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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,
CITY OF SOUTH LAKE TAHOE,
and DOES 1-100,
Defendants.

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

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

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

2 **JURISDICTION AND VENUE**

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

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

24 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 a Bi-state 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 Radio Frequency 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 its 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 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 Act (FHAA), the federal Water Quality Act of 1965 and as amended in the Clean Water Act of 1972, and the California Porter-Cologne Water Quality Control Act of 1969. The fact that two TRPA

1 Governing Board members, former member Marsha Berkgigler and current member Sue
2 Novasel, and TRPA's Executive Director, Joanne Marchetta, all named in this lawsuit, are under
3 a clear conflict of interest as defined in the Compact, and under State and federal law, makes the
4 review of their decisions even more urgent.

5 8. Plaintiffs are requesting the court to issue a series of Declarations and a Writ of
6 Mandamus to compel compliance with federal and state established procedures, and to establish
7 a moratorium on the proposed expansions of antennas, as the California Federal Court Eastern
8 District has done in other situations in the past;¹ in this case, halting further piecemeal blanket
9 implementation of cell tower and antenna approvals and installations until TRPA complies fully
10 with all applicable federal and state laws consistent with the terms of its Compact and Regional
11 Plan. Plaintiffs David Benedict and Tahoe Stewards LLC are also seeking injunctive relief to
12 prevent further action towards the permitting and/or construction of a 112 foot tall Verizon cell
13 tower at 1360 Ski Run Boulevard, on Defendant Gilliam Nel's property, which would cause
14 irreparable harm to these Plaintiffs, their neighbors, and the general public. Plaintiff Benedict
15 further seeks Declaratory and Injunctive Relief against the City of South Lake Tahoe and the
16 TRPA, revoking the Special Use Permit for the Verizon small cell facility installed across
17 Needle Peak Road from his residence in the vicinity of 3565 Needle Peak Road, and injunctive
18 relief and monetary and punitive damages against Verizon Wireless, the City of South Lake
19 Tahoe, and TRPA for injuries he has sustained to date and will continue to sustain from the
20 wireless radiation being transmitted from the Verizon small cell facility towards and into his
21 residence and property, and into his body, all against his will and without his permission, where
22
23

24 ¹ See *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 739 F. Supp. 2d 1260 (E.D. 2010).

1 he is attempting to convalesce and recover from his continuing medical treatments for a serious
2 medical condition.

3 INTRODUCTION

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

10 10. In approving the TRPA Compact, Congress had the foresight to recognize the
11 environmental fragility of the Tahoe Region, especially in light of the propensity of State and
12 local governments to succumb to powerful industrial and commercial interests, as witnessed in
13 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
22 the President’s Council on Environmental Quality in determining environmental threshold
23 carrying capacities (Article V Planning, Section (b)) in developing TRPA’s Regional Plan; and
24

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

12. Unfortunately, while TRPA’s initial institutional blindness to the hazards of RFR might have been understandable in 1980, its continuing cecity is now inexcusable and in direct contravention of the Compact. TRPA has steadfastly refused even to address the known and potential environmental hazards of wireless facilities, has performed no comprehensive planning, and routinely approves new wireless communications 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 that RFR is

1 harmful to endangered species, birds, insects, riparian vegetation crucial to preserving Tahoe's
2 famed water clarity, and dozens of other TRPA-adopted thresholds which measure
3 environmental benchmarks and mandated environmental goals. There are over 2,000 peer-
4 reviewed studies from around the world on the negative health and environmental impacts of
5 locating cell towers near private residences, workplaces, and especially near schools, hospitals,
6 retirement homes, and other vulnerable communities; many of the studies were submitted to
7 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
22 harsh. The monopines are subjected to severe winds, extraordinary snow and ice loads, extreme
23 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
6 down into smaller and smaller fragments, carried by the wind and water through the storm water
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. Microplastics contamination in Lake Tahoe is a relatively new discovery, but poses a
10 serious risk to the fish and amphibians that ingest the microplastics either directly or indirectly
11 through the food chain. Humans too are at risk from ingesting such microplastics by eating fish
12 or by other exposure in the Lake or its environs, and just-released peer-reviewed studies have
13 found microplastics present in human blood, human lung tissue, and in the placentas of pregnant
14 women. See Heather A. Leslie, *et al.*, “Discovery and Quantification of Plastic Particle Pollution
15 in Human Blood,” Vol. 163 *Environment International* 107199 (May 2022); [Radiofrequency and
16 Extremely Low Frequency Electromagnetic Field Effects on the Blood Brain Barrier](#).

17 14. Plaintiffs expressed their concerns about the serious potential for illegal
18 microplastic pollution from Verizon’s proposed monopine at 1360 Ski Run Boulevard to TRPA
19 in their appeal papers filed in support of the Appeal of the Hearing Officer’s Decision, dated
20 October 14, 2021, granting Verizon’s application for the TRPA permit to construct and operate
21 the monopine at that location. Plaintiffs demonstrated in their Statement of Appeal and
22 supporting papers to the TRPA Governing Board that Verizon’s monopine likely would be
23 sheathed in 5,000 pounds or more of PVC faux pine branches and PVC faux pine needles;

1 substantial quantities of these PVC materials likely will “shed” from the monopine in the
2 extreme environmental conditions present; the PVC materials will likely fragment into tiny
3 pieces and be transported off location and into the surrounding storm water system and stream
4 drainage basins, before eventually being discharged as microplastics into Lake Tahoe. Plaintiffs
5 cited numerous scientific studies finding PVC microplastics present in freshwater ecosystems
6 and concluding that PVC microplastics pose a serious toxic threat therein.

7 15. TRPA, working jointly with Verizon, proclaimed to the Board of Governors at
8 the hearing on the appeal that they have “solved” this monopine major pollution threat to the
9 Lake Tahoe Basin by adding a condition no. 11 to Verizon’s Ski Run Boulevard tower permit
10 requiring Verizon to use “best available technology” to construct and adhere the plastics, and
11 keep “the site clean of dislodged material from the monopine,” then remove visible wastes from
12 the monopine Project “site, and surrounding area,” twice each year and dispose of any fallen
13 PVC material “properly.” All of the quoted terms are lacking objective criteria, and therefore
14 without meaning, or they mean whatever TRPA decides they mean. No monitoring reports are
15 required for verification, nor is there a mechanism to ensure accountability for what plastics have
16 been shed into the surrounding area. Plaintiffs are also concerned with invisible wastes,
17 microplastics, which will be discharged for the life of the tower, as surface corrosion dust and in
18 storm water runoff. The requirement to perform waste removal operations in “surrounding areas”
19 is an admission by TRPA that the plastic wastes cannot realistically be contained within the
20 Project site property, as Plaintiffs stated in the appeal. Furthermore, Verizon cannot intrude and
21 trespass on surrounding private and public properties in service of its industrial waste abatement
22 operations, nor can TRPA require others to submit to that; thus the offsite industrial waste foisted
23 on others is simply a public nuisance. In open hearing, Verizon’s counsel admitted that Verizon

1 has not performed any toxicity analysis on monopine-generated microplastics, and therefore is
2 clueless about the contents of the hazardous waste Verizon’s monopine will cause to be
3 discharged into Lake Tahoe. The absurdity of Verizon’s proposed “solution” ignores the reality
4 that the shedding PVC fragments are dispersed by the wind and waters over a very broad area,
5 beyond the small footprint of the tower site; the PVC fragments are, in many cases, too small to
6 be collected, even if located; the PVC fragments break down into subvisible microplastics,
7 without loss of toxicity; and the proposed twice per year collection period is limited to the
8 snowless season, after the fierce winter storms and snowmelt have transported much of the PVC
9 offsite and beyond possible retrieval. Nevertheless, the TRPA Governing Board *sub silentio*
10 accepted this condition, and denied Plaintiffs’ appeal on March 23, 2022. Plaintiffs are
11 appealing the TRPA Governing Board’s denial of the appeal – a Final Action – through this
12 Complaint.

13 16. TRPA actively promotes and grants permits for the construction and operation of
14 hazardous wireless communications infrastructure with no evaluation of the environmental
15 impacts, including the monopine waste issue, ignoring the explicit requirements of Article VII in
16 the Compact and the basic procedures required by NEPA and the California Environmental
17 Policy Act (CEQA) which are adopted and incorporated as TRPA’s own practices in its Regional
18 Plan and in its ordinances. TRPA blatantly supports a pro-telecom lobbying entity, the Tahoe
19 Prosperity Center (“TPC”). Not only does TRPA directly contribute funding to TPC, but its
20 Executive Director, Defendant Joanne Marchetta (“Marchetta”), and one immediate past and one
21 current TRPA Board members, Defendants Marcia Berkbigler (“Berkbigler”) and Sue Novasel
22 (“Novasel”), as well as a former key TRPA staff member, are also on the Board of Directors of
23 TPC. Another member of the TPC Board is Devin Middlebrook, the current Mayor of the City of

1 South Lake Tahoe. The majority of TPC’s budget goes directly or indirectly to promoting its
2 “Connected Tahoe” agenda — which is being promoted by the three major telecom providers in
3 the Tahoe region, Defendant Verizon, as well as AT&T and T-Mobile. The TPC is a creation of
4 the Lake Tahoe Basin Prosperity Plan (“Prosperity Plan”), a landmark planning document
5 prepared in November 2010 by Applied Development Economics for the Western Nevada
6 Development District on behalf of the Lake Tahoe Basin Prosperity Plan Steering Committee.
7 The Prosperity Plan has since and to this day served as a critical planning document for TRPA.
8 The Prosperity Plan is formally embedded in the TRPA Process Flow Chart included in the most
9 recent updated TRPA Regional Plan, amended April 28, 2021, in Chapter 1: Introduction, Page
10 1-5, Figure 3, where it is one of the “External Factors” that flows into the TRPA Regional Plan.
11 The Abstract of the Prosperity Plan states: “The central recommendation in the Prosperity Plan is
12 the formation of the Tahoe Prosperity Center, based on a regional stewardship model, to serve as
13 an organizational focal point for implementing initiatives promoting economic cluster expansion
14 as well as addressing a number of fundamental issues essential to the success of cluster
15 initiatives.” Plaintiffs contend that the present situation represents a patent and egregious conflict
16 of interest, in direct violation of the terms of the Compact. The service of Defendants Marchetta,
17 Berkgigler, and Novasel on the Board of Directors of the Tahoe Prosperity Center, an
18 organization that actively lobbies local government and the TRPA to issue permits to support
19 broadband expansion in the Lake Tahoe Basin through, among other things, widespread
20 deployment of macro cell towers and small cell wireless facilities requires their immediate
21 disqualification and recusal from any TRPA decision-making regarding such facilities, and the
22 voiding of any such policies, permits, or decisions made with respect to such facilities in which
23 they participated. Simply put, the fox (TPC) cannot be left guarding the henhouse (TRPA, which

1 is supposed to be the impartial arbiter, protecting the Lake's clarity, and Tahoe's pristine
2 environment from overdevelopment).

3 17. The telecom providers, through the California Public Utilities Commission, and
4 also directly, provide major funding for TPC. The telecom providers are actively pushing an
5 agenda to provide voice and data services wirelessly, when most of those services could be
6 provided with little or no environmental damage with safe fiber-optic to the premises
7 connections. In plain terms, much of the wireless infrastructure that is currently being
8 aggressively and dangerously implemented within the Tahoe Region is not needed, especially
9 when an alternative, safe, fast, secure, environmentally protective, energy efficient, cost-effective
10 and balanced alternative – fiber-optic to the premises – is immediately available throughout the
11 Tahoe Region. TRPA never bothered to examine these alternative technologies, which in and of
12 itself constitutes a violation of Article VII of the Compact. The Tahoe Region has an
13 opportunity to become a showcase for a proven, innovative, already paid for optical fiber wired
14 infrastructure to the home and workplace for residents and the millions of visitors to Tahoe each
15 year.

16 18. In what appears to be a classic “bait and switch” scheme, the telecoms had
17 promised fiber-optic infrastructure in the Tahoe Region in exchange for massive subsidies paid
18 for by their customers, but instead of building out the full fiber-optic network they had promised,
19 and for which they had been funded, the telecoms now push their wireless infrastructure agenda
20 for greater profits for themselves. The telecoms routinely claim that further wireless facilities are
21 justified to meet a “coverage gap” and to provide for additional wireless capacity, but they have
22 actually created that “gap” and lack of capacity themselves by failing to provide the promised
23 fiber-optic network. Similar wireless industry claims that the accelerated establishment of a

1 wireless infrastructure will bridge the Digital Divide, fortify power grid resilience during
2 wildfires, earthquakes, and cyberattacks, and promote climate change friendly policies are
3 equally specious and a form of greenwashing. Plaintiffs have already cited in the record critical
4 scientific and technical studies confirming that the exact opposite is the case.² The so-called
5 “Tahoe Prosperity Center” is instead bringing a wireless radiation-induced dystopia to the Lake
6 Tahoe Region.

7 19. The present litigation is the unfortunate, but necessary culmination of efforts to
8 hold the TRPA accountable, after several years of many urgent but fruitless appeals at the local
9 municipal, regional, and federal levels, which have resulted in a voluminous record of scientific
10 studies and legal precedents all pointing to the utter failure of the TRPA Board to safeguard the
11 Public Trust envisioned by the Tahoe Compact. In particular, over the past few years, within the
12 Tahoe Basin, Plaintiffs, along with many concerned residents and members of the public, have
13 attended many meetings of local government bodies, including the City of South Lake Tahoe
14 Planning Commission and the City Council, and public meetings of the TRPA, attesting to
15 massive violations of federal and state laws, including the Compact itself and its Ordinances,
16 regarding the approval and deployment of wireless transmission facilities. Plaintiffs’ and the
17 public’s concerns have been either arbitrarily and capriciously ignored or dismissed, or actively
18 rebuked by wireless representatives and TRPA officials. Plaintiffs and many other individuals
19 and groups have strenuously objected to the unbridled rollout of wireless facilities within the
20 Lake Tahoe Basin to TRPA’s Board at nearly every one of the TRPA Board meetings over the
21 better part of a year. Plaintiffs and the public have requested that the TRPA schedule a public
22 hearing on this subject, but TRPA has refused and/or willfully ignored these requests.

23
24 ² e.g. [5G will prompt Energy Consumption to Grow by staggering 160% in 10 years - Datacenter Forum](#)

20. With no other outlet for their frustration at being ignored by the TRPA Board of Directors, officers, and staff about their concerns regarding the approval and deployment of wireless transmission facilities within the Lake Tahoe Basin, hundreds of commenters utilized their only opportunity to appear and be heard – the Public Comment period of the TRPA Board meetings – despite the TRPA’s best efforts to suppress their voices. During the Public Comment period of the TRPA Board meetings, anyone present is permitted to speak for a limited period of time (set at the discretion of the Chair of the Board). Over the past three years, the Public Comment period became the only outlet for members of the public to express themselves at an open public meeting and to confront the TRPA Board and staff with their serious misgivings about the TRPA’s actions regarding wireless transmission facilities. Faced with scores of residents upset 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 requisite scrutiny, the TRPA responded by moving the Public Comment period to the end of the agenda in Spring 2020, instead of holding Public Comment at the beginning of the agenda as it had done for decades. This change was a patently obvious attempt to discourage public participation in the Public Comment period and thereby minimize the amount of negative public comment about how the TRPA is handling the roll-out of wireless infrastructure in the Tahoe Basin. TRPA’s and the individual Defendants’ actions have violated Plaintiff’s First and Fourteenth Amendment and California State Constitutional rights of Due Process and Freedom of Expression by continually refusing to agenda a public hearing on TRPA’s policies and practices regarding the wireless facilities rollout in the Lake Tahoe Region and by unduly circumscribing the public’s ability to participate in the TRPA Board’s public comment sessions. In so doing, the TRPA and the individual Defendants have violated the Compact.

21. Only one among many examples of how the rapidly expanding wireless infrastructure is personally and intimately affecting, and potentially destroying the lives of individual residents of the Tahoe Region is the case of Plaintiff Monica Eisenstecken (“Eisenstecken”). Plaintiff Eisenstecken objects to the 112-foot high Verizon cellular macro tower proposed to be installed on a parcel directly adjacent to the one where her family resided for years, but sold in the Spring of 2021 because of Eisenstecken’s well-grounded fear that the TRPA Governing Board would ultimately approve the tower. The proposed cell tower is now set to be located at 1360 Ski Run Boulevard, approximately 150 feet from Eisenstecken’s former home. According to TRPA’s last two Threshold Evaluation Reports for Scenic Roadway Units, the proposed tower will be located in an area which is categorized by TRPA as in the worst 4% 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 the absolute bottom of the list, and characterizes it as “Considerably Worse Than Target.” TRPA’s Compact and Regional Plan require that all environmental impacts, including scenic impacts, be fully mitigated to a less than significant level. At a hearing on September 30, 2020, the TRPA Governing Board once again demonstrated its insensitivity, not only to the impacts of wireless radiation, but to even the cherished scenic vistas lauded by Mark Twain and many generations of visitors to Tahoe since. Almost incomprehensibly, the TRPA Board voted, without any evidence that the additional degradation to scenic quality would be mitigated to a less than significant level, to allow the landowner, Defendant Nel, to cut down 31 trees, averaging 70 feet tall, with several trees much taller. The tree-cutting permit was issued after the City of South Lake Tahoe fire inspector had ordered Nel to cut down the trees because the

1 inspector determined they presented a fire hazard in this wildfire-susceptible zone. The TRPA
2 granted the tree-cutting permit without considering at all the fact that some or all of those 31
3 trees would have provided at least some visual screening to the proposed 112-foot Verizon
4 monopine tower in advance of the hearing on the tower project itself, or the fact that the area is
5 in non-attainment of TRPA scenic thresholds. The TRPA considered the tree-cutting permit to
6 be completely independent of the then-pending but incomplete application of the same
7 landowner and Verizon for the proposed cell tower on the same land parcel. Although no
8 findings were made by the Board, TRPA's General Counsel, John Marshall ("Marshall"),
9 averred after the vote that the result of the TRPA Board's action was to reduce the scenic
10 baseline for the tower project to the condition of the project site with the trees already removed.
11 Such an interpretation would effectively foreclose the options to reduce the scenic impacts of
12 Verizon's 10-story tall eyesore. In addition, and as will be explained below, the proposed tower
13 looming over Ms. Eisenstecken's former home, and especially the resulting increased and
14 untested RFR exposures, would have placed her health and wellbeing and that of her two young
15 children in immediate jeopardy. Plaintiff Eisenstecken and her family did not consent to this
16 impending assault and trespass, and as the likelihood of TRPA granting final approval for the
17 tower increased, Ms. Eisenstecken felt that she had no alternative other than to move her family
18 from their homestead. In Spring 2021, her father sold the family property, including the house
19 which he had built with his own hands.

PARTIES

21 22. Plaintiff Monica Eisenstecken ("Eisenstecken") is an individual who had lived
22 with her family at 3605 Needle Peak Road in South Lake Tahoe City, California until late 2021,
23 when she and her family sold their property because of her well-founded fears that Verizon

1 would soon obtain the final permits necessary to construct the monopine tower next door at 1360
2 Ski Run Boulevard, which would then render the property uninhabitable for her and her family.
3 Eisenstecken and her family presently are living in temporary accommodations with relatives
4 and friends in South Lake Tahoe City and vicinity, while seeking permanent accommodations.
5 Their lives have been entirely disrupted by the proposed Verizon macro tower.

6 23. Eisenstecken lived in the house located at 3605 Needle Peak Road beginning in
7 2005, when her father, George Eisenstecken, finished construction of the house he envisioned as
8 a multi-generational compound for his family. Plaintiff Eisenstecken, who was born and raised
9 in South Lake Tahoe, California, and her family, are long standing residents of South Lake
10 Tahoe, and are directly and immediately affected by the illegal actions alleged herein. Plaintiff
11 Eisenstecken and the other plaintiffs to this action are “aggrieved persons” under Article VI
12 (j)(3) of the Compact.

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

21 25. Eisenstecken has been so upset by the prospect of Verizon building and operating
22 its proposed 112-foot tall cell tower immediately adjacent to her property that she had her father,
23 the owner of the property, put the property, which he personally built as his “dream” compound

1 for his family, on the market for sale in the Fall of 2020. Eisenstecken's father listed the
2 property with a professional realtor for several months. After dropping the price (despite the
3 super-heated real estate market in the Lake Tahoe region), Eisenstecken's father finally found
4 buyers for the property in April 2021. The buyers were advised by the seller about the proposed
5 Verizon cell tower next door, and they had already read news reports about the proposed facility
6 on the Internet. The buyers told Eisenstecken and her father that the prospect of the cell tower
7 did not bother them, and they wanted to close the deal – a cash deal – by the end of April 2021.
8 The transaction proceeded towards closing, with the buyers conducting a home inspection that
9 turned up only a few minor items needing attention. However, towards the end of April 2021,
10 the buyers suddenly backed out of the deal, writing:

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

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

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

5 28. Mr. Benedict currently suffers from multiple myeloma, a very serious disease for
6 which he is receiving state-of-the-art medical care, in the form of an FDA experimental drug
7 trial, administered by leading specialists and researchers at a major university teaching hospital
8 in San Francisco. Mr. Benedict has recently undergone a rigorous course of drug therapy, and is
9 convalescing in his sole residence on Needle Peak Road in South Lake Tahoe. Mr. Benedict
10 remains in a fragile medical condition, and receives highly specialized and closely monitored
11 medical care by his physicians and their teams in both San Francisco and the Lake Tahoe
12 Region. His life literally depends on the success of the experimental drug trial. As explained
13 below, Mr. Benedict’s oncologist, a leader in her field of multiple myeloma, has provided a
14 Declaration expressing her concern that constant and cumulative RF exposure from the present
15 Verizon small cell wireless antennas located directly across the street from Mr. Benedict’s house
16 will interfere with his experimental drug trial and reduce his chances of survival. Defendants
17 Verizon, the City of South Lake Tahoe, and the TRPA have refused to extend any reasonable
18 accommodation under the federal Americans with Disabilities Act and the Fair Housing
19 Amendments Act despite Mr. Benedict’s written request for such reasonable accommodations.

20 29. Plaintiff Tahoe Stewards, LLC (“Tahoe Stewards”) is a California Limited
21 Liability Company which focuses on the threat to Tahoe’s environment from wireless
22 infrastructure. It has generated petitions³ with over 5,000 signatories opposing the Verizon
23

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

monopine tower to be located at 1360 Ski Run Boulevard. Tahoe Stewards is a well-recognized representative of many of those who oppose the adverse impacts of wireless communications technology, which will directly and immediately affect their personal health and the quality of their lives, especially in the Lake Tahoe Basin. Tahoe Stewards is headed by Benjamin Lebovitz (“Lebovitz”) who resides on Regina Road, South Lake Tahoe City, California. Lebovitz’s property is located only a few hundred feet from the base of Verizon’s proposed monopine macro tower at 1360 Ski Run Boulevard. Lebovitz is directly and immediately affected by the illegal actions alleged herein. Plaintiff Benedict is an “aggrieved person” under Article VI (j)(3) of the Compact.

30. Plaintiff Tahoe for Safer Tech is an unincorporated membership organization based in South Lake Tahoe City that advocates on behalf of its members for fact-based, scientifically-grounded, and balanced approaches to providing communication and data services. 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 that will directly and immediately adversely affect their personal health and the quality of their lives.

31. Plaintiff Environmental Health Trust (“EHT”) is a non-profit 501(c)(3) scientific and educational organization, based in Teton Village, Wyoming, whose mission is to safeguard human health and the environment by empowering people with state-of-the-art information and working directly with various constituencies to mitigate health and environmental risks. EHT is a “think tank” that promotes a healthier environment through research, education, and policy. EHT has no parent corporation, and no publicly-held company has a 10% or greater ownership interest in the organization. The environmental and health issues presented in this case are of

1 direct concern to EHT’s basic organizational rationale, core mission, and purpose. EHT’s
2 success as an organization depends on the integrity and truthfulness of information provided or
3 relied upon by government agencies, along with a reasonable opportunity for non-profit public
4 interest organizations such as EHT to challenge arbitrary governmental decisions that reach
5 conclusions without a reasoned process. Dr. Devra Davis, EHT’s Founder and President, has
6 recently visited the Lake Tahoe Basin to enjoy its pristine environment, magnificent scenery, and
7 abundant outdoor activities. Dr. Davis was one of the scientists who was a lead author of a paper
8 on climate mitigation policies included on the Intergovernmental Panel on Climate Change. Dr.
9 Davis was part of the team of scientists, along with former Vice President Al Gore, which was
10 awarded the Nobel Peace Prize in 2007.

11 32. Defendant, the City of South Lake Tahoe, California (“South Lake Tahoe” or
12 “City”), is the most populous city in El Dorado County, California, and in the Lake Tahoe
13 Region. South Lake Tahoe was incorporated as a city in 1965. South Lake Tahoe plays a major
14 role in the land use decisions within its city boundaries. Numerous City departments and the
15 City Council are involved in the local land use decision-making process. For example, the
16 Planning Division and its Planning Commission is responsible for current and long-range
17 planning activities which implement the City’s [General Plan](#). Current planning activities include
18 reviewing and permitting development activities to ensure new development and redevelopment
19 projects are consistent with the City’s General Plan, Plan Area Statements, and Title 6,
20 Development Services, of the South Lake Tahoe City Code. The City’s planning, land use, and
21 zoning services are intended to protect, maintain, and develop an attractive, safe, and healthy
22 community by providing planning services to the general public, project applicants, and other
23
24

1 City Departments. South Lake Tahoe is organized as a General Law City under the California
2 Constitution.

3 33. South Lake Tahoe’s City Council, its legislative body, has enacted a
4 comprehensive South Lake Tahoe City Code which, among other things, sets forth the
5 organization of the city government, the duties of various officials and departments, and the
6 local, police, sanitary, and other ordinances and regulations which are not in conflict with the
7 general laws of the State of California. Among these code provisions is the comprehensive
8 [Chapter 6.75](#), entitled “Wireless Facilities on Private Property,” which was passed as Ordinance
9 2020-1143 on May 12, 2020, and became effective on June 11, 2020. The purpose and intent of
10 Chapter 6.75 is set forth in Section 6.75.010, which states:

1 A. The city of South Lake Tahoe intends this chapter to establish reasonable, uniform and
2 comprehensive standards and procedures for wireless facilities deployment, construction,
3 installation, collocation, modification, operation, relocation and removal within the city's
4 territorial boundaries, consistent with and to the extent permitted under federal and California
5 state law. The standards and procedures contained in this chapter are intended to, and should be
6 applied to, consistent with federal and state law, protect and promote public health, safety and
7 welfare, and also balance the benefits that flow from robust, advanced wireless services with the
8 city's local values, which include without limitation the aesthetic character of the city, its
9 neighborhoods and community. This chapter is also intended to reflect and promote the
10 community interest by (1) ensuring that the balance between public and private interest is
11 maintained on a case-by-case basis; (2) protecting the city's visual character from potential
12 adverse impacts or visual blight created or exacerbated by wireless communications
13 infrastructure; (3) protecting and preserving the city's environmental resources; and (4)
14 promoting access to high-quality, advanced wireless services for the city's residents, businesses
15 and visitors.
16 Prior to June 11, 2020, the South Lake Tahoe Code contained no specific provisions governing
17 the regulation of wireless telecommunications facilities within the City limits. Instead, wireless
18 telecommunications facilities were permitted in certain areas within the City limits pursuant to
19 special use permits granted by the Planning Commission and/or the City Council.

20 34. Defendant Tahoe Regional Planning Agency (TRPA), headquartered at 128
21 Market Street, Stateline, Nevada, is an entity created by a Bi-State Compact, and is the lead
22 regulator in the Tahoe Region as that term is used in the Compact. The Tahoe Region includes
23 portions of El Dorado County and Placer County on the California side, as well as the City of
24 South Lake Tahoe. It also includes portions of Washoe County, Douglas County, and Carson
City on the Nevada side. TRPA has adopted environmental threshold carrying capacities and a

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

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

17 36. Defendant Marsha Berkbighler (“Berkbighler”) was an elected member of the
18 Washoe County Commission, Nevada, between 2013 and January 3, 2021, representing District
19 1. Berkbighler lost her re-election bid on November 3, 2020. Pursuant to Article III(a) of the
20 Compact, by virtue of her position as a Washoe County Commissioner, Berkbighler was
21 appointed to and served as a Member of the TRPA Governing Board from 2013 until she left the
22 Board on January 3, 2021. Berkbighler served as a Director of the Tahoe Prosperity Center
23 concurrently during her service as a TRPA Governor, and said concurrent service created a

1 serious conflict of interest and ethical violation that requires her disqualification from any
2 decision-making regarding TRPA policy-making or permitting of wireless facilities in the Lake
3 Tahoe Basin and the voiding of any decisions and/or policies concerning such facilities in which
4 Berkbighler participated while she concurrently served in those positions.

5 37. Defendant Sue Novasel (“Novasel”) was elected as the District V Supervisor, El
6 Dorado County, California, in the November 2014 election. Pursuant to Article III(a) of the
7 Compact, by virtue of her position as an El Dorado County Supervisor, Novasel was appointed
8 to and continues to serve as a Member of the TRPA Governing Board. Novasel has served as a
9 Director of the Tahoe Prosperity Center concurrently during her service as a TRPA Governor,
10 and her concurrent service has created a serious conflict of interest and ethical violation that
11 requires her disqualification from any decision-making regarding TRPA policy-making or
12 permitting of wireless facilities in the Lake Tahoe Basin and the voiding of any decisions and/or
13 policies concerning such facilities in which Novasel participated while she concurrently served
14 in those positions. Nonetheless, she did not recuse herself from the TRPA appeal hearing.

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

20 39. Defendant Gullium Nel (“Nel”) is an individual, and the owner of the property
21 located at 1360 Ski Run Boulevard, South Lake Tahoe, California, where Verizon Wireless
22 intends to construct and operate the proposed cell tower, adjacent to the property formerly owned
23 by Plaintiff Eisenstecken’s father, George, and where the Eisenstecken family resided until late

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

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

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

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

1. STANDING

43. Plaintiffs have satisfied both Article III and prudential standing. Plaintiffs each have suffered an injury in fact that is a) concrete and particularized; b) non-speculative; and c) actual or imminent. Each Plaintiff has suffered an injury in fact by showing a connection to the Lake Tahoe region of concern sufficient to make credible the contention that the Plaintiff's future life will be less enjoyable if the area in question remains or becomes environmentally

1 degraded, or for a Plaintiff association, if any of its existing members themselves have met that
2 standing test. *See Garmon v. Tahoe Regional Planning Authority*, 806 Fed. Appx. 568 (9th Cir.
3 2020), relying on *Ecological Rights Foundation v. Pac Lumber*, 230 F.3d 1141 (9th Cir. 2000).

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

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

21 46. As for individual Plaintiff Monica Eisenstecken, as noted she has suffered
22 significant economic losses and her life and that of her family have been thoroughly uprooted
23 because of the insistence of Defendants Nel and Verizon to build and operate the 112-foot tall

monopine cell tower at 1360 Ski Run Boulevard and the TRPA Defendants' violations of their sworn duties in "greasing the skids" for the granting of the necessary TRPA permit for said construction and operation.

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

FACTS COMMON TO ALL CAUSES OF ACTION

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

1 49. Article VII of the Compact (pp. 16-18) provides detailed requirements for TRPA
2 responsibilities to review, review, assess, consult, and coordinate decision making relating to
3 significant "matters" that will have major environmental consequences, such as blanketing the
4 Lake Tahoe Region, its inhabitants, and environment with wireless cell towers. The Compact
5 further requires TRPA to adopt environmental threshold carrying capacities ("threshold
6 standards" or "thresholds"). A threshold standard is "an environmental standard necessary to
7 maintain a significant scenic, recreational, educational, scientific or natural value of the region or
8 to maintain public health and safety within the region." (See Compact, Art. II(i).) Such standards
9 shall include, but not be limited to, "standards for air quality, water quality, soil conservation,
10 vegetation preservation and noise." In order to attain the threshold standards, the Compact
11 requires TRPA to adopt and enforce a Regional Plan and implement ordinances that will achieve
12 and maintain the thresholds. (See Compact, Art. I (b), V(b), V(c).)

13 50. Several provisions of the Compact are of particular importance in ensuring that
14 the thresholds will be achieved and maintained in the regional planning process. First, Article V
15 of the Compact requires that "the regional plan... and all its elements, as implemented through
16 agency ordinances, rules and regulations, achieves and maintains the adopted environmental
17 threshold carrying capacities." (See Art. V(c).)

18 51. Second, Article V(g) of the Compact requires TRPA to make certain other
19 findings that relate to environmental protection before approving any project or activity that may
20 substantially affect the natural resources of the region to "insure that the project under review
21 will not adversely affect implementation of the Regional Plan and will not cause the adopted
22 environmental threshold carrying capacities of the region to be exceeded." TRPA's Code of
23 Ordinances, at Sections 4.4.1 and 2, goes further, and requires: "Wherever federal, state, or local

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

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

1 the entire record prior to rendering her decision, and who failed to base her decision upon
2 substantial evidence from the voluminous record. See Compact, Article VI(j)(5). The TRPA
3 Governing Board's decision denying Plaintiffs' appeal on March 23, 2022 constitutes a final
4 order from which Plaintiffs are timely appealing by filing this amended Complaint in this Court
5 pursuant to the Compact, Article VI(j)(3).

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

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

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

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

1 Accordingly, the Court found those conclusions to be arbitrary and capricious. Finally, the Court
2 held that the FCC's order was arbitrary and capricious in its failure to respond to comments
3 concerning environmental harm caused by RF radiation. The Court remanded the petition to the
4 FCC to provide a reasoned determination on whether its guidelines adequately protect against
5 harmful effects of exposure to RFR other than cancer. 9 F.4th 893.

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

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

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

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

19 59. Plaintiffs are informed and believe that TRPA has never required a telecom cell
20 tower project applicant to participate in TRPA's environmental impact assessment process, in
21 spite of the fact that the available information is compelling that significant environmental
22 impacts are created by such projects. Most wireless transmission facility projects are handled at
23 the staff level, and unless a "Special Use Finding" (Code of Ordinances Section 21.2.2) is

1 determined by staff to be necessary, or an exemption for additional height (Code of Ordinances
2 Section 37.6.2) is sought, no public hearing is held. Very often, no notice is given to adjoining
3 property owners.

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

12 61. TRPA's decision-making must consider the impact of a proposed project on the
13 Regional Plan as a whole. TRPA avoids this mandate under the Compact by engaging in a
14 forbidden practice of project segmenting known as "piecemealing" without any reference to the
15 Regional Plan or the body of Compact, or 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.

19 *The Verizon Wireless Special Use Permit issued for the 112-foot tall monopine at 1360 Ski Run*
20 *Boulevard by the South Lake Tahoe City Council, despite the overwhelming opposition by*
21 *residents, is null and void because Verizon Wireless failed to utilize its variance within one year*
22 *of the date of granting.*

23 62. On or about March 22, 2019, Verizon Wireless filed a General Planning
Application for a major design review and a special use permit with the South Lake Tahoe

1 Development Services Department, Planning Division, to erect a 112-foot tall monopine cell
2 tower on property owned by Defendant Nel at 1360 Ski Run Boulevard in South Lake Tahoe (the
3 “Verizon tower project”). The proposed monopine is to include 12 antennas, each 8 feet tall. A
4 new equipment shed will be constructed and shared between the property owner and Verizon.
5 The owner of the property will use 120 square feet of the shed and the remaining 250 square feet
6 will contain cabinets and electrical equipment for the telecommunications facility. Verizon is
7 also proposing to install a standby generator and fossil-fuel storage that will be located behind
8 the equipment shed. The application was assigned File #19-026.

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

13 64. On or about May 31, 2019, the South Lake Tahoe Planning Department caused to
14 be published in the Tahoe Daily Tribune newspaper a summary notice of a public hearing to be
15 held on June 13, 2019 to consider, among other things, the application of Verizon Wireless for
16 the special use permit at 1360 Ski Run Boulevard. Mailed notice of the June 13, 2019 public
17 hearing purportedly was provided to all landowners within 300 feet of the subject property.
18 However, the notice was never received by Plaintiff Eisenstecken or by her father, the
19 landowner, and, therefore, Eisenstecken was not made aware of the upcoming hearing, even
20 though the 112-foot tall monopine cell tower was being proposed for construction on the
21 adjoining property, just two hundred feet or so from her bedroom. On information and belief,
22 numerous neighborhood residents, including apartment building tenants, also received no
23 advance notice of the June 13, 2019 public hearing.

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

10 66. On or about June 25, 2019, South Lake Tahoe issued the special use permit. The
11 special use permit includes as a general condition the following: “This Special Use Permit shall
12 expire and become null and void one year after the date of granting, unless such issuance is
13 utilized prior to the date of expiration.” On or about June 28, 2019, Verizon Wireless accepted
14 the conditions set forth in the special use permit.

15 67. On June 27, 2019, Plaintiff Eisenstecken filed an appeal of the Planning
16 Commission decision approving the special use permit for the Verizon Wireless monopine cell
17 tower at 1360 Ski Run Boulevard. Pursuant to the South Lake Tahoe City Code, appeals of
18 decisions of the Planning Commission are heard by the South Lake Tahoe City Council.

19 68. On or about August 6, 2019, the South Lake Tahoe City Council was scheduled to
20 hear Plaintiff Eisenstecken’s appeal of the June 13, 2019 decision of the Planning Commission
21 approving the special use permit. Many of Ms. Eisenstecken’s neighbors submitted written
22 comments to the Council objecting to the proposed cell tower at 1360 Ski Run Boulevard on a
23 variety of grounds, including aesthetics, diminution of property values, health impacts, and

1 inappropriateness in a residential neighborhood. The Tahoe Prosperity Center, by its CEO, Heidi
2 Hill Drum, submitted a written comment to the City Council on August 5, 2019, strongly
3 supporting the Planning Commission’s granting of the special use permit, stating: “The Tahoe
4 Prosperity Center supports this cell tower and site for a monopine that will fit well into the area
5 and provide the much-needed coverage for our residents, businesses and community.” A handful
6 of other residents sent in comments supporting the tower. At the City Council meeting, the
7 appeal was postponed until September 3, 2019.

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

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

17 71. At the hearing, besides the parties and their advocates, forty persons provided
18 public comment to the City Council, with twenty-eight persons opposing the special use permit
19 (and the cell tower) and fourteen favoring the special use permit, including two persons from
20 Verizon and one from AT&T. Notably, Heidi Hill-Drum, the CEO of The Tahoe Prosperity
21 Center, and Shelby Cook, organizational coordinator of The Tahoe Prosperity Center, spoke in
22 favor of upholding the Planning Commission’s granting of the special use permit. Following a
23 nearly three-hour long hearing and deliberation, the City Council voted 3-2 to deny the appeal

1 and to uphold the special use permit, adding a condition that Verizon Wireless permit other
2 carriers to co-locate antennas on the monopine. Consequently, the City Council issued the
3 special use permit to Verizon Wireless for the monopine cell tower on January 14, 2020,
4 imposing the additional condition that Verizon Wireless agree to co-locate other carriers'
5 antennas on the tower.

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

9 "The Special Use Permit issued on June 25, 2019 and accepted by Verizon on
10 June 28, 2019 is amended to incorporate the City Council decision of January 14,
11 2020 to deny the appeal and uphold the Planning Commission approval of the
12 Special Use Permit for Verizon Wireless, File #19-026 (Resolution 20-004). The
13 motion passed by City Council included a general condition for the Special Use
14 Permit as follows:

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

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

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

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

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

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

6 76. Condition 5 to this Special Use Permit provides: “This Special Use Permit shall
7 become effective and will be issued no sooner than five business days after the date of the
8 granting of the Special Use Permit. If prior to the expiration of such five-day period an appeal is
9 filed, the Special Use Permit shall not be issued until the granting of the variance is affirmed on
10 appeal (SLTCC §6.55.640 H).”

11 77. As alleged above, this Special Use Permit was issued by the Planning
12 Commission on June 25, 2019, and was accepted by Verizon Wireless on June 28, 2019.
13 However, Plaintiff Eisenstecken timely appealed the granting of the Special Use Permit on June
14 27, 2019, well within the five-day appeal period. The granting of the variance was finally
15 affirmed on appeal on January 14, 2020. Therefore, pursuant to Condition 5 to the Special Use
16 Permit and SLTCC §6.55.640 H, the Special Use Permit was issued on January 14, 2020.

17 78. In order for this Special Use Permit to remain valid, Verizon Wireless was
18 required to “utilize” its variance within one year – otherwise, it “shall expire and become null
19 and void one year after the date of granting.” Under California law, land use and zoning statutes
20 often provide that variances and/or permits automatically expire at one year unless used during
21 that one-year period. The purpose of the one-year automatic expiration is to prevent reserving
22 the use of land for future purposes when one has no present intention to commence upon the
23 permitted use. *Although a permittee need not comply with every condition in the use permit in*

1 order to avoid expiration of the permit after one year, the permittee must take some affirmative,
2 good faith action in employing the permit.

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

12 80. On or about March 22, 2019, Verizon Wireless, filed an incomplete application to
13 TRPA for a TRPA permit to erect a 112-foot tall monopine cell tower on property owned by
14 Defendant Nel at 1360 Ski Run Boulevard in the City of South Lake Tahoe. TRPA assigned
15 TRPA File # ERSP 2019-0389 1360 Ski Run Blvd. as the project file. The initial materials filed
16 by Verizon Wireless as part of this incomplete application included, among other things, several
17 site plans relating to the proposed Verizon Wireless monopine cell tower along with plans
18 relating to a project proposed by AT&T several years earlier for a monopine cell tower on the
19 same land parcel which project AT&T subsequently abandoned. Verizon Wireless provided
20 some answers to questions on the application and left others blank.

21 81. On or about May 20, 2019, Brandy McMahon, local government coordinator for
22 TRPA, emailed Joseph Sharp, the site specialist for Verizon Wireless who filed the application,
23 advising him that she had completed a preliminary review of the Verizon Wireless application on

1 behalf of Theresa Avance, the TRPA Senior Planner who was assigned to the project. Ms.
2 McMahon identified numerous items that Verizon Wireless needed to address or submit before
3 its application could be processed. Verizon Wireless had to prepare a notice program for affected
4 landowners and the public, submit a RFR study, provide coverage maps to document any
5 purported “gap” in coverage, substantiate the height required for the tower, and address tree
6 removal, best management practices, and land/lot coverage. On or about June 3, 2019, Ms.
7 Avance told Mr. Sharp to submit a soil hydrology application. Verizon Wireless responded to
8 these requests over the next few months, and submitted certain information to the TRPA file,
9 including revised site plans dated June 26, 2019.

10 82. On or about August 14, 2019, Verizon Wireless submitted the soils hydrology
11 assessment requested by TRPA’s Ms. Avance. On or about August 27, 2019, Julie Roll, a TRPA
12 Senior Planner, wrote Defendant Nel, informing him that TRPA staff had reviewed the Verizon
13 Wireless hydrology scoping report application submitted in connection with the cell tower and
14 accessory building application and determined that the proposed excavation would not likely be
15 impacted by the water table. Therefore, TRPA issued a soil hydrologic approval waiver.

16 83. Neither Nel nor Verizon Wireless appear to have taken any steps at all post
17 August 14, 2019 to move forward with the incomplete application Verizon Wireless filed with
18 the TRPA. And as alleged above, the Special Use Permit was not issued until January 14, 2020,
19 a full five months after Verizon Wireless ceased all activity towards completing its open
20 application with the TRPA for a permit to construct and operate the very same monopine cell
21 tower for which the City of South Lake Tahoe granted its Special Use Permit on January 14,
22 2020. This failure by Verizon Wireless to take any actions to complete its open application with
23 the TRPA for the TRPA permit for the monopine at 1360 Ski Run Boulevard persisted well

1 beyond the one year special use permit deadline on January 14, 2021. Verizon Wireless first
2 began actions to complete said open TRPA action a few months after the January 14, 2021
3 deadline had passed.

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

11 85. Plaintiffs presented the foregoing specific facts to TRPA Hearings Officer Burch
12 at the October 14, 2021 hearing on Verizon’s application for the TRPA permit to authorize
13 construction and operation of its proposed monopine at 1360 Ski Run Boulevard. Verizon’s
14 attorney, Paul Albritton, rebutted Plaintiffs’ specific factual showing simply by asserting
15 generally and conclusorily that Verizon had taken steps to further its application with TRPA after
16 receiving the City’s permit within the one-year period. However, Mr. Albritton submitted no
17 proof whatsoever of any actions actually taken by the applicant besides simply e-mailing a copy
18 of the City permit to the TRPA. That didn’t matter. Later that afternoon, Hearings Officer Burch
19 orally approved Verizon’s application without even mentioning Plaintiffs’ contention that the
20 underlying required City of South Lake Tahoe special use permit had expired. Hearings Officer
21 Burch’s failure to address this critical issue in her decision was arbitrary and capricious, lacked
22 evidentiary support, and failed to proceed in a manner required by law in violation of the
23 Compact, Article VI(j)(5).

1 86. Plaintiffs subsequently raised this fundamental issue in their appeal before the
2 TRPA Board of Governors, both in their Statement of Appeal, filed on December 1, 2021, their
3 follow up letter to the Board on March 22, 2022, and at the March 23, 2022 hearing. Again, the
4 argument fell on deaf ears. The failure of the TRPA Board of Governors to address this critical
5 issue in its March 23, 2022 decision to deny Plaintiffs’ appeal was arbitrary and capricious,
6 lacked evidentiary support, and failed to proceed in a manner required by law in violation of the
7 Compact, Article VI(j)(5).

8 87. Plaintiffs seek a Declaratory Judgment from this Court finding that the City of
9 South Lake Tahoe Special Use Permit #19-026, 1360 Ski Run Boulevard, is null and void
10 because Verizon failed to “utilize” said permit within one year of its issuance on January 14,
11 2020. The judicial alternative – allowing the Permit to stand under these circumstances – would
12 establish an untenable carte blanche which defeats the sound public policy that underlies the
13 present time limitation: to prevent applicants from tying up development rights by simply sitting
14 on permits previously granted. If voided, Verizon Wireless will have to go back to square one
15 with the City of South Lake Tahoe and apply anew for a new special use permit from the
16 Planning Commission. This is a reasonable and just result, especially now that South Lake Tahoe
17 has adopted a new wireless communications facility zoning ordinance that will control the
18 permitting process and provide the legal framework for consideration of the application. Under
19 the new zoning law, Verizon Wireless will face an extremely difficult burden to overcome in
20 order to obtain a special use permit for the cell tower in this residential neighborhood.

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

1 88. Defendant Nel, with Verizon's full knowledge and acquiescence, applied for, and
2 received a permit from TRPA on July 30, 2020 to cut down 31 trees, averaging about 70 feet tall,
3 on the project site at 1360 Ski Run Boulevard. No notice was given to adjoining property
4 owners, including Plaintiff Eisenstecken. TRPA issued TREE2020-1260 permit on or about July
5 30, 2020, authorizing the cutting of 31 trees specified by the TRPA forester. The reason
6 provided for cutting the trees is listed on the permit as defensible space and safety hazard. The
7 31 trees would have provided at least some screening of the proposed cell tower as viewed from
8 adjoining roadways and properties, including from the property of Plaintiff Eisenstecken.
9 Moreover, these 31 trees could have afforded some margin of protection against RFR
10 contamination. TRPA's arbitrary act and that of Defendant Nel destroyed Plaintiff
11 Eisenstecken's scenic view and reduced the value of her property prior to her father's sale of the
12 property in 2021. These damages are, however, small when compared to the risks to her and her
13 family's health and wellbeing after they would have been exposed to RFR contamination from
14 the proposed Verizon macro cell tower. Moreover, the macro tower presents a significant fire
15 risk to the surrounding community. Again, these reckless decisions and others like them could
16 have been avoided had the TRPA prepared a comprehensive Environmental Impact Statement, as
17 the Compact requires, to address the risks and harms of the *entire project* proposed at 1360 Ski
18 Run Boulevard, instead of piecemealing it, and to balance these tradeoffs.

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

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

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

13 91. The net result became the foreclosure of opportunities to mitigate the scenic
14 degradation that would occur due to the presence of the tower. The tower is proposed in an area
15 designated in TRPA’s thresholds as in “non-attainment” as to scenic quality. Only 4% of all
16 Tahoe Region roadway scenic units are designated as in “non-attainment,” meaning that no
17 further degradation can be allowed under the terms of the Compact, TRPA’s Ordinances, and the
18 Regional Plan. Under such circumstances, allowing the tree cutting to be approved separately
19 clearly constituted “piecemealing.” Nevertheless, the TRPA Governing Board subsequently
20 voted to deny the appeal.

21 92. Although the TRPA Governing Board made no findings, Marshall stated on the
22 record that the result of the Board’s vote was that the “baseline” for the purposes of the scenic
23 analysis would be the condition of the project site without the 31 trees. After the September 30,
24 2020 appeal denial, all 31 trees were subsequently cut down. At the October 13, 2021 hearing,

1 TRPA Hearing Officer Burch ignored this evidence of “piecemealing,” and granted the TRPA
2 permit without requiring Verizon to mitigate this scenic eyesore as a condition of obtaining the
3 TRPA permit for the monopine tower at 1360 Ski Run Boulevard. Likewise, the Governing
4 Board, in denying Plaintiffs’ appeal on March 23, 2022, allowed the piecemealing of projects to
5 proceed, in clear violation of TRPA’s mandates. TRPA’s granting of the tree cutting permit,
6 without conducting an environmental impact analysis, while knowing that Defendant Nel and
7 Verizon Wireless had already filed a partially completed application for a permit to build the
8 112-foot tall monopine cell tower on the same site, was arbitrary and capricious, lacking in
9 evidentiary support, and was done in manner that failed to proceed as required by law in
10 violation of the Compact, Article VI(j)(5). The TRPA Governing Board’s improper decision
11 demonstrates plainly why thoughtful environmental analyses are mandated by the Compact, and
12 why TRPA’s strategy of piecemealing projects violates the Compact and TRPA’s Regional Plan.
13 In the end, TRPA winds up granting many piecemeal permits and any cogent regional
14 development planning is drowned under a sea of individually permitted projects. Uninterrupted,
15 this scenario will continue, with ever more towers. Plaintiffs respectfully seek a Declaratory
16 Judgment from this Court, ruling that the afore-described piecemealing of projects, specifically
17 the project for the construction and operation of Verizon’s monopine at 1360 Ski Run Boulevard,
18 without conducting a full environmental analysis as mandated by the Compact, violates the
19 Compact and TRPA’s Regional Plan, and requires that the TRPA permit for this monopine be
20 vacated.

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

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

13 94. On August 9, 2018, the South Lake Tahoe City Planning Commission approved
14 12 of 13 projects proposed by Verizon to replace a network of wireless communications facilities
15 to existing utility poles in the City right of way with poles that are ten to fifteen feet taller to
16 accommodate Verizon's wireless equipment. One of those projects was in the vicinity of 3565
17 Needle Peak Road. In 2018, Verizon constructed the small cell wireless facility in the vicinity of
18 3565 Needle Peak Road, approximately 130 feet from Mr. Benedict's house, with direct line of
19 sight, after receiving Planning Commission approval on August 9, 2018 under File #18-049.
20 That small cell wireless facility contains three omnidirectional antennas which have for the past
21 three and one-half years continuously emitted RFR radiation in all directions, including directly
22 at Mr. Benedict's house. For this entire period, Verizon has been bombarding Mr. Benedict's
23 house and property with wireless radiation 24 hours per day, seven days per week.

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

17 96. Mr. Benedict commissioned a certified building biologist and environmental
18 consultant and certified electromagnetic radiation specialist to conduct the second assessment of
19 his house and property. This full assessment was performed on April 30 and May 1, 2021. This
20 assessment was conducted after the ski season at Heavenly Valley had ended, and significantly
21 fewer people were present in the South Lake Tahoe City area. Accordingly, demand for cellular
22 service was significantly reduced during this seasonal low period as compared to the busy ski
23 and summer seasons. Nonetheless, the electromagnetic radiation specialist found that the levels

1 of RFR present inside Mr. Benedict's house, particularly in the rooms where he sleeps, are all
2 well above the "Extreme Concern" level which is "totally unacceptable even for people in
3 excellent health." The electromagnetic radiation specialist found that the source of the
4 electromagnetic radiation producing these levels of "Extreme Concern" is the Verizon small cell
5 wireless facility located in the vicinity of 3565 Needle Peak Road, about 130 feet from Mr.
6 Benedict's house. This is an omnidirectional canister antenna array containing three 360-degree
7 antennas. The specialist suggests that Verizon remove this small cell facility to a location where
8 it will not be able to direct any wireless radiation at Mr. Benedict's house and property. As of
9 the current time, no other wireless transmission facility in the area appears to be directing
10 wireless radiation onto Mr. Benedict's property and into his house at high enough levels to cause
11 a likely risk of exacerbating Mr. Benedict's medical condition and impairing his recovery. The
12 TRPA Governing Board, by denying Plaintiffs' appeal of Hearing Officer Burch's grant of the
13 TRPA permit at the March 23, 2022 hearing, has now approved Verizon to construct and operate
14 the 112-foot tall monopine cell tower at 1360 Ski Run Boulevard. That facility – just one block
15 down the street (perhaps 1,000 feet) from Mr. Benedict's property at 3565 Needle Peak Road –
16 will further bathe Mr. Benedict's property and home with RFR at very dangerous levels, which is
17 one of the many reasons that cell towers should not be permitted in this or any residential
18 neighborhood.

19 97. Mr. Benedict is struggling to regain his health at his home in South Lake Tahoe.
20 He lacks the financial means to relocate. He is unwilling to go to a homeless shelter, when he has
21 lived peacefully in his own home for many years. Mr. Benedict literally has nowhere to escape
22 from the non-stop, unwanted, offensive, dangerous assault and intrusion of the RFR which
23 Verizon's small cell wireless transmission facility across the street from his house for the past

1 three and one-half years. And he is about to be bombarded with substantial, unwanted, and
2 dangerously high levels of RFR from Verizon's monopine tower at 1360 Ski Run Boulevard
3 should it be allowed to be built and operated. Mr. Benedict's chief treating physician opines her
4 deep concern that if Mr. Benedict is continuously exposed to the elevated levels of RFR he is
5 presently experiencing at his South Lake Tahoe City residence from the nearby Verizon cellular
6 facilities, he will suffer expected elevated levels of continuous, cumulative, and unavoidable
7 oxidative stress, which may interfere with the new experimental drug trial in which he is a
8 participant, which will substantially interfere with his recovery, and which will worsen his
9 prognosis. The heightened stress and loss of sleep caused by these exposures will also likely
10 impair Mr. Benedict's health. Mr. Benedict's physician urges that the cellular communications
11 company responsible for the RFR radiation to which Mr. Benedict is being exposed, Verizon
12 Wireless, and the concerned governmental entities, the TRPA and South Lake Tahoe, make
13 every reasonable accommodation to support Mr. Benedict in his courageous struggle in the face
14 of his grave illness. In her medical opinion, she states: "'reasonable accommodation' must be
15 the cessation of the RFR radiation transmissions so long as Mr. Benedict resides in his home."

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

- 20 ● Hans Vestberg, CEO, Verizon
- 21 ● Kelly (Felix) Gower, ADA Compliance Specialist, Verizon
- 22 ● Jim Heard, Mackenzie & Albritton, Counsel for Verizon
- 23 ● Joanne Marchetta, Chairperson, TRPA
- 24 ● John Marshall, General Counsel, TRPA
- Tamara Wallace, Mayor, City of South Lake Tahoe
- Devin Middlebrook, Mayor Pro Tem, City of South Lake Tahoe
- John James, Compliance Officer, City of South Lake Tahoe

1
2 99. Plaintiffs' Counsel received a reply from Verizon's attorney, Paul B. Albritton,
3 rejecting Plaintiff Benedict's request, asserting essentially that: a) the ADA/FHAA do not apply
4 to Verizon because it is not a government entity within the meaning of the ADA/FHAA; and b)
5 the FCC, in any event, has determined that its present thermal standard for wireless radiation
6 exposure is safe. Plaintiff rejects the first argument because Verizon is openly maintaining in
7 numerous government settings that it is a public utility or quasi-public utility and has received
8 public subsidies and regulatory benefits from this claimed special status. Plaintiff rejects
9 Verizon's second argument on two grounds: first, the FCC itself has publicly admitted that it has
10 no expertise whatsoever on health and safety, and must rely on the FDA for guidance; and
11 second, the FDA itself does not have an officially published policy or regulations covering RF
12 radiative emissions for non-medical devices, nor has the agency ever conducted a formal process
13 as required by the Administrative Procedure Act to formulate such a policy based on best
14 available science. Therefore, Verizon has erred in citing the FCC's current regulation, and the
15 FCC has erred and misrepresented the FDA's position. Lastly, the FCC itself has never ruled that
16 its present thermal standard is safe for continuous and cumulative RFR exposure of persons with
17 existing serious, especially life-threatening disabilities, as in Plaintiff's case. How could the FCC
18 do this in any event? It has no scientific or medical expertise relating to the biological effects of
19 RFR over-exposure, to otherwise healthy people, much less to those unfortunate persons who
20 suffer from multiple myeloma, a deadly medical condition at an advanced stage of progression.

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

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

11 101. Plaintiffs' counsel scheduled a Zoom meeting with Mr. Marshall and Heather L.
12 Stroud, City Attorney for the City of South Lake Tahoe, for May 20, 2021. During that Zoom
13 meeting, Plaintiffs' counsel explained Mr. Benedict's dire medical circumstances; the high levels
14 of RFR that Verizon's small cell wireless facility directly across the street was continuously
15 blasting onto Mr. Benedict's property and into his house; the injuries and stress these RFR
16 exposures were causing Mr. Benedict, and the interference the RFR was likely having on Mr.
17 Benedict's medical treatment, as substantiated by the distinguished physician and researcher in
18 charge of his medical care; and the tremendous constraints these RFR transmissions were
19 imposing on Mr. Benedict's ability to use his property and enjoy his home. Plaintiffs' counsel
20 explained to Mr. Marshall and Ms. Stroud how Verizon's harmful transmissions were violating
21 the terms of the special use permits the company had obtained from both TRPA and South Lake
22 Tahoe, and how TRPA and South Lake Tahoe each had the power to order Verizon to shut down
23 the small cell wireless facility that is causing these injuries and/or to revoke the permit. In
24 response, Mr. Marshall and Ms. Stroud maintained that neither TRPA nor the City had the legal
25 power to take any of the actions requested.

26 102. On May 25, 2021, Mr. Marshall (on behalf of TRPA) and Ms. Stroud (on behalf
27 of South Lake Tahoe) each sent Plaintiffs' counsel letters reiterating their positions that TRPA

1 and the City lack the authority to require Verizon to move or to turn off the power to the Verizon
2 small cell wireless facility located in the vicinity of 3565 Needle Park Road.

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

12 104. Under the express terms of the special use permits, both the City and TRPA have
13 the right to rescind the permits or take other appropriate actions. Moreover, the ADA and the
14 FHAA confer upon the City and TRPA affirmative obligations to provide reasonable
15 accommodations to Mr. Benedict by ordering Verizon to cease transmitting the continuous
16 damaging stream of RFR onto his nearby property and into his residence at high levels which his
17 expert treating physician states, in her medical opinion, is causing him serious bodily harm.
18 "Reasonable accommodation" under the ADA and the FHAA means modifying existing laws,
19 policies, practices, or services to the reasonable extent necessary to provide equal access to the
20 disabled, and by refusing to act to accommodate Mr. Benedict's disability, the City and TRPA
21 are violating both federal statutes.

22 105. Ms. Stroud responded to Plaintiffs' counsel's May 26, 2021 "legal memorandum"
23 in an email dated May 28, 2021 in which she stated:

1 Hi Julian and Bob,

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

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

16 106. On June 16, 2021, Plaintiffs' counsel responded by email to Ms. Stroud's May 28,
17 2021 email which invited further discussion with the City about other reasonable
18 accommodations which might shield Mr. Benedict from RFR exposure while he is suffering
19 from such exposure caused by Verizon's small cell wireless facility in the vicinity of 3565
20 Needle Peak Road. Plaintiffs' counsel reminded Ms. Stroud that the City is now aware that Mr.
21 Benedict's primary treating physician has confirmed in an expert report that the level of RFR
22 exposure from the Verizon small cell wireless facility, as documented by the report of a certified
23 building biologist, is interfering materially with Mr. Benedict's experimental drug trial to treat a
24 life-threatening illness, and is hindering his efforts to recover. The email challenges Ms. Stroud
25 to explain why she keeps insisting that the City has no legal authority to modify the conditional
26 use permit authorizing Verizon's small cell wireless facility at this location when, in fact,
27 General Condition of Approval 27 provides: "The wireless communications facility site shall be
28 developed and maintained in a neat, quiet, and orderly condition, and operated in a manner so as
29 not be detrimental to adjacent properties."

30 107. Plaintiffs' counsel stated:

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

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

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

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

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

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

10 Hi Julian,

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

15 As I have stated before, the City does not have authority to modify or revoke Verizon's special
16 use permit because it is operating in compliance with the permit conditions and FCC limits. You
17 are essentially asking the City to 'regulate the placement, construction, and modification of
18 personal wireless service facilities on the basis of the environmental effects of radiofrequency
19 emissions' that comply with the FCC standards, which would be a violation of 47 U.S.C. sec.
20 332(c)(7)(B)(iv). See Santa Fe Alliance for Public Health and Safety v. City of Santa Fe, 993
21 F.3d 802 (10th Cir. 2021). Nor does Mr. Benedict's condition require (or authorize) the City to
22 revoke Verizon's permit under the ADA. See Safe Air for Everyone v. Idaho, 469 F. Supp.2d
23 884 (D. Id. 2006)(rejecting an ADA claim that the state discriminated against medically sensitive
24 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

1 process, and the City cannot force Verizon to participate or make changes to its permitted facility
2 without Verizon's permission.

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

8 Thank you,
9 Heather

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

15 111. With respect to the TRPA, its failure to consider granting reasonable
16 accommodation to Mr. Benedict or to enforce the terms of its permit and require Verizon to
17 cease harming Mr. Benedict with its RFR transmissions are in direct violation of the Tahoe
18 Compact. If the Court grants Plaintiffs' request for a Moratorium requiring TRPA to prepare a
19 Comprehensive Programmatic Environmental Impact Statement on the risks and harms of the
20 Connected Tahoe Program, the tragic predicament in which the TRPA, South Lake Tahoe,
21 Verizon, and the other telecoms are placing many Tahoe residents like Plaintiff David Benedict
22 will become clear. For his part, Plaintiff David Benedict is doing everything within his power to
23 shield himself, immediately following the advice of two building biologists. But as noted, he has
24 no viable means of escape from Verizon's two nearby small cell facilities, and now a third macro
cell tower permitted at 1360 Ski Run Boulevard. Even his last resort, selling his modest
dwelling, is practically impossible, as the buyers, just as in Plaintiff Monica Eisenstecken's case,

1 are now extremely wary of themselves walking into the same hazardous situation. Meanwhile,
2 the loss in profit from this single act of compassion to Verizon -- removing the small cell facility
3 in the vicinity of 3565 Needle Peak Road -- is infinitesimal; but for Plaintiff David Benedict it
4 could mean everything.

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

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

19 113. On or about October 5, 2021, Mr. Marshall advised Plaintiffs' counsel that
20 Andrew Strain would be the TRPA's Hearings Officer who would hear Verizon's TRPA permit
21 application at the hearing on October 14, 2021. The position of Hearings Officer is appointed
22 by, and serves at the discretion of, the Executive Director, Joanne Marchetta. The role of the
23 Hearings Officer is to determine an application's consistency and compliance with “the
24

1 Compact, Goals and Policies, Code, other TRPA plans, maps and programs, and Rules of
2 Procedure, for projects or matters identified in subsection 2.2.2 in the Code as requiring review
3 by the Hearings Officer.”

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

1 115. On October 7, 2021, Plaintiffs' counsel served Ms. Marchetta and Mr. Marshall
2 with a letter demanding that Mr. Strain be replaced as the hearings officer because of his obvious
3 conflict of interest for the foregoing reasons.

4 116. On October 11, 2021, at 12:34 p.m. (PDT), John Marshall sent an email to
5 counsel advising that Marsha Burch would be serving as TRPA Hearings Officer instead of Mr.
6 Strain. Evidently, having been called out on Mr. Strain's egregious conflict of interest, even Ms.
7 Marchetta and Mr. Marshall capitulated and replaced him with Ms. Burch. But this late
8 replacement of the Hearing Officer, just three days before the hearing date, provided Ms. Burch
9 little to no time to review the voluminous file, which consisted of many thousands of pages of
10 plans, scientific studies, public comments, legal argument, photos, photo simulations, expert
11 reports, and the like. Nevertheless, Mr. Marshall insisted on keeping the hearing on the date
12 scheduled, October 14, 2021.

13 117. On October 7, 2021, as required by TRPA procedures, TRPA issued its Staff
14 Report regarding Verizon/Guilliam New Cellular Monopine Cellular Tower; 1360 Ski Run
15 Boulevard, City of South Lake Tahoe, El Dorado County, CA; Assessor's Parcel Number 025-
16 580-07, TRPA File Number ERSP2019-0389. In this 8-page report, TRPA Staff made the
17 following conclusory findings without a shred of evidence of any careful environmental review:

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

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

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

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

3 E. Location: The current proposal is the preferred location. The other 31
4 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.

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

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

14 TRPA has incorporated a condition into the draft permit (Special 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
15 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
16 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
17 tower shall also provide additional opportunity to make improvements to the
tower.

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

24 No State or local government or instrumentality thereof may regulate the
placement, construction, and modification of personal wireless service

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

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

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

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

31 118. TRPA Staff Report made the following Chapter 4 "Required Findings:"

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

35 The project is located within Plan Area Statement #085 (Lakeview Heights), where transmission
36 and receiving facilities are a special use. Policy PS-1.1 of the Regional Plan supports the
37 upgrade and expansion of public service facilities consistent with the Land Use Element of the
38 Regional Plan. There is no evidence showing the proposed project will have an adverse effect on
39 the Land Use, Transportation, Conservation, Recreation, Scenic Quality, Public Service and
40

Facilities, or Implementation sub-elements of the Regional Plan. The project, as conditioned, will not adversely affect the implementation of any applicable elements of the Regional Plan.

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

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

(c) Wherever federal, state, or local air and water quality standards applicable 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.

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.

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

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

Visual simulations were prepared for the project which demonstrates the main structure will be partially visible from scenic travel routes and as a result, staff has requested specific design criteria to ensure the project would not result in impacts to scenic quality. The cell tower will resemble a tree of similar height and appearance to adjacent trees in the surrounding forest. A condition of approval requires the applicant to submit elevation drawings that include a random branch pattern that mimics the branch pattern of adjacent trees (see Special Condition 3.H of draft permit). A condition of approval also requires the applicant to submit final color final color [sic] and material samples for monopine and equipment shelters to ensure there will be no significant impacts to scenic quality. In addition, Special Condition 3.J requires the 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.

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.

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

The communication facility will improve wireless service in the area and will not change the character of the neighborhood due to its monopine design. The project is located within Plan Area Statement 085 (Lakeview 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.

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

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

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

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

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

7 121. TRPA made the following Chapter 50 “Additional Public Service Facility
8 Findings”:

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

10 Cellular coverage maps show service gaps in the area and existing facilities are
11 not meeting service needs associated with increased wireless data needs. This
12 project will provide additional facilities to meet service needs in the area. The
13 additional facilities will provide improved wireless communication service in
14 emergencies to help protect public health, safety, and welfare.

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

17 See rationale in Chapter 4 findings, above.

18 (c) The project is consistent with the TRPA Environmental Improvement
19 Program.

20 The project will not affect implementation of the EIP and will not cause TRPA’s
21 environmental thresholds to be exceeded. The color and shape of the monopine
22 tower and color and material equipment shelter will resemble other trees in the
23 project vicinity which will also ensure there are no significant impacts to
24 applicable scenic resource thresholds.

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

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

122. The October 7, 2021 TRPA Staff Report and Findings and recommendation to
approve the project fail, on their face, to meet the substantial evidence requirements necessary to
support approval of the permit by the Hearings Officer. On most key elements, the TRPA Staff
Report Findings either do not speak to the criteria, or are entirely conclusory, as this term has
been interpreted by the D.C. Circuit Court of Appeals in its landmark August 13, 2021 decision
in *EHT v. FCC*, *supra*, 9 F.4th 893, and provide no supporting evidence whatsoever. TRPA

1 Staff fail to provide any reasoned analysis in furtherance of their conclusory findings or to
2 describe what, if any facts, they considered in reaching these conclusions. As such, their
3 findings are arbitrary and capricious, lacking in substantial evidentiary support, and were arrived
4 at in an unlawful manner, all in violation of the Compact, Article VI(j)(5).

5 123. A particularly egregious example is Chapter 4 Required Finding (c) which
6 demands Staff to respond to the following: “Wherever federal, state, or local air and water
7 quality standards for the Region, whichever are strictest, must be attained and maintained
8 pursuant to Article V(g) of the TRPA Compact, the project meets or exceeds such standards.”
9 As set forth above, the Staff report finding states: “The project, as conditioned, will not have an
10 adverse impact on applicable air and water quality standards for the Region. The project
11 includes the installation of water quality best management practices and will not result in the
12 generation of additional daily vehicle trip ends.” Entirely absent from the report is any evidence
13 of what steps, if any, staff took to assure that the strictest water and air quality standards will be
14 attained and preserved by this project. On information and belief, TRPA staff undertook no
15 water quality analysis for this monopine cell tower project. Moreover, as alleged in greater
16 detail below, in November 2021, Plaintiffs discovered that a virtually identical AT&T monopine
17 nearby at Hekpa Drive, and another on a ridge on the public lands of the Heavenly Valley Ski
18 Resort just above the site for the proposed Verizon monopine, are both shedding prodigious
19 amounts of PVC faux pine branches and PVC faux pine needles in the range of hundreds of
20 pounds or more per tower every year. These PVC plastics have been ripped off the monopines
21 by extreme winds and snowstorms, stripping the Heavenly Valley Ski Resort monopine nearly
22 bare in as little as two years. The plastics deteriorate in the high UV exposure and extreme
23 temperatures, and disperse over wide debris fields around the base of these towers. The

deteriorating PVC debris results in microplastics that become embedded in the ground cover and get blown around by the wind, then are carried off as contaminants in surface runoff into stormwater catchments and into the surrounding drainage basins. Although TRPA has been approving monopines like these for two decades throughout the Lake Tahoe Region – and should have been monitoring these monopines for such deterioration and plastic waste discharge throughout that period, TRPA seems to have been completely oblivious to the obvious and serious fact that the PVC faux pine branches and needles degrade rapidly in the harsh Tahoe environment. TRPA staff apparently has never taken these critically important facts into account, including the likelihood that PVC fragments and microplastics are being transported into local streams, drainages, and storm water systems before dumping out into Lake Tahoe. The Lake Tahoe Basin is a Zero Discharge Zone. The federal Clean Water Act, its California counterpart, and federal and TRPA laws all make it illegal to discharge solid waste, hazardous or otherwise, onto land, or into 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 conditioned, will not have an adverse impact on applicable air and water quality standards for the Region.”

124. The continuing discharge of toxic plastic waste into Lake Tahoe from shredding monopines is clearly a significant and imminent environmental/public health hazard that TRPA has a legal duty to assess in an EIS prepared under Article VII of the Compact, in close coordination with the Lahontan Regional Water Quality Control Board (“Water Board”); the Regional Board responsible for implementing Water Quality Control Plan for the Lahontan Region, which includes California portions of Lake Tahoe.

125. All of Plaintiffs' concerns and grievances noted herein were duly presented to TRPA through the Notice of Appeal on November 2, 2021, the Opposition filed on December 1, 2021, the follow-up Letter to the Governing Board on March 22, 2022, and the public TRPA Board Hearing on March 23, 2022. In each instance there is no evidence that TRPA or its Planning Staff gave any serious consideration to the legal arguments and detailed factual evidence presented by Plaintiffs. TRPA has failed to offer any formal or truthful finding demonstrating that the agency or its staff followed any APA compliant or equivalent Compact process of reasoned decision making. This is precisely the kind of conclusionary, arbitrary, and capricious conduct by a federal agency, or in this case a special agency established by Congress to uphold a high Public Trust, that the DC Circuit castigated in its remand decision in *EHT v. FCC*.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

TRPA'S POLICIES AND REGULATIONS THAT AUTHORIZE AND EXPLICITLY PERMIT WIRELESS COMPANIES TO DESTROY THE TAHOE REGION BY SEGMENTED, PIECEMEAL, AND UNPLANNED CELL TOWER INSTALLATIONS, WITH NO ANALYSIS OF CUMULATIVE EFFECTS, VIOLATE ITS PUBLIC TRUST, AND THEREFORE VIOLATE THE TRPA COMPACT.

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

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

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

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

130. 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.)

131. TRPA is violating its sacred Public Trust by continuously and routinely granting permits to wireless companies without first having conducted 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.

132. By violating the Public Trust, TRPA has violated the Compact.

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

SECOND CAUSE OF ACTION

BY FAILING TO PREPARE A COMPREHENSIVE PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT (EIS) ON THE DEPLOYMENT OF WIRELESS

1 *INFRASTRUCTURE THROUGHOUT THE TAHOE REGION, AS REQUIRED BY ARTICLE*
2 *VII, TRPA IS ACTING IN VIOLATION OF THE COMPACT.*

3 134. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

4 135. TRPA is based on an Interstate Compact established, approved, and partially
5 funded by Congress. The Compact is one of several controlling federal laws that apply to the
6 implementation of wireless infrastructure in the Tahoe Region.

7 136. If the TRPA seeks to exempt its planned wireless infrastructure program from its
8 obligations under the Compact, it must secure a special Act of Congress authorizing it to do so.
9 Moreover, TRPA must also comply with the Administrative Procedures Act (APA), the National
10 Environmental Policy Act (NEPA), the Clean Air and Water Acts, the Endangered Species Act,
11 the National Historic Preservation Act, and other federal statutes.

12 137. TRPA is organized under an interstate compact, established, approved, and
13 partially funded by Congress. As such, the Compact is federal law. TRPA is governed by
14 federal law, and TRPA is the functional equivalent of a federal agency. Federal agencies are
15 special government organizations set up for a specific purpose such as the management of
16 resources or national security issues. They are created to regulate industries, lands, or practices
17 that require close oversight or specialized expertise.

18 138. There is a strong federal interest to ensure that TRPA's operations comply with
19 the Administrative Procedures Act, NEPA, the Clean Air and Water Act, the Endangered Species
20 Act, the National Historic Preservation Act, and other federal statutes in the same manner as
21 other interstate compacts, including the Delaware River Basin Compact, the Potomac River
22 Compact, the Columbia River Gorge Compact, the New York-New Jersey Port Authority
23 Compact, the Colorado River Compact, the Arizona-California Boundary Compact, the Interstate

1 Compact on Placement of Children, the Interstate Forest Fire Suppression Compact, and the
2 Palisades Interstate Park Compact.

3 139. Although TRPA’s regulatory powers, authority, organization, structure, and duties
4 all stem from the Compact, TRPA itself, and in the exercise of its powers and authorities,
5 remains subject to all federal laws, including the Americans with Disabilities Act, the Fair
6 Housing Amendments Act, as well as the Constitution of the United States. TRPA has asserted
7 in earlier filings with this Court the erroneous interpretation that the Compact is the “sole
8 governing federal law.”

9 140. Piecemeal blanket permits to wireless companies allowing for the construction
10 and operation of an unlimited number of cell towers, small cell wireless facilities, and satellite
11 earth and base stations throughout the Tahoe Region is a major federal action as this term is
12 defined and interpreted by NEPA and many court decisions, as well as interpretations of the
13 Compact itself. Both NEPA and Article VII of the Compact require a complete and thorough
14 environmental impact and risk assessment by TRPA of this major federal action. On October 14,
15 2021, Appellants presented legal arguments and an extensive record referencing over 4,000
16 pages of environmental and scientific studies detailing the harms from wireless radiation
17 transmitted from cell towers and cell phones. The required NEPA evaluation should and must
18 include cumulative impacts. The tree cutting alleged above in advance of the public hearing on
19 the Verizon monopine cell tower project at the same site at 1360 Ski Run Boulevard, and the
20 inadequately regulated dumping of toxic microplastic monopine waste from that same site, are
21 specific instances of impermissible piecemealing.

1 141. Moreover, TRPA’s entire helter-skelter wireless deployment program must
2 comply with various risk assessments and permitting requirements under the above federal
3 statutes.

4 142. TRPA is openly defying and violating the Compact by maintaining that it is under
5 no legal obligation to conduct a comprehensive environmental assessment under its own rules
6 and ordinances pursuant to the Compact, or a NEPA environmental assessment, or to comply
7 with any of the other federal laws noted above. TRPA has not provided any evidence of a
8 reasoned decision making process comparable to a Negative Declaration, as it is required to do
9 under Article VII of the Compact, the TRPA Regional Plan, and TRPA’s Code of Ordinances for
10 the Verizon monopine project at 1360 Ski Run Boulevard or for the Connected Tahoe Plan.

11 143. Nor can TRPA delegate to private companies any of its statutory responsibilities,
12 as it is currently doing to private, self-interested commercial companies such as Verizon
13 Wireless, AT&T, and T-Mobile.

14 144. The Tahoe Prosperity Center’s Wireless Tahoe Initiative and Action Plan (also
15 known as the Connected Tahoe Plan) which is being encouraged and enabled by TRPA, is
16 governed by the Compact and is a major federal action as this term is understood under federal
17 law. The Telecommunications Act of 1996 does not and cannot preempt the TRPA from
18 conducting its own comprehensive environmental reviews of wireless projects under the
19 Compact, or NEPA, and TRPA is required by the Compact to do so in this case. A legal precept
20 well recognized by the courts is that federal laws are to be interpreted together and harmonized,
21 and federal regulatory agencies are to cooperate in setting standards and their enforcement based
22 on these harmonized interpretations. Moreover, the Telecommunications Act of 1996 contains a
23 broad “savings clause” that expressly provides: “NO IMPLIED EFFECT. -- This Act and the

1 amendments made by this Act shall not be construed to modify, impair, or supersede Federal,
2 State, or local law unless expressly so provided in such Act or amendments.”

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

4 **THIRD CAUSE OF ACTION**

5 *TRPA’S FAILURE TO MAKE REQUIRED FINDINGS TO PROTECT THRESHOLDS*
6 *VIOLATES THE TERMS OF THE COMPACT.*
7

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

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

15 148. Plaintiffs are informed and believe, and thereupon allege, that TRPA has never
16 properly assessed nor attempted to measure the costs of the adverse impacts of increased RFR
17 exposures resulting from hundreds or thousands of additional cell tower and antenna installations
18 upon the fragile environment of the Tahoe Region. The last Threshold Evaluation Report from
19 2015 is silent on the subject. TRPA is now overdue for another Threshold Evaluation, but again,
20 it appears the effects of RFR exposure to the environment will not be evaluated. TRPA seems
21 reluctant to do so, and if anything, is defiant in its refusal to look at the latest scientific
22 information available. Unless relief is granted, TRPA will continue to be blind to the effects of
23 RFR exposure on humans, flora, fauna, and the environment, and to its own obligations under
24 the Compact and the Regional Plan. Plaintiffs allege that dramatic adverse impacts have been

1 shown from RFR exposure and RFR facilities with respect to water quality, soil conservation,
2 vegetation, wildlife, scenic resources, and recreation. By way of example, aspen trees are a
3 declining indicator species for Stream Environment Zones (SEZ) in the Lake Tahoe Region. The
4 vegetation in SEZs is crucial to the process of stripping nutrients out of ground and surface
5 waters before being discharged into Lake Tahoe; the aspen fall foliage is a tremendous scenic
6 asset in the Lake Tahoe Region. Nutrients are strongly implicated in the algal growth that
7 decreases the clarity of the lake. According to peer-reviewed studies, RF visibly damages the
8 health of aspen trees, thereby affecting not only the vegetation threshold, but water quality and
9 scenic thresholds as well. Similarly, studies show significant adverse impacts on endangered
10 species, birds, bees, wildlife, and dozens more of the 178 indicators.

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

12
13 **FOURTH CAUSE OF ACTION**

14 *TRPA'S SEGMENTED AND PIECEMEAL POLICIES AND PRACTICES VIOLATE THE*
15 *COMPACT AND TRPA'S OWN REGIONAL PLAN, IMPLEMENTING REGULATIONS AND*
16 *ORDINANCES, AND WELL-ESTABLISHED CALIFORNIA, NEVADA, AND FEDERAL LAND*
17 *USE PLANNING LAWS REQUIRING THAT TRPA'S RESULTING ACTIONS BE COHERENT,*
18 *INTEGRAL, AND CONSISTENT WITH THE REGIONAL PLAN, THE COMPACT, AND TRPA*
19 *ORDINANCES.*

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

21 151. TRPA has produced a series of plans, databases, and mapping pursuant to its
22 Regional Plan for the protection, conservation, and balanced development of the Tahoe Region.
23
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1 152. A well-established principle under California, Nevada, and federal jurisprudence
2 is that all subsequent decisions taken by the lead regulator at Tahoe, in this case, TRPA, and the
3 counties, cities, and other political subdivisions, must be consistent, and not in conflict with the
4 spirit and substance of the Regional Plan.

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

8 154. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

9
10 **FIFTH CAUSE OF ACTION**

11 *DEFENDANTS CITY OF SOUTH LAKE TAHOE, TAHOE REGIONAL PLANNING*
12 *AGENCY, AND VERIZON ARE CONTINUOUSLY VIOLATING THE FEDERAL AND STATE*
13 *CLEAN WATER ACTS, AND IN PARTICULAR THE ZERO DISCHARGE STANDARD, BY*
14 *ALLOWING THE DISCHARGE OF HAZARDOUS MONOPINE WASTE ONTO THE LANDS*
15 *SURROUNDING, AND THE WATERWAYS LEADING INTO LAKE TAHOE.*

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

17 156. Each Defendant in its own way is violating federal and state law. Defendant City
18 of South Lake Tahoe has issued monopine permits without any assessment or awareness of the
19 discharge of monopine waste, and has failed to monitor these continuous discharges, which
20 occur at every single site. Defendant TRPA also has issued monopine permits without any
21 assessment or awareness of the discharge of monopine plastic waste. Once Plaintiffs brought this
22 serious environmental hazard to TRPA's attention in connection with the appeal before the
23 TRPA Governing Board of the 1360 Ski Run Boulevard permit, TRPA adopted a pathetic
24 mitigation plan requiring Verizon to inspect and clean up the site twice per year during snow-

1 free periods. This plan fails to comply with the Zero Discharge standard explicit in the Basin
2 Plan prohibitions discussed below. Moreover, by its nature, the fall zone for this waste extends
3 beyond the 1360 Ski Run Boulevard site, onto surrounding private and/or public lands over
4 which Verizon has no right of access, and the waste may be transported by water and wind into
5 storm water drains, drainage basins, and eventually into the Lake, without Verizon having any
6 ability to capture it.

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

12 158. Trash Provisions applicable to all California state waters amend and supersede all
13 prior regional Water Quality Control Plan (Basin Plan) “trash” requirements with a uniform
14 definition for “trash,” and a plan of implementation. See full details at [Plans and Policies |](#)
15 [California State Water Resources Control Board](#): “ISWEBE Plan - The following adopted
16 amendments will be incorporated into the Water Quality Control Plan for ISWEBE of California:
17 Part 1: Trash Provisions, adopted on April 7, 2015 (Resolution No. 2015-0019), effective on
18 December 2, 2015 (OAL approval letter).” The Basin Plan for the Lahontan region, including
19 Lake Tahoe, includes additional long-standing prohibitions against solid and industrial waste
20 discharges to land and waters.

21 159. With the Trash Provisions, California has a recent (2015) statewide Water
22 Quality Objective (WQO) for trash, which considered together with “beneficial uses”
23
24

(municipal, recreation wildlife, etc.), comprise water quality standards, which may also be implemented through prohibitions.

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

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

162. The monopines in the open environment are shedding plastic branches and needles. Discarded plastic needles fit the description of waste “products.” The whole regulation is aimed at reducing plastic and other trash pollution in California waters, and is directed at municipal storm water managers with a timeline to get all trash out of storm water discharges with “full capture systems,” or alternatives deemed equivalent to full capture system controls.

163. The statewide prohibition against trash is: “2. Prohibition of Discharge. The 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 discharge shall be achieved as follows: . . . d. Dischargers without NPDES permits, WDRs, or waivers of WDRs must comply with this prohibition of discharge.”

164. Deposition to lands is included in the prohibition if the trash can get into overland surface runoff or drainages and streamways. Thus, for non-municipal, unregulated dischargers such as Verizon, the Trash Provisions took effect on Dec. 2, 2015, including the prohibition (which is enforceable with administrative civil liability). In addition, TRASH shall not be present

1 in waters in amounts that adversely affect beneficial uses or cause nuisance, per the WQO.

2 Affecting a beneficial use includes, for example, making waters unsafe for drinking or

3 swimming or contaminating wildlife habitat. Nuisance is codified.

4 165. The discharges of plastic trash that will inevitably occur from the Verizon
5 monopine once built at 1360 Ski Run Boulevard will create a public nuisance. Moreover, the
6 existing monopines in the Lake Tahoe Basin have been shedding their PVC branches and PVC
7 needles, resulting in illegal TRASH discharges which constitute public nuisances pursuant to CA
8 Water Code section 13050:

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

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

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

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

16 166. There is no reasonable basis to find that toxic and other plastic wastes discharged
17 from the proposed Verizon monopine tower at 1360 Ski Run Boulevard can be managed solely
18 on the Project site/property and, indeed, no such findings of fact have been made. Nothing has
19 been provided by TRPA to refute our common-sense findings, other than assertions without a
20 basis in fact, assertions that are arbitrary and capricious. Clearly, toxic and other solid wastes
21 discharged on the wind and otherwise into the surrounding properties and waters may be
22 injurious to health or obstruct the free use of property, such as when the Water Board decides to
23 show up, belatedly, to require costly assessments and cleanups for prohibited discharges. A
24 worse thing occurs when the contamination and pollution is unknown, uncontrolled, and affects

1 the waters of the Lake Tahoe Basin, and the public is not made aware of the issue. These
2 potentially contaminated lands and waters include the sites where monopine facilities are located
3 on or near protected public lands, such as those the United States Forest Service-Lake Tahoe
4 Basin Management Unit oversees, the public conservation lands and streamways of the
5 California Tahoe Conservancy, the City of South Lake Tahoe streets, rights-of way, storm water
6 sewers, and the surrounding private properties and streamways. By denying Plaintiffs' appeal –
7 which expressly addresses the serious imminent hazard of microplastic pollution and illegal solid
8 waste discharge from already existing monopines in the Lake Tahoe Basin and the imminent
9 threat of such illegal discharges from Verizon's monopine at 1360 Ski Run Boulevard, if built –
10 and nonetheless allowing for the issuance of the TRPA permit for Verizon's monopine at 1360
11 Ski Run Boulevard, the TRPA Governing Board is giving the green light to illegal industrial-
12 scale plastic waste discharges from among the most-profitable industries in the nation to be
13 disposed of into the surrounding lands and waterways (or a considerable portion thereof), while
14 turning a blind eye to the very strict pollution and contamination control laws TRPA is obliged to
15 enforce under the Compact. Verizon may claim to comply with all laws as a matter of course, yet
16 they have provided no report of the proposed discharge to the Water Board, as California Water
17 Code section 13260 requires. By its actions and failures to act, TRPA violates the Compact,
18 Article VI(j)(5).

19 167. WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
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1 **SIXTH CAUSE OF ACTION**

2 *TRPA'S OVERALL FAILURE TO CONDUCT ANY COMPREHENSIVE RISK*
3 *ASSESSMENT OF THE DOCUMENTED HAZARDS OF MACRO TOWER PLACEMENTS IN*
4 *WILDFIRE-PRONE AREAS, AND ITS SPECIFIC PIECEMEAL APPROVAL OF VERIZON'S*
5 *1360 SKI RUN BOULEVARD MACRO TOWER APPLICATION, CONSTITUTE VIOLATIONS*
6 *OF TRPA'S LEGAL OBLIGATIONS UNDER THE COMPACT.*

7 168. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

8 169. The heavily wooded Tahoe Region is a tinderbox. Wildfires endanger the
9 National Public Trust Heritage and all of the investments federal and other agencies have made
10 for environmental protection and restoration at Lake Tahoe. The massive, reckless proliferation
11 of cell towers which TRPA has enabled through its wrongful issuance of permits presents a
12 unique fire risk from malfunctions, explosions, and lighting strikes. The recent Caldor wildfire,
13 which burned 221,835 acres during the Summer of 2021 and narrowly missed burning through
14 South Lake Tahoe, confirms this significant public hazard. Peer-reviewed studies show that cell
15 towers attract lightning, and notwithstanding the lightning rods atop the towers, thereby increase
16 wildfire risk. Peer-reviewed studies also show that RFR causes conifer trees to greatly increase
17 production of terpenes. Terpenes are highly flammable hydrocarbons, making each conifer tree
18 subjected to RFR more flammable. Cell tower fires can occur due to a wide variety of causes,
19 human and natural, and present unique firefighting challenges in remote and inaccessible areas
20 (i.e., ridgetops).

21 170. TRPA has performed absolutely no programmatic planning or evaluation of the
22 wildfire risks of RFR emitting small cell and macro RFR facilities. TRPA has utterly failed to
23 adopt standards (other than limited scenic standards for public utilities generally) to guide new
24

1 RFR facility rollout, the overall environmental impact of cell tower proliferation, or the specific
2 fire risks directly related thereto. TRPA has encouraged, funded, and promoted a wireless
3 transmission infrastructure, in cahoots with the industry-sponsored and supported Tahoe
4 Prosperity Center, while abandoning its obligation to look impartially and critically at the
5 available science, which confirms the serious environmental threats from the very projects that it
6 is permitting and actively promoting.

7 171. The removal of 31 trees that occurred at 1360 Ski Run Boulevard during the
8 Summer of 2020, without any consideration of the pending Verizon application for the proposed
9 monopine tower at the very same site, shows the perils of piecemealing – the very opposite of the
10 Compact’s requirement of coordination.

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

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

16 **SEVENTH CAUSE OF ACTION**

17 *TRPA’S FAILURE TO IDENTIFY AND TO EXPLORE IMMEDIATELY AVAILABLE*
18 *VIABLE NON-WIRELESS INFRASTRUCTURE ALTERNATIVES VIOLATES THE COMPACT*
19 *AND TRPA’S OWN REGIONAL PLAN.*

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

22 175. There is a substantial body of evidence and practice that an optical fiber-to-the-
23 premises infrastructure offers an immediately available, proven, safe, secure, environmentally
24 protective, far more energy-efficient, cost-effective alternative to the currently implemented

1 wireless infrastructure. Indeed, as [*Irregulators v. FCC*](#) , 953 F.3d 78 (D.C. Cir. 2020), has
2 documented, there is a strong likelihood that U.S. taxpayers, including Tahoe residents, have
3 already paid for this optical fiber wired infrastructure, and local rate payers have been
4 overcharged by telecom companies to subsidize wireless to the competitive disadvantage of
5 optical fiber wired companies. Verizon and the other telecom purveyors should bear the cost of
6 the optical fiber build-out since they have been overcharging local ratepayers for years for this
7 service, but have not used the funds for it.

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

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

1 securely, faster, and cheaper than over wireless infrastructure, thereby substantially reducing the
2 need for wireless infrastructure (as well as the increased energy to power it), and the concomitant
3 RFR and other harms created by wireless infrastructure can be mitigated.

4 178. TRPA has never considered the perverse economics of the present regulatory
5 subsidy it is actively extending to the wireless companies.

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

10 180. In particular, in denying Plaintiffs' appeal with respect to Verizon's 1360 Ski Run
11 Boulevard monopine application, TRPA failed to consider any fiber optic alternative solution to
12 Verizon's proposed macro tower application and purported data capacity needs.

13 181. TRPA's failure to consider any fiber optic to the premises and workplace
14 alternatives in connection with Verizon's proposed monopine application violates the Compact.

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

16 **EIGHTH CAUSE OF ACTION**

17 *THE ENTIRE COURSE OF ACTION CONCERNING WIRELESS FACILITY PERMITS*
18 *AND POLICIES BY OFFICERS AND DIRECTORS OF TRPA, WHO CONCURRENTLY SERVE*
19 *OR HAVE SERVED AS DIRECTORS OF THE TAHOE PROSPERITY CENTER, REFLECTS*
20 *UNDISCLOSED CONFLICTS OF INTEREST, VIOLATES CALIFORNIA'S OPEN MEETING*
21 *LAWS, AND ALL ACTIONS AND DECISIONS VOTED ON BY SAID DIRECTORS MUST BE*
22
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1 *VOIDED AND REMANDED FOR RECONSIDERATION BY NON-CONFLICTED OFFICERS*
2 *AND DIRECTORS OF TRPA.*

3 183. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

4 184. Plaintiffs are informed and believe, and thereon allege, that if any comprehensive
5 planning has been done at all in the Tahoe Region regarding the proliferation of wireless
6 facilities, it was done behind closed doors under the auspices of the Tahoe Prosperity Center
7 (“TPC”). TPC purports to be a federally registered 501(c)(3) not-for-profit organization, and is
8 funded in part directly by governmental entities with regulatory authority in the Tahoe Region,
9 including TRPA, El Dorado County, Placer County, and the City of South Lake Tahoe. TPC’s
10 Board of Directors included (until January 2021) two members of the TRPA Board of
11 Governors, Defendant Novasel (currently an El Dorado County Supervisor) and Defendant
12 Berkbigler (who, until 2021, was a member of TRPA’s Board and also a Washoe County
13 Supervisor; she lost her re-election bid for Washoe County Supervisor in the November 3, 2020
14 election, and thus lost her Board seat on TRPA’s Governing Board as well), TRPA’s Executive
15 Director, Defendant Marchetta, and a former TRPA employee, and the Mayor of the City of
16 South Lake Tahoe, Devin Middlebrook, who served as a City Council Member and Mayor *Pro*
17 *Tem* during the course of these proceedings. The Verizon tower project at 1360 Ski Run
18 Boulevard is located in South Lake Tahoe.

19 185. TPC has as a core part of its primary mission, reflected in its “Connected Tahoe”
20 Project, the goal to bring the highest levels of broadband and cellular service to the Tahoe
21 Region. Plaintiffs are informed and believe, and thereon allege, that as part of its planning
22 process, TPC solicited each of the primary telecoms, including Defendant Verizon, to provide
23 TPC with the telecoms’ preferred locations for all cell towers and other wireless facilities. This
24

1 information was provided on the understanding that it would not be made public to protect the
2 competitive advantage of each telecom. TPC then prepared internal documents, including maps,
3 which included the aggregated wish lists of each telecom in terms of project sites and their
4 priority in terms of timing.

5 186. For at least the past several years, TPC has actively lobbied the regulators in the
6 Tahoe Region, including the City of South Lake Tahoe and the TRPA, to streamline their
7 regulatory processes to allow each telecom, including defendant Verizon, to implement their
8 wireless infrastructure projects as quickly as possible. Moreover, TPC, by its Chief Executive
9 Officer, Heidi Hill-Drum, has aggressively campaigned for the approval of specific cell towers
10 and wireless transmission facilities throughout the Tahoe Region, including the proposed
11 Verizon cell tower at 1360 Ski Run Boulevard, which is one of the centerpieces of the instant
12 litigation. For example, on August 5, 2019, the day before the scheduled South Lake Tahoe City
13 Council hearing on Plaintiff Eisenstecken's appeal of the Planning Commission's grant of a
14 special use permit for the Verizon cell tower at 1360 Ski Run Boulevard, Heidi Hill-Drum sent
15 an email to members of the City Council, including Devin Middlebrook, who simultaneously
16 serves as a Director of TPC (and who, despite this obvious conflict of interest, never recused
17 himself from the decision-making). In her email, Ms. Drum writes:

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

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

11 187. Notably, the April presentation referred to in Ms. Drum's August 5, 2019 email
12 was a lengthy April 2, 2019 presentation Ms. Drum organized for the South Lake Tahoe City
13 Council to address broadband and wireless communications in the Tahoe Region and TPC's
14 Connected Tahoe project to expand such coverage. At this presentation, Ms. Drum spoke along
15 with Tellus Venture Associates, who Ms. Drum introduced as TPC's independent expert, and
16 representatives from Verizon, T-Mobile, and AT&T. Ms. Drum stated that the three
17 telecommunications companies are all TPC's "partners" in the Connected Tahoe project. Ms.
18 Drum and TPC serve as the telecommunications companies' cheerleader to the regulators,
19 legislators, and the public, touting and seeking approval of their expansive wireless infrastructure
20 deployment plans.

21 188. Ironically, when publicly challenged by residents concerned about the dangerous
22 "rubber-stamping" of permit approvals for cell towers and other wireless infrastructure
23 facilitated by TPC's "unholy" seeding of several of its Directors on the TRPA Board and
24 Executive staff and the South Lake Tahoe City Council, TPC cries foul. In a press release

1 reported in SouthTahoeNow.com, dated April 16, 2021, Frank Gerdeman, TPC's Chairman,
2 asserted:

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

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

15 190. In that same press release, Ms. Drum complains: "I have been publicly attacked
16 for more than a year -- simply for doing my job and communicating an opinion that differs from
17 plaintiffs in this case. This intimidation has also continued against TPC board members, as well
18 as numerous other community leaders since each of us spoke up at a City Council meeting and
19 stated that better cell coverage is needed in the Lake Tahoe Basin." Ms. Drum, too, is mistaken.
20 Public officials simply have no business sitting as directors of organizations which lobby
21 aggressively before them in their official capacities. That's just basic ethics, enforced by conflict
22 of interest policies and laws of TRPA, the City of South Lake Tahoe, the Compact, and federal
23 and state law.

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

13 192. TPC seeds its Board of Directors with Directors who simultaneously are
14 employed by government regulators and legislative bodies that issue the necessary permits for
15 wireless infrastructure, including cell towers and small cell facilities in the Tahoe Region. As
16 alleged above, besides Mr. Middlebrook, TPC's Board includes Joanne Marchetta, the Executive
17 Director of TRPA, and Sue Novasel, El Dorado County Supervisor. Until January 2021
18 (following her November 2020 election loss), Marsha Berkgigler, served as a Washoe County
19 Supervisor while she was both a TPC Director and a Director of TRPA. On information and
20 belief, none of these TPC Directors recused themselves from permit decision-making or
21 legislating regarding cell towers and wireless infrastructure when sitting in their official
22 government capacities. As Executive Director of TRPA, Ms. Marchetta exercises tremendous
23 sway in setting the TRPA's agenda, driving its priorities, overseeing permit applications,

1 projects, and staff, and working with local, State, and federal government representatives. Given
2 TPC's strong positions supporting ever-expanding wireless infrastructure deployment throughout
3 the Tahoe Region and equally strong support for Verizon, T-Mobile, and AT&T, TPC's
4 Directors should have recused themselves from any participation in all such matters when sitting
5 in their official government capacities because of the blatant conflict of interest presented, but
6 they each failed to do so. Indeed, they never should have served as TPC Directors at all while
7 occupying official government jobs. In particular, Defendants Marchetta, Novasel, and
8 Berkgler should have recused themselves from any and all TRPA matters involving wireless
9 facilities and cell towers, but they each failed to do so.

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

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

18 (A) Any business entity operating in the region in which the member
19 or employee has a direct or indirect investment worth more than
20 \$1,000.

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

23 (C) Any source of income attributable to activities in the region,
24 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

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

No member or employee of the agency shall make, or attempt to influence, an agency decision in which he knows or has reason to know he has an economic interest. Members and employees of the 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.

194. Chapter 8 of TRPA's Rules of Procedure echo the above requirements, and at Section 8.4, at least as to employees, clarifies that the intent is to prevent anything that gives rise to "an actual conflict of interest, or that creates the appearance of an actual conflict of interest." Plaintiffs are informed and believe that TPC is functioning as a business entity, notwithstanding its non-profit status, at least in part to advance the interests of the telecom industry. As members of TPC's Board of Directors, Defendants Marchetta, Berkbigler, and Novasel owe a fiduciary duty to TPC that creates an actual conflict and/or an appearance of a conflict of interest with their fiduciary duties as members of the Board or employees of TRPA to follow the dictates of the Compact and the Regional Plan. TRPA's Rules of Procedure also prohibit *ex parte* communications for its Board members when they act upon a matter in their quasi-judicial capacity. To the extent that a TPC Board member, or any other TRPA Board member, receives specific information about preferred wireless sites and the reasoning therefore, prior to a hearing

1 in their capacity as a TRPA Board member, that information must be disclosed or the TRPA
2 Board member is in violation of Section 2.15.1 of the Rules of Procedure. That provision
3 requires “Prior to taking action on a quasi-adjudicative matter, a Board member shall publicly
4 disclose on the record the existence and essential content of any material *ex parte*
5 communications on the matter under consideration.” TPC and its CEO, Heidi Hill-Drum,
6 received proprietary information from at least Verizon, T-Mobile, and AT&T about each of their
7 preferred sites for cell towers in the Tahoe Basin. Ms. Drum agreed to keep the identities of the
8 companies anonymous, but prepared for internal use a map of these preferred cell tower sites.
9 Ms. Drum set forth this information in an email to Plaintiff Eisenstecken, dated October 15,
10 2019, in which she wrote:

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

18 They are also a few years old now as we started this project five years ago.
19 Plaintiffs are informed and believe that Defendants Berkbigler and Novasel and any other TRPA
20 Board members who have received such information have not complied with this requirement.

21 195. Defendant Marchetta is TRPA’s Executive Director, and therefore an employee of
22 TRPA. According to TRPA’s Rules of Procedure, the Executive Director administers all affairs
23 of 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

1 Procedure at Section 1.5, and Section 5.11.) Because Defendant Marchetta is also on the Board
2 of TPC, her recommendations to approve applications by telecoms, at the very least, “create the
3 appearance of an actual conflict of interest” (Rules of Procedure at Section 8.4).

4 196. Plaintiffs Eisenstecken and Benedict allege that Defendants stonewalled, then
5 harassed them, simply because these Plaintiffs, in their exercise of their First and Fourth
6 Amendments and other statutory rights, objected in a public hearing to cell tower installations by
7 presenting science-based factual information of their adverse impacts. Plaintiffs were branded by
8 these Defendants, who are under a blatant conflict of interest, as “conspiracy theorists.” They
9 were referred to as “crazies.” When Ms. Eisenstecken and her neighbors tried to reason with
10 Defendant Nel, he told them to “go to hell” and uttered other profane epithets. On another
11 occasion, when a scenic consultant was taking pictures from city property, Defendant Nel called
12 the police, who then sent an imposing police officer who threatened Ms. Eisenstecken’s 81-year-
13 old father, George. This abuse of process and climate of harassment has been actively
14 encouraged, aided, and abetted by TRPA which has permitted this intolerable and degrading
15 situation to continue. It is a blatant violation of Plaintiffs’ First and Fourteenth Amendment and
16 California Constitution (Article I. Section 7) Due Process and Freedom of Expression rights. As
17 set for the in greater detail in the NINTH CAUSE OF ACTION, Plaintiffs allege that this entire
18 course of conduct by Defendant TRPA is in violation of Ms. Eisenstecken’s and Mr. Benedict’s
19 civil rights under the Americans with Disabilities Act, and other federal and state laws that
20 guarantee the civil rights of disabled persons, in particular the right to freely express grievances
21 and to be free from such intimidation and retaliation. In light of the fact that Mr. Benedict, who
22 has been subjected to constant irradiation from a Verizon small cell facility, has recently been
23 diagnosed with a serious medical condition, and is undergoing intensive treatments and

1 convalescence, Ms. Eisenstecken and her family were in reasonable apprehension that their lives
2 would be in jeopardy if and when the Verizon monopine were to be built at 1360 Ski Run
3 Boulevard. As a result, Ms. Eisenstecken convinced her father to sell his property and home
4 adjacent to 1360 Ski Run Boulevard at a distressed price once she realized that Verizon likely
5 would imminently receive TRPA approval for the monopine.

6 197. Plaintiffs are informed and believe that paid elected government officials,
7 appointed government officials, and key staff members believe it is in their best interests to
8 appear to support TPC's agenda in order to maintain the economic advantages of employment
9 and the support of the pro-economic growth faction in the community who are politically
10 powerful with regard to winning elections and plum political appointments. This inherent
11 conflict of interest is magnified by voluntarily agreeing to be on the Board of an unapologetically
12 pro-telecom lobbying business entity – the TPC which, as alleged above, is officially tied to the
13 TRPA in the TRPA's Regional Plan as the chief raison d'être of the Prosperity Plan itself. Once
14 again, the façade of TPC as a publicly-spirited, tax-exempt, non-profit entity is directly
15 contradicted by the promotional actions the TPC takes on behalf of the telecom companies.
16 Indeed, the TPC is the telecom companies' regional cheerleader-in-chief in the Tahoe Region.

17 198. By way of example, this conflict of interest likely inhibits conflicted individuals
18 from calling for a proper needs assessment, including a forensic audit of the extent of existing
19 fiber optic infrastructure, who owns it, who paid for it, and whether such data and
20 communications services can be provided without more wireless facilities that create adverse
21 impacts. Under Subsection (D) of Article III(a)(5), therefore, Defendants Marchetta, Berkbigler,
22 and Novasel have an economic interest that is required to be disclosed. Plaintiffs are informed
23 and believe that no such disclosures have been made as required. Finally, each of the Defendants

1 has an economic interest in keeping his or her job. It appears they have been installed to do the
2 telecom companies' bidding and likely would be immediately replaced if they started to act
3 independently.

4 199. TPC is subject to the Brown Act, California Government Code Section 54950, *et*
5 *seq.*, also commonly referred to as California's "open meeting laws." Under California
6 Government Code Section 54952(c)(1)(B), TPC is a "legislative body" if it "[r]eceives funds
7 from a local agency and the membership of whose governing body includes a member of the
8 legislative body of the local agency appointed to that governing body as a full voting member by
9 the legislative body of the local agency." As previously alleged, TPC receives funding from
10 multiple local agencies, and one or more of those agencies have formally appointed Supervisors
11 and/or Council members as full voting members of the TPC Board. Accordingly, the TPC is
12 subject to the Brown Act and/or its Nevada counterpart open meetings laws, whichever is
13 stricter. (TRPA Rules of Procedure, Section 2.6). TPC has not complied with these laws, even
14 though it openly makes recommendations and creates policy that it lobbies for and in close
15 collaboration with TRPA and local jurisdictions, including South Lake Tahoe City, within the
16 Tahoe Region. This is precisely the type of conduct the open meeting laws are designed to
17 prohibit. By meeting in closed session – illegally – TPC avoids public disclosure of its wireless
18 infrastructure plans and those of its telecom patrons, and its Directors Marchetta, Novasel, and
19 Berkbigler, who serve(d) concurrently as TRPA Officers or Governors, were therefore able to be
20 lobbied, illegally and outside of the public's scrutiny, by the telecoms and their supporters over
21 matters which the TRPA regulates and is supposed to be a fair and independent arbiter protecting
22 the Tahoe environment.

1 200. Plaintiffs therefore allege that all decisions and actions made by TRPA regarding
2 wireless projects and/or policies, from the date that Defendants Marchetta, Novasel and
3 Berkbigler began their conflicted activities, up to the present time, at either the staff, Hearings
4 Officer or Board level, are flawed and void as of the date of final action on the project in
5 question, including specifically the TRPA Governing Board’s denial of Plaintiffs’ appeal on
6 March 23, 2022.

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

8
9 **NINTH CAUSE OF ACTION**

10 *SOUTH LAKE TAHOE’S AND TRPA’S FAILURES TO DEVELOP COHERENT*
11 *POLICIES AND PROGRAMS TO PROTECT PERSONS WITH RECOGNIZED DISABILITIES,*
12 *AND THEIR REFUSAL TO REASONABLY ACCOMMODATE PERSONS SUFFERING FROM*
13 *DISABILITIES, INCLUDING PLAINTIFFS EISENSTECKEN AND BENEDICT, VIOLATE THE*
14 *AMERICANS WITH DISABILITIES ACT OF 1990, THE FAIR HOUSING AMENDMENTS ACT*
15 *(FHAA) OF 1989, (42 U.S.C. 3601 ET SEQ.), AND OTHER FEDERAL AND STATE LAWS.*

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

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

22 204. The Americans with Disabilities Act of 1990 (“ADA”) and the Fair Housing Act
23 Amendments of 1988 (“FHAA”), including Title II of the ADA, 42 U.S.C. §§12131-12134 (Title

1 II), prohibit discrimination on the basis of disability by state and local governments and public
2 entities. 28 C.F.R. §35.101(a). Plaintiffs Benedict and Eisenstecken are both qualified
3 individuals with a disability, also known as persons with a handicap. The primary focus under
4 Title II is whether a “public entity,” which includes Verizon, the City of South Lake Tahoe, and
5 TRPA, has complied with its obligations to provide an accommodation when it is reasonable to
6 do so, not whether the individual meets the definition of having a “disability.” 28 C.F.R. §§
7 35.101(b), 35.108(a)(2)(i).

8 205. Verizon is the owner and operator of the small cell facility in the vicinity of 3565
9 Needle Peak Road, which is bombarding Plaintiff Benedict’s property, house, and body with
10 unwanted RFR contamination against his will, and will be the owner and operator of the
11 proposed cell tower at 1360 Ski Run Boulevard, now approved. Verizon has repeatedly asserted
12 that it is a public utility, and has claimed regulatory and financial benefits based on its public
13 utility status. Consequently, Verizon is a public entity within the meaning of the ADA and the
14 FHAA, or is estopped from denying that it is a public entity. South Lake Tahoe and TRPA, as
15 governmental bodies, are public entities.

16 206. The FHAA requires public entities, which include Verizon, the City of South
17 Lake Tahoe, and TRPA, to “make reasonable accommodations in rules, policies, practices, or
18 services, when such accommodations may be necessary to afford such a person equal
19 opportunity to use and enjoy a dwelling.” 42 U.S.C. §3604(f)(3)(B). Congress intended this
20 language to apply to a broad range of circumstances, including avoiding “implementing land-use
21 rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise
22 make unavailable or deny dwellings to persons because of ... handicap.” 24 C.F.R.
23 §100.70(d)(5).

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

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

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

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

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

17 212. In similar vein, Verizon’s small cell facility, installed and operating
18 approximately 130 feet from Plaintiff Benedict’s house, is transmitting extremely high levels of
19 RFR onto Plaintiff Benedict’s property, infiltrating his house and his body against his will, as
20 shown by the scientific measurements taken by an independent professional certified by the
21 Building Biology Institute using advanced scientific equipment. Plaintiff Benedict’s
22 independent wireless radiation specialist and his chief treating physician have both opined that
23 the levels of radiation bombarding Plaintiff Benedict’s body and property are inflicting serious

1 bodily harm, and his physician believes, in her medical opinion, that continuous exposure to
2 these levels of wireless radiation poses a substantial, and perhaps an existential, threat to Plaintiff
3 Benedict's health given his precarious medical condition. Plaintiff Benedict lacks the financial
4 means to move elsewhere, nor should he have to. Besides being injured by Verizon's
5 transmission of unwanted wireless radiation, Plaintiff Benedict is severely restricted in his ability
6 to use and enjoy his property and his residence. Yet Verizon has callously rejected Plaintiff's
7 request for reasonable accommodation, which simply seeks to remove that single small cell
8 facility from a location where it is causing Plaintiff grievous injury. The cost of moving said
9 small cell facility to Verizon is infinitesimal, while the costs being imposed by Verizon on
10 Plaintiff Benedict are irreparable -- indeed, his life is placed in jeopardy in the name of corporate
11 greed. The balance of equities tips decidedly in Plaintiff's favor. Verizon has violated the ADA
12 and FHAA, and is liable for said violations.

13 213. Both TRPA and South Lake Tahoe issued special use permits allowing Verizon to
14 construct and operate the small cell facility in the vicinity of 3565 Needle Peak Road. Both
15 TRPA and South Lake Tahoe are empowered to revoke or rescind the special use permits or
16 impose conditions upon the special use permits in order to prevent harm to public health and
17 safety. Because Plaintiff Benedict has demonstrated in his request for reasonable
18 accommodation to each of TRPA and South Lake Tahoe the serious harms he is suffering and
19 will continue to suffer on account of the RFR transmissions emanating from the small cell
20 facility in the vicinity of 3565 Needle Peak Road, TRPA and South Lake Tahoe are required
21 under the ADA and FHAA to grant him reasonable accommodation so that he may continue to
22 reside in his dwelling. Such reasonable accommodation in this instance requires Verizon to
23 remove the offending small cell facility. Instead of considering and granting his request for

1 reasonable accommodation, TRPA and South Lake Tahoe simply ignored it and responded that
2 they are legally unable to do anything, despite the exigent circumstances. As such, they have
3 violated the ADA and FHAA and are liable for such violations.

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

16 215. The special sensitivity and vulnerability of children to RFR exposure at home and
17 in schools is well documented.

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

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

10 218. Likewise, South Lake Tahoe has a legal obligation to address the vulnerability of
11 disabled persons to RFR exposure, and to develop and to implement guidelines and regulations
12 specifying the procedures for reasonable accommodation for disabled persons to be implemented
13 by the City. But the City is refusing to do so, wrongly saying its hands are tied legally.

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

15
16 **TENTH CAUSE OF ACTION**

17 *DEFENDANTS TRPA'S, SOUTH LAKE TAHOE'S, AND VERIZON'S REFUSAL TO*
18 *EXTEND A REASONABLE ACCOMMODATION TO REMOVE THE SMALL CELL FACILITY*
19 *TRANSMITTING EXCESSIVE RFR ONTO PLAINTIFF BENEDICT'S PROPERTY ARE*
20 *ALLOWING A PUBLIC NUISANCE, AND DEFENDANT TRPA, SOUTH LAKE TAHOE, NEL,*
21 *AND VERIZON'S REFUSAL TO EXTEND A REASONABLE ACCOMMODATION TO*
22 *PREVENT THE INSTALLATION OF A DANGEROUS 112-FOOT TALL MONOPINE CELL*
23
24

1 *TOWER 1,000 FEET FROM PLAINTIFF BENEDICT'S PROPERTY WILL RESULT IN A*
2 *PUBLIC NUISANCE, A TORTIOUS ACT UNDER CALIFORNIA AND NEVADA LAW.*

3 220. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

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

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

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

11 The defendant, by acting or failing to act, created a condition or permitted a
12 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
13 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,
14 or basin, or any public park, square, street, or highway; or was a fire hazard/specify
other potentially dangerous condition plaintiff's property;

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

19 224. The second element of public nuisance is that the condition affects a substantial
20 number of people at the same time. The small cell facility in the vicinity of 3565 Needle Peak
21 Road affects Mr. Benedict and his guests as well as his neighbors and their guests, and any
22 workers or visitors to the neighborhood. Overall, the installation of cell towers and antennas by
23 Verizon and other telecom companies in close proximity to human habitation and in sensitive
24

1 ecosystems is endangering the lives of hundreds, potentially thousands of residents of the Tahoe
2 Region.

3 225. The third element of public nuisance is that an ordinary person would be
4 reasonably annoyed or disturbed by the condition. The dangers facing Plaintiff Benedict on
5 account of the wireless radiation being transmitted from the small cell facility in the vicinity of
6 3565 Needle Peak Road are a matter of life and death.

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

14 227. The fifth element of public nuisance is that Plaintiffs did not consent to
15 Defendants' conduct. Here, Plaintiff Benedict has complained to Defendant Verizon about its
16 conduct and has sought the cessation of the unwanted wireless radiation onto his property.
17 Plaintiff Benedict has repeatedly objected in TRPA hearings and at hearings before the City
18 Planning Commission and City Council about the placement of these cell towers and small cell
19 facilities in residential neighborhoods, including his own.

20 228. The sixth element of public nuisance is that Plaintiff suffered harm that was
21 different from the type of harm suffered by the general public. Plaintiff Benedict clearly has a
22 unique harm due to his unusual and severe medical condition which is especially exacerbated by
23

1 exposure to wireless radiation. Each person's harm from RFR contamination, based on her or his
2 disability, is unique.

3 229. The seventh element is that Defendant's conduct was a substantial factor in
4 causing plaintiff's harm. Here, Verizon's transmission of wireless radiation from its small cell
5 facility in the vicinity of 3565 Needle Peak Road is the sole cause of Plaintiff Benedict's harm.

6 230. Defendant Verizon is well aware, and cannot claim ignorance of the foreseeable
7 harms that it is committing by causing a tortious nuisance against Plaintiff Benedict.

8 231. During the past two years, Defendants TRPA and the City of South Lake Tahoe
9 permitted, enabled, and encouraged this tortious course of conduct.

10 232. For the above reasons, Plaintiffs Benedict is asking this Court to prevent and
11 enjoin these harms that are well documented, foreseeable, and irreparable, for which monetary
12 relief cannot offer adequate and fair compensation.

13 233. Plaintiff Benedict seeks monetary damages, and punitive damages because of the
14 intentional and willful nature of the nuisance.

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

16 **ELEVENTH CAUSE OF ACTION**

17 *DEFENDANT TRPA'S, SOUTH LAKE TAHOE'S, AND VERIZON'S REFUSAL TO*
18 *GRANT PLAINTIFF BENEDICT'S REQUEST FOR REASONABLE ACCOMMODATION TO*
19 *REMOVE VERIZON'S SMALL CELL FACILITY TRANSMITTING EXCESSIVE RFR ONTO*
20 *PLAINTIFF BENEDICT'S PROPERTY HAS CAUSED A PRIVATE NUISANCE, A TORTIOUS*
21 *ACT UNDER CALIFORNIA LAW.*
22

23 235. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

1 236. A private nuisance is an activity that injures health, affecting less than a
2 considerable number of people, that satisfies the following elements: a. Plaintiff owns the
3 property; b. Defendants, by acting or failing to act, created a condition or permitted a condition
4 to exist that is harmful to health; indecent or offensive to the senses; is an obstruction to the free
5 use of property, so as to interfere with the comfortable enjoyment of life or property; or is a fire
6 hazard and other potentially dangerous condition to Plaintiff's property; c. Defendant's conduct
7 in acting or failing to act was intentional and unreasonable, or if unreasonable negligent or
8 reckless, created or permitted to exist was the result of an abnormally dangerous activity; d. this
9 condition substantially interfered with plaintiff's use or enjoyment of his/her land; e. an ordinary
10 person would reasonably be annoyed or disturbed by defendant's conduct; f. that plaintiff did not
11 consent to defendant's conduct; g. plaintiff was harmed; h. defendant's conduct was a substantial
12 factor in causing plaintiff's harm; i. the seriousness of the harm outweighs the public benefit of
13 defendant's conduct.

14 237. Plaintiff Benedict owns the affected property where he resides at 3585 Needle
15 Peak Road, South Lake Tahoe City.

16 238. Defendants City of South Lake Tahoe, TRPA, and most importantly, Verizon, by
17 acting or failing to act, created a condition or permitted a condition to exist that is harmful to
18 health; indecent or offensive to the senses; is an obstruction to the free use of property, so as to
19 interfere with the comfortable enjoyment of life or property; and is a potentially dangerous
20 condition to Plaintiff Benedict's property. Verizon is causing the release of unwanted and
21 dangerous RFR onto Plaintiff Benedict's property at levels Benedict's radiation specialist and
22 chief treating physician believe present a substantial and continuing danger to his health.
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24

1 239. 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.

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

10 241. This is not a matter of reasonable annoyance. Plaintiff Benedict has been placed
11 in immediate jeopardy of life.

12 242. Plaintiff Benedict has explicitly objected and withheld consent to the Verizon
13 small cell facility in the vicinity of 3565 Needle Peak Road.

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

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

21 245. During the past two years, Defendants TRPA and the City of South Lake Tahoe
22 permitted, enabled, and encouraged this tortious course of conduct.

1 246. Plaintiff Benedict seeks monetary damages, and punitive damages because of the
2 intentional and willful nature of the nuisance.

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

4
5 **TWELFTH CAUSE OF ACTION**

6 *DEFENDANT VERIZON'S EMISSIONS OF RFR FROM ITS SMALL CELL FACILITY*
7 *IN THE VICINITY OF 3565 NEEDLE PARK ROAD CONSTITUTES THE TORT OF ASSAULT*
8 *UNDER THE CALIFORNIA CIVIL CODE AGAINST PLAINTIFF BENEDICT.*

9 248. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein.

10 249. Both present FCC regulations and the Guideline of the International Commission
11 on Non-Ionizing Radiation Protection (ICNIRP), a leading wireless industry association,
12 officially recognize that RFR penetrates the skin. The Federal Communications Commission
13 (FCC) [RFR limits](#) for exposures are measured in terms of absorption into the skin (Specific
14 Absorption Rate, or SAR). “The new FCC exposure limits are also based on data showing that
15 the human body absorbs RF energy at some frequencies more efficiently than at others.” The
16 ICNIRP [Guidelines](#) confirm that RFR at a frequency of 6 GHz penetrates the skin to a depth of
17 8.1 millimeters (0.32 inches), and the penetration deepens as the frequency decreases below 6
18 GHz (which the Verizon antennas will be emitting).

19 250. Wireless radiation is presently and continuously being transmitted from Verizon's
20 small cell facility in the vicinity of 3565 Needle Peak Road onto Plaintiff Benedict's property at
21 3585 Needle Peak Road, into his house, and into his person, at levels both his radiation specialist
22 and chief treating physician believe are causing him serious physical harm. The small cell
23 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.

3 251. 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 radiation.

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

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

18 254. 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.

21 255. Plaintiff Benedict seeks monetary damages, and punitive damages because of the
22 intentional and willful nature of the assault.

23 256. 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*
3 *NEEDLE PEAK ROAD IS CAUSING A TRESPASS TO PROPERTY.*

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

5 258. 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.

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

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

14 261. 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.

18 262. 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.

21 263. Plaintiff Benedict seeks monetary damages as well as punitive damages because
22 of the intentional and willful nature of the trespass.

23 264. WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

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PRAYER

Plaintiffs respectfully request the following relief:

1. Declaratory Relief declaring that the City of South Lake Tahoe's Special Use Permit (File #19-026) issued to Verizon for constructing a macro tower at 1360 Ski Run Boulevard issued on January 14, 2020 expired on or about January 14, 2021, and is null and void, pursuant to its terms.
2. Declaratory Relief declaring TRPA has fiduciary responsibilities as the steward of the Public Trust for the Tahoe Region, and finding that TRPA has violated those duties and the Compact for the reasons set forth above.
3. Declaratory Relief declaring 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 to conduct a comprehensive Environmental Impact Statement of that action, and has failed to do so.
4. An Order imposing a moratorium on all further wireless installations, and modifications on existing installations throughout the Tahoe Region, until TRPA adopts a comprehensive plan for wireless infrastructure deployment for the Tahoe Region that comports with the Compact, its Regional Plan, and its own rules and Regulations, as approved by this Court.
5. Declaratory Relief declaring that the Telecommunications Acts of 1934 and 1996 do not preempt the Compact, the Clean Water Act, NEPA, Americans with Disabilities Act, and the Fair Housing Amendments Act, and other federal statutes.
6. Writ of Mandamus compelling 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

1 the aesthetic standard with respect to Verizon's monopine at 1360 Ski Run Boulevard
2 and all other existing monopine towers in the Region.

3 7. Declaratory Relief declaring that the named Defendants, Directors, and Officers of TRPA
4 have acted and are acting under material conflicts of interest; and therefore all TRPA
5 actions in which they participated, commented, or voted upon based on these conflicts of
6 interest are null and void; and this Court is respectfully requested to remand such actions
7 to the TRPA for reconsideration without the participation of those named Defendants,
8 and possibly others as yet unnamed, who are subject to said conflicts of interest.

9 8. Declaratory Relief declaring that TRPA, City of South Lake Tahoe, and Verizon are
10 required to comply with the Americans with Disabilities Act, the Fair Housing
11 Amendments Act, and other federal and state laws protecting the civil rights of people
12 with disabilities, and to develop in their plans, ordinances and policies adequate rules and
13 procedures to ensure reasonable accommodation for persons with disabilities who are
14 exposed to RFR contamination.

15 9. Declaratory Relief declaring that TRPA is required to consider the impacts of the cutting
16 of 31 trees within the context of the Verizon monopine project at 1360 Ski Run
17 Boulevard, and that the scenic baseline is the condition of the project area before the
18 cutting of the trees, and not after, contrary to the decision of the TRPA Governing Board.

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

21 11. A Writ of Mandamus to compel TRPA to prepare Comprehensive Programmatic
22 Environmental Impact Statements (EIS) for all wireless facility projects, including
23 addressing specifically the microplastic pollutants and waste discharges by Defendant
24 Verizon and other wireless infrastructure companies, as well as a careful evaluation of

1 immediately available safe, secure, environmentally protective, energy efficient, and
2 more cost-effective alternatives, as required by the Compact, NEPA, and CEQA.

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

6 13. Specific injunction preventing the erection of the macro cell tower at 1360 Ski Run
7 Boulevard, approximately 1,000 feet from Plaintiff Benedict's property, until proper
8 reasonable accommodation is made by Verizon, the owner of the property, and TRPA in
9 full compliance with the ADA and other federal and state laws; if said tower is
10 constructed, a specific injunction requiring said tower to be turned off and dismantled.

11 14. Specific injunction preventing the erection of the monopine cell tower at 1360 Ski Run
12 Boulevard because the illegal plastic discharge cannot be prevented or remediated; if said
13 tower is constructed, a specific injunction requiring that said tower be turned off and
14 dismantled.

15 15. Declaratory Relief declaring the City of South Lake Tahoe's fiduciary responsibilities as
16 stewards of the Public Trust for the City.

17 16. Declaratory Relief declaring that the City Mayor Devin Middlebrook is under a conflict
18 of interest because of his concurrent service as a Director of the TPC; and therefore all
19 City Council actions relating to wireless infrastructure facilities in which he participated,
20 commented, or voted upon based on this conflict of interest are null and void; and this
21 Court is respectfully requested to remand such actions to the City Council for
22 reconsideration without the participation of Mayor Middlebrook, and possibly others as
23 yet unnamed, who are subject to said conflict of interest.

1 17. Monetary damages to Plaintiff Benedict to compensate him for the Torts of Public
2 Nuisance, Private Nuisance, Assault, and Trespass inflicted upon him by Verizon.

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

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

12 20. Award any such other and further relief as this Court may deem appropriate.

13
14 **JURY DEMAND**

15 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby request
16 a trial by jury on all issues so triable.

17 Date: May 6, 2022

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