ignored by the TRPA directors,
12 officers, and staff about their concerns regarding the approval and deployment of wireless
13 transmission facilities within the Lake Tahoe Basin, hundreds of commenters utilized their only
14 opportunity to appear and be heard – the Public Comment period of the TRPA Board meetings –
15 despite the TRPA's best efforts to suppress their voices. During the Public Comment period of
16 the TRPA Board meetings, anyone present is permitted to speak for a limited period of time (set
17 at the discretion of the Chair of the Board). Over the past three years, the Public Comment period
18 became the only outlet for members of the public to express themselves at an open public
19 meeting and to confront the TRPA Board and staff with their serious misgivings about the
20 TRPA's actions regarding wireless transmission facilities. Faced with scores of residents upset
21 with TRPA's disregard for the environmental criteria controlling development projects and the
TRPA's routine granting of permits for wireless transmission facilities without undergoing the

1 requisite scrutiny, the TRPA responded by moving the Public Comment period to the end of the
2 agenda in Spring 2020, instead of holding Public Comment at the beginning of the agenda as it
3 had done for decades. This change was a patently obvious attempt to discourage public
4 participation in the Public Comment period and thereby minimize the amount of negative public
5 comment about how the TRPA is handling the roll-out of wireless infrastructure in the Tahoe
6 Basin. TRPA's and other Defendants' actions have violated Plaintiff's First and Fourteenth
7 Amendment and California State Constitutional rights of Due Process and Freedom of
8 Expression by continually refusing to agenda a public hearing on TRPA's policies and practices
9 regarding the wireless facilities rollout in the Lake Tahoe Region and by unduly circumscribing
10 the public's ability to participate in the TRPA Board's public comment sessions.

11 21. Only one among many examples of how the rapidly expanding wireless
12 infrastructure is personally and intimately affecting, and potentially destroying the lives of
13 individual residents of the Tahoe Region is the case of Plaintiff Monica Eisenstecken
14 ("Eisenstecken"). Plaintiff Eisenstecken objects to a 112-foot high Verizon cellular macro tower
15 proposed to be installed on a parcel directly adjacent to the one where her family resided for
16 years, but sold in the Spring of 2021 because of Eisenstecken's well-grounded fear that the
17 TRPA Governing Board would ultimately approve the tower. The proposed cell tower is now set
18 to be located at 1360 Ski Run Boulevard, approximately 150 feet from Eisenstecken's former
19 home. According to TRPA's last two Threshold Evaluation Reports for Scenic Roadway Units,
20 the proposed tower will be located in an area which is categorized by TRPA as in the worst 4%
21 of all areas at Tahoe in terms of vulnerability to scenic quality degradation, precisely the kind of
reckless decision that an EIS process would make transparent and rectify. TRPA's most recent
Threshold Evaluation Report for 2015, *see especially* Appendix G, Table 9-4, places this area at

1 the absolute bottom of the list, and characterizes it as “Considerably Worse Than Target.”
2 TRPA’s Compact and Regional Plan require that all environmental impacts, including scenic
3 impacts, be fully mitigated to a less than significant level. At a hearing on September 30, 2020,
4 the TRPA Governing Board once again demonstrated its insensitivity, not only to the impacts of
5 wireless radiation, but to even the cherished scenic vistas lauded by Mark Twain and many
6 generations of visitors to Tahoe since. Almost incomprehensibly, the TRPA Board voted, without
7 any evidence that the additional degradation to scenic quality would be mitigated to a less than
8 significant level, to allow the landowner, Defendant Nel, to cut down 31 trees, averaging 70 feet
9 tall, with several trees much taller. The tree-cutting permit was issued after the City of South
10 Lake Tahoe fire inspector had ordered Nel to cut down the trees because the inspector
11 determined they presented a fire hazard in this wildfire-susceptible zone. The TRPA granted the
12 tree-cutting permit without considering at all the fact that some or all of those 31 trees would
13 have provided at least some visual screening to the proposed 112-foot tower in advance of the
14 hearing on the tower project itself. The TRPA considered the tree-cutting permit to be
15 completely independent of the then-pending but incomplete application of the same landowner
16 and Verizon for the proposed cell tower on the same land parcel. Although no findings were
17 made by the Board, TRPA’s General Counsel, John Marshall (“Marshall”), averred after the vote
18 that the result of the TRPA Board’s action was to reduce the scenic baseline for the tower project
19 to the condition of the project site with the trees already removed. Such an interpretation would
20 effectively foreclose the options to reduce the scenic impacts of Verizon’s 10-story tall eyesore.
21 In addition, and as will be explained below, the proposed tower looming over Ms. Eisenstecken’s
former home, and especially the resulting increased and untested RFR exposures, would have
placed her health and wellbeing and that of her two young children in immediate jeopardy.

1 Plaintiff Eisenstecken and her family did not consent to this impending assault and trespass, and
2 as the likelihood of TRPA granting final approval for the tower increased, Ms. Eisenstecken felt
3 that she had no alternative other than to move her family from their homestead. In Spring 2021,
4 her father sold the family property, including the house which he had built with his own hands.
5 Plaintiff will document her measurable loss in the reduced value of her property as a direct result
6 of the imminent macro-tower, along with other losses that will be shown to have arisen directly
7 from this badly conceived project.

8 PARTIES

9 22. Plaintiff Monica Eisenstecken (“Eisenstecken”) is an individual who had lived
10 with her family at 3605 Needle Peak Road in South Lake Tahoe City, California until late 2021,
11 when she and her family sold their property because of her well-founded fears that Verizon
12 would soon obtain the final permits necessary to construct the monopine tower next door, which
13 would then render the property uninhabitable for her and her family. Eisenstecken and her
14 family presently are living in temporary accommodations with relatives and friends in South
15 Lake Tahoe City and vicinity, while seeking permanent accommodations. Their lives have been
entirely disrupted by the proposed Verizon macro tower.

16 23. Eisenstecken lived in the house located at 3605 Needle Peak Road beginning in
17 2005, when her father, George Eisenstecken, finished construction of the house he envisioned as
18 a multi-generational compound for his family. Plaintiff Eisenstecken, who was born and raised
19 in South Lake Tahoe City, California, and her family, are long standing residents of South Lake
20 Tahoe City, and are directly and immediately affected by the illegal actions alleged herein.
21 Plaintiff Eisenstecken and the other plaintiffs to this action are “aggrieved persons” under Article
VI (j)(3) of the Compact.

1 24. Eisenstecken suffers from a medically-diagnosed condition known as
2 electromagnetic hypersensitivity syndrome (“EHS”), which means that Eisenstecken is
3 extra-sensitive to wireless radiation. When Eisenstecken is in the presence of wireless radiation,
4 particularly at elevated levels, she suffers physical and mental symptoms, including anxiety, back
5 pain, neck pain, headaches, dizziness, and brain fog. Eisenstecken’s two young sons, who both
6 lived in the family home at 3605 Needle Peak Road, also suffer from EHS. Both boys have
7 disabilities, including attention deficit disorder, which may be exacerbated by excessive exposure
8 to wireless radiation.

9 25. Eisenstecken has been so upset by the prospect of Verizon building and operating
10 its proposed 112-foot tall cell tower immediately adjacent to her property that she had her father,
11 the owner of the property, put the property, which he personally built as his “dream” compound
12 for his family, on the market for sale in the Fall of 2020. Eisenstecken’s father listed the property
13 with a professional realtor for several months. After dropping the price (despite the super-heated
14 real estate market in the Lake Tahoe region), Eisenstecken’s father finally found buyers for the
15 property in April 2021. The buyers were advised by the seller about the proposed Verizon cell
16 tower next door, and they had already read news reports about the proposed facility on the
17 Internet. The buyers told Eisenstecken and her father that the prospect of the cell tower did not
18 bother them, and they wanted to close the deal – a cash deal – by the end of April 2021. The
19 transaction proceeded towards closing, with the buyers conducting a home inspection that turned
20 up only a few minor items needing attention. However, towards the end of April 2021, the
21 buyers suddenly backed out of the deal, writing:

1 After doing our due diligence regarding the property at 3605 Needle Peak, we had
2 to make a most unfortunate decision to cancel our purchase. Although the house
3 is everything we wanted and the land was very desirable, the looming issue of a
4 possible cell tower right next door left us seeking answers. Our home inspection
5 came up with minimal issues and we were happy to proceed, but the cell tower
6 issue would not go away. With such a large purchase price, and a plan to invest a
7 lot remodeling, we found it too risky to jeopardize our investment with the
8 expected property value hit we'd incur with the addition of a massive cell tower
9 literally next door...

10 26. Several months later, Eisenstecken's father relisted the property, and was able to
11 find a buyer. The sale price was considerably lower than comparable properties with similar
12 prized views and locations so close to the Heavenly Valley Ski Resort in the exceptionally strong
13 Lake Tahoe real estate market because of the likely prospect that the Verizon monopine would
14 receive final approval and be built in the immediate future.

15 27. Plaintiff David Benedict ("Benedict") is an individual who resides at 3585 Needle
16 Peak Road, South Lake Tahoe City, California, in a house he has owned for more than
17 twenty-five years. Mr. Benedict is directly and immediately affected by the illegal actions
18 alleged herein. Plaintiff Benedict is an "aggrieved person" under Article VI (j)(3) of the
19 Compact.

20 28. Mr. Benedict currently suffers from multiple myeloma, a very serious disease for
21 which he is receiving state-of-the-art medical care, in the form of an FDA experimental drug
trial, administered by leading specialists and researchers at a major university teaching hospital
in San Francisco. Mr. Benedict has recently undergone a rigorous course of drug therapy, and is
convalescing in his sole residence on Needle Peak Road in South Lake Tahoe City. Mr. Benedict
remains in a fragile medical condition, and receives highly specialized and closely monitored
medical care by his physicians and their teams in both San Francisco and the Lake Tahoe
Region. His life literally depends on the success of the experimental drug trial. As explained
below, Mr. Benedict's oncologist, a leader in her field of multiple myeloma, has provided a

1 Declaration expressing her concern that constant and cumulative RF exposure from the present
2 Verizon small cell wireless antennas located directly across the street from Mr. Benedict's house
3 will interfere with his experimental drug trial and reduce his chances of survival. Defendants
4 Verizon and the City of South Lake Tahoe have refused to extend any reasonable accommodation
5 under the federal Americans with Disabilities Act and the Fair Housing Amendments Act despite
6 Mr. Benedict's written request for such reasonable accommodations.

7 29. Plaintiff Tahoe Stewards, LLC ("Tahoe Stewards") is a California Limited
8 Liability Company which focuses on the threat to Tahoe's environment from wireless
9 infrastructure. It has generated petitions³ with over 5,000 signatories opposing the Verizon
10 monopine tower to be located at 1360 Ski Run Boulevard. Tahoe Stewards is a well-recognized
11 representative of many of those who oppose the adverse impacts of wireless technology, which
12 will directly and immediately affect their personal health and the quality of their lives, especially
13 in the Lake Tahoe Basin. Tahoe Stewards is headed by Benjamin Lebovitz ("Lebovitz") who
14 resides on Regina Road, South Lake Tahoe City, California. Lebovitz's property is located only
15 a few hundred feet from the base of Verizon's proposed monopine at 1360 Ski Run Boulevard.
16 Lebovitz is directly and immediately affected by the illegal actions alleged herein. Plaintiff
17 Benedict is an "aggrieved person" under Article VI (j)(3) of the Compact.

18 30. Plaintiff Tahoe for Safer Tech is an unincorporated membership organization
19 based in South Lake Tahoe City that advocates on behalf of its members for fact-based,
20 scientifically-grounded, and balanced approaches to providing communication and data services.
21 Plaintiff Tahoe for Safer Tech is a watchdog grassroots organization whose mission is to
safeguard Tahoe's unique environment and the health of its residents and to challenge actions

³ See Exhibit B, pg. 103 of the [NEPA filing](#).

1 that will directly and immediately adversely affect their personal health and the quality of their
2 lives.

3 31. Plaintiff Environmental Health Trust (“EHT”) is a non-profit 501(c)(3) scientific
4 and educational organization, based in Teton Village, Wyoming, whose mission is to safeguard
5 human health and the environment by empowering people with state-of-the-art information and
6 working directly with various constituencies to mitigate health and environmental risks. EHT is
7 a “think tank” that promotes a healthier environment through research, education, and policy.
8 EHT has no parent corporation, and no publicly-held company has a 10% or greater ownership
9 interest in the organization. The environmental and health issues presented in this case are of
10 direct concern to EHT’s basic organizational rationale, core mission and purpose. EHT’s success
11 as an organization depends on the integrity and truthfulness of information provided or relied
12 upon by government agencies, along with a reasonable opportunity for non-profit public interest
13 organizations such as EHT to challenge arbitrary governmental decisions that reach conclusions
14 without a reasoned process. Dr. Devra Davis, EHT’s Founder and President, has recently visited
15 the Lake Tahoe Basin to enjoy its pristine environment, magnificent scenery, and abundant
16 outdoor activities. Dr. Davis was one of the scientists who was a lead author of a paper on
17 climate mitigation policies included on the Intergovernmental Panel on Climate Change. Dr.
18 Davis was part of the team of scientists, along with former Vice President Al Gore, which was
19 awarded the Nobel Peace Prize in 2007.

20 32. Defendant, the City of South Lake Tahoe, California (“South Lake Tahoe”), is the
21 most populous city in El Dorado County, California and in the Lake Tahoe Region. South Lake
Tahoe was incorporated as a city in 1965. South Lake Tahoe plays a major role in the land use
decisions within its city boundaries. Numerous City departments and the City Council are

1 involved in the local land use decision-making process. For example, the Planning Division is
2 responsible for current and long-range planning activities which implement the City's [General](#)
3 [Plan](#). Current planning activities include reviewing and permitting development activities to
4 ensure new development and redevelopment projects are consistent with the City's General Plan,
5 Plan Area Statements, and Title 6, Development Services, of the South Lake Tahoe City
6 Code. The City's planning, land use, and zoning services are intended to protect, maintain, and
7 develop an attractive, safe, and healthy community by providing planning services to the general
8 public, project applicants, and other City Departments. South Lake Tahoe is organized as a
9 General Law City under the California Constitution.

10 33. South Lake Tahoe's City Council, its legislative body, has enacted a
11 comprehensive South Lake Tahoe City Code which, among other things, sets forth the
12 organization of the city government, the duties of various officials and departments, and the
13 local, police, sanitary, and other ordinances and regulations which are not in conflict with the
14 general laws of the State of California. Among these code provisions is the comprehensive
15 [Chapter 6.75](#), entitled "Wireless Facilities on Private Property," which was passed as Ordinance
16 2020-1143 on May 12, 2020, and became effective on June 11, 2020. The purpose and intent of
17 Chapter 6.75 is set forth in Section 6.75.010, which states:
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1 A. The city of South Lake Tahoe intends this chapter to establish reasonable,
2 uniform and comprehensive standards and procedures
3 for wireless facilities deployment, construction, installation, collocation,
4 modification, operation, relocation and removal within the city's territorial
5 boundaries, consistent with and to the extent permitted under federal and
6 California state law. The standards and procedures contained in this
7 chapter are intended to, and should be applied to, consistent with federal
8 and state law, protect and promote public health, safety and welfare, and
9 also balance the benefits that flow from robust, advanced wireless services
with the city's local values, which include without limitation the aesthetic
character of the city, its neighborhoods and community. This chapter is
also intended to reflect and promote the community interest by (1)
ensuring that the balance between public and private interest is maintained
on a case-by-case basis; (2) protecting the city's visual character from
potential adverse impacts or visual blight created or exacerbated
by wireless communications infrastructure; (3) protecting and preserving
the city's environmental resources; and (4) promoting access to
high-quality, advanced wireless services for the city's residents, businesses
and visitors.

10 Prior to June 11, 2020, the South Lake Tahoe Code contained no specific provisions
11 governing the regulation of wireless telecommunications facilities within the City limits.
12 Instead, wireless telecommunications facilities were permitted in certain areas within the
13 City limits pursuant to special use permits granted by the Planning Commission and/or
14 the City Council.

15 34. Defendant Tahoe Regional Planning Agency (TRPA), headquartered at 128
16 Market Street, Stateline, Nevada, is an entity created by a Bi-State Compact, and is the lead
17 regulator in the Tahoe Region as that term is used in the Compact. The Tahoe Region includes
18 portions of El Dorado County and Placer County on the California side, as well as the City of
19 South Lake Tahoe. It also includes portions of Washoe County, Douglas County, and Carson City
20 on the Nevada side. TRPA has adopted environmental threshold carrying capacities and a
21 Regional Plan and Ordinances which dictate that no project may be approved unless it is shown
that none of the adopted threshold carrying capacities will be exceeded.

1 35. Defendant Joanne Marchetta (“Marchetta”) is the Executive Director of TRPA.
2 Marchetta serves and has served on the Board of Directors and the Executive Committee of the
3 Tahoe Prosperity Center at the same time as she serves as the Executive Director of TRPA. The
4 Tahoe Prosperity Center, as alleged herein, is an organization that lobbies before the TRPA in
5 support of the Connected Tahoe plan, a plan conceived and advocated in concert with the
6 telecoms, and in particular, with Verizon, AT&T, and Sprint, to dramatically increase the
7 densification of wireless transmission facilities within the Lake Tahoe Basin by deploying many
8 new macro and small cell wireless facilities and co-locating wireless antennas on existing
9 facilities. Marchetta’s concurrent service as a Director and Executive Committee Member of the
10 Tahoe Prosperity Center while she serves as TRPA’s Executive Director represents a serious
11 conflict of interest and ethical violation that requires her disqualification from any
12 decision-making regarding TRPA policy-making or permitting of wireless facilities in the Lake
13 Tahoe Basin and the voiding of any decisions and/or policies concerning such facilities in which
14 Marchetta participated while she concurrently served in those positions.

15 36. Defendant Marsha Berkbigler (“Berkbigler”) was an elected member of the
16 Washoe County Commission, Nevada, between 2013 and January 3, 2021, representing District
17 1. Berkligler lost her re-election bid on November 3, 2020. Pursuant to Article III(a) of the
18 Compact, by virtue of her position as a Washoe County Commissioner, Berkbigler was appointed
19 to and served as a Member of the TRPA Governing Board from 2013 until she left the Board on
20 January 3, 2021. Berkbigler served as a Director of the Tahoe Prosperity Center concurrently
21 during her service as a TRPA Governor, and said concurrent service created a serious conflict of
interest and ethical violation that requires her disqualification from any decision-making
regarding TRPA policy-making or permitting of wireless facilities in the Lake Tahoe Basin and

1 the voiding of any decisions and/or policies concerning such facilities in which Berkbighler
2 participated while she concurrently served in those positions.

3 Defendant Sue Novasel (“Novasel”) was elected as the District V Supervisor, El Dorado County,
4 California, in the November 2014 election. Pursuant to Article III(a) of the Compact, by virtue
5 of her position as an El Dorado County Supervisor, Novasel was appointed to and continues to
6 serve as a Member of the TRPA Governing Board. Novasel served as a Director of the Tahoe
7 Prosperity Center concurrently during her service as a TRPA Governor, and said concurrent
8 service created a serious conflict of interest and ethical violation that requires her disqualification
9 from any decision-making regarding TRPA policy-making or permitting of wireless facilities in
10 the Lake Tahoe Basin and the voiding of any decisions and/or policies concerning such facilities
11 in which Novasel participated while she concurrently served in those positions.

12 37. Defendants Sacramento-Valley Limited Partnership, d/b/a Verizon Wireless, and
13 Does 1-100, are affiliated with Verizon Communications, Inc., and/or the other Defendants, and
14 are acting on their behalf and as their agents. The Verizon Wireless office which is seeking the
15 monopine cell tower at 1360 Ski Run Boulevard is located at 8880 Cal Center Drive, Suite 130,
16 Sacramento, California.

17 38. Defendant Gullium Nel (“Nel”) is an individual, and the owner of the property
18 located at 1360 Ski Run Boulevard, South Lake Tahoe, California, where Verizon Wireless
19 intends to construct and operate the proposed cell tower, adjacent to the property formerly owned
20 by Plaintiff Eisenstecken’s father, George, and where the Eisenstecken family resided until late
21 2021. On information and belief, Nel and Verizon Wireless have entered into a lease agreement
pursuant to which Nel will allow Verizon Wireless to construct and operate a 112-foot tall
monopine cell tower on his property, and Verizon Wireless will pay Nel rental income in return.

1 Nel has cooperated with Verizon Wireless to secure the necessary permits from South Lake
2 Tahoe City and TRPA, and any other governmental or regulatory body for the construction,
3 operation, and maintenance of the cell tower and accessory structures and equipment.

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

8 40. Plaintiffs are informed and believe and thereon allege that each named or Doe
9 Defendant is responsible in some manner for the acts, occurrences, and liability hereinafter
10 alleged and referred to.

11 41. Plaintiffs are informed and believe and thereon allege that at all times mentioned
12 herein, each named and/or Doe Defendant is the agent, servant, or employee of each and every
13 remaining Defendant, and the acts of each Defendant are within the course and scope of said
14 agency and/or employment.

15 **STANDING**

16 42. Plaintiffs have satisfied both Article III and prudential standing. Plaintiffs each
17 have suffered an injury in fact that is a) concrete and particularized; b) non-speculative; and c)
18 actual or imminent. Each Plaintiff has suffered an injury in fact by showing a connection to the
19 Lake Tahoe region of concern sufficient to make credible the contention that the Plaintiff's future
20 life will be less enjoyable if the area in question remains or becomes environmentally degraded,
21 or for a Plaintiff association, if any of its existing members themselves have met that standing
test. *See Garmong v. Tahoe Regional Planning Authority*, 806 Fed. Appx. 568 (9th Cir. 2020),
relying on *Ecological Rights Foundation v. Pac Lumber*, 230 F.3d 1141 (9th Cir. 2000).

1 43. Applying this standard to the instant case, Plaintiffs and their families have lived
2 and thrived in Tahoe for decades and/or have been visitors to the Lake Tahoe region attracted by
3 its remarkable beauty and pristine environment. For them the rampant destruction of the Tahoe
4 Region by cell towers and the discharge of toxic monopine microplastic waste into Lake Tahoe,
5 polluting their drinking water and the food they eat, will cause them irreversible harm, not to
6 mention depriving them of enjoyment and personal enrichment that is conferred by the natural
7 heritage the Compact is designed to protect. Their personal lives will be impoverished if Tahoe is
8 converted into a jungle of cell towers blanketing the Region with electromagnetic radiation.

9 44. The standing of Plaintiff Environmental Health Trust is established both on the
10 basis that some of the other plaintiffs are members, but also on distinct and separate grounds, that
11 of informational rights that are infringed when a federal agency, or its functional equivalent,
12 TRPA, actively disseminates, encourages, and repeats false claims that the federal government
13 has determined that RF exposure of the general public is safe—when in fact the opposite is the
14 case-- and further uses such claims to deny basic due process rights and rights to freedom of
15 expression. The disdain that Defendant TRPA has shown for the scientific evidence touches the
16 very core of why EHT was established in the first place.

17 45. As for individual Plaintiff Monica Eisenstecken, as noted she has suffered
18 significant economic losses and her life and that of her family have been thoroughly uprooted
19 because of the insistence of Defendants Nel and Verizon to build and operate the 112-foot tall
20 monopine cell tower at 1360 Ski Run Boulevard and the TRPA Defendants' violations of their
21 sworn duties in "greasing the skids" for the granting of the necessary TRPA permit for said
construction and operation.

1 46. For Plaintiff David Benedict, who is greatly physically impaired by his illness and
2 cannot financially afford to move, Verizon's and the City of Lake Tahoe's refusal to extend a
3 reasonable accommodation under the ADA and the FHAA and the City's refusal to find that
4 Verizon is violating the terms of its permit for the operation of the small cell wireless facility that
5 is beaming high levels of wireless radiation at his house and property, may be a death sentence.
6 Verizon is causing Mr. Benedict grievous physical injury, and the City of South Lake Tahoe is
7 standing idly by, allowing it to happen, despite its duty to protect Mr. Benedict under the ADA,
8 the FHAA, and pursuant to the very City permit it issued to Verizon allowing this wireless
9 facility to operate.

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

11 47. Defendant TRPA was created and exists as a separate legal entity pursuant to
12 Article III(a) of the Compact. The Compact confers on TRPA powers and responsibilities for
13 land use planning and environmental protection in the Lake Tahoe Region. TRPA's
14 decision-making body is its Governing Board, comprised of a seven-member California
15 delegation, each of whom is appointed by a certain designated state or local governmental body
16 or state official of the State of California; a seven-member Nevada delegation, six of whom are
17 variously appointed by certain local governmental bodies or state officials of the State of
18 Nevada, and one of whom is appointed by the other six appointees; and one non-voting member
19 appointed by the President of the United States.

20 48. Article VII of the Compact (pp. 16-18) provides detailed requirements for TRPA
21 responsibilities to review, review, assess, consult, and coordinate decision making relating to
significant "matters" that will have major environmental consequences, such as blanketing
Tahoe, its inhabitants, and environment with wireless cell towers. The Compact further requires

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

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

14 50. Second, Article V(g) of the Compact requires TRPA to make certain other
15 findings that relate to environmental protection before approving any project or activity that may
16 substantially affect the natural resources of the region to “insure that the project under review
17 will not adversely affect implementation of the Regional Plan and will not cause the adopted
18 environmental threshold carrying capacities of the region to be exceeded.” TRPA’s Code of
19 Ordinances, at Sections 4.4.1 and 2, goes further, and requires: “Wherever federal, state, or local
20 air and water quality standards apply for the region, the strictest standards shall be attained,
21 maintained, or exceeded pursuant to Article V(d) of the Tahoe Regional Planning Compact.”
And very significantly, TRPA is required to “Identify the nature, extent, and timing or rate of

1 effects of the project, using applicable measurement standards consistent with the available
2 information...”.

3 51. These are solemn obligations that go to the core of Congressional intent in
4 establishing a Public Trust for the Tahoe Region. On August 13, 2021 the D.C. Circuit Court of
5 Appeals, in the landmark case of *Environmental Health Trust v. FCC*, 9 F.4th 893 (D.C. Cir.
6 2021), held that the Federal Communications Commission, effectively an administrative agency
7 analogue of the TRPA, could not ignore or arbitrarily dispense with statutory obligations (in this
8 case the Compact and the Regional Plan and the TRPA Ordinances promulgated pursuant to the
9 Compact) by articulating conclusory statements in support of a final ruling that showed no
10 evidence of a reasoned decision process. Yet, on March 23, 2022, in denying Plaintiffs’ appeal
11 of Hearings Officer Burch’s October 14, 2021 decision granting Defendants Verizon and Nel the
12 TRPA permit for the Verizon monopine tower at 3160 Ski Run Boulevard, TRPA’s Governing
13 Board committed even a more egregious demonstration of arbitrary and capricious
14 decision-making than that condemned and invalidated by the D.C. Circuit Court of Appeals in
15 the *EHT v. FCC* case. Here, the TRPA Governing Board simply voted to deny the appeal (with
16 two Governors recusing themselves and one voting in opposition), but without issuing any
17 decision whatsoever, and therefore, without providing any substantial evidence from the
18 voluminous record upon which to base its wholly unsupported decision. Moreover, the Hearings
19 Officer decision which the TRPA Governors upheld on appeal was issued in reliance upon TRPA
20 staff recommendations that were not made in a manner required by law by a hearings officer who
21 failed to review and consider the entire record prior to rendering her decision and who failed to
base her decision upon substantial evidence from the voluminous record. *See* Compact, Article
VI(j)(5). The TRPA Governing Board’s decision denying Plaintiffs’ appeal on March 23, 2022

1 constitutes a final order from which Plaintiffs are timely appealing by filing this amended
2 Complaint in this Court pursuant to the Compact, Article VI(j)(3).

3 52. The consistency principle is a bedrock of California and Nevada land planning
4 law, as well as in most other States. In the present case, the actions and omissions of the TRPA
5 are wildly inconsistent with the explicit terms of the Compact and the TRPA's own Regional
6 Plan, issued pursuant to the Compact, and violate the National Environmental Policy Act
7 (NEPA), the California Environmental Policy Act (CEQA), and many other federal and state
8 laws enacted to protect the natural environment and the health and well-being of communities.
9 Moreover, the TRPA, when it grants permits for wireless transmission facilities or considers
10 requests to modify those permits, fails to make any reasonable accommodation to disabled
11 persons like David Benedict when they present such requests under the Americans with
12 Disabilities Act and/or the Fair Housing Amendments Act, as it is required to do under both
federal statutes

13 53. In fact, TRPA has failed to adopt any standards or regulations to control or to
14 mitigate the rapidly increasing ambient levels of pulse modulated wireless radiation from the
15 accelerating deployment of new RFR emitting small cell and macro towers and other wireless
16 devices. TRPA has given no consideration at all to the impact on thresholds or consistency with
17 the goals and objectives of its Regional Plan. In derogation of its duties and responsibilities
18 under the Compact, TRPA is relying solely on the telecom industry and the FCC's outdated 1996
19 emissions standards that cover only thermal, not biological, effects of RFR, and fail to address
20 harms from non-ionizing radiation on community health and the environment. The adequacy of
21 the 1996 FCC emissions standards, which are still in effect, to protect human health and the

1 environment is being currently being challenged and litigated in proceedings remanded to the
2 FCC by the D.C. Circuit Court of Appeals pursuant to its ruling in *EHT v. FCC*.

3 54. In that landmark case, brought by the Environmental Health Trust, one of
4 Plaintiffs herein, petitioner EHT challenged the FCC's decision to terminate a notice of inquiry
5 regarding the adequacy of the FCC's guidelines for exposure to radiofrequency radiation, the
6 identical FCC guidelines upon which TRPA relies to grant its permit to Verizon in this litigation.
7 The notice of inquiry, which the FCC initiated in March 2013, requested comment on whether
8 the FCC should initiate a rulemaking to modify its guidelines for the first time since they were
9 promulgated in 1996, when the wireless industry was still promulgating 2G, and cellphones were
10 not in common use by the general public. The FCC explained that it issued its notice of inquiry
11 in response to changes in the ubiquity of wireless devices and in scientific studies and research
12 since 1996. In December 2019, the FCC issued a final order resolving the 2013 notice of inquiry
13 by declining to undertake any of the changes contemplated in the notice of inquiry. On appeal,
14 the D.C. Circuit Court found that the FCC's decision to terminate the notice of inquiry was
15 arbitrary and capricious. The Court cited the FCC's failure to produce a substantial evidentiary
16 record supporting its conclusion that exposure to RF radiation at levels below the FCC's current
17 limits would not entail significant health effects unrelated to cancer. The court further held that
18 this failure undermines the FCC's conclusions regarding the adequacy of its testing procedures,
19 particularly as they relate to children, and its conclusions regarding the implications of long-term
20 exposure to RF radiation, exposure to RF pulsation or modulation, and the implications of
21 technological developments that have occurred since 1996, all of which depend on the premise
that exposure to RF radiation at levels below its current limits causes no negative health effects.
Accordingly, the court found those conclusions to be arbitrary and capricious. Finally, the court

1 held that the FCC's order was arbitrary and capricious in its failure to respond to comments
2 concerning environmental harm caused by RF radiation. The court remanded the petition to the
3 FCC to provide a reasoned determination that its guidelines adequately protect against harmful
4 effects of exposure to radiofrequency radiation other than cancer. 9 F.4th 893.

5 55. The D.C. Circuit's decision in *EHT v. FCC* calls into sharp question the adequacy
6 of the FCC's emissions guidelines to safeguard the public's health and the environment against
7 exposure to radiofrequency radiation other than cancer. The D.C. Circuit did hold that the FCC's
8 analysis of the record evidence was sufficiently reasoned to pass the low bar of not being
9 arbitrary or capricious with respect to the FCC's determination that exposure to radiofrequency
10 radiation did not cause cancer in humans. However, that bar is indeed low, and numerous
11 peer-reviewed scientific studies demonstrate the causative link between exposure to
12 radiofrequency radiation and cancer in humans. The D.C. Circuit's *EHT* decision makes clear
13 the assurance that the FCC's emissions guidelines protect humans and the environment from any
14 harms of exposure to radiofrequency radiation is simply a house of cards.

15 56. Plaintiffs, individually, and through their representatives and members, have
16 supplied TRPA during open meetings of the TRPA, at hearings before the TRPA, and by email
17 with references to and/or copies of several thousand scientific studies detailing the negative
18 impacts of RFR on the environment. On February 26, 2020, Plaintiffs supplied the TRPA Legal
19 Committee and the Governing Board with a binder filled with peer-reviewed and respected
20 scientific studies demonstrating the deleterious impacts of RFR on the environment. Plaintiffs
21 also provided TRPA with the report of Dr. Martin Pall, a leading RFR researcher, on the adverse
environmental impacts of RFR at Tahoe. Plaintiffs have supplied additional studies and
information to TRPA, which are more than sufficient to raise serious concerns about TRPA's

1 ability to carry out its Congressional mandate to protect the Public Trust in the Tahoe Region.
2 TRPA is required to work with “available information” (see Code of Ordinances Section 4.4.2),
3 which plaintiffs have furnished. All of these studies point to the adverse impacts on the
4 environment of the proposed wireless infrastructure and the availability of immediately
5 available, environmentally protective and safe alternatives. TRPA has not adduced a shred of
6 scientifically credible evidence to the contrary.

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

18 58. Plaintiffs are informed and believe that TRPA has never required a telecom cell
19 tower project applicant to participate in TRPA’s environmental impact assessment process, in
20 spite of the fact that the available information is compelling that significant environmental
21 impacts are created by such projects. Most wireless transmission facility projects are handled at
the staff level, and unless a “Special Use Finding” (Code of Ordinances Section 21.2.2) is
determined by staff to be necessary, or an exemption for additional height (Code of Ordinances

1 Section 37.6.2) is sought, no public hearing is held. Very often, no notice is given to adjoining
2 property owners.

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

11 60. TRPA's decision-making must consider the impact of a proposed project on the
12 Regional Plan as a whole. TRPA avoids this mandate under the Compact by engaging in a
13 forbidden practice known as "piecemealing." The following is an example of the kind of
14 piecemeal decision making that is being embraced by TRPA without any reference to the
15 Regional Plan or the body of Compact, federal, and state law applicable to it. By engaging in
16 such piecemeal decision-making, TRPA improperly avoids and circumvents its responsibilities
17 under the Compact and effectively undermines the purpose and the intent of the Compact, its
18 own Regional Plan, and applicable laws, as discussed below.
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1 **The Verizon Wireless Special Use Permit issued for the 112-foot tall monopine at 1360 Ski**
2 **Run Boulevard by the South Lake Tahoe City Council, despite the overwhelming**
3 **opposition by residents, is null and void because Verizon Wireless failed to utilize its**
4 **variance within one year of the date of granting.**

5 61. On or about March 22, 2019, Verizon Wireless filed a General Planning
6 Application for a major design review and a special use permit with the City of South Lake
7 Tahoe Development Services Department, Planning Division, to erect a 112-foot tall monopine
8 cell tower on property owned by Defendant Nel at 1360 Ski Run Boulevard in the City of South
9 Lake Tahoe (the “Verizon tower project”). The proposed monopine is to include 12 antennas,
10 each 8 feet tall. A new equipment shed will be constructed and shared between the property
11 owner and Verizon. The owner of the property will use 120 square feet of the shed and the
12 remaining 250 square feet will contain cabinets and electrical equipment for the
13 telecommunications facility. Verizon is also proposing to install a standby generator that will be
located behind the equipment shed. The application was assigned File #19-026.

14 62. On or about April 2, 2019, the Tahoe Prosperity Center coordinated a presentation
15 before the South Lake Tahoe City Council by Verizon Wireless and other wireless
16 telecommunications carriers to showcase the Tahoe Prosperity Center’s work with cellular
service providers advocating for placement of cellular infrastructure in the Lake Tahoe region.

17 63. On or about May 31, 2019, the City of South Lake Tahoe Planning Department
18 caused to be published in the Tahoe Times newspaper a summary notice of a public hearing to be
19 held on June 13, 2019 to consider, among other things, the application of Verizon Wireless for
20 the special use permit at 1360 Ski Run Boulevard. Mailed notice of the June 13, 2019 public
21 hearing purportedly was provided to all landowners within 300 feet of the subject property.

1 However, the notice was never received by Plaintiff Eisenstecken or by her father, the landowner,
2 and, therefore, Eisenstecken was not made aware of the upcoming hearing, even though the
3 112-foot tall monopine cell tower was being proposed for construction on the adjoining property,
4 just two hundred feet or so from her bedroom. On information and belief, numerous
5 neighborhood residents, including apartment building tenants, also received no advance notice of
6 the June 13, 2019 public hearing.

7 64. On June 13, 2019, the City of South Lake Tahoe Planning Commission held a
8 public hearing to address the Verizon Wireless application for the special use permit at 1360 Ski
9 Run Boulevard. The four members of the Planning Commission present voted unanimously to
10 find the project categorically exempt from the California Environmental Quality Act (CEQA),
11 pursuant to Sections 15301 and 15303 of the CEQA guidelines. The Planning Commission
12 approved the Special Use Permit, by a 3-1 vote, based on the staff report and required findings,
13 and subject to the Conditions of Approval specified in the City Permit, with the condition that
14 Verizon Wireless shall submit a radio frequency report at the end of construction by a neutral
15 third-party vendor and annually to the Planning Division.

16 65. On or about June 25, 2019, the City of South Lake Tahoe issued the special use
17 permit. The special use permit includes as a general condition the following: "This Special Use
18 Permit shall expire and become null and void one year after the date of granting, unless such
19 issuance is utilized prior to the date of expiration." On or about June 28, 2019, Verizon Wireless
20 accepted the conditions set forth in the special use permit.

21 66. On June 27, 2019, Plaintiff Eisenstecken filed an appeal of the Planning
Commission decision approving the special use permit for the Verizon Wireless monopine cell

1 tower at 1360 Ski Run Boulevard. Pursuant to the South Lake Tahoe City Code, appeals of
2 decisions of the Planning Commission are heard by the South Lake Tahoe City Council.

3 67. On or about August 6, 2019, the South Lake Tahoe City Council was scheduled to
4 hear Plaintiff Eisenstecken's appeal of the June 13, 2019 decision of the Planning Commission
5 approving the special use permit. Many of Ms. Eisenstecken's neighbors submitted written
6 comments to the Council objecting to the proposed cell tower at 1360 Ski Run Boulevard on a
7 variety of grounds, including aesthetics, diminution of property values, health impacts, and
8 inappropriateness in a residential neighborhood. The Tahoe Prosperity Center, by its CEO, Heidi
9 Hill Drum, submitted a written comment to the City Council on August 5, 2019, strongly
10 supporting the Planning Commission's granting of the special use permit, stating: "The Tahoe
11 Prosperity Center supports this cell tower and site for a monopine that will fit well into the area
12 and provide the much-needed coverage for our residents, businesses and community." A handful
13 of other residents sent in comments supporting the tower. At the City Council meeting, the
14 appeal was postponed until September 3, 2019.

15 68. Pursuant to a continuing series of agreements among the parties and tolling
16 agreements between Verizon Wireless and the City of South Lake Tahoe, the FCC "shot clock"
17 on the application for the special use permit was extended until January 20, 2020, and the appeal
18 of the Planning Commission decision granting the special use permit was also scheduled for that
19 date. During the period between August 6, 2019 and January 6, 2020, more than 3,800 pages of
20 documents and comments were submitted to the City Council by opponents of the cell tower.

21 69. On January 14, 2020, the South Lake Tahoe City Council conducted its hearing
on Plaintiff Eisenstecken's appeal of the June 13, 2019 Planning Commission decision granting
Verizon Wireless the special use permit for the monopine cell tower at 1360 Ski Run Boulevard.

1 70. At the hearing, besides the parties and their advocates, forty persons provided
2 public comment to the City Council, with twenty-eight persons opposing the special use permit
3 (and the cell tower) and fourteen favoring the special use permit, including two persons from
4 Verizon and one from AT&T. Notably, Heidi Hill-Drum, the CEO of The Tahoe Prosperity
5 Center, and Shelby Cook, organizational coordinator of The Tahoe Prosperity Center, spoke in
6 favor of upholding the Planning Commission's granting of the special use permit. Following a
7 nearly three-hour long hearing and deliberation, the City Council voted 3-2 to deny the appeal
8 and to uphold the special use permit, adding a condition that Verizon Wireless permit other
9 carriers to co-locate antennas on the monopine. Consequently, the City Council issued the
10 special use permit to Verizon Wireless for the monopine cell tower on January 14, 2020,
11 imposing the additional condition that Verizon Wireless agree to co-locate other carriers'
12 antennas on the tower.

13 71. The special use permit issued by the South Lake Tahoe City Council to Verizon
14 Wireless on January 14, 2020 contains an "Addendum to Special Use Permit," "1360 Ski Run,"
15 "File 10-026." The Addendum provides as follows:

16 "The Special Use Permit issued on June 25, 2019 and accepted by Verizon
17 on June 28, 2019 is amended to incorporate the City Council decision of
18 January 14, 2020 to deny the appeal and uphold the Planning Commission
19 approval of the Special Use Permit for Verizon Wireless, File #19-026
20 (Resolution 20-004). The motion passed by City Council included a
21 general condition for the Special Use Permit as follows:

 "The applicant shall allow co-location on the monopine if technologically
feasible. If not technologically feasible, the applicant shall submit a report
stating these facts for the record."

 72. The Addendum then sets forth a paragraph entitled "PERMITTEE'S
ACCEPTANCE" which states:

1 I have read the new general condition to the Special Use Permit and
2 understand and accept the new condition. I also understand that I am
3 responsible for compliance with all of the conditions of the permit and
4 responsible for agents' and employees' compliance with the permit
5 conditions. I understand that it is my sole responsibility to obtain any and
6 all required approvals from any other state, local or federal agencies that
7 may have jurisdiction over this project whether or not they are listed in
8 this permit.

9 73. Below the permittee's acceptance paragraph is a line for the signature of the
10 owner or authorized representative and the date. Scott Stewart, Director of Real Estate/N.
11 Cal./N. Nev., signed the permittee's acceptance on behalf of Verizon Wireless on January 24,
12 2020.

13 **Verizon Wireless allows its Special Use Permit issued by the South Lake Tahoe City**
14 **Council to expire on or about January 14, 2021.**

15 74. Condition 3 to Special Use Permit File #19-026, 1360 Ski Run Boulevard,
16 provides: "This Special Use Permit shall expire and become null and void one year after the date
17 of granting, unless such variance is utilized prior to the date of expiration."

18 75. Condition 5 to this Special Use Permit provides: "This Special Use Permit shall
19 become effective and will be issued no sooner than five business days after the date of the
20 granting of the Special Use Permit. If prior to the expiration of such five-day period an appeal is
21 filed, the Special Use Permit shall not be issued until the granting of the variance is affirmed on
appeal (SLTCC §6.55.640 H)."

76. As alleged above, this Special Use Permit was issued by the Planning
Commission on June 25, 2019, and was accepted by Verizon Wireless on June 28, 2019.
However, Plaintiff Eisenstecken timely appealed the granting of the Special Use Permit on June
27, 2019, well within the five-day appeal period. The granting of the variance was finally

1 affirmed on appeal on January 14, 2020. Therefore, pursuant to Condition 5 to the Special Use
2 Permit and SLTCC §6.55.640 H, the Special Use Permit was issued on January 14, 2020.

3 77. In order for this Special Use Permit to remain valid, Verizon Wireless was
4 required to “utilize” its variance within one year – otherwise, it “shall expire and become null
5 and void one year after the date of granting.” Under California law, land use and zoning statutes
6 often provide that variances and/or permits automatically expire at one year unless used during
7 that one-year period. The purpose of the one-year automatic expiration is to prevent reserving
8 the use of land for future purposes when one has no present intention to commence upon the
9 permitted use. *Although a permittee need not comply with every condition in the use permit in
10 order to avoid expiration of the permit after one year, the permittee must take some affirmative,
11 good faith action in employing the permit.*

12 78. With respect to Special Use Permit File #19-026, 1360 Ski Run Boulevard, issued
13 to Verizon Wireless on January 14, 2020, Verizon Wireless was required to “utilize” its variance
14 by January 14, 2021. Yet nothing in the public record shows any activity at all by Verizon
15 Wireless to move forward with its proposed 112-foot tall monopine cell tower project at 1360 Ski
16 Run Boulevard during the one year period following issuance of the special use permit on
17 January 14, 2020. Once Verizon Wireless obtained its special use permit for this facility, its next
18 step procedurally would have been to move forward with its application for a necessary permit
19 from TRPA. *However, a search of TRPA’s online database for 1360 Ski Run Boulevard reveals
20 zero activity for the one-year period ending January 14, 2021.*

21 79. On or about March 22, 2019, Verizon Wireless, filed an incomplete application to
TRPA for a TRPA permit to erect a 112-foot tall monopine cell tower on property owned by
Defendant Nel at 1360 Ski Run Blvd. in the City of South Lake Tahoe (“the Verizon tower

1 project”). TRPA assigned TRPA File # ERSP 2019-0389 1360 Ski Run Blvd. as the project file.
2 The initial materials filed by Verizon Wireless as part of this incomplete application included,
3 among other things, several site plans relating to the proposed Verizon Wireless monopine cell
4 tower along with plans relating to a project proposed by AT&T several years earlier for a
5 monopine cell tower on the same land parcel which project AT&T subsequently abandoned.
6 Verizon Wireless provided some answers to questions on the application and left others blank.

7 80. On or about May 20, 2019, Brandy McMahon, local government coordinator for
8 TRPA, emailed Joseph Sharp, the site specialist for Verizon Wireless who filed the application,
9 advising him that she had completed a preliminary review of the Verizon Wireless application on
10 behalf of Theresa Avance, the TRPA Senior Planner who was assigned to the project. Ms.
11 McMahon identified numerous items that Verizon Wireless needed to address or submit before
12 its application could be processed. Verizon Wireless had to prepare a notice program for affected
13 landowners and the public, submit a RF study, provide coverage maps to document any
14 purported “gap” in coverage, substantiate the height required for the tower, and address tree
15 removal, best management practices, and land/lot coverage. On or about June 3, 2019, Ms.
16 Avance told Mr. Sharp to submit a soil hydrology application. Verizon Wireless responded to
17 these requests over the next few months, and submitted certain information to the TRPA file,
18 including revised site plans dated June 26, 2019.

19 81. On or about August 14, 2019, Verizon Wireless submitted the soils hydrology
20 assessment requested by TRPA’s Ms. Avance. On or about August 27, 2019, Julie Roll, a TRPA
21 Senior Planner, wrote Defendant Nel, informing him that TRPA staff had reviewed the Verizon
Wireless hydrology scoping report application submitted in connection with the cell tower and

1 accessory building application and determined that the proposed excavation would not likely be
2 impacted by the water table. Therefore, TRPA issued a soil hydrologic approval waiver.

3 82. Neither Nel nor Verizon Wireless appear to have taken any steps at all post
4 August 14, 2019 to move forward with the incomplete application Verizon Wireless filed with
5 the TRPA. And as alleged above, the Special Use Permit was not issued until January 14, 2020,
6 a full five months after Verizon Wireless ceased all activity towards completing its open
7 application with the TRPA for a permit to construct and operate the very same monopine cell
8 tower for which the City of South Lake Tahoe granted its Special Use Permit on January 14,
9 2020. This failure by Verizon Wireless to take any actions to complete its open application with
10 the TRPA for the TRPA permit for the monopine at 1360 Ski Run Boulevard persisted beyond
11 the one year special use permit deadline on January 14, 2021. Verizon Wireless first began
12 actions to complete said open TRPA action a few months after the January 14, 2021 deadline had
13 passed.

14 83. Verizon Wireless therefore has failed to “utilize” its variance granted by the
15 Special Use Permit File #19-026, 1360 Ski Run Boulevard, issued to Verizon Wireless on
16 January 14, 2020. Verizon Wireless was required to “utilize” its variance by January 14, 2021 or
17 else, under the express terms of the Special Use Permit, the variance expires. Because Verizon
18 Wireless failed to utilize its variance during the one-year period after the City Council granted
19 the variance, said variance has expired and Special Use Permit #19-026, 1360 Ski Run
20 Boulevard, has been rendered null and void.

21 84. Plaintiffs presented the foregoing specific facts to TRPA Hearings Officer Burch
at the October 14, 2021 hearing on Verizon’s application for the TRPA permit to authorize
construction and operation of its proposed monopine at 1360 Ski Run Boulevard. Verizon’s

1 attorney, Paul Albritton, rebutted Plaintiffs’ specific factual showing simply by asserting
2 generally and conclusorily that Verizon had taken steps to further its application with TRPA after
3 receiving the City’s permit within the one-year period. However, Mr. Albritton submitted no
4 proof whatsoever of any actions actually taken by the applicant. That didn’t matter. Later that
5 afternoon, Hearings Officer Burch orally approved Verizon’s application without even
6 mentioning Plaintiffs’ contention that the underlying required City of South Lake Tahoe special
7 use permit had expired. Hearings Officer Burch’s failure to address this critical issue in her
8 decision was arbitrary and capricious, lacked evidentiary support, and failed to proceed in a
9 manner required by law in violation of the Compact, Article VI(j)(5).

10 85. Plaintiffs subsequently raised this fundamental issue in their appeal before the
11 TRPA Board of Governors, both in their Statement of Appeal, filed on December 1, 2021, and at
12 the March 23, 2022 hearing. Again, the argument fell on deaf ears. The failure of the TRPA
13 Board of Governors to address this critical issue in its March 23, 2022 decision to deny
14 Plaintiffs’ appeal was arbitrary and capricious, lacked evidentiary support, and failed to proceed
15 in a manner required by law in violation of the Compact, Article VI(j)(5).

16 86. Plaintiffs seek a declaratory judgment from this Court finding that the City of
17 South Lake Tahoe Special Use Permit #19-026, 1360 Ski Run Boulevard, is null and void
18 because Verizon failed to “utilize” said permit within one year of its issuance on January 14,
19 2020. The judicial alternative – allowing the Permit to stand under these circumstances – would
20 establish an untenable *carte blanche* which defeats the sound public policy that underlies the
21 present time limitation: to prevent applicants from tying up development rights by simply sitting
on permits previously granted. If voided, Verizon Wireless will have to go back to square one
with the City of South Lake Tahoe and apply anew for a new special use permit from the

1 Planning Commission. This is a reasonable and just result, especially now that the City of South
2 Lake Tahoe has adopted a new wireless communications facility zoning ordinance that will
3 control the permitting process and provide the legal framework for consideration of the
4 application. Under the new zoning law, Verizon Wireless will face an extremely difficult burden
5 to overcome in order to obtain a special use permit for the cell tower in this residential
6 neighborhood.

7 **Nel obtains a Tree Cutting Permit from TRPA to cut down 31 trees on the parcel where**
8 **Verizon proposes to build the 112-foot tall monopine cell tower as part of TRPA's Illegal**
9 **Process of Piecemealing Approval of Projects to Avoid Comprehensive Environmental**
10 **Reviews.**

11 87. Defendant Nel, with Verizon's full knowledge and acquiescence, applied for, and
12 received a permit from TRPA on July 30, 2020 to cut down 31 trees, averaging about 70 feet tall,
13 on the project site at 1360 Ski Run Boulevard. No notice was given to adjoining property
14 owners, including Plaintiff Eisenstecken. TRPA issued TREE2020-1260 permit on or about July
15 30, 2020, authorizing the cutting of 31 trees specified by the TRPA forester. The reason
16 provided for cutting the trees is listed on the permit as defensible space and safety hazard. The
17 31 trees would have provided at least some screening of the proposed cell tower as viewed from
18 adjoining roadways and properties, including from the property of Plaintiff Eisenstecken.
19 Moreover, these 31 trees could have afforded some margin of protection against RFR
20 contamination. TRPA's arbitrary act and that of Defendant Nel destroyed Plaintiff
21 Eisenstecken's scenic view and reduced the value of her property prior to her father's sale of the
property in 2021. These damages are, however, small when compared to the risks to her and her
family's health and wellbeing after they would have been exposed to RFR contamination from

1 the proposed Verizon macro cell tower. Moreover, the macro tower presents a significant fire risk
2 to the surrounding community. Again, these reckless decisions and others like them could have
3 been avoided had the TRPA prepared a comprehensive Environmental Impact Statement, as the
4 Compact requires, to address the risks and harms of the entire project proposed at 1360 Ski Run
5 Boulevard, instead of piecemealing it, and to balance these tradeoffs.

6 88. On or about August 19, 2020, Plaintiff Eisenstecken discovered that the tree
7 removal permit had been issued. On August 20, 2020, she duly filed an appeal from the staff
8 approval, and requested a stay of the project until the appeal could be heard. Shortly thereafter,
9 TRPA informed Plaintiff Eisenstecken that the requested stay of the project would not be
10 granted. Plaintiff Eisenstecken, in her Statement of Appeal, argued that,

11 Cutting down the trees designated will have a negative impact on scenic
12 quality, water quality, forest health and create loss of habitat. The impacts
13 of the tree removal permit must be considered with the context of the
14 Verizon application. To do otherwise would be to “piecemeal” the project,
15 with excess tree removal in advance of the Verizon project foreclosing
16 opportunities to screen and mitigate visual impacts, as well as other
17 impacts.

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

90. The net result became the foreclosure of opportunities to mitigate the scenic
degradation that would occur due to the presence of the tower. The tower is proposed in an area
designated in TRPA’s thresholds as in “non-attainment” as to scenic quality. Only 4% of roadway

1 scenic units are designated as in “non-attainment,” meaning that no further degradation can be
2 allowed under the terms of the Compact, TRPA’s Ordinances, and the Regional Plan. Under such
3 circumstances, allowing the tree cutting to be approved separately clearly constituted
4 “piecemealing.” Nevertheless, the TRPA Governing Board subsequently voted to deny the
5 appeal.

6 91. Although the TRPA Governing Board made no findings, Marshall stated on the
7 record that the result of the Board’s vote was that the “baseline” for the purposes of the scenic
8 analysis would be the condition of the project site without the 31 trees. After the hearing, all 31
9 trees were subsequently cut down. At the October 13, 2021 hearing, TRPA Hearing Officer
10 Burch ignored this evidence of “piecemealing,” and granted the TRPA permit without requiring
11 Verizon to mitigate this scenic eyesore as a condition of obtaining the TRPA permit for the
12 monopine tower at 1360 Ski Run Boulevard. Likewise, the Governing Board, in denying
13 Plaintiffs’ appeal on March 23, 2022, allowed the piecemealing of projects to proceed, in clear
14 violation of TRPA’s mandates. TRPA’s granting of the tree cutting permit, without conducting an
15 environmental impact analysis, while knowing that Defendant Nel and Verizon Wireless had
16 already filed a partially completed application for a permit to build the 112-foot tall monopine
17 cell tower on the same site, was arbitrary and capricious, lacking in evidentiary support, and was
18 done in manner that failed to proceed as required by law in violation of the Compact, Article
19 VI(j)(5). The TRPA Governing Board’s improper decision demonstrates plainly why thoughtful
20 environmental analyses are mandated by the Compact, and why TRPA’s strategy of piecemealing
21 projects violates the Compact and TRPA’s Regional Plan. In the end, TRPA winds up granting
many piecemeal permits and any cogent regional development planning is drowned under a sea
of individually permitted projects. Plaintiffs respectfully seek a Declaratory Judgment from this

1 Court, ruling that the afore-described piecemealing of projects, specifically the project for the
2 construction and operation of Verizon's monopine at 1360 Ski Run Boulevard, without
3 conducting a full environmental analysis as mandated by the Compact, violates the Compact and
4 TRPA's Regional Plan, and requires that the TRPA permit for this monopine be vacated.

5 **Plaintiff David Benedict Suffers From Multiple Myeloma, a Serious Disease; his Recovery**
6 **Requires his RFR Exposure to be minimized; Verizon is Unreasonably Refusing to Remove**
7 **its Small Cell Wireless Antenna which is Continuously Irradiating his Person, Home, and**
8 **Property.**

9 92. Plaintiff Benedict resides in a 1,447 square foot, 6 room, 2 bedroom, 1 bath house
10 built in 1949, on 1.06 acres of land, located at 3585 Needle Peak Road, South Lake Tahoe. Mr.
11 Benedict suffers from multiple myeloma, a serious disease for which he is receiving expert
12 medical treatment from leading researchers and physicians. According to the medical specialist
13 in charge of Mr. Benedict's treatment, a University of California San Francisco medical school
14 professor and world-expert in treating Mr. Benedict's serious disease, wireless radiation
15 exposures pose a substantial danger to Mr. Benedict's fragile medical condition. In particular,
16 Mr. Benedict's medical condition of multiple myeloma, a dangerous blood cancer, is aggravated
17 by oxidative stress, and peer-reviewed scientific studies definitively link wireless radiation
18 exposure to increased levels of oxidative stress. A major concern of Mr. Benedict's treating
19 physicians is that this additional unnecessary stress factor will interfere with Mr. Benedict's FDA
20 approved experimental drug trial.

21 93. On August 9, 2018, the South Lake Tahoe City Planning Commission approved
12 of 13 projects proposed by Verizon to replace a network of wireless communications facilities
to existing utility poles in the City right of way with poles that are ten to fifteen feet taller to

1 accommodate Verizon's wireless equipment. One of those projects was in the vicinity of 3565
2 Needle Peak Road. In 2018, Verizon constructed the small cell wireless facility in the vicinity of
3 3565 Needle Peak Road, approximately 130 feet from Mr. Benedict's house, with direct line of
4 sight, after receiving Planning Commission approval on August 9, 2018 under File #18-049.
5 That small cell wireless facility contains three omnidirectional antennas which have for the past
6 three and one-half years continuously emitted RF radiation in all directions, including directly
7 at Mr. Benedict's house. For this entire period, Verizon has been bombarding Mr. Benedict's
8 house and property with wireless radiation 24 hours per day, seven days per week.

9 94. Given Mr. Benedict's precarious medical state, and his grave concern that Verizon
10 is assaulting his property and himself continuously with dangerous and unwanted wireless
11 radiation from its small cell facility just down the block in the vicinity of 3565 Needle Peak
12 Road, Mr. Benedict recently commissioned two electromagnetic frequency assessments by a
13 certified building biologist to be performed at his property. The first assessment was conducted
14 on April 16, 17, and 18, 2021. This was the last weekend of the ski season at the Heavenly
15 Valley ski area which is located in the immediate neighborhood. The readings taken during that
16 first assessment, when Verizon increased its cell tower power to service increased customer
17 demand, showed measurements in the *extreme danger zone*, using the recommended standards
18 set by the Building Biology Institute that are themselves based on the best recommended
19 standards of the 2012 BioInitiative Report. These readings suggest that: (a) Verizon has the
20 capacity easily to adjust the power transmitted by the wireless facility, hence to prevent or to
21 mitigate Mr. Benedict's exposure at will; and (b) Mr. Benedict can expect to be exposed to far
higher levels of RFR radiation emitted by the surges of power from Verizon's cell towers and

1 small cell facilities during both the summer and winter seasons, when the Tahoe Region is most
2 crowded with tourists, second homeowners, and residents.

3 95. Mr. Benedict commissioned a certified building biologist and environmental
4 consultant and certified electromagnetic radiation specialist to conduct the second assessment of
5 his house and property. This full assessment was performed on April 30 and May 1, 2021. This
6 assessment was conducted after the ski season at Heavenly Valley had ended, and significantly
7 fewer people were present in the South Lake Tahoe City area. Accordingly, demand for cellular
8 service was significantly reduced during this seasonal low period as compared to the busy ski
9 and summer seasons. Nonetheless, the electromagnetic radiation specialist found that the levels
10 of radiation present inside Mr. Benedict's house, particularly in the rooms where he sleeps, are
11 all well above the "Extreme Concern" level which is "totally unacceptable even for people in
12 excellent health." The electromagnetic radiation specialist found that the source of the
13 electromagnetic radiation producing these levels of "Extreme Concern" is the Verizon small cell
14 wireless facility located in the vicinity of 3565 Needle Peak Road, about 130 feet from Mr.
15 Benedict's house. This is an omnidirectional canister antenna array containing three 360-degree
16 antennas. The specialist suggests that Verizon remove this small cell facility to a location where
17 it will not be able to direct any wireless radiation at Mr. Benedict's house and property. As of the
18 current time, no other wireless transmission facility in the area appears to be directing wireless
19 radiation onto Mr. Benedict's property and into his house at high enough levels to cause a likely
20 risk of exacerbating Mr. Benedict's medical condition and impairing his recovery. The TRPA
21 Governing Board, by denying Plaintiffs' appeal of Hearing Officer Burch's grant of the TRPA
permit at the March 23, 2022 hearing, has now approved Verizon to construct and operate the
112-foot tall monopine cell tower at 1360 Ski Run Boulevard. That facility – just one block

1 down the street (perhaps 1,000 feet) from Mr. Benedict's property at 3565 Needle Peak Road –
2 will further bathe Mr. Benedict's property and home with RFR at very dangerous levels, which is
3 one of the many reasons that cell towers should not be permitted in this or any residential
4 neighborhood.

5 96. Mr. Benedict is struggling to regain his health at his home in South Lake Tahoe.
6 He lacks the financial means to relocate. He is unwilling to go to a homeless shelter, when he has
7 lived peacefully in his own home for many years. Mr. Benedict literally has nowhere to escape
8 from the non-stop, unwanted, offensive, dangerous assault and intrusion of the electromagnetic
9 radiation which Verizon's small cell wireless transmission facility across the street from his
10 house for the past three and one-half years. And he is about to be bombarded with substantial,
11 unwanted, and dangerously high levels of electromagnetic radiation from Verizon's monopine
12 tower at 1360 Ski Run Boulevard should it be allowed to be built and operated. Mr. Benedict's
13 chief treating physician opines her deep concern that if Mr. Benedict is continuously exposed to
14 the elevated levels of electromagnetic frequency radiation he is presently experiencing at his
15 South Lake Tahoe City residence from the nearby Verizon cellular facilities, he will suffer
16 expected elevated levels of continuous, cumulative, and unavoidable oxidative stress, which may
17 interfere with the new experimental drug trial in which he is a participant, will substantially
18 interfere with his recovery, and will worsen his prognosis. The heightened stress and loss of
19 sleep caused by these exposures will also likely impair Mr. Benedict's health. Mr. Benedict's
20 physician urges that the cellular communications company responsible for the RFR radiation to
21 which Mr. Benedict is being exposed, Verizon Wireless, and the concerned governmental
entities, the Tahoe Regional Planning Agency and the City of South Lake Tahoe, make every
reasonable accommodation to support Mr. Benedict in his courageous struggle in the face of his

1 grave illness. In her medical opinion, she states: “‘reasonable accommodation’ must be the
2 cessation of the RFR radiation transmissions so long as Mr. Benedict resides in his home.”

3 97. On May 4, 2021, Julian Gresser and Robert Berg, counsel to Plaintiff David
4 Benedict, sent a letter to the following individuals requesting a Reasonable Accommodation
5 under the Americans with Disabilities Act and the Fair Housing Amendments Act. The recipients
6 were:

- 7 • Hans Vestberg, CEO, Verizon
- 8 • Kelly (Felix) Gower, ADA Compliance Specialist, Verizon
- 9 • Jim Heard, Mackenzie & Albritton, Counsel for Verizon
- 10 • Joanne Marchetta, Chairperson, TRPA
- 11 • John Marshall, General Counsel, TRPA
- 12 • Tamara Wallace, Mayor, City of South Lake Tahoe
- 13 • Devin Middlebrook, Mayor Pro Tem, City of South Lake Tahoe
- 14 • John James, Compliance Officer, City of South Lake Tahoe

15 98. Plaintiffs’ Counsel received a reply from Verizon’s attorney, Paul B. Albritton,
16 rejecting Plaintiff Benedict’s request, asserting essentially that: a) the ADA/FHAA do not apply
17 to Verizon because it is not a government entity within the meaning of the ADA/FHAA; and b)
18 the FCC, in any event, has determined that its present thermal standard for wireless radiation
19 exposure is safe. Plaintiff rejects the first argument because Verizon is openly maintaining in
20 numerous government settings that it is a public utility or quasi-public utility and has received
21 public subsidies and regulatory benefits from this claimed special status. Plaintiff rejects
Verizon’s second argument on two grounds: first, the FCC itself has publicly admitted that it has
no expertise whatsoever on health and safety, and must rely on the FDA for guidance; and
second, the FDA itself does not have an officially published policy or regulations covering RF
radiative emissions for non-medical devices, nor has the agency ever conducted a formal process
as required by the Administrative Procedure Act to formulate such a policy based on best

1 available science. Therefore, Verizon has erred in citing the FCC's current regulation, and the
2 FCC has erred and misrepresented the FDA's position. Lastly, the FCC itself has never ruled that
3 its present thermal standard is safe for continuous and cumulative EMF exposure of persons with
4 existing serious, especially life-threatening disabilities, as in Plaintiff's case. How could the FCC
5 do this in any event? It has no scientific or medical expertise relating to the biological effects of
6 EMF over-exposure, to otherwise healthy people, much less to those unfortunate persons who
7 suffer from multiple myeloma, a deadly medical condition at an advanced stage of progression?

8 99. As for TRPA and the City of South Tahoe, on May 10, 2021, John Marshall,
9 TRPA's General Counsel, sent an email to Plaintiffs' counsel, Julian Gresser and Robert Berg,
10 stating:

11 Thank you for the opportunity to respond to Mr. Benedict's request for
12 accommodation under the Americans with Disabilities Act (ADA) and the Fair
13 Housing Amendments Act (FHAA). On behalf of Mr. Benedict you propose that
14 the Tahoe Regional Planning Agency (TRPA) and the City of South Lake Tahoe
15 order Verizon Wireless as operator of two cellular facilities within the vicinity of
16 Mr. Benedict's house to modify operations of the towers to reduce radio
17 frequency emissions to a level you deem appropriate. The City of South Lake
18 Tahoe and TRPA would like to engage in an interactive process and meet with Mr.
19 Benedict to discuss possible accommodations consistent with our legal
20 authorities. Please let me know of your availability if Mr. Benedicts [sic] would
21 desire to engage in such a process. John.

16 100. Plaintiffs' counsel scheduled a Zoom meeting with Mr. Marshall and Heather L.
17 Stroud, City Attorney for the City of South Lake Tahoe, for May 20, 2021. During that Zoom
18 meeting, Plaintiffs' counsel explained Mr. Benedict's dire medical circumstances; the high levels
19 of wireless radiation that Verizon's small cell wireless facility directly across the street was
20 continuously blasting onto Mr. Benedict's property and into his house; the injuries and stress
21 these wireless radiation exposures were causing Mr. Benedict, and the interference the wireless
radiation was likely having on Mr. Benedict's medical treatment, as substantiated by the

1 distinguished physician and researcher in charge of his medical care; and the tremendous
2 constraints these wireless radiation transmissions were imposing on Mr. Benedict's ability to use
3 his property and enjoy his home. Plaintiffs' counsel explained to Mr. Marshall and Ms. Stroud
4 how Verizon's harmful transmissions were violating the terms of the special use permits the
5 company had obtained from both TRPA and the City of South Lake Tahoe, and how TRPA and
6 the City of South Lake Tahoe each had the power to order Verizon to shut down the small cell
7 wireless facility that is causing these injuries and/or to revoke the permit. In response, Mr.
8 Marshall and Ms. Stroud maintained that neither TRPA nor the City had the legal power to take
9 any of the actions requested.

10 101. On May 25, 2021, Mr. Marshall (on behalf of TRPA) and Ms. Stroud (on behalf
11 of the City of South Lake Tahoe) each sent Plaintiffs' counsel letters reiterating their positions
12 that TRPA and the City lack the authority to require Verizon to move or to turn off the power to
13 the Verizon small cell wireless facility located in the vicinity of 3565 Needle Park Road.

14 102. In response, on May 26, 2021, Plaintiffs' counsel sent Mr. Marshall and Ms.
15 Stroud a detailed joint settlement letter explaining the legal authority pursuant to which both
16 TRPA and the City must order Verizon to move or turn off the dangerous facility. Plaintiffs'
17 Counsel's letter further pointed out that Verizon has breached its special use permits issued by
18 the City and TRPA: 1) by falsely representing that it has secured insurance and is able to
19 indemnify the City and TRPA for any harms caused by its wireless radiation transmitted from the
20 small cell wireless facilities constructed and operated under these special use permits; and 2) in
21 the case of the City's special use permit, by operating the facility to the detriment of the
22 neighboring properties – namely, Mr. Benedict's.

1 103. Under the express terms of the special use permits, both the City and TRPA have
2 the right to rescind the permits or take other appropriate actions. Moreover, the ADA and the
3 FHAA confer upon the City and TRPA affirmative obligations to provide reasonable
4 accommodations to Mr. Benedict by ordering Verizon to cease transmitting the continuous
5 damaging stream of RF radiation onto his nearby property and into his residence at high levels
6 which his expert treating physician states, in her medical opinion, is causing him serious bodily
7 harm. “Reasonable accommodation” under the ADA and the FHAA means modifying existing
8 laws, policies, practices, or services to the reasonable extent necessary to provide equal access to
9 the disabled, and by refusing to act to accommodate Mr. Benedict’s disability, the City and TRPA
are violating both federal statutes.

10 104. Ms. Stroud responded to Plaintiffs’ counsel’s May 26, 2021 “legal memorandum”
11 in an email dated May 28, 2021 in which she stated:

12 Hi Julian and Bob,

13 I have reviewed your memo and do not find authority on point that would allow
14 the City to require Verizon to move or turn off its permitted small cell facility.
15 Additionally, the right of way permit application you are referencing required
16 Verizon to carry insurance during construction, as we explained in our last
meeting. This is the same insurance requirement that applies for anyone doing
construction work in the right of way. The special use permit issued for the small
cell facility does not have an insurance requirement, as the City’s new regulations
requiring insurance for wireless communication facilities were not put into place
until May 2020.

17 We are willing to meet with you next week but it would be helpful to know the
18 purpose of the meeting. If the only accommodation being requested is that the
19 City require Verizon to modify or move its facility, then I think we have
exhausted that issue. If there are other possible accommodations you would like
to explore, please let us know. I am going to be in a City Council meeting all day
Tuesday, so would have to meet later in the week.

20 105. On June 16, 2021, Plaintiffs’ counsel responded by email to Ms. Stroud’s May 28,
21 2021 email which invited further discussion with the City about other reasonable
accommodations which might shield Mr. Benedict from wireless radiation exposure while he is

1 suffering from such exposure caused by Verizon’s small cell wireless facility in the vicinity of
2 3565 Needle Peak Road. Plaintiffs’ counsel reminded Ms. Stroud that the City is now aware that
3 Mr. Benedict’s primary treating physician has confirmed in an expert report that the level of
4 wireless radiation exposure from the Verizon small cell wireless facility, as documented by the
5 report of a certified building biologist, is interfering materially with Mr. Benedict’s experimental
6 drug trial to treat a life-threatening illness, and is hindering his efforts to recover. The email
7 challenges Ms. Stroud to explain why she keeps insisting that the City has no legal authority to
8 modify the conditional use permit authorizing Verizon’s small cell wireless facility at this
9 location when, in fact, General Condition of Approval 27 provides: “The wireless
10 communications facility site shall be developed and maintained in a neat, quiet, and orderly
11 condition, and operated in a manner so as not be detrimental to adjacent properties.”

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106. Plaintiffs’ counsel stated:

1 You have never provided us with a substantive answer as to why
2 the City lacks the legal authority to exercise its express power under this
3 conditional use permit, when Verizon has breached a material condition of
4 a permit to which Verizon willingly agreed to be bound. Because the harm
5 to Mr. Benedict is so grave, we reiterate our request that the City modify
6 or revoke the conditional use permit until Verizon is able to operate this
7 ‘wireless communication facility site...in a manner so as not to be
8 detrimental to adjacent properties.’ This means that the City must require
9 Verizon to cease operating this City-permitted small cell facility in a
10 manner which radiates EMF onto Mr. Benedict’s property.

11 You also ‘find no authority’ in our request for reasonable
12 accommodation (May 26, 2021) under the ADA/FHAA notwithstanding
13 that we have provided ample authority. You have chosen arbitrarily to
14 ignore it without providing any legal support for your decision. We have
15 no evidence that you have fairly and in good faith made any attempt to
16 seek a solution to an accommodation that will give Mr. Benedict an
17 opportunity to heal from his multiple myeloma and enjoy the use of his
18 property and his dwelling without being irradiated by EMF from the
19 Verizon small cell facility. As you have full knowledge of the specific
20 harms your actions and those of Verizon are inflicting upon David
21 Benedict, and are intentionally ignoring them and failing to take
immediately available prevention and/or abatement, the legal and ethical
responsibility for his rapidly deteriorating medical condition is entirely
upon you personally, the City, TRPA, and Verizon.

 As his attorneys, we will do whatever is possible to save his life.
Therefore, we demand the City first and foremost modify or revoke
Verizon’s conditional use permit unless Verizon is able to demonstrate that
it is able to shield Mr. Benedict’s property from EMF being transmitted
from this small cell facility. If the City still refuses to do so, then without
waiving any rights our client has under the ADA/FHAA and other federal
and state laws, we urge that we explore other practical abatements which
your email indicates you are open to discuss.

107. Plaintiffs’ counsel then proposed several possible modifications to Mr. Benedict’s
house and/or to Verizon’s equipment which Plaintiffs’ building biologist had recommended
following his detailed measurements of the wireless radiation measurements in the house and the
sources thereof. Among the recommendations are: (1) install a new pole with a shield on it close
to the existing pole with the Verizon small cell facility to block the wireless radiation coming
from the Verizon small cell facility in the direction of Mr. Benedict’s property and house; (2)

1 install an outrigger with a shield on the existing pole bearing the Verizon small cell facility to
2 block the wireless radiation in the direction of Mr. Benedict's property; (3) staple hundreds of
3 square feet of fine mesh aluminum screen to the wooden side of Mr. Benedict's house facing the
4 Verizon small cell facility to prevent the penetration of the wireless radiation into the house; and
5 (4) plant additional trees on Mr. Benedict's property to further block the radiation coming from
6 the Verizon small cell facility. Plaintiffs' counsel proposed that the City and Verizon pay for the
7 costs of these modifications insofar as Mr. Benedict is without any financial means whatsoever,
8 and requested an expedited reply from Ms. Stroud.

9 108. On June 25, 2021, Ms. Stroud responded on behalf of the City and reported on her
10 outreach to Verizon's counsel, Paul Albritton:

11 Hi Julian,

12 I reached out to Paul Albritton and received the following response:
13 'Heather: Thank you for your email. My apologies that it has taken
14 Verizon Wireless a few days to review and reply to your inquiry. Verizon
15 Wireless is unwilling to enter into the process described by Plaintiffs'
16 Counsel and reaffirms its response to Plaintiffs' Counsel of May 7, 2021.'

17 As I have stated before, the City does not have authority to modify or
18 revoke Verizon's special use permit because it is operating in compliance
19 with the permit conditions and FCC limits. You are essentially asking the
20 City to 'regulate the placement, construction, and modification of personal
21 wireless service facilities on the basis of the environmental effects of
radiofrequency emissions' that comply with the FCC standards, which
would be a violation of 47 U.S.C. sec. 332(c)(7)(B)(iv). See Santa Fe
Alliance for Public Health and Safety v. City of Santa Fe, 993 F.3d 802
(10th Cir. 2021). Nor does Mr. Benedict's condition require (or authorize)
the City to revoke Verizon's permit under the ADA. See Safe Air for
Everyone v. Idaho, 469 F. Supp.2d 884 (D. Id. 2006)(rejecting an ADA
claim that the state discriminated against medically sensitive plaintiffs by
not modifying permits to eliminate agricultural burning that was alleged to
create smoke and health hazards). Verizon has indicated it is unwilling to
enter into your proposed process, and the City cannot force Verizon to
participate or make changes to its permitted facility without Verizon's
permission.

1 If Mr. Benedict wants to make changes on his own property such as the
2 wire mesh or tree planting mentioned below, the City can reasonably
3 accommodate that effort by expediting any approvals required. The City,
4 however, is not in a position to pay for work on his property and I am not
5 aware of any authority under the ADA or FHAA requiring a public entity
6 to pay for a requested accommodation on private property.

7 Thank you,

8 Heather

9 109. Plaintiffs' counsel had thus exhausted all efforts with Verizon, TRPA, and the City
10 to reach any accommodation pursuant to the ADA, the FHAA, or otherwise to ameliorate or
11 eliminate the transmission of high levels of wireless radiation from Verizon's small cell wireless
12 facility in the vicinity of 3565 Needle Peak Road onto Mr. Benedict's property and into his house
13 approximately 130 feet away, and thereby, avoid causing further injury to Mr. Benedict.

14 110. With respect to the TRPA, its failure to consider granting reasonable
15 accommodation to Mr. Benedict or to enforce the terms of its permit and require Verizon to cease
16 harming Mr. Benedict with its wireless radiation transmissions are in direct violation of the
17 Tahoe Compact. If the Court grants Plaintiffs' request for a Moratorium requiring TRPA to
18 prepare a Comprehensive Programmatic Environmental Impact Statement on the risks and harms
19 of the Connected Wireless Tahoe Program, the tragic predicament in which the TRPA, City of
20 South Tahoe, Verizon, and the other telecoms are placing many Tahoe residents like Plaintiff
21 David Benedict will become clear. For his part, Plaintiff David Benedict is doing everything
within his power to shield himself, immediately following the advice of two building biologists.
But as noted, he has no viable means of escape from Verizon's two, and quite possibly three, cell
towers. Even his last resort, selling his modest dwelling, is practically impossible, as the buyers,
just as in Plaintiff Monica Eisenstecken's case, are now extremely wary of themselves walking
into the same hazardous situation. Meanwhile, the loss in profit from this single act of

1 compassion to Verizon -- removing the small cell facility in the vicinity of 3565 Needle Peak
2 Road -- is infinitesimal; but for Plaintiff David Benedict it could mean everything.

3 **The TRPA Hearing on Verizon’s Application for a Special Use Permit for its Proposed**
4 **Monopine at 1360 Ski Run Boulevard Held on October 14, 2021 was a Sham Proceeding**
5 **with a Pre-ordained Outcome Issued by a Hearings Officer who Acted Arbitrarily and**
6 **Capriciously, Failed to Issue a Decision Capable of Review, and Failed to Rule Based on**
7 **Substantial Evidence Supporting Reasoned Decision-making.**

8 111. As alleged above, Verizon’s special use permit issued by the City of South Lake
9 Tahoe – a “use it or lose it” permit – had expired for want of use on January 14, 2021. Yet
10 Verizon took no action to complete its application and appear for a hearing before a TRPA
11 Hearings Officer until October 14, 2021 – more than one year, nine months after Verizon’s City
12 special use permit was required to have been used or to expire by its express terms. Plaintiffs
13 first learned of this impending hearing when on September 20, 2021, after several months of
14 silence, TRPA’s Mr. Marshall telephoned one of Plaintiffs’ counsel that TRPA had decided to
15 push Verizon’s TRPA permit application ahead for a hearing before a TRPA hearings officer
16 scheduled for October 14, 2021.

17 112. On or about October 5, 2021, Mr. Marshall advised Plaintiffs’ counsel that
18 Andrew Strain would be the TRPA’s Hearings Officer who would hear Verizon’s TRPA permit
19 application at the hearing on October 14, 2021. The position of Hearings Officer is appointed by,
20 and serves at the discretion of, the Executive Director. The role of the Hearings Officer is to
21 determine an application’s consistency and compliance with “the Compact, Goals and Policies,
Code, other TRPA plans, maps and programs, and Rules of Procedure, for projects or matters
identified in subsection 2.2.2 in the Code as requiring review by the Hearings Officer.”

1 113. Executive Director Marchetta’s appointment of Mr. Strain as TRPA’s Hearings
2 Officer for Verizon’s application for the monopine at 1360 Ski Run Boulevard demonstrated her
3 utter disdain for fairness and her blatant disregard for TRPA’s conflict of interest policy as set
4 forth in Article III(a)(5) of the Compact. Given that Mr. Strain is a local real estate developer
5 and works as a high-level executive for the owner of an ultra-high end resort complex on Lake
6 Tahoe, Ms. Marchetta exercised bizarrely poor judgment in appointing Mr. Strain as a TRPA
7 hearings officer for any case involving wireless facilities. However, Mr. Strain’s boss, Patrick
8 Rhamey, Chief Executive Officer of the Tahoe Beach Club, had submitted public comments to
9 the City of South Lake Tahoe City Council on May 11, 2020 supporting expansion of cell towers
10 in South Lake Tahoe and co-location of antennas on such facilities. Mr. Strain’s boss, Mr.
11 Rhamey, is also a Director of the Tahoe Prosperity Center. Knowing his boss’s penchant for
12 expanded cell tower deployment in South Lake Tahoe, and because of Mr. Strain’s membership
13 on the Government Affairs Committee of the Tahoe Chamber of Commerce, which partners with
14 the Tahoe Prosperity Center, a telecom industry-sponsored private group that lobbies TRPA for
15 the densification of wireless facilities deployment in the Lake Tahoe Basin, Mr. Strain never
16 should have accepted the hearings officer assignment for this particular hearing. More
17 importantly, Ms. Marchetta had no business appointing him to hear this case because his
18 “impartiality” was subject to serious challenge.

19 114. On October 7, 2021, Plaintiffs’ counsel served Ms. Marchetta and Mr. Marshall
20 with a letter demanding that Mr. Strain be replaced as the hearings officer because of his obvious
21 conflict of interest for the foregoing reasons.

 115. On October 11, 2021, at 12:34 p.m. (PDT), John Marshall sent an email to
counsel advising that Marsha Burch would be serving as TRPA Hearings Officer instead of Mr.

1 Strain. Evidently, having been called out on Mr. Strain's egregious conflict of interest, even Ms.
2 Marchetta and Mr. Marshall capitulated and replaced him with Ms. Burch. But this late
3 replacement of the Hearing Officer, just three days before the hearing date, provided Ms. Burch
4 little to no time to review the voluminous file, which consisted of many thousands of pages of
5 plans, scientific studies, public comments, legal argument, photos, photo simulations, expert
6 reports, and the like. Nevertheless, Mr. Marshall insisted on keeping the hearing on the date
7 scheduled, October 14, 2021.

8 116. On October 7, 2021, as required by TRPA procedures, TRPA issued its Staff
9 Report regarding Verizon/Guilliam New Cellular Monopine Cellular Tower; 1360 Ski Run
10 Boulevard, City of South Lake Tahoe, El Dorado County, CA; Assessor's Parcel Number
11 025-580-07, TRPA File Number ERSP2019-0389. In this 8-page report, TRPA Staff made the
12 following conclusory findings without a shred of evidence of any careful environmental review:

13 A. Environmental Documentation: TRPA staff completed the Initial
14 Environmental Checklist (IEC) and "Project Review Conformance
15 Checklist and Article V(g) Findings" in accordance with Chapter 4,
16 Subsection 4.3 of the TRPA Code of Ordinances. All responses contained
17 on said checklists indicate compliance with the environmental threshold
18 carrying capacities and TRPA staff recommends the Hearings Officer
19 make a Finding of No Significant Effect.

20 B. Plan Area: The project is located within Plan Area 085, Lakeview
21 Heights, where transmission and receiving facilities are a special use.

C. Land Coverage: The project will not result in the creation of additional
coverage.

D. Height: The proposed height of the monopine is 112 feet. The
applicant prepared an alternate site analysis which evaluated 32 different
locations, and concluded the other 31 locations were not feasible for
various reasons.

E. Location: The current proposal is the preferred location. The other 31
locations were not feasible because they would not fill the gap in service,
owners were not willing to entertain a cell tower on the property, scenic
impacts, and other reasons.

1 F. Scenic Quality: The proposed project is visible from Pioneer Trail,
2 along Scenic Road Unit #45, currently in non-attainment, and from
3 portions of the Heavenly Valley Ski Resort recreation area. Photo
4 simulations from the Pioneer Trail/Ski Run Boulevard intersection (part of
5 Roadway Unit 45) show that the proposed facility blends in with
6 surrounding trees. Other perspectives (including northwest from Ski Run
7 Boulevard, and from across the street) show that the monopine will blend
8 in with the adjacent trees. The proposed monopine design will provide a
9 natural tree appearance, with non-uniform tree branches, and a tapered
10 trunk. TRPA will require a range of tree bark, branch, needle, material
11 samples that integrate with colors surrounding natural forest.

12 Views from Recreation Area: The proposed monopine tower may be
13 visible from parts of Heavenly Valley Ski Area, which is a recreation area
14 identified in the Lake Tahoe Scenic Resource Evaluation (TRPA 1993).
15 However, due to the presence of trees of varying heights in the foreground
16 and middleground views, the visibility of the monopine will not
17 significantly change the viewshed and will not adversely affect the
18 numerical standard. By requiring the stealth, monopine design, there will
19 be no impact to views from the recreation area.

20 TRPA has incorporated a condition into the draft permit (Special
21 Condition 3.J) requiring payment of a scenic monitoring fee. TRPA staff
will inspect the tower every two years for the first ten years after passing
final inspection. These inspections shall include review of the quality of
the branches and bark of the tower. If the scenic quality of the tower has
substantially degraded (e.g., branches or bark have fallen off, needles have
substantially fallen off and/or faded from the original color, etc.), the
applicant shall make improvements to bring the tower back to a level
consistent with original approval. Any future project related to the tower
shall also provide additional opportunity to make improvements to the
tower.

15 G. Radio Frequency Emissions: Congress gave the Federal
16 Communications Commission (“FCC”) ‘comprehensive powers’ over
17 radio communications, and the FCC has exercised ‘federal primacy’ over
18 the technical aspects of such communications. *See Cohen v. Apple, Inc.*,
19 2020 WL 6342922, at *3, 10 (N.D. Cal. 2020). Congress determined that
20 ‘it is in the national interest that uniform, consistent requirements, with
21 adequate safeguards for radio frequency (‘RF’) emissions,’ *id.* at *10; 47
C.F.R. §§1.1307(b), 1.1310, 2.1091, 2.1093. While Congress preserved
traditional state and local zoning authority, it expressly prohibited states,
or instrumentalities thereof, from regulating RF emissions based on health
or environmental impacts:

No State or local government or instrumentality thereof may
regulate the placement, construction, and modification of personal
wireless service facilities on the basis of the environmental effects

1 of radio frequency emissions to the extent that such facilities
2 comply with the Commission's regulations concerning such
emissions.

3 47 U.S.C. §332(c)(7)(B)(iv). 'Environmental effects' as used in this
section includes both impacts on human health and the wider environment,
4 including plants and wildlife. See *T-Mobile Northeast, LLC v. Town of*
Ramapo, 701 F. Supp.2d 446, 460 (S.D.N.Y. 2009)(includes human health
5 concerns); *Jaeger v. Celco Partnership*, 2010 WL 965730, *10 (D. Conn.
2010)('The plain meaning of the term 'environmental effects' incorporates
adverse effects on all biological organisms').

6 Thus, the proposed Verizon Wireless tower is required to comply with the
FCC limits on RF emissions, and any attempt under state law to impose
7 other limits on RF emissions is preempted. This preemption applies to
other federal and state claims as well. For example, the Federal District
8 Court in the Northern District of California recently rejected claims that
RF emissions violated the Americans with Disabilities Act, and assorted
9 tort claims, finding that the Telecommunications Act (TCA) and the
FCC's regulations preempted a city's ability to regulate radio frequency
10 emissions. *Wolf v. City of Millbrae*, 2021 WL 37207072 (N.D. Cal. Aug.
23, 2021).

11 TRPA, having been created by an interstate compact, is a creature of
federal law, and the application of the TCA to its permitting process is not
12 a matter of preemption. Rather, one must reconcile the intent of Congress
in passing both the TCA and the Compact and give meaning to both
13 statutes should there be any conflict in implementation. In furtherance of
that standard, the agency position to date is this: TRPA will defer to the
FCC regulations over general issues of human health and environmental
14 impacts. However, TRPA could choose to regulate RF in the region
should cellular facilities be proven to have a particular adverse effect on
15 the unique environment of the Tahoe Region. TRPA has not received any
such proof of adverse impacts particular to Tahoe and therefore will not
16 reexamine the determinations of the FCC.

17 117. TRPA Staff Report made the following Chapter 4 "Required Findings:"

18 (a).The project is consistent with and will not adversely affect
implementation of the Regional Plan, including all applicable Goals and
Policies, Plan Area Statements and maps, the Code and other TRPA plans
and programs.

19
20 The project is located within Plan Area Statement #085 (Lakeview
Heights), where transmission and receiving facilities are a special use.
21 Policy PS-1.1 of the Regional Plan supports the upgrade and expansion of
public service facilities consistent with the Land Use Element of the
Regional Plan. There is no evidence showing the proposed project will

1 have an adverse effect on the Land Use, Transportation, Conservation,
2 Recreation, Scenic Quality, Public Service and Facilities, or
3 Implementation sub-elements of the Regional Plan. The project, as
4 conditioned, will not adversely affect the implementation of any
5 applicable elements of the Regional Plan.

6 (b). The project will not cause the environmental threshold carrying
7 capacities to be exceeded.

8 TRPA staff has completed the “Article V(g) Findings” in accordance with
9 Section 4.4.2 of the TRPA Code of Ordinances and incorporates the
10 checklist into this analysis. All responses contained in the project findings
11 indicate compliance with the environmental threshold carrying capacities.
12 In addition, the applicant has completed an IEC, which is hereby
13 incorporated into this analysis. Staff has concluded that the project will
14 not have a significant effect on the environment. A copy of the completed
15 checklist and IEC will be made available on the TRPA website and, and
16 through the Parcel Tracker.

17 (c) Wherever federal, state, or local air and water quality standards
18 applicable for the Region, whichever are strictest, must be attained and
19 maintained pursuant to Article V(g) of the TRPA Compact, the project
20 meets or exceeds such standards.

21 The project, as conditioned, will not have an adverse impact on applicable
air and water quality standards for the Region. The project includes the
installation of water quality best management practices and will not result
in the generation of additional daily vehicle trip ends.

118. TRPA Staff made the following Chapter 21 “Special Use Findings:”

(a) The project, to which the use pertains, is of such a nature, scale,
density, intensity and type to be an appropriate use for the parcel on
which, and surrounding area in which, it will be located.

The nature of the proposed project is consistent with the public service
uses permissible within the Area Plan and will provide an important site
for wireless technology providers to improve service in the area. The
monopine tower is designed to stimulate the appearance of a pine tree and
integrate with the natural environment. The applicant conducted an
analysis of 32 alternative sites, all of which were not feasible. The
proposed location was found to be the preferred location.

(b) The project to which the use pertains, will not be injurious or
disturbing to the health, safety, enjoyment of property, or general welfare
of persons or property in the neighborhood, or general welfare of the
region, and the applicant has taken reasonable steps to protect against any

1 such injury and to protect the land, water, and air resources of both the
2 applicant's property and that of surrounding property owners.

3 This tower will not contain lights or generate noise that could be visible or
4 heard outside the immediate vicinity of the monopine. The generator will
5 be housed in an enclosure shelter and will temporarily provide power
6 during power outages only. The shelter will be visible from adjacent
7 roadways. The equipment will be housed within the shelter.

8 Visual simulations were prepared for the project which demonstrates the
9 main structure will be partially visible from scenic travel routes and as a
10 result, staff has requested specific design criteria to ensure the project
11 would not result in impacts to scenic quality. The cell tower will resemble
12 a tree of similar height and appearance to adjacent trees in the surrounding
13 forest. A condition of approval requires the applicant to submit elevation
14 drawings that include a random branch pattern that mimics the branch
15 pattern of adjacent trees (see Special Condition 3.H of draft permit). A
16 condition of approval also requires the applicant to submit final color final
17 color [sic] and material samples for monopine and equipment shelters to
18 ensure there will be no significant impacts to scenic quality. In addition,
19 Special Condition 3.J requires the payment of a scenic monitoring fee.
20 TRPA staff will inspect the tower every two years for the first ten years
21 after passing final inspection. These inspections shall include review of
the quality of the branches and bark of the tower. If the scenic quality of
the tower has substantially degraded (e.g., branches or bark have fallen
off, needles have substantially fallen off and/or faded from the original
color, etc.), the applicant shall make improvements to bring the tower back
to a level consistent with original approval.

The project will provide important wireless communication service in
emergencies to protect public health, safety, and welfare. The ground
level equipment will be housed within a shelter to reduce the potential for
public access and injury. The monopine will improve public safety by
increasing cellular reception for first responders in the area.

16 (c) The project to which the use pertains will not change the character of
17 the neighborhood or detrimentally affect or alter the purpose of the
18 applicable planning area statement, community plan and specific or master
19 plan, as the case may be.

18 The communication facility will improve wireless service in the area and
19 will not change the character of the neighborhood due to its monopine
20 design. The project is located within Plan Area Statement 085 (Lakeview
21 Heights) where transmission and receiving facilities are a special use.
Policy PS-1.1 of the Regional Plan supports the upgrade and expansion of
public service facilities consistent with the Land Use Element of the
Regional Plan.

1 119. TRPA issued the following Chapter 37 “Additional Height Findings:

2 (a) The function of the structure requires greater maximum height than
3 otherwise provided for in this chapter.

4 Surrounding trees and mountainous topography cause cell signal
5 degradation and scatter. Cell tower functionality is greatest if it extends
6 above the forest canopy and therefore requires greater maximum height
7 than otherwise provided for in Chapter 37. The monopine design, colors
8 and antenna configuration will ensure the antennas are located within the
9 monopine’s branches to achieve a more realistic tree appearance.

10 (b) The additional height is the minimum necessary to feasibly implement
11 the project and there are no feasible alternatives requiring less additional
12 height.

13 The height of the proposed monopine tower is the minimum required to
14 enable the tower to provide adequate cell service, and also allows for
15 eventual use by multiple carriers. Allowing multiple carriers to co-locate
16 on the tower will eliminate the need to possibly construct additional
17 towers for each carrier. As demonstrated by the Alternatives Analysis, no
18 other feasible alternative exists; therefore the additional height is
19 necessary.

20 120. TRPA made the following Chapter 50 “Additional Public Service Facility
21 Findings”:

22 (a) There is a need for the project.

23 Cellular coverage maps show service gaps in the area and existing
24 facilities are not meeting service needs associated with increased wireless
25 data needs. This project will provide additional facilities to meet service
26 needs in the area. The additional facilities will provide improved wireless
27 communication service in emergencies to help protect public health,
28 safety, and welfare.

29 (b) The project [sic] with the Goals and Policies, applicable plan area
30 statements, and Code.

31 See rationale in Chapter 4 findings, above.

32 (c) The project is consistent with the TRPA Environmental Improvement
33 Program.

34 The project will not affect implementation of the EIP and will not cause
35 TRPA’s environmental thresholds to be exceeded. The color and shape of
36 the monopine tower and color and material equipment shelter will

1 resemble other trees in the project vicinity which will also ensure there are
2 no significant impacts to applicable scenic resource thresholds.

3 (d) The project meets the findings adopted pursuant to Article V(g) of the
4 Compact as set forth in Chapter 4: Required Findings, as they are
5 applicable to the product's service capacity.

6 The project's service capacity is shown on wireless propagation maps
7 submitted with the application and shows the areas to be served by the
8 project.

9 121. The October 7, 2021 TRPA Staff Report and Findings and recommendation to
10 approve the project fail, on their face, to meet the substantial evidence requirements necessary to
11 support approval of the permit by the Hearings Officer. On most key elements, the TRPA Staff
12 Report Findings are entirely conclusory, as this term has been interpreted by the D.C. Circuit
13 Court of Appeals in its landmark August 13, 2021 decision in *EHT v. FCC, supra*, 9 F.4th 893,
14 and provide no supporting evidence whatsoever. TRPA Staff fail to provide any reasoned
15 analysis in furtherance of their conclusory findings or to describe what, if any facts, they
16 considered in reaching these conclusions. As such, their findings are arbitrary and capricious,
17 lacking in substantial evidentiary support, and were arrived at in an unlawful manner, all in
18 violation of the Compact, Article VI(j)(5).

19 122. A particularly egregious example is Chapter 4 Required Finding (c) which
20 demands Staff to respond to the following: "Wherever federal, state, or local air and water
21 quality standards for the Region, whichever are strictest, must be attained and maintained
pursuant to Article V(g) of the TRPA Compact, the project meets or exceeds such standards."
As set forth above, the Staff report finding states: "The project, as conditioned, will not have an
adverse impact on applicable air and water quality standards for the Region. The project
includes the installation of water quality best management practices and will not result in the
generation of additional daily vehicle trip ends." Entirely absent from the report is any evidence

1 of what steps, if any, staff took to assure that the strictest water and air quality standards will be
2 attained and preserved by this project. On information and belief, TRPA staff undertook no
3 water quality analysis for this monopine cell tower project. Moreover, as alleged in greater detail
4 below, in November 2021, Plaintiffs discovered that a virtually identical AT&T monopine nearby
5 at Heckla Drive, and another on a ridge on the Heavenly Valley Ski Resort just above the site for
6 the proposed Verizon monopine, are both shedding prodigious amounts of PVC faux pine
7 branches and pine needles. Many pounds of these PVC materials had been ripped off the
8 monopines from the extreme winds and snowstorms, after deteriorating in the high UV exposure
9 and extreme temperatures, and have been dispersed over wide debris fields around the base of
10 these towers. The deteriorating PVC debris has been found to be fragmenting into tiny pieces
11 that has become embedded in the ground cover or has blown around by the wind or has been
12 carried off as runoff into stormwater catchments and into the surrounding drainage basins.
13 Although TRPA has been approving monopines like these for two decades throughout the Lake
14 Tahoe Basin – and should have been monitoring these monopines for such deterioration and
15 plastic waste discharge throughout that period, TRPA seems to have been completely oblivious
16 to the obvious and serious fact that the PVC faux pine branches and needles degrade rapidly in
17 the harsh Tahoe environment. TRPA staff apparently has never taken these critically important
18 facts into account, including the likelihood that PVC fragments and microplastics are being
19 transported into local streams, drainages, and stormwater systems before dumping out into Lake
20 Tahoe. The Lake Tahoe Basin is a Zero Discharge Zone. The federal Clean Water Act, its
21 California counterpart, and federal and TRPA laws all make it illegal to discharge hazardous
solid waste onto land or water unless authorized pursuant to special highly controlled discharge
permits. These facts put the lie to the TRPA Staff’s absurd finding that “[t]he project, as

1 conditioned, will not have an adverse impact on applicable air and water quality standards for the
2 Region.”

3 123. The continuing discharge of toxic plastic waste into Lake Tahoe from shredding
4 monopines is clearly a significant and imminent environmental/public health hazard that TRPA
5 has a legal duty to assess in an EIS prepared under Article VII of the Compact, in close
6 coordination with the Lohanton and Regional Water Quality Boards.

7 **CLAIMS FOR RELIEF**

8 **FIRST CAUSE OF ACTION**

9 **TRPA’s Policies and Regulations that Authorize and Explicitly Permit Wireless Companies**
10 **to Destroy the Tahoe Region by Segmented, Piecemeal, and Unplanned Cell Tower**
11 **Installations with no Analysis of Cumulative Effects is a Violation of its Public Trust.**

12 124. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

13 125. The Public Trust Doctrine has a long-standing history in California that has been
14 recognized and upheld in numerous state court decisions.

15 126. The Public Trust Doctrine affirms that certain public lands such as the shores,
16 natural forests, lakes, as well the air and running water must be protected by the sovereign for the
17 benefit of everyone, and cannot be sold or allowed to be converted by private enterprise
18 companies for commercial gain.

19 127. The TRPA Compact has incorporated the Public Trust Doctrine as core part of its
20 Policy Declarations in Article 1(a), in particular, in Sections 6-7.

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

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

130. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

TRPA is Based on an Interstate Compact Established, Approved, and Partially Funded by Congress. The Compact is One of Several Controlling Federal Laws that Apply to the Connected Tahoe Program. By Failing to Prepare a Comprehensive Environmental Impact Statement as Required by Article VII, TRPA is Acting in Defiant Violation of the Compact. If the TRPA Seeks to Exempt the Connected Tahoe Program from its Obligations under the Compact, it Must Secure a Special Act of Congress Authorizing it to do so. Moreover, TRPA must also Comply with the Administrative Procedures Act (APA), the National Environmental Policy Act (NEPA), the Clean Air and Water Acts, the Endangered Species Act, the National Historic Preservation Act, and Other Federal Statutes.

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

2 132. TRPA is organized under an interstate compact, established, approved, and
3 partially funded by Congress. As such, the Compact is federal law. TRPA is governed by
4 federal law, and TRPA is a federal agency. Federal agencies are special government
5 organizations set up for a specific purpose such as the management of resources or national
6 security issues. They are created to regulate industries or practices that require close oversight or
7 specialized expertise.

8 133. There is a strong federal interest to ensure that TRPA's operations comply with the
9 Administrative Procedures Act, NEPA, the Clean Air and Water Act, the Endangered Species
10 Act, the National Historic Preservation Act, and other federal statutes in the same manner as
11 other interstate compacts, including the Tennessee Valley Association (TVA), the Potomac River
12 Compact, the Columbia River Gorge Compact, and the Palisades Interstate Park Compact.

13 134. Although TRPA's regulatory powers, authority, organization, structure, and duties
14 all stem from the Compact, TRPA itself, and in the exercise of its powers and authorities,
15 remains subject to all federal laws, including the Americans with Disabilities Act, the Fair
16 Housing Amendments Act, as well as the Constitution of the United States. TRPA has asserted in
17 earlier filings with this Court the erroneous interpretation that the Compact is the "sole governing
18 federal law."

19 135. Piecemeal blanket permitting to wireless companies allowing for the construction
20 and operation of thousands of cell towers, small cell wireless facilities, and satellite earth and
21 base stations throughout the Tahoe Region is a major federal action as this term is defined and
interpreted by NEPA and many court decisions, as well as interpretations of the Compact itself.
Both NEPA and Article VII of the Compact require a complete and thorough environmental

1 impact and risk assessment by TRPA of this major federal action. The required NEPA evaluation
2 should and must include cumulative impacts. The tree cutting alleged above in advance of the
3 public hearing on the Verizon monopine cell tower project at the same site at 1360 Ski Run
4 Boulevard, and the unregulated dumping of toxic microplastic monopine waste from that same
5 site are specific instances of impermissible piecemealing.

6 136. Moreover, TRPA's entire helter-skelter wireless deployment program must
7 comply with various risk assessments and permitting requirements under the above federal
8 statutes.

9 137. TRPA is openly defying the Compact by maintaining that it is under no legal
10 obligation to conduct a comprehensive environmental assessment under its own rules and
11 ordinances pursuant to the Compact, or a NEPA environmental assessment, or to comply with
12 any of the other federal laws noted above. TRPA has not even issued a well reasoned Negative
13 Declaration as it is required to do under the California Environmental Quality Act (CEQA) or its
14 own Regional Plan and Code of Ordinances for the Verizon monopine project at 1360 Ski Run
15 Boulevard or for the Tahoe Connected Plan.

16 138. Nor can TRPA delegate to private companies any of its statutory responsibilities,
17 as it is currently doing to private, self-interested commercial companies such as Verizon
18 Wireless, AT&T, and T-Mobile.

19 139. The Tahoe Prosperity Center's Wireless Tahoe Initiative and Action Plan (also
20 known as the Tahoe Connected Plan) which is being encouraged and enabled by TRPA, is
21 governed by the Compact and is a major federal action as this term is understood under federal
law. The Telecommunications Act of 1996 does not and cannot preempt the TRPA from
conducting its own comprehensive environmental reviews of wireless projects under the

1 Compact, NEPA, or CEQA, and TRPA is required by the Compact to do so in this case. A legal
2 precept well recognized by the courts is that federal laws are to be interpreted together and
3 harmonized, and federal regulatory agencies are to cooperate in setting standards and their
4 enforcement based on these harmonized interpretations. Moreover, the Telecom Act of 1996
5 contains a broad “savings clause” that expressly provides: “NO IMPLIED EFFECT. -- This Act
6 and the amendments made by this Act shall not be construed to modify, impair, or supersede
Federal, State, or local law unless expressly so provided in such Act or amendments.”

7 140. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

8 **THIRD CAUSE OF ACTION**

9 **TRPA’s Failure to Make Required Findings to Protect Thresholds Violates the Terms of the** 10 **Compact.**

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

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

18 143. Plaintiffs are informed and believe, and thereupon allege, that TRPA has never
19 properly assessed nor attempted to measure the costs of the adverse impacts of increased RFR
20 exposures resulting from hundreds or thousands of additional cell tower and antenna installations
21 upon the fragile environment of the Tahoe Region. The last Threshold Evaluation Report from
2015 is silent on the subject. TRPA is now overdue for another Threshold Evaluation, but again,

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

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

16 **FOURTH CAUSE OF ACTION**

17 **TRPA's Segmented and Piecemeal Policies and Practices Violate the Compact and TRPA's**
18 **Own Regional Plan, Implementing Regulations and Ordinances, and Well-Established**
19 **California, Nevada, and Federal Land Use Planning Laws Requiring that TRPA's**
20 **Resulting Actions be Coherent, Integral, and Consistent with the Regional Plan, the**
21 **Compact, and TRPA Ordinances.**

145. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

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

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

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

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

11 **FIFTH CAUSE OF ACTION**

12 **Defendants City of South Lake Tahoe, Tahoe Regional Planning Agency, and Verizon are**
13 **Continuously Violating the Federal and State Clean Water Acts, and in Particular the Zero**
14 **Discharge Standard which Prohibits the Discharge of Hazardous Waste such as Toxic**
15 **Monopine Microplastics into Lake Tahoe.**

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

17 151. The Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE) Plan is a
18 critically important Statewide Toxics Control Program of the California State Water Resources
19 Control Board that applies to all discharges of pollutants to U.S. waters under the CWA. USEPA
20 approved amendments to the 2006 ISWEBE Plan to address “trash” on a statewide basis,
21 including at Lake Tahoe.

 152. Trash Provisions applicable to all California state waters amend and supersede all
prior regional Water Quality Control Plan (Basin Plan) “trash” requirements with a uniform

1 definition for “trash,” and a plan of implementation. See full details at [Plans and Policies |](#)
2 [California State Water Resources Control Board](#): “ISWEBE Plan - The following adopted
3 amendments will be incorporated into the Water Quality Control Plan for ISWEBE of California:
4 Part 1: Trash Provisions, adopted on April 7, 2015 (Resolution No. 2015-0019), effective on
5 December 2, 2015 (OAL approval letter).”

6 153. California has a new statewide Water Quality Objective (WQO) for trash, which
7 considered together with “beneficial uses” (municipal, recreation wildlife, etc.), comprise water
8 quality standards, which may also be implemented through prohibitions.

9 154. The new WQO for Trash states: “TRASH shall not be present in inland surface
10 waters, enclosed bays, estuaries, and along shorelines or adjacent areas in amounts that adversely
11 affect beneficial uses or cause nuisance.”

12 155. The full new statewide (California) definition for trash is as follows: “TRASH:
13 All improperly discarded solid material from any production, manufacturing, or processing
14 operation including, but not limited to, products, product packaging, or containers constructed of
15 plastic, steel, aluminum, glass, paper, or other synthetic or natural materials.”

16 156. Discarded plastic needles fit the description of waste “products.” The whole
17 regulation is largely aimed at reducing plastic and other trash pollution in California waters, and
18 directed at municipal storm water with a timeline to get all trash out of waters with “full capture
19 systems,” or alternatives deemed equivalent to full capture system controls.

20 157. The new statewide prohibition against trash is: “ 2. Prohibition of Discharge. The
21 discharge of TRASH to surface waters of the State or the deposition of TRASH where it may be
discharged into surface waters of the State is prohibited. Compliance with this prohibition of

1 discharge shall be achieved as follows: . . . d. Dischargers without NPDES permits, WDRs, or
2 waivers of WDRs must comply with this prohibition of discharge.”

3 158. Deposition to lands is included in the prohibition if the trash can get into overland
4 runoff or drainages and streamways. Thus, for non-municipal, unregulated dischargers such as
5 Verizon, the Trash Provisions took effect on Dec. 2, 2015, including the prohibition (which is an
6 enforceable civil liability). In addition, TRASH shall not be present in waters in amounts that
7 adversely affect beneficial uses or cause nuisance. Affecting a beneficial use includes making
8 waters unsafe for swimming or contaminating wildlife habitat. Nuisance is codified.

9 159. The plastics discharge that will inevitably occur from the Verizon monopine once
10 built at 1360 Ski Run Boulevard will create a public nuisance. Moreover, the existing
11 monopines in the Lake Tahoe Basin have been shedding their PVC branches and PVC needles,
12 resulting in illegal TRASH discharges which constitute public nuisances pursuant to CA Water
13 Code section 13050:

14 (m) “Nuisance” means anything which meets all of the following requirements:

15 (1) Is injurious to health, or is indecent or offensive to the senses, or an
16 obstruction to the free use of property, so as to interfere with the comfortable
17 enjoyment of life or property.

18 (2) Affects at the same time an entire community or neighborhood, or any
19 considerable number of persons, although the extent of the annoyance or damage
20 inflicted upon individuals may be unequal.

21 (3) Occurs during, or as a result of, the treatment or disposal of wastes.

160. There is no reasonable basis to find that toxic and other plastic wastes discharged
from the proposed Verizon monopine tower at 1360 Ski Run Boulevard can be managed solely
on the Project site/property and, indeed, no such findings of fact have been made. Nothing has
been provided by TRPA to refute our common-sense findings, other than assertions without a
basis in fact, assertions that are arbitrary and capricious. Clearly, toxic and other solid wastes

1 discharged on the wind and otherwise into the surrounding properties and waters may be
2 injurious to health or obstruct the free use of property, such as when the Lahontan Water Board
3 decides to show up, belatedly, to require costly assessments and cleanups for prohibited
4 discharges. A worse thing occurs when the contamination and pollution is unknown,
5 uncontrolled, and affects the waters of the Lake Tahoe Basin, and the public is not made aware of
6 the issue. These potentially-contaminated lands and waters include the sites where monopine
7 facilities are located on protected public lands, such as those the USFS-Lake Tahoe Basin
8 Management Unit oversees, the City of South Lake Tahoe streets and right-of ways, the public
9 conservation lands and streamways of the California Tahoe Conservancy, and the surrounding
10 private properties and streamways. By denying Plaintiffs' appeal – which expressly address the
11 serious imminent hazard of microplastic pollution and illegal solid waste discharge from already
12 existing monopines in the Lake Tahoe Basin – and nonetheless, allowing for the issuance of the
13 TRPA permit for Verizon's monopine at 1360 Ski Run Boulevard, the TRPA Governing Board is
14 giving the green light to illegal industrial-scale plastic waste discharges from among the
15 most-profitable industries in the nation to be disposed of into the surrounding lands and
16 waterways (or a considerable portion thereof), while turning a blind eye to the form very strict
17 pollution and contamination control laws TRPA is obliged to enforce under the Compact. Verizon
18 may claim to comply with all laws as a matter of course, yet they have provided no report of the
19 proposed discharge to the Water Board, as CWC section 13260 requires. By its actions and
20 failures to act, TRPA violates the Compact, Article VI(j)(5).

21
161. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

1 **SIXTH CAUSE OF ACTION**

2 **TRPA's Failure to Assess, Plan, and Implement Policies, Plans, and Programs to Address**
3 **Adverse Environmental Impact of RFR Contamination, and Further the Unique and**
4 **Unaddressed Wildfire Hazards Presented by Proliferated Cell Tower Installations, Violates**
5 **its Own Regulations.**

6 162. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

7 163. The heavily wooded Tahoe Region is a tinderbox. The massive, reckless
8 proliferation of cell towers which TRPA has enabled through its wrongful issuance of permits
9 presents a unique fire risk from malfunctions, explosions, and lighting strikes. The recent Caldor
10 wildfire, which burned 221,835 acres during the Summer of 2021 and narrowly missed burning
11 through South Lake Tahoe City, confirms this significant public hazard. Peer-reviewed studies
12 show that cell towers attract lightning, and notwithstanding the lightning rods atop the towers,
13 thereby increase wildfire risk. Peer-reviewed studies also show that RFR causes conifer trees to
14 greatly increase production of terpenes. Terpenes are highly flammable hydrocarbons, making
each conifer tree subjected to RFR more flammable.

15 164. TRPA has performed absolutely no programmatic planning or evaluation of the
16 wildfire risks of RF emitting small cell and macro RF facilities. TRPA has utterly failed to adopt
17 standards (other than limited scenic standards for public utilities generally) to guide new RFR
18 facility rollout, the overall environmental impact of cell tower proliferation, or the specific fire
19 risks directly related thereto. TRPA has encouraged, funded, and promoted a wireless
20 transmission infrastructure, in cahoots with the industry-sponsored and supported Tahoe
21 Prosperity Center, while abandoning its obligation to look impartially and critically at the

1 available science, which confirms the serious environmental threats from the very projects that it
2 is permitting and actively promoting.

3 165. In the absence of protective ordinances, themselves based upon a master EIS,
4 TRPA must study not only the impacts of each individual project through the EIS process, but
5 also their cumulative impacts along with other projects, in order to make the findings required
6 under Article V(g-i) of the Compact, and otherwise as required by the Regional Plan.

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

15 167. Plaintiffs are informed, and therefore allege that to date large volume data
16 transmission has been a primary cause of the bottlenecks cellular customers may sometimes
17 encounter -- and the cell phone carriers use these “bottlenecks” as their excuse for the need to
18 deploy ever more cell towers and small cell facilities to blight the pristine Tahoe landscapes.
19 TRPA must require a complete EIS for every project, with a strong mandate to look at RF-free
20 alternatives for the protection of Lake Tahoe’s sensitive environment. For example, by building
21 out the fiber optic infrastructure fully in the Lake Tahoe Basin, heavy data-based Internet traffic
can be carried much more efficiently, securely, faster, and cheaper than over wireless

1 infrastructure, the need for wireless infrastructure can be reduced substantially, and the
2 concomitant harms created by wireless infrastructure can be mitigated.

3 168. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

4 SEVENTH CAUSE OF ACTION

5 **TRPA is Failing to Assess Immediately Available, Safe, Secure, Environmentally Protective,**
6 **Energy Efficient, and Cost-Effective Alternatives to a Massive Wireless Infrastructure in**
7 **the Tahoe Region. This Failure to Identify and to Explore Viable and Practical**
8 **Alternatives, and to Include its Findings in the Regional Plan, Violates TRPA's Obligations**
9 **Under NEPA, CEQA, its own Regional Plan, and the Compact.**

10 169. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

11 170. There is a substantial body of evidence and practice that an optical
12 fiber-to-the-premises infrastructure offers an immediately available, proven, safe, secure,
13 environmentally protective, more energy-efficient, cost-effective alternative to the currently
14 implemented wireless infrastructure. Indeed, as [*Irregulators v. FCC*](#), 953 F.3d 78 (D.C. Cir.
15 2020), has documented, there is a strong likelihood that U.S. taxpayers, including Tahoe
16 residents, have already paid for this optical fiber wired infrastructure, and local rate payers have
17 been overcharged by telecom companies to subsidize wireless to the competitive disadvantage of
18 optical fiber wired companies. Verizon and the other telecom purveyors should bear the cost of
19 the optical fiber build-out since they have been overcharging local ratepayers for years for this
20 service, but have not used the funds for it.

21 171. TRPA has never considered the perverse economics of the present regulatory
subsidy it is actively extending to the wireless companies.

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

173. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

EIGHTH CAUSE OF ACTION

The Actions of Officers and Directors of TRPA who Concurrently Serve or Have Served as Directors of the Tahoe Prosperity Center Reflect Undisclosed Conflicts of Interest, Violate California's Open Meeting Laws, and Must be Voided and Remanded for Reconsideration.

174. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

175. Plaintiffs are informed and believe, and thereon allege, that if any comprehensive planning has been done at all in the Tahoe Region regarding the proliferation of wireless facilities, it was done behind closed doors under the auspices of the Tahoe Prosperity Center (“TPC”). TPC purports to be a federally registered 501(c)(3) not-for-profit organization, and is funded in part directly by governmental entities with regulatory authority in the Tahoe Region, including TRPA, El Dorado County, Placer County, and the City of South Lake Tahoe. TPC’s Board of Directors included (until January 2021) two members of the TRPA Board of Governors, Defendant Novasel (currently an El Dorado County Supervisor) and Defendant Berkbighler (who, until 2021, was a member of TRPA’s Board and also a Washoe County Supervisor; she lost her re-election bid for Washoe County Supervisor in the November 3, 2020 election, and thus lost her Board seat on TRPA’s Governing Board as well), TRPA’s Executive Director, Defendant Marchetta, and a former TRPA employee and current member of the City Council of the City of

1 South Lake Tahoe, Devin Middlebrook, who now serves as Mayor. The Verizon tower project at
2 1360 Ski Run Boulevard is located in the City of South Lake Tahoe.

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

12 177. For at least the past several years, TPC has actively lobbied the regulators in the
13 Tahoe Region, including the City of South Lake Tahoe and the TRPA, to streamline their
14 regulatory processes to allow each telecom, including defendant Verizon, to implement their
15 wireless infrastructure projects as quickly as possible. Moreover, TPC, by its Chief Executive
16 Officer, Heidi Hill Drum, has aggressively campaigned for the approval of specific cell towers
17 and wireless transmission facilities throughout the Tahoe Region, including the proposed Verizon
18 cell tower at 1360 Ski Run Boulevard, which is one of the centerpieces of the instant litigation.
19 For example, on August 5, 2019, the day before the scheduled South Lake Tahoe City Council
20 hearing on Plaintiff Eisenstecken’s appeal of the Planning Commission’s grant of a special use
21 permit for the Verizon cell tower at 1360 Ski Run Boulevard, Heidi Hill Drum sent an email to
members of the City Council, including Devin Middlebrook, who simultaneously serves as a

1 Director of TPC (and who, despite this obvious conflict of interest, never recused himself from
2 the decision-making). In her email, Ms. Drum writes:

3 I somehow missed this on my agenda review when I sent my support letter for the
4 other items. *But I wanted to express my sincere hope that you uphold your*
5 *planning commission's approval of the cell tower on Ski Run Boulevard.* As you
6 are well aware it is almost impossible to send a text in the heavy summer
7 visitation periods. Cell coverage has diminished greatly over the past couple of
8 years. In addition, many members of our community no longer have a landline
9 and rely solely on cell phone service as their only means of communication.

10 *You will recall from our presentation in April with the cell phone providers that*
11 *many people are using cell phones as their means of downloading data as well as*
12 *phone service. This means that we are in a challenging situation when cell towers*
13 *are not approved as it puts lives in danger. Two independent experts also testified*
14 *that there are no health ramifications from the towers and there is no cause for*
15 *concern in that regard. Your planning commission thoroughly reviewed this cell*
16 *tower site and approved it appropriately. To reverse their decision diminishes*
17 *their authority and we hope that you uphold their decision.* Finally, and most
18 importantly, I hope you consider the public safety ramifications of reversing the
19 installation of the cell tower that is so desperately needed. With people using
20 their cell phones only and not having land lines, in the event of a wildfire or other
21 public emergency people would not be able to reach their families to let them
know about the danger. That could cause catastrophic harm and loss of life. Your
fire department brought this up during their codes of coverage issue previously as
well.

The Tahoe Prosperity Center supports this cell tower and site for a monopine that
will fit well into the area and provide the much-needed coverage for our residents,
businesses and community. (Emphasis added).

178. Notably, the April presentation referred to in Ms. Drum's August 5, 2019 email
was a lengthy April 2, 2019 presentation Ms. Drum organized for the South Lake Tahoe City
Council to address broadband and wireless communications in the Tahoe Region and TPC's
Connected Tahoe project to expand such coverage. At this presentation, Ms. Drum spoke along
with Tellus Venture Associates, who Ms. Drum introduced as TPC's independent expert, and
representatives from Verizon, T-Mobile, and AT&T. Ms. Drum stated that the three
telecommunications companies are all TPC's "partners" in the Connected Tahoe project. Ms.

1 Drum and TPC serve as the telecommunications companies' cheerleader to the regulators,
2 legislators, and the public, touting and seeking approval of their expansive wireless infrastructure
3 deployment plans.

4 179. Ironically, when publicly challenged by residents concerned about the dangerous
5 "rubber-stamping" of permit approvals for cell towers and other wireless infrastructure facilitated
6 by TPC's "unholy" seeding of several of its Directors on the TRPA Board and Executive staff
7 and the South Lake Tahoe City Council, TPC cries foul. In a press release reported in
8 SouthTahoeNow.com, dated April 16, 2021, Frank Gerdeman, TPC's Chairman, asserted:

9 The Tahoe Prosperity Center believes that adding a small number of strategically
10 located, environmentally appropriate cell towers to improve coverage for our
11 community is an important goal for public safety and improved communications.
12 We shared that in public comment in January 2020 at a City Council meeting and
13 for that, we were sued. Our CEO has been continually harassed since then and this
14 lawsuit is another attempt at silencing our organization on this important matter.

15 180. Mr. Gerdeman protests too much. He admits to TPC's pro-telecom pro-cell tower
16 expansion platform, which he freely acknowledges TPC pushed before the City Council on
17 which TPC's own Director, then City Councilman (now Mayor) Devin Middlebrook,
18 orchestrated the majority vote which resulted in the issuance of the special use permit by the City
19 of South Lake Tahoe for the 112-foot tall cell tower at 1360 Ski Run Boulevard opposed by
20 Plaintiff Eisenstecken and Plaintiff Benedict and by hundreds of other South Lake Tahoe
21 residents.

181. In that same press release, Ms. Drum complains: "I have been publicly attacked
for more than a year -- simply for doing my job and communicating an opinion that differs from
plaintiffs in this case. This intimidation has also continued against TPC board members, as well
as numerous other community leaders since each of us spoke up at a City Council meeting and
stated that better cell coverage is needed in the Lake Tahoe Basin." Ms. Drum, too, is mistaken.

1 Public officials simply have no business sitting as directors of organizations which lobby
2 aggressively before them in their official capacities. That's just basic ethics, enforced by conflict
3 of interest policies and laws of TRPA, the City of South Lake Tahoe, the Compact, and federal
4 and state law.

5 182. TPC, through its CEO, certainly has a First Amendment right to lobby
6 government, though as a 501(c)(3) not-for-profit organization, it needs to tread very carefully
7 when engaging in political activity lest it jeopardize its tax-deductible status with the Internal
8 Revenue Service. Nevertheless, when TPC and its CEO actively lobby before government
9 regulators and urge them to approve specific cell projects -- and those same government
10 regulators include current TPC Board members, such as Devin Middlebrook, then a sitting City
11 of South Lake Tahoe Councilman, Mr. Middlebrook faced a blatant conflict of interest and he
12 was required to recuse himself from participating in the proceeding at hand -- in this case, the
13 appeal of the Planning Commission grant of the special use permit. However, Mr. Middlebrook
14 failed to recuse himself. Indeed, at the January 12, 2020 hearing when the City Council denied
15 the appeal, Mr. Middlebrook took a lead role in persuading a majority of the Council to join him
16 in voting to deny the appeal.

17 183. TPC seeds its Board of Directors with Directors who simultaneously are
18 employed by government regulators and legislative bodies that issue the necessary permits for
19 wireless infrastructure, including cell towers and small cell facilities in the Tahoe Region. As
20 alleged above, besides Mr. Middlebrook, TPC's Board includes Joanne Marchetta, the Executive
21 Director of TRPA, and Sue Novasel, El Dorado County Supervisor. Until January 2021
(following her November 2020 election loss), Marsha Berkbigler, served as a Washoe County
Supervisor while she was both a TPC Director and a Director of TRPA. On information and

1 belief, none of these TPC Directors recused themselves from permit decision-making or
2 legislating regarding cell towers and wireless infrastructure when sitting in their official
3 government capacities. As Executive Director of TRPA, Ms. Marchetta exercises tremendous
4 sway in setting the TRPA's agenda, driving its priorities, overseeing permit applications, projects,
5 and staff, and working with local, State, and federal government representatives. Given TPC's
6 strong positions supporting ever-expanding wireless infrastructure deployment throughout the
7 Tahoe Region and equally strong support for Verizon, T-Mobile, and AT&T, TPC's Directors
8 should have recused themselves from any participation in all such matters when sitting in their
9 official government capacities because of the blatant conflict of interest presented, but they each
10 failed to do so. In particular, Defendants Marchetta, Novasel, and Berkbigler should have
11 recused themselves from any and all TRPA matters involving wireless facilities and cell towers,
12 but they each failed to do so.

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

15 5) Each member and employee of the agency shall disclose his
16 economic interests in the region within 10 days after taking his seat
17 on the governing board or being employed by the agency and shall
18 thereafter disclose any further economic interest which he
19 acquires, as soon as feasible after he acquires it. As used in this
20 paragraph, 'economic interests' means:

21 (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.

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

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

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

7 185. Chapter 8 of TRPA's Rules of Procedure echo the above requirements, and at
8 Section 8.4, at least as to employees, clarifies that the intent is to prevent anything that gives rise
9 to "an actual conflict of interest, or that creates the appearance of an actual conflict of interest."
10 Plaintiffs are informed and believe that TPC is functioning as a business entity, notwithstanding
11 its non-profit status, at least in part to advance the interests of the telecom industry. As members
12 of TPC's Board of Directors, Defendants Marchetta, Berkbigler, and Novasel owe a fiduciary
13 duty to TPC that creates an actual conflict and/or an appearance of a conflict of interest with
14 their fiduciary duties as members of the Board or employees of TRPA to follow the dictates of
15 the Compact and the Regional Plan. TRPA's Rules of Procedure also prohibit *ex parte*
16 communications for its Board members when they act upon a matter in their quasi-judicial
17 capacity. To the extent that a TPC Board member, or any other TRPA Board member, receives
18 specific information about preferred wireless sites and the reasoning therefore, prior to a hearing
19 in their capacity as a TRPA Board member, that information must be disclosed or the TRPA
20 Board member is in violation of Section 2.15.1 of the Rules of Procedure. That provision
21 requires "Prior to taking action on a quasi-adjudicative matter, a Board member shall publicly
disclose on the record the existence and essential content of any material *ex parte*
communications on the matter under consideration." TPC and its CEO, Heidi Hill-Drum,

1 received proprietary information from at least Verizon, T-Mobile, and AT&T about each of their
2 preferred sites for cell towers in the Tahoe Basin. Ms. Drum agreed to keep the identities of the
3 companies anonymous, but prepared for internal use a map of these preferred cell tower sites.
4 Ms. Drum set forth this information in an email to Plaintiff Eisenstecken, dated October 15,
5 2019, in which she wrote:

6 Hello Monica. The cell tower maps are not printed and they are for
7 internal use only as part of our Connected Tahoe project. I can share the
8 screen shot of the green dot (#11) on the image below, which is the tower
9 at 1360 Ski Run Blvd. Green dots means a priority site. None of the dots,
10 nor numbers outline which provider, because, in order to ensure that each
11 provider was able to maintain their competitive business advantage, we
12 agreed to code them. I am happy to meet with you in person (as I also
13 offered to do with Ben) and show you the maps on my computer, but they
14 are for internal planning use only. They are also a few years old now as
15 we started this project five years ago.

16 Plaintiffs are informed and believe that Defendants Berkbigler and Novasel and any other
17 TRPA Board members that have received such information have not complied with this
18 requirement.

19 186. Defendant Marchetta is TRPA's Executive Director, and therefore an employee of
20 TRPA. According to TRPA's Rules of Procedure, the Executive Director administers all affairs of
21 TRPA, directs and hires staff, directs Legal Counsel for TRPA, and creates the staff summary for
projects to be heard, including recommendations for approval or rejection. (Rules of Procedure at
Section 1.5, and Section 5.11.) Because Defendant Marchetta is also on the Board of TPC, her
recommendations to approve applications by telecoms, at the very least, "create the appearance
of an actual conflict of interest" (Rules of Procedure at Section 8.4).

187. Plaintiffs Eisenstecken and Benedict allege that Defendants stonewalled, then
harassed them, simply because these Plaintiffs, in their exercise of their First and Fourth
Amendments and other statutory rights, objected in a public hearing to cell tower installations by

1 presenting science-based factual information of their adverse impacts. Plaintiffs were branded by
2 these Defendants, who are under a blatant conflict of interest, as “conspiracy theorists.” They
3 were referred to as “crazies.” When Ms. Eisenstecken and her neighbors tried to reason with
4 Defendant Nel, he told them to “go to hell” and uttered other profane epithets. On another
5 occasion, when a scenic consultant was taking pictures from city property, Defendant Nel called
6 the police, who then sent an imposing police officer who threatened Ms. Eisenstecken’s
7 81-year-old father, George. This abuse of process and climate of harassment has been actively
8 encouraged, aided, and abetted by TRPA which has permitted this intolerable and degrading
9 situation to continue. It is a blatant violation of Plaintiffs’ First and Fourteenth Amendment and
10 California Constitution (Article I. Section 7) Due Process and Freedom of Expression rights. As
11 set for the in greater detail in the NINTH CAUSE OF ACTION, Plaintiffs allege that this entire
12 course of conduct by Defendant TRPA is in violation of Ms. Eisenstecken’s and Mr. Benedict’s
13 civil rights under the Americans with Disabilities Act, and other federal and state laws that
14 guarantee the civil rights of disabled persons, in particular the right to freely express grievances
15 and to be free from such intimidation and retaliation. In light of the fact that Mr. Benedict, who
16 has been subjected to constant irradiation from a Verizon small cell facility, has recently been
17 diagnosed with a serious medical condition, and is undergoing intensive treatments and
18 convalescence, Ms. Eisenstecken and her family were in reasonable apprehension that their lives
19 would be in jeopardy if and when the Verizon monopine were to be built at 1360 Ski Run
20 Boulevard. As a result, Ms. Eisenstecken convinced her father to sell his property and home
21 adjacent to 1360 Ski Run Boulevard at a distressed price once she realized that Verizon likely
would imminently receive TRPA approval for the monopine.

1 188. Plaintiffs are informed and believe that paid elected government officials,
2 appointed government officials, and key staff members believe it is in their best interests to
3 appear to support TPC's agenda in order to maintain the economic advantages of employment
4 and the support of the pro-economic growth faction in the community who are politically
5 powerful with regard to winning elections and plum political appointments. This inherent
6 conflict of interest is magnified by voluntarily agreeing to be on the Board of an unapologetically
7 pro-telecom lobbying business entity – the TPC. Once again, the façade of TPC as a
8 publicly-spirited, tax-exempt, non-profit entity is directly contradicted by the promotional
9 actions the TPC takes on behalf of the telecom companies. Indeed, the TPC is the telecom
10 companies' regional cheerleader-in-chief in the Tahoe Region.

11 189. By way of example, this conflict of interest likely inhibits conflicted individuals
12 from calling for a proper needs assessment, including a forensic audit of the extent of existing
13 fiber optic infrastructure, who owns it, who paid for it, and whether such data and
14 communications services can be provided without more wireless facilities that create adverse
15 impacts. Under Subsection (D) of Article III(a)(5), therefore, Defendants Marchetta, Berkbighler,
16 and Novasel have an economic interest that is required to be disclosed. Plaintiffs are informed
17 and believe that no such disclosures have been made as required. Finally, each of the Defendants
18 has an economic interest in keeping his or her job. It appears they have been installed to do the
19 telecom companies' bidding and likely would be immediately replaced if they started to act
20 independently.

21 190. TPC is subject to the Brown Act, California Government Code Section 54950, *et*
seq., also commonly referred to as California's "open meeting laws." Under California
Government Code Section 54952(c)(1)(B), TPC is a "legislative body" if it "[r]eceives funds

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

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

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

17 **NINTH CAUSE OF ACTION**

18 **TRPA’s Failure to Develop a Coherent Policy and Program to Protect Persons with**
19 **Recognized Disabilities, and TRPA’s Refusal to Reasonably Accommodate Persons**
20 **Suffering from Disabilities, such as Plaintiffs Eisenstecken and Benedict, Violates the**
21 **Americans with Disabilities Act of 1990, the [Fair Housing Amendments Act \(FHAA\) of 1989, \(42 U.S.C. 3601 et seq.\)](#), and Other Federal and State Laws Requiring Reasonable Accommodation.**

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

2 194. Congress has recognized that persons suffering from disabilities within the U.S.
3 deserve special protection, and that it is a civil rights violation to discriminate against such
4 persons based on such disabilities. For this reason Congress passed special statutes, the
5 Americans with Disability Act, the Fair Housing Amendments Act, and other laws specifically to
6 shield these vulnerable populations.

7 195. The Americans with Disabilities Act of 1990 (“ADA”) and the Fair Housing Act
8 Amendments of 1988 (“FHAA”), including Title II of the ADA, 42 U.S.C. §§12131-12134 (Title
9 II), prohibit discrimination on the basis of disability by state and local governments and public
10 entities. 28 C.F.R. §35.101(a). Plaintiffs Benedict and Eisenstecken are both qualified
11 individuals with a disability, also known as persons with a handicap. The primary focus under
12 Title II is whether a “public entity,” which includes Verizon, the City of South Lake Tahoe, and
13 TRPA, has complied with its obligations to provide an accommodation when it is reasonable to
14 do so, not whether the individual meets the definition of having a “disability.” 28 C.F.R. §§
15 35.101(b), 35.108(a)(2)(i).

16 196. Verizon is the owner and operator of the small cell facility in the vicinity of 3565
17 Needle Peak Road, which is bombarding Plaintiff Benedict’s property, house, and body with
18 unwanted RFR contamination against his will, and will be the owner and operator of the
19 proposed cell tower at 1360 Ski Run Boulevard, if approved. Verizon has repeatedly asserted
20 that it is a public utility, and has claimed regulatory and financial benefits based on its public
21 utility status. Consequently, Verizon is a public entity within the meaning of the ADA and the
FHAA, or is estopped from denying that it is a public entity. The City of South Lake Tahoe and
TRPA, as governmental bodies, are public entities.

1 197. The FHAA requires public entities, which include Verizon, the City of South Lake
2 Tahoe, and TRPA, to “make reasonable accommodations in rules, policies, practices, or services,
3 when such accommodations may be necessary to afford such a person equal opportunity to use
4 and enjoy a dwelling.” 42 U.S.C. §3604(f)(3)(B). Congress intended this language to apply to a
5 broad range of circumstances, including avoiding “implementing land-use rules, ordinances,
6 policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable
7 or deny dwellings to persons because of ... handicap.” 24 C.F.R. §100.70(d)(5).

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

12 199. Plaintiff Benedict is a “qualified individual with a disability,” within the meaning
13 of the ADA. 42 U.S.C. §§12102 and 12131(2) and 28 C.F.R. §35.104.

14 200. Defendants TRPA and City of South Lake Tahoe are “public entities” within the
15 meaning of the ADA. 42 U.S.C. §12131(1) and 28 C.F.R. §35.104.

16 201. Defendant Verizon, although it is technically a private entity, regards itself and is
17 indeed considered to be a public utility by the State Public Utilities Commission -- and thus is a
18 “public entity” within the meaning of the ADA, 42 U.S.C. §12131(1) and 28 C.F.R. §35.104 --
for the purpose of zoning applications.

19 202. As set forth above, the City of South Lake Tahoe and TRPA refuse to consider the
20 rights of disabled individuals in the context of zoning applications for wireless communications
21 facilities and, thus, blatantly ignored Plaintiff Benedict’s request for accommodation.

1 203. In similar vein, Verizon's small cell facility, installed and operating approximately
2 130 feet from Plaintiff Benedict's house, is transmitting extremely high levels of RFR onto
3 Plaintiff Benedict's property, infiltrating his house and his body against his will, as shown by the
4 scientific measurements taken by an independent professional certified by the Building Biology
5 Institute using advanced scientific equipment. Plaintiff Benedict's independent wireless
6 radiation specialist and his chief treating physician have both opined that the levels of radiation
7 bombarding Plaintiff Benedict's body and property are inflicting serious bodily harm, and his
8 physician believes, in her medical opinion, that continuous exposure to these levels of wireless
9 radiation poses a substantial, and perhaps an existential, threat to Plaintiff Benedict's health
10 given his precarious medical condition. Plaintiff Benedict lacks the financial means to move
11 elsewhere, nor should he have to. Besides being injured by Verizon's transmission of unwanted
12 wireless radiation, Plaintiff Benedict is severely restricted in his ability to use and enjoy his
13 property and his residence. Yet Verizon has callously rejected Plaintiff's request for reasonable
14 accommodation, which simply seeks to remove that single small cell facility from a location
15 where it is causing Plaintiff grievous injury. The costs of moving said small cell facility to
16 Verizon are infinitesimally small, while the costs being imposed by Verizon on Plaintiff Benedict
17 are irreparable -- indeed, his life is placed in jeopardy in the name of corporate greed. The
18 balance of equities tips decidedly in Plaintiff's favor. Verizon has violated the ADA and FHAA,
19 and is liable for said violations.

20 204. Both TRPA and the City of South Lake Tahoe issued special use permits allowing
21 Verizon to construct and operate the small cell facility in the vicinity of 3565 Needle Peak Road.
Both TRPA and the City of South Lake Tahoe are empowered to revoke or rescind the special
use permits or impose conditions upon the special use permits in order to prevent harm to public

1 health and safety. Because Plaintiff Benedict has demonstrated in his request for reasonable
2 accommodation to each of TRPA and the City of South Lake Tahoe the serious harms he is
3 suffering and will continue to suffer on account of the wireless radiation transmissions emanating
4 from the small cell facility in the vicinity of 3565 Needle Peak Road, TRPA and City of South
5 Lake Tahoe are required under the ADA and FHAA to grant him reasonable accommodation so
6 that he may continue to reside in his dwelling. Such reasonable accommodation in this instance
7 requires Verizon to remove the offending small cell facility. Instead of considering and granting
8 his request for reasonable accommodation, TRPA and City of South Lake Tahoe simply ignored
9 it and responded that they are legally unable to do anything, despite the exigent circumstances.
10 As such, they have violated the ADA and FHAA and are liable for such violations.

11 205. Plaintiff Eisenstecken, as alleged above, suffers from electromagnetic
12 hypersensitivity, and therefore has a disability within the meaning of the ADA and FHAA.
13 Plaintiff Eisenstecken sought a reasonable accommodation under the ADA and FHAA from the
14 City Council on January 14, 2020, when opposing the special use permit sought by Verizon
15 before the City Council because of her disability. Because the City Council failed to consider
16 her request for reasonable accommodation under the ADA and FHAA, Ms. Eisenstecken had no
17 choice but to move herself and her family out of harm's way once she realized the inevitability
18 that Verizon would obtain the permits needed to build its monopine next door to her family
19 homestead. Consequently, she convinced her father, the property owner, to sell the property at a
20 distressed price in 2021, and the family now lives in temporary accommodations in the South
21 Lake Tahoe City area, while seeking permanent accommodations.

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

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

6 208. TRPA has a legal obligation to address the vulnerability of disabled persons to
7 RFR exposure in its Regional Plan and to develop and to implement guidelines and regulations
8 specifying the procedures for reasonable accommodation for disabled persons to be implemented
9 by cities and throughout local communities within the Tahoe Region. Instead, and directly as a
10 result of some TRPA Board members' and staff's conflict of interest involving the TPC, the
11 exact opposite is happening. These conflicted Defendants are permitting and actually
12 encouraging the accelerated diffusion of cell tower installations and RFR contamination of the
13 TRPA Region and its most vulnerable communities for their own narrow parochial interests and
14 those of their patron wireless companies.

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

16 **TENTH CAUSE OF ACTION**

17 **Defendants TRPA, the City of South Lake Tahoe, and Verizon's Refusal to Extend a**
18 **Reasonable Accommodation to Remove the Small Cell Facility Transmitting Excessive**
19 **Wireless Radiation onto Plaintiff Benedict's property are allowing a Public Nuisance, and**
20 **Defendant TRPA, the City of South Lake Tahoe, Nel, and Verizon's Refusal to extend a**
21 **Reasonable Accommodation to Prevent the Installation of a Dangerous 112-Foot Tall**

Monopine Cell Tower 1,000 feet from Plaintiff Benedict's Property will Result in a Public Nuisance, a Tortious Act Under California and Nevada Law.

210. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

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

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

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

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

213. In the present case, ALL of these statutory conditions are met at the current time with respect to the small cell facility in the vicinity of 3565 Needle Peak Road, and all of these statutory conditions are threatened in the future with respect to the Verizon cell tower proposed at 1360 Ski Run Boulevard.

214. The second element of public nuisance is that the condition affects a substantial number of people at the same time. The small cell facility in the vicinity of 3565 Needle Peak Road affects Mr. Benedict and his guests as well as his neighbors and their guests, and any workers or visitors to the neighborhood. Overall, the installation of cell towers and antennas by Verizon and other telecom companies in close proximity to human habitation and in sensitive

1 ecosystems is endangering the lives of hundreds, potentially thousands of residents of the Tahoe
2 Region. One example: Plaintiff Eisenstecken spoke with a Mexican lady with a baby who is
3 concerned that a small cell facility installed 20 feet from her child's bedroom will injure her
4 child. She has nowhere to turn for help. A second example: Plaintiff Eisenstecken's former
5 neighbors are both 84 years old. They also objected to the siting of antennas and a tower, and the
6 City did nothing to help them. There are hundreds of other such cases.

7 215. The third element of public nuisance is that an ordinary person would be
8 reasonably annoyed or disturbed by the condition. The dangers facing Plaintiff Benedict on
9 account of the wireless radiation being transmitted from the small cell facility in the vicinity of
10 3565 Needle Peak Road are a matter of life and death. For Plaintiff Eisenstecken and her family,
11 and that of hundreds of others, the dangers too far exceed annoyance. For Plaintiff Eisenstecken,
12 the prospect of a 112-foot tall cell tower 200 feet from her bedroom has utterly destroyed the
13 quality of life she and her family have enjoyed as residents of Tahoe for over forty years and led
14 her father to sell the dream family homestead he built with his own hands at a distressed price.

15 216. The fourth element of public nuisance is that the seriousness of the harm
16 outweighs the social utility of Defendant's conduct. The harms, including health risks and fire
17 hazards, greatly exceed the social utility of the two wireless facilities at issue. Moreover, as
18 pleaded, there are immediately available safe, secure, and environmentally protective alternatives
19 in the form of optical fiber to the home and office. Finally, such wireless facilities do not belong
20 in densely populated residential neighborhoods, and to the extent they are truly necessary, should
21 be located in appropriate areas away from residences.

22 217. The fifth element of public nuisance is that Plaintiffs did not consent to
23 Defendants' conduct. Here, Plaintiff Benedict has complained to Defendant Verizon about its

1 conduct and has sought the cessation of the unwanted wireless radiation onto his property.
2 Plaintiff Eisenstecken and Plaintiff Benedict have repeatedly objected in TRPA hearings and at
3 hearings before the City of South Lake Tahoe Planning Commission and City Council about the
4 placement of these cell towers and small cell facilities in residential neighborhoods, including
5 their own. Plaintiff Eisenstecken has complained directly to defendants Nel and Verizon about
6 her objections to the proposed cell tower adjacent to her former property.

7 218. The sixth element of public nuisance is that Plaintiffs suffered harm that was
8 different from the type of harm suffered by the general public. Plaintiff Benedict clearly has a
9 unique harm due to his unusual and severe medical condition which is especially exacerbated by
10 exposure to wireless radiation. Plaintiff Eisenstecken has been diagnosed with EHS, a disability
11 uniquely affected by RFR contamination. Each person's harm from RFR contamination, based
12 on her or his disability, is unique.

13 219. The seventh element is that Defendant's conduct was a substantial factor in
14 causing plaintiff's harm. Here, Verizon's transmission of wireless radiation from its small cell
15 facility in the vicinity of 3565 Needle Peak Road is the sole cause of Plaintiff Benedict's harm.
16 Likewise, Defendants Nel's and Verizon's conduct is in fact the sole cause of Plaintiff
17 Eisenstecken's harm.

18 220. Defendant Verizon is well aware, and cannot claim ignorance of the foreseeable
19 harms that it is committing by causing a tortious nuisance against Plaintiff Benedict, and
20 Defendants Nel and Verizon are well aware, and cannot claim ignorance of the foreseeable harms
21 that they are committing by causing a tortious nuisance against Eisenstecken and her family.
They intended, willfully, to endanger her and her family's lives , and to violate the safe, healthy,

1 enjoyable, and happy use of her property. Moreover, the public nuisance to be caused by
2 defendants Nel is not barred by any statute of limitations.

3 221. During the past two years, Defendants TRPA and the City of South Lake Tahoe
4 permitted, enabled, and encouraged this tortious course of conduct.

5 222. For the above reasons, Plaintiffs Benedictis asking this Court to prevent and
6 enjoin these harms that are well documented, foreseeable, and irreparable, for which monetary
7 relief cannot offer adequate and fair compensation. Plaintiff Eisenstecken seeks monetary
8 damages.

9 223. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

10 **ELEVENTH CAUSE OF ACTION**

11 **Defendant TRPA's, the City of South Lake Tahoe's, and Verizon's Refusal to Grant**
12 **Plaintiff Benedict's Request for Reasonable Accommodation to Remove Verizon's Small**
13 **Cell Facility Transmitting Excessive Wireless Radiation onto Plaintiff Benedict's Property**
14 **has Caused a Private Nuisance, and Defendant TRPA's, the City of South Lake Tahoe's,**
15 **Nel's, and Verizon's Pending Installation of a Dangerous Macro Cell Tower 1,000 Feet from**
16 **Plaintiff Benedict's Property will Result in a Private Nuisance, a Tortious Act Under**
17 **California Law.**

18 224. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

19 225. A private nuisance is an activity that injures health, affecting less than a
20 considerable number of people, that satisfies the following elements: a. Plaintiff owns the
21 property; b. Defendants, by acting or failing to act, created a condition or permitted a condition
to exist that is harmful to health; indecent or offensive to the senses; is an obstruction to the free

1 use of property, so as to interfere with the comfortable enjoyment of life or property; or is a fire
2 hazard and other potentially dangerous condition] to Plaintiff's property; c. Defendant's conduct
3 in acting or failing to act was [intentional and unreasonable/unintentional, but negligent or
4 reckless]/[the condition that [name of defendant] created or permitted to exist was the result of
5 an abnormally dangerous activity]]; d. this condition substantially interfered with [name of
6 plaintiff]'s use or enjoyment of [his/her/nonbinary pronoun] land; e. an ordinary person would
7 reasonably be annoyed or disturbed by [name of defendant]'s conduct; f. That [name of plaintiff]
8 did not consent to [name of defendant]'s conduct;] g. [name of plaintiff] was harmed; h. [name
9 of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm; i. the
seriousness of the harm outweighs the public benefit of [name of defendant]'s conduct.

10 226. Plaintiff Benedict owns the affected property where he resides at 3585 Needle
11 Peak Road, South Lake Tahoe City.

12 227. Defendants City of South Lake Tahoe, TRPA, and most importantly, Verizon, by
13 acting or failing to act, created a condition or permitted a condition to exist that is harmful to
14 health; indecent or offensive to the senses; is an obstruction to the free use of property, so as to
15 interfere with the comfortable enjoyment of life or property; and is a potentially dangerous
16 condition to Plaintiff Benedict's property. Verizon is causing the release of unwanted and
17 dangerous wireless radiation onto Plaintiff Benedict's property at levels Benedict's radiation
18 specialist and chief treating physician believes present a substantial and continuing danger to his
19 health. The construction and operation of Verizon's 112-foot tall monopine cell tower just 1,000
20 feet down the street from Mr. Benedict's house will subject him to even greater levels of RF
21 exposure, further exacerbating the harm from which he is presently suffering from Verizon's
small cell wireless facility directly across the street, only 130 feet away.

1 228. The continued operation of the existing small cell facility in the vicinity of 3565
2 Needle Peak Road, especially after repeated warnings of the foreseeable and preventable harms,
3 is a reckless and intentional action to cause an abnormally dangerous activity for which
4 Defendants Verizon, City of South Lake Tahoe, and TRPA are all liable. The installation and
5 operation of the proposed Verizon cell tower at 1360 Ski Run Boulevard, especially after
6 repeated warnings of the foreseeable and preventable harms, is a reckless and intentional action
7 to cause an abnormally dangerous activity.

8 229. Plaintiff Benedict's property is effectively uninhabitable for him, given his
9 precarious medical condition. Because of his equally precarious financial situation, he has
10 nowhere else to live, leaving him between the proverbial rock and a hard place. Should the
11 Verizon tower at 1360 Ski Run Boulevard be built, that would make matters even worse for Mr.
12 Benedict.

13 230. This is not a matter of reasonable annoyance. Plaintiff Benedict has been placed
14 in immediate jeopardy of life.

15 231. Plaintiff Benedict has explicitly objected and withheld consent to the Verizon
16 small cell facility in the vicinity of 3565 Needle Peak Road.

17 232. Plaintiff Benedict's quiet enjoyment of his property has been completely
18 destroyed. Plaintiff Benedict is currently being assaulted on his person by unwanted and
19 dangerous wireless radiation emanating from Verizon's facility a mere 130 feet from his house.
20 The actual operation of Verizon's small cell facility in the vicinity of 3565 Needle Peak Road is
21 the primary cause of Plaintiff Benedict's present harm.

 233. The public benefit can be simply achieved by optical fiber, thereby avoiding all of
the harms to Plaintiff Benedict.

1 234. During the past two years, Defendants TRPA and the City of South Lake Tahoe
2 permitted, enabled, and encouraged this tortious course of conduct.

3 235. WHEREFORE, Plaintiff Benedict prays for relief as hereinafter set forth.

4 **TWELFTH CAUSE OF ACTION**

5 **Defendant Verizon’s Emissions of Wireless Radiation from its Small Cell Facility in the**
6 **Vicinity of 3565 Needle Park Road Constitutes the Tort of Assault Under the California**
7 **Civil Code Against Plaintiff Benedict.**

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

9 237. Both present FCC regulations and the Guideline of the International Commission
10 on Non-Ionizing Radiation Protection (ICNIRP), a leading wireless industry association,
11 officially recognize that RFR penetrates the skin. The Federal Communications Commission
12 (FCC) [RF limits](#) for exposures are measured in terms of absorption into the skin (Specific
13 Absorption Rate, or SAR). “The new FCC exposure limits are also based on data showing that
14 the human body absorbs RF energy at some frequencies more efficiently than at others.” The
15 ICNIRP [Guidelines](#) confirm that RFR at a frequency of 6 GHz penetrates the skin to a depth of
16 8.1 millimeters (0.32 inches), and the penetration deepens as the frequency decreases below 6
GHz (which the Verizon antennas will be emitting).

17 238. Wireless radiation is presently and continuously being transmitted from Verizon’s
18 small cell facility in the vicinity of 3565 Needle Peak Road onto Plaintiff Benedict’s property at
19 3585 Needle Peak Road, into his house, and into his person, at levels both his radiation specialist
20 and chief treating physician believe are causing him serious physical harm. The small cell
21 facility is located approximately 130 feet from Plaintiff Benedict’s home. Plaintiff Benedict

1 explicitly denies permission to allow Defendants to commit this invasion of his person and this
2 willful assault on his person.

3 239. The projected maximum power Radiating from the proposed Verizon cell tower at
4 1360 Ski Run Boulevard is approximately 50 kW. This will bathe the entire area in RFR.

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

9 241. This standard fits Plaintiff Benedict's present circumstances perfectly. The
10 apprehension of immediate harm that Plaintiff Benedict is experiencing concerning the Verizon
11 small cell facility is actually occurring, as Verizon continuously transmits the harmful wireless
12 radiation onto his property and into his body twenty-four hours per day, seven days per week.
13 Defendants Nel and Verizon are now well aware based on all the evidence that Plaintiff
14 Eisenstecken, Plaintiff Benedict, and many others have presented to the TRPA and to the City of
15 South Lake Tahoe, and in letters seeking reasonable accommodation under the ADA and FHA of
16 the foreseeable harms. Defendants cannot claim ignorance of the risks, and harms they are
17 presently inflicting upon Plaintiff Benedict.

18 242. For the above reasons, Plaintiffs Benedict asks this Court to prevent and to enjoin
19 these harms that are well documented, foreseeable, and irreparable, for which monetary relief
20 cannot offer compensation.

21 243. WHEREFORE, Plaintiff Benedict prays for relief as hereinafter set forth.

1 **THIRTEENTH CAUSE OF ACTION**

2 **Defendant Verizon's Small Cell Facility in the Vicinity of 3565 Needle Peak Road is**

3 **Causing a Trespass to Property.**

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

5 245. The elements of the Tort of Trespass are clearly stated in the [California Civil](#)
6 [Code](#) and include the following:

7 a. Plaintiff is the owner or renter of the property.

8 b. Defendant intentionally or recklessly entered the property.

9 c. Plaintiff did not give permission

10 d. The Plaintiff is actually harmed.

11 246. As alleged above, Plaintiff Benedict is the owner of his property.

12 247. Verizon has intentionally or recklessly entered Plaintiff Benedict's property by
13 allowing the infiltration of said property with noxious wireless radiation.

14 248. The instant Trespass is directly against Plaintiff Benedict's objection and without
15 his consent, and has caused physical injuries, exacerbated his delicate medical condition, and
16 caused him extraordinary stress, apprehension, sleeplessness, and anxiety, leading to irreparable
17 harm.

18 249. For the above reasons, Plaintiff Benedict is asking this Court to prevent and
19 enjoin these harms that are well documented, foreseeable, and irreparable, for which monetary
20 relief cannot offer adequate and fair compensation.

21 250. WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

PRAYER

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

1. Declaratory Relief affirming the TRPA's fiduciary responsibilities as stewards of the Public Trust for the Tahoe Region.
2. Declaratory Relief affirming that the TRPA's helter-skelter, segmented, and piecemeal wireless program constitutes a major federal action, and TRPA is bound by the Compact, its Regional Plan, and its own Rules and Regulations.
3. An Order imposing a moratorium on all further wireless installations and modifications on existing installations throughout the Tahoe Region.
4. Declaratory Relief that the Telecommunications Acts of 1934 and 1996 do not preempt the Clean Water Act, NEPA, Americans with Disabilities Act, and the Fair Housing Amendments Act, and other federal statutes.
5. Writ of Mandamus to compel Defendants to comply with the Zero Discharge Standard under the Clean Water Act, California Porter-Cologne Water Quality Control Act, and the Water Quality Control Plan for the Lahontan Region, in a manner that also satisfies the aesthetic standard.
6. Declaratory Relief that the named Defendants, Directors, and Officers of TRPA are under a conflict of interest; and therefore all TRPA actions in which they participated, commented, or voted upon based on this conflict of interest are null and void; and this Court is respectfully requested to remand such actions to the TRPA for reconsideration without the participation of those named defendants, and possibly others as yet unnamed, who are subject to said conflict of interest.
7. Declaratory Relief that TRPA is required to comply with the Americans with Disabilities Act, the Fair Housing Amendments Act, and other federal and state laws protecting the civil rights of people with disabilities, and to develop in its Regional Plan and

1 supplemental plans adequate rules and procedures to ensure reasonable accommodation
2 for persons with disabilities who are exposed to RFR contamination.

3 8. Declaratory Relief that TRPA is required to consider the impacts of the cutting of 31 trees
4 within the context of the Verizon tower project, and that the scenic baseline is the
5 condition of the project area before the cutting of the trees and not after.

6 9. A Writ of Mandamus requiring TRPA to comply with the Compact, its own Regional
7 Plan, Code of Ordinances, and all relevant federal and state laws.

8 10. A Writ of Mandamus to compel TRPA to prepare a Comprehensive Programmatic
9 Environmental Impact Statement (EIS) covering its blanket licenses under the Connected
10 Wireless Tahoe Program, addressing the microplastic pollutants and waste discharges by
11 Defendant Verizon, as well as a careful evaluation of immediately available safe, secure,
12 environmentally protective, energy efficient, and more cost-effective alternatives, as
13 required by the Compact NEPA and CEQA.

14 11. Specific injunction requiring Verizon to turn off and dismantle the small cell wireless
15 facility located in the vicinity of 3565 Needle Peak Road, which is approximately 130
16 feet from Plaintiff Benedict's home.

17 12. Specific injunction preventing the erection of a cell tower approximately 1,000 feet from
18 Plaintiff Benedict's property until proper reasonable accommodation is made by Verizon,
19 the owner of the property, and TRPA in full compliance with the ADA and other federal
20 and state laws; if said tower is constructed, an injunction requiring said tower to be turned
21 off and dismantled.

22 13. Declaratory Relief that Verizon's Special Use Permit (File #19-026) has expired and is
23 null and void.

1 14. Declaratory Relief affirming the City of South Lake Tahoe’s fiduciary responsibilities as
2 stewards of the Public Trust for the Tahoe Region.

3 15. Declaratory Relief that the City of South Lake Tahoe Mayor Devin Middlebrook is under
4 a conflict of interest because of his concurrent service as a Director of the TPC; and
5 therefore all City Council actions in which he participated, commented, or voted upon
6 based on this conflict of interest are null and void; and this Court is respectfully requested
7 to remand such actions to the City Council for reconsideration without the participation
8 of Mayor Middlebrook, and possibly others as yet unnamed, who are subject to said
9 conflict of interest.

10 16. Declaratory Relief that the City of South Lake Tahoe is required to comply with the
11 Americans with Disabilities Act, the Fair Housing Amendments Act, and other federal
12 and state laws protecting the civil rights of people with disabilities, and to develop in its
13 Regional Plan and supplemental plans adequate rules and procedures to ensure
14 reasonable accommodation for persons with disabilities who are exposed to RFR
15 contamination.

16 17. A Writ of Mandamus requiring the City of South Lake Tahoe to comply with all federal
17 and state laws as well as its own General Plan and regulations, as they apply to Verizon’s
18 specific application of the Tahoe Wireless Plan and TPC’s and the wireless carriers’
19 Wireless Tahoe Implementation Plan, currently permitted, allowed, and actively
20 encouraged by TRPA and the City of South Lake Tahoe in close coordination with TPC..

21 18. Specific injunction stopping the operation of the Verizon small cell facility in the vicinity
of 3565 Needle Peak Road approximately 130 feet from Plaintiff Benedict’s property

1 until proper reasonable accommodation is made by Verizon, the owner of the property,
2 and TRPA in full compliance with the ADA, the FHAA, and other federal and state laws.

3 19. Monetary damages to Plaintiff Benedict to compensate him for the Torts of Public
4 Nuisance, Private Nuisance, Assault, and Trespass inflicted upon him by Verizon.

5 20. Punitive damages to Plaintiff Benedict to compensate him for the willful, intentional, and
6 egregious conduct by Verizon in continuing to commit the Torts of Public Nuisance,
7 Private Nuisance, Assault, and Trespass, even after learning of Benedict's serious and
8 fragile medical condition and his primary treating physician's serious concerns that
9 continued exposure to Verizon's wireless radiation likely will cause Benedict grievous
injury.

10 21. Attorney's fees, expert witness fees, and other costs as provided under [42 U.S. Code §](#)
11 [1988 - Proceedings in vindication of civil rights](#) under Section 1983; as well as under the
12 ADA and the FHAA (42 USC Section 12205 (b) and (c)).

13 22. Award any such other and further relief as this Court may deem appropriate.

14 JURY DEMAND

15 Plaintiffs hereby request a trial by jury on all issues so triable.

16 Date: May 6, 2022

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