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4 *Attorney for Plaintiff*

5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 SWITCH, LTD. a Nevada limited liability
8 company

9 Plaintiff,

10 vs.

11 The PUBLIC UTILITIES COMMISSION OF
12 NEVADA, a Nevada Administrative Agency;
13 The REGULATORY OPERATIONS STAFF
OF THE PUBLIC UTILITY COMMISSION
14 OF NEVADA a department within the PUCN;
15 NEVADA POWER d/b/a NV Energy a Nevada
Public Utility and Monopoly; ANTHONY
16 SANCHEZ, Esq., an individual; ELIZABETH
ELLIOT, ESQ., an individual; and CAROLYN
17 "LINA" TANNER, ESQ., an individual;
DOES 1 through 10; ROE ENTITIES 11
18 through 20, inclusive,

19 Defendants.
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CASE NO.:

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- (1) Failure to Comply with NRS 239.0107 and Request for Injunctive Relief
- (2) Violation of Switch's right to Equal Protection under the Fourteenth Amendment
- (3) Violation of Switch's rights to Due Process under the Fourteenth Amendment
- (4) Unlawful State Government Action in Violation of the Commerce Clause
- (5) Tortious Interference with Contractual Relations
- (6) Intentional Interference with Prospective Economic Advantage
- (7) Deceptive Trade Practices under N.R.S. 598.0903, et seq.
- (8) Fraud
- (9) Civil Conspiracy
- (10) Conspiracy to Commit Fraud
- (11) Negligence
- (12) Gross Negligence
- (13) Personal Liability pursuant to 42 U.S.C.S. § 1983
- (14) Request for Declaratory Relief

**PRAYER FOR RELIEF
DEMAND FOR JURY TRIAL**

SAMUEL CASTOR, ESQ.
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Las Vegas, NV 89118
Telephone: (702) 333-6566

1 **COMPLAINT**

2 **SWITCH, LTD.** (hereinafter referred to as “Plaintiff” or “Switch”) hereby complains
3 and alleges upon information and belief as follows:

4 **NATURE OF ACTION**

5 This is an action for wanton, reckless and intentional actions and omissions giving
6 rise to fraud and other unlawful and unconstitutional activities perpetrated by governmental
7 agencies and employees trusted by the people of the State of Nevada; such acts and
8 omissions being condoned and led by Carolyn “Lina” Tanner, Esq., the former General
9 Counsel of the Public Utilities Commission (“TANNER”). The associated claims arising
10 from TANNER’s actions and the actions of others to be named, violated state and federal
11 statutes, regulations, rules, and constitutions, give rise to personal liability under 42 U.S.C.S.
12 1983, and were done to unlawfully retain Switch as a customer of the monopoly NV Energy
13 and impair renewable energy development in the State of Nevada, all while unlawfully
14 enriching NV Energy. Plaintiff Switch seeks damages, attorneys’ fees, costs, and
15 preliminary injunctive relief.

16 **JURISDICTION**

17 1. This Court has subject matter jurisdiction over this case pursuant to
18 28 U.S.C. §§1331. This Court has supplemental jurisdiction over Plaintiff Switch’s state law
19 claims including against the state agencies, divisions and individuals named herein, pursuant
20 to 28 U.S.C. § 1367(a).

21 2. This Court has personal jurisdiction over Defendants based upon the
22 following: (a) Defendants are resident in, provide government activity in, or operate licensed
23 or regulated business in Nevada which activities serve or affect residents of the State of
24 Nevada; and (b) Defendants committed acts or omissions that they knew or should have
25 known would cause injury to Plaintiff Switch, in the State of Nevada.

26 3. Venue is proper in the United States District Court for the District of Nevada
27 under 28 U.S.C. § 1391(b) and (c). Venue lies in the unofficial Southern Division of this
28 Court.

PARTIES

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2 4. Plaintiff Switch is a Nevada limited liability company organized and existing
3 under the laws of the State of Nevada and doing business world-wide.

4 5. Switch, led by its founder, CEO and inventor, Rob Roy, is known as the
5 world's leading designer, builder and operator of the award winning SUPERNAP data
6 centers, facilities designed to sustainably power, cool and protect the physical infrastructure
7 and networks necessary to run the Internet. A partial list of Switch's clients is available
8 online at <https://www.supernap.com/clients.html>.

9 6. Switch is informed and believes that Defendant **Carolyn "Lina" Tanner**
10 (hereinafter "Defendant" or "TANNER") was, and is, a resident of Washoe County Nevada,
11 mostly recently employed as the General Counsel for the PUCN and that TANNER's Nevada
12 Bar number is 5520.

13 7. Switch is informed and believes that TANNER served as the PUCN's General
14 Counsel for over three (3) years, where her duties included ensuring the propriety and
15 legality of PUCN activities and proceedings until she promptly resigned on June 16, 2016;
16 one day following complaint at a public PUCN hearing of her veiled use of social media to
17 discuss dockets pending before the PUCN. See a copy of the publicly filed complaint and
18 examples of some of the social media statements previously publicly provided to the PUCN
19 attached hereto as **Exhibit 1**.

20 8. Switch is informed and believes TANNER has been subject to other
21 complaints including complaints filed on June 9, 2014, alleging that TANNER violated
22 Nevada's open meeting laws by tampering with evidence¹ as well as impairing and
23 obfuscating public testimony critical of the PUCN.²

24 9. Switch is informed and believes that Defendant **Tony F. Sanchez, III**
25 (hereinafter "Defendant" or "SANCHEZ") was, and is, a resident of Clark County Nevada
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27 ¹ Available at: <http://pucwatchdogs.com/2ndagcomplaint.pdf>

28 ² Available at: <http://www.thevegasvoice.net/politics--opinions/-faux-transparency-and-hidden-unwanted-public-participation>

1 and is currently employed as the Senior Vice President of Government and Community
2 Strategy for NV Energy and was formerly employed as the Assistant General Counsel at the
3 PUCN. SANCHEZ's Nevada Bar Number is 5478.

4 10. Switch is informed and believes that Defendant **Elizabeth Elliot**
5 (hereinafter "Defendant" or "ELLIOT") was, and is, a resident of Clark County Nevada and
6 is currently employed as the Associate General Counsel for NV Energy. ELLIOT's Nevada
7 Bar Number is 205.

8 11. Switch is informed and believes that as the senior regulatory attorney for
9 NVE, ELLIOT led or coordinated NVE's activities in the Switch 704B Docket.

10 12. Switch is informed and believes that Defendant **Nevada Power Company**
11 (dba NV Energy) (hereinafter "Defendant" or "NVE") was and is a Nevada Corporation
12 doing business in Clark County Nevada. See print out of the Nevada Secretary of State
13 website attached hereto as **Exhibit 2**.

14 13. Switch is informed and believes that the **Public Utilities Commission of**
15 **Nevada** (hereinafter "Defendant" or "PUCN") was, and is, the administrative body of the
16 state of Nevada governed by Nev. Rev. Stat. 703 among other statutes, rules and regulations,
17 tasked with regulating electric monopolies in the State of Nevada.

18 14. The true names and capacities, whether individual, corporate, associate, or
19 otherwise, of Defendants herein designated as DOES 1 through 10 and ROE ENTITIES 11
20 through 20, are unknown to Switch at this time, who therefore sues said Defendants by such
21 fictitious names. More particularly, Switch is informed and believes that such Defendants
22 are otherwise responsible, personally and collectively, for the damages to Switch complained
23 of herein. Switch will respectfully seek leave of the Court to amend this Complaint to allege
24 the true names of said Defendants as they are ascertained and the right to include any
25 associated claims that arise from such discovery.
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1 **ALLEGATIONS COMMON TO ALL COUNTS**

2 1. In 2001, the Nevada Legislature enacted Nev. Rev. Stat. 704B to allow customers
3 annually consuming over one (1) megawatt of power to unbundle from the electric monopoly
4 in the State of Nevada.

5 2. In or around 2003, Barrick Gold U.S. Inc., filed an application to depart the electric
6 monopoly, NVE pursuant to Nev. Rev. Stat. 704B. Barrick's 704B application was approved
7 and allowed to depart the electric monopoly NVE by the PUCN.

8 3. At least as early as 2011, Switch began seeking renewable energy options from NVE
9 but Switch's requests were ignored as will be proven in discovery and at trial. As such,
10 Switch began exploring alternative 100% green energy options, including access to interstate
11 commerce under Nev. Rev. Stat. 704B.

12 4. On November 7th, 2014, Switch filed its application to unbundle from the electric
13 monopoly, NVE, and obtain direct access to the national electric grid pursuant to Nev. Rev.
14 Statute 704B so that Switch could obtain 100% renewable power for its data center facilities
15 (the "Switch 704B Docket")³.

16 5. Switch made regular public statements including statements under oath during the
17 Switch 704B Docket that it intended to unbundle from the electric utility NVE because of
18 NVE's lack of interest in providing Switch with 100% renewable power. See Expert Witness
19 Testimony of Adam Kramer, attached herewith as **Exhibits 3.1 and 3.2**. Switch had been
20 trying for several years to obtain 100% renewable power and regularly reported that
21 sustainability was central to its current and future business policies. See id.

22 6. At that time, Switch also began negotiating with several renewable energy providers
23 – including nationally recognized photovoltaic solar provider First Solar Electric, LLC, (aka
24 First Solar, Inc.) – to build a new solar facility in Nevada. Switch planned to secure the
25 resources necessary to ensure that when Switch unbundled from NVE, Switch could be 100%
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27
28 ³ PUCN Docket No. 14-11007

1 green via renewable power contracts with First Solar (the “First Solar Contracts”) and other
2 providers. See id.

3 7. Given the mission critical nature of Switch’s services, and the need to ensure utmost
4 physical security of Switch’s physical infrastructure, Switch, PUCN Staff, and NVE executed
5 various Protective Agreements.

6 8. On or around May 8, 2015, after the Switch 704B Docket had already commenced,
7 Las Vegas Sands Corp.⁴ and Wynn Las Vegas, LLC⁵ filed their own applications to unbundle
8 from NVE pursuant to NRS 704B.

9 9. On or around May 12, 2015, MGM Resorts International⁶ filed an application to
10 unbundle from NVE pursuant to NRS 704B.

11 10. On or about June 10, 2015 the PUCN issued an order declaring that Switch was not
12 permitted to unbundle because inter alia, “[a]t a minimum, Switch’s departure must be
13 followed by a Switch-like customer” to hold other NVE customers harmless.⁷

14 11. The Las Vegas Sun in reaction to the Switch 704B Docket published a cartoon
15 depicting Switch in chains unable to escape a prison with the word “NV Energy” scrawled on
16 the prison door. See a copy of the cartoon attached herewith as **Exhibit 4**.

17 12. Alarmed by the procedural process in the Switch 704B Docket, surprised by the
18 decision to prevent Switch from unbundling in the Denial Order, and suspecting unlawful or
19 collusive behavior, Switch filed litigation hold letters with the PUCN, the PUCN Regulatory
20 Operations Staff, NVE, R&R Partners, the BCP, on June 12, 2015. See a copy of the
21 litigation hold letter attached herewith as **Exhibit 5**.

22 13. Defendant TANNER responded to Switch’s letter on June 22, 2015, largely denying
23 any duty to comply with the litigation hold request for the PUCN and ignoring Switch’s
24 request. See a copy of the response letter attached herewith as **Exhibit 6**.

25 ⁴ PUCN Docket No. 15-05002

26 ⁵ PUCN Docket No. 15-05006

27 ⁶ PUCN Docket No. 15-05017

28 ⁷ PUCN Order Docket No. 14-11007 ¶ 105

1 14. Switch then filed a Petition for Reconsideration on June 25, 2015, seeking review of
2 the Denial Order and outlining the unlawful and inappropriate substantive and procedural
3 steps taken and conclusions reached by the PUCN in the Switch 704B Docket and Denial
4 Order. Former Commissioner Wagner, one of the three PUCN commissioners sitting over
5 the Denial Order, dissented indicating she believed that Switch should be given the ability to
6 unbundle. Specifically, she stated she thought the Denial Order “inherently unfair” and
7 “fundamentally unfair for all of the parties that went through this, whether they supported it
8 or not, to not have some kind of outcome”; and that she felt the Denial Order was “changing
9 the rules midstream...”. An audio recording of the Switch 704B Docket Hearing issuing the
10 Denial Order is available on the PUCN website and will be provided.

11 15. Despite Switch’s strong belief in the unlawful and unjust nature of the Denial Order
12 and the Switch 704B Docket, Switch remained desirous to secure 100% renewable energy
13 and to do so prior to the quickly approaching termination of Switch’s ability to enter into the
14 First Solar Contracts due to the pending expiration of a federal investment tax credit required
15 by First Solar. As such, Switch had no choice but to pay a premium for the resource, permit
16 NVE to interject itself as a middle man in the First Solar Contracts and entered into a
17 settlement agreement with NVE and the PUCN on July 30, 2015
18 (the “Settlement Agreement”). See a copy of the final PUCN Order granting the Stipulation
19 and the associated Settlement Agreement attached herewith as **Exhibit 7**.

20 16. The Settlement Agreement provided Switch with the renewable energy credits from
21 the First Solar Contracts, but at a higher cost and with NVE as an injected middle party.
22 Specifically, the PUCN and NVE required Switch to pay a Nevada Green Rider “premium”
23 above its then current electric rates to obtain the renewable benefit of the First Solar
24 Contracts. The First Solar Contracts signed by NVE were praised as the lowest priced photo-
25 voltaic solar solution in the United States, if not the world for the year 2015⁸; and well below
26 Switch’s then current costs with NVE, as will be proved. However, Switch was required to
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28 ⁸ <https://www.nvenergy.com/company/mediaroom/newsdetail.cfm?n=136919>

1 pay a premium above their normal retail rate to claim association with their First Solar
2 Contracts. Thereby enriching NVE who was paying approximately 3.8 cents a KWH while
3 charging Switch approximately 9 cents a KWH.

4 17. In good faith reliance and recognizing Switch was being given no other way to obtain
5 100% renewable power, or execute on the First Solar Contracts, Switch signed the Settlement
6 Agreement with NVE and the PUCN on November 30, 2015 and stayed its Petition for
7 Reconsideration.

8 18. Switch spent approximately \$1,000,000.00 pursuing the Switch 704B Docket, as will
9 be evidenced by subsequent records via discovery.

10 19. On or around January 13, 2016, the PUCN issued final orders authorizing the Sands,
11 Wynn, and MGM the authority to unbundle from the electric utility and utilize interstate
12 direct access for their energy needs. Unlike the Denial Order, which fully barred Switch
13 from unbundling, the Sands, Wynn, and MGM were permitted to unbundle without being
14 replaced by a like customer.

15 20. Switch understands that since January 2016, the hotel properties known as the
16 Peppermill, El Dorado and the Grand Sierra operating in Northern Nevada have all expressed
17 intent to unbundle from NVE under NRS 704B

18 21. Switch understands that to date, Switch is the only entity the PUCN has expressly
19 denied the ability to unbundle under Nev. Rev. Stat. 704B.

20 22. On or around June 15, 2016, Switch became aware that TANNER had used the false
21 name "DixieRaeSparx", "#DixieRaeSparx" or "@DixieRaeSparx" (each referred to herein as
22 the "Handle") to publicly discuss the Switch 704B Docket and other PUCN proceedings
23 during the pendency of those dockets. TANNER has since deleted or hidden the contents of
24 the social media accounts.

25 23. Switch understands TANNER also maintained a blog (www.dixiereasparx.com) on
26 WordPress, as well as accounts using variations of the Handle on Twitter, Pinterest, Etsy,
27 SoundCloud, Instagram, and other platforms. See screen shots of various accounts using the
28

1 Handle attached herewith as **Exhibits 8.1-8.4**. Again, TANNER has attempted to delete or
2 hide the contents of these accounts.

3 24. Switch has confirmed that TANNER made comments under the Handle to online
4 publications about PUCN dockets including VegasInc. See id., at **Exhibit 9**. The comments,
5 tweets, postings and contents of the blog were deleted after TANNER's sudden resignation
6 from her position as General Counsel to the PUCN. Id.

7 25. Switch understands that TANNER also maintains a public Facebook account under
8 her proper name "Carolyn 'Lina' Tanner", where she has used the Handle enabling the public
9 to associate herself with the Handle. See a copy of various postings and screen shots of
10 TANNER's Facebook page, some of TANNER's posts and friends are attached herewith as
11 **Exhibit 10.1-10.4**.

12 26. At the time of this filing, the depth of TANNER's social media activity is unknown,
13 because the entries have been deleted or made private. Even so, Switch has found evidence
14 in the "snippets" captured or cached by Google's search engine, available when searching
15 "DixieRaeSparx Switch" that TANNER discussed Switch under her Handle. See Exhibit
16 **11.1-11.5**.

17 27. Switch is further informed that TANNER evidenced a bias against solar by publicly
18 defending the PUCN, and NVE, when criticized by other commenters, including during the
19 pendency of the Switch 704B Docket.

20 28. Switch understands that other commenters publicly communicating with TANNER
21 cloaked as "DixieRaeSparx" concluded that she worked for NVE or the PUCN due to her
22 defense of both with her comments. See a copy of a VegasInc. article containing responses
23 to TANNER's comments using the Handle, attached herewith as **Exhibit 9**.

24 29. Switch understands that after TANNER resigned, she reported that the PUCN knew
25 of her use of the Handle "DixieRaeSparx" and that the PUCN Chairman followed TANNER
26 on Twitter. See a copy of a news articles quoting from TANNER is attached herewith as
27 **Exhibit 12.1 to Exhibit 12.3**.

28

1 30. Upon discovery of TANNER's activity, Switch filed a second litigation hold letter
2 through outside counsel, Greenberg Traurig, on June 24, 2016. A copy of the second
3 litigation hold letter is attached herewith as **Exhibit 13**.

4 31. Thereafter, Switch submitted a Nevada Open Records Act request to the PUCN on
5 June 28, 2016 and again on July 1, 2016, pursuant to NRS 239.0107; requesting information
6 related to this Complaint. A copy of these requests is attached herewith as **Exhibit 15**, and
7 **Exhibit 16**. Switch has yet to receive any documents from the PUCN.

8 **FIRST CAUSE OF ACTION**

9 **(Failure to Comply with NRS 239.0107 and Request for Injunctive Relief)**

10 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
11 forth herein.

12 2. The PUCN failed to comply with NRS 239.0107 because the PUCN has yet to
13 identify a date by which Switch will obtain the records requested pursuant to NRS 239.0107.

14 3. While Switch will continue to work with the PUCN to obtain the requested records,
15 Switch asks the Court's assistance in ensuring Switch obtains all relevant records,
16 particularly communications between the Commission and parties, and any documents or
17 postings created by TANNER with the Handle.

18 4. TANNER deactivated her Twitter account, attempting to destroy evidence and
19 putting the evidence at jeopardy shortly after her unlawful acts were exposed on June 15,
20 2016.

21 5. Twitter's deactivation policy is such that unless a request for Twitter records is made
22 by law enforcement or a court, all records of a deactivated account will be permanently
23 deleted thirty (30) days from deactivation (here around June 15, 2016); see **Exhibit 16**.
24 Twitter's policy also states that a user who has attempted to deactivate an account, can
25 reactivate an account simply by logging into the account within the thirty (30) day post-
26 deactivation window.

27 6. Therefore, as requested below, Switch requests injunctive relief in the form of a Court
28 Order requiring TANNER to log into and reactivate her account, immediately, so that all

1 evidence will be preserved and so that she can provide a complete copy of the material to
2 Switch.

3 7. Switch also requests injunctive relief in the form of a Court Order, ordering all social
4 media platforms, and especially Twitter, to retain all tweets, comments, messages, videos,
5 and any content created by TANNER with her Handle, and deliver all such material to
6 Switch.

7 8. Switch further requests that the Court Order all Defendants, but particularly
8 TANNER, SANCHEZ, and ELLIOT to preserve all evidence, including communications,
9 calendar meetings, and any record of contact or interaction including via social media use to
10 ensure no further evidence is threatened during the pendency of this litigation.

11 9. TANNER has already attempted to destroy evidence. Switch has already been
12 harmed, and the likelihood of immediate harm is demonstrably high. Absent injunctive
13 relief, material evidence *will* be destroyed, further complicating this matter allowing
14 TANNER to destroy evidence of unlawful conduct.

15 10. It has been necessary to retain the services of counsel to prosecute this action and
16 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
17 and costs related to the same.

18 **SECOND CAUSE OF ACTION**

19 **(Violation of Switch's Right to Equal Protection under the Fourteenth Amendment)**

20 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
21 forth herein.

22 2. The Fourteenth Amendment of the United States Constitution ensures equal
23 protection to all citizens under the United States.

24 3. Switch has a constitutional right to equal protection when before a Nevada
25 Administrative panel such as the PUCN.

26 4. NRS 704B is a statute in full force and effect in Nevada and provides electric utility
27 customers who meet certain requirements the ability to unbundle from the public electric
28 utility and access the national market. To date, four (4) other entities have been authorized

1 by the PUCN to unbundle from NVE; three (3) in the last six (6) months. Switch is the only
2 entity to be explicitly denied the right to unbundle after completing a contested case before
3 the PUCN.

4 5. NRS 703.301 is a statute in full force and effect in Nevada and prohibits *ex parte*
5 communication between the PUCN and the parties (including the PUCN Regulatory
6 Operations Staff) in a contested case such as the Switch 704B Docket.

7 6. Rules 2.9, 2.10 and 3.4 (among others) of the Revised Nevada Judicial Code of
8 Conduct are in full force and effect in Nevada and bind PUCN employees and officers;
9 preventing *ex parte* communications with NVE, and PUCN Regulatory Operations Staff or
10 public discussion of a pending docket;

11 7. TANNER, the PUCN, PUCN Regulatory Operations Staff and other government
12 actors knew or should have known that their failure to implement certain policies and
13 procedures would result in a miscarriage of justice and deprive Switch of its constitutional
14 and statutory rights and protections.

15 8. The PUCN, PUCN Regulatory Operations Staff and other government actors,
16 including the Chairman of the PUCN who was following TANNER on Twitter and had
17 knowledge of her actions, knew or should have known that TANNER was engaging in
18 inappropriate activity, and abusing her role as General Counsel, and failed to enforce rules,
19 guidelines, policies or procedures that would protect Switch against a miscarriage of justice
20 and secure Switch's constitutional and statutory rights and protections.

21 9. The PUCN, PUCN Regulatory Operations Staff, TANNER and other government
22 actors yet to be named, violated Switch's constitutional and statutory right to equal protection
23 as guaranteed by the Fourteenth Amendment by:

24 a. Discriminating against and singling out Switch as the only 704B applicant to
25 be denied the ability to unbundle, while simultaneously permitting four (4) other 704B
26 applicants to unbundle under NRS 704B (i.e. Barrick Gold U.S. Inc., Las Vegas Sands
27 Corp., Wynn Las Vegas, LLC, and MGM Resorts International (collectively the "704B
28 Entities"));

1 or implicit *ex parte* communication between the PUCN Commissioners (including TANNER
2 and the rest of the Commissioners' staff) and any other party (including the PUCN
3 Regulatory Operations Staff) during a contested case such as the Switch 704B Docket.

4 4. Defendants and other government actors yet to be named, violated Switch's
5 constitutional and statutory right to due process in the Switch 704B Docket by engaging in *ex*
6 *parte* communications prohibited by NRS 703.301 during the pendency of the docket;
7 including via TANNER's Handle.

8 5. The PUCN violated Switch's constitutional and statutory right to due process in the
9 Switch 704B Docket by permitting TANNER to use the Handle to publicly discuss the
10 Switch 704B Docket during the pendency of the same. TANNER publicly commented that
11 the PUCN Chairman knew of her use of the Handle. See Exhibit 12.1 and Exhibit 12.3.

12 6. Rules 2.9 and 2.10 of the Revised Nevada Judicial Code of Conduct are in full force
13 and effect in Nevada and bind PUCN employees and officers; preventing *ex parte*
14 communications with NVE, and PUCN Regulatory Operations Staff or public discussion of a
15 pending docket;

16 7. TANNER, the PUCN, PUCN Regulatory Operations Staff, and other government
17 actors knew or should have known that their failure to implement certain policies and
18 procedures would result in a miscarriage of justice and deprive Switch of its constitutional
19 and statutory rights and protections.

20 8. Yet, TANNER, the PUCN, and PUCN Regulatory Operations Staff other government
21 actors yet to be named, violated Switch's constitutional and statutory right to due process as
22 guaranteed by the Fourteenth Amendment by:

- 23
- 24 a. Engaging in *ex parte* communications during the pendency of the Switch
25 704B Docket including directly or indirectly communicating via postings
26 created with TANNER's Handle;
 - 27 b. Publicly commenting on the NRS 704B Docket with the intent to influence
28 public opinion regarding the docket using TANNER's Handle, during the
pendency of the Switch 704B Docket;

1 c. Intentionally disobeying rules prohibiting *ex parte* communications in
2 violation of Rule 3.4 and Rule 3.5 of the Nevada Rules of Professional
3 Conduct; and/or

4 d. In failing to disclose the unlawful conduct of TANNER and attempting to
5 destroy evidence of such unlawful conduct, in violation of Rule 3.4 of the
6 Nevada Rules of Professional Conduct.

7 9. As a result of the Defendants' unlawful actions, Switch expended over \$1,000,000.00
8 to pursue its 704B application to obtain 100% renewable energy in a biased and partial
9 process (the Switch 704B Docket), suffered monetary damages in excess of \$30,000,000.00,
10 has been required to pay NVE increased costs for renewable energy and has been deprived of
11 its statutory and constitutional rights, including Switch's rights to access interstate
12 commerce.

13 10. It has been necessary to retain the services of counsel to prosecute this action and
14 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
15 and costs related to the same.

16 **FOURTH CAUSE OF ACTION**

17 **(Unlawful State Government Action in Violation of the Commerce Clause)**

18 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
19 forth herein.

20 2. TANNER, the PUCN, the PUCN Regulatory Operations Staff and other government
21 actors yet to be named, violated Switch's constitutional and statutory right to unbundle from
22 NVE and engage in interstate commerce when:

23 a. TANNER, the PUCN, PUCN Regulatory Operations Staff and other
24 government actors yet to be named, exceeded and abused their governmental powers by
25 improperly and intentionally preventing Switch from engaging in interstate commerce
26 despite state and federal laws permitting Switch to do so and in doing so, violated the
27 Commerce Clause of the United States Constitution and violated the Dormant Commerce
28 Clause of the United States by:

- 1 i. Discriminating against and singling out Switch as the only 704B applicant
2 to be denied the ability to unbundle, while having permitted four (4) other
3 704B applicants to unbundle under NRS 704B;
4 ii. Engaging in *ex parte* communications during the pendency of the Switch
5 704B Docket including directly or indirectly communicating via postings
6 created with TANNER's Handle;
7 iii. Publicly commenting on the NRS 704B Docket with the intent to
8 influence public opinion regarding the docket using TANNER's Handle,
9 during the pendency of the Switch 704B Docket;
10 iv. Intentionally disobeying rules prohibiting *ex parte* communications in
11 violation of Rule 3.4 and Rule 3.5 of the Nevada Rules of Professional
12 Conduct; and/or
13 v. In failing to disclose the unlawful conduct of TANNER and attempting to
14 destroy evidence of such unlawful conduct, in violation of Rule 3.4 of the
15 Nevada Rules of Professional Conduct.

16 b. TANNER, the PUCN, PUCN Regulatory Operations Staff and other
17 government actors yet to be named, intentionally or negligently misconstrued Nevada law
18 to prevent Switch from engaging in interstate Commerce.

19 3. As a result of the Defendants' unlawful actions, Switch expended over \$1,000,000.00
20 to pursue its 704B application to obtain 100% renewable energy in a biased and partial
21 process (the Switch 704B Docket), suffered monetary damages in excess of \$30,000,000.00,
22 has been required to pay NVE increased costs for renewable energy and has been deprived of
23 its statutory and constitutional rights, including Switch's rights to access interstate
24 commerce.

25 4. It has been necessary to retain the services of counsel to prosecute this action and
26 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
27 and costs related to the same.

28 ///

FIFTH CAUSE OF ACTION

(Tortious Interference with Contractual Relations)

1
2
3 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
4 forth herein.

5 2. As afore pled, Switch was pursuing the First Solar Contracts during the pendency of
6 the Switch 704B Docket.

7 3. TANNER, SANCHEZ, and/or ELLIOT intentionally abused their roles as attorneys,
8 and knew or should have known TANNER was abusing her role as General Counsel of the
9 PUCN to influence the PUCN and PUCN Staff and affect the Switch 704B Docket
10 procedural process, such that the PUCN issued a Denial Order; interfering with Switch's
11 ability to execute the First Solar Contracts. Such actions were taken by TANNER either
12 intentionally or in wanton disregard of TANNER's knowledge that she was tortiously
13 interfering with Switch's contractual relations.

14 4. These actions permitted NVE to enter into the First Solar Contracts for NVE's own
15 gain and charge Switch a premium for renewable energy Switch would have otherwise
16 obtained directly for less, without NVE as the injected middle man.

17 5. As a result of the Defendants' unlawful actions, Switch expended over \$1,000,000.00
18 to pursue its 704B application to obtain 100% renewable energy in a biased and partial
19 process (the Switch 704B Docket), suffered monetary damages in excess of \$30,000,000.00,
20 has been required to pay NVE inflated costs for renewable energy.

21 6. It has been necessary to retain the services of counsel to prosecute this action and
22 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
23 and costs related to the same.

24 **SIXTH CAUSE OF ACTION**

25 **(Intentional Interference with Prospective Economic Advantage)**

26 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if
27 fully set forth herein.

28 2. Upon information and belief, at the time Switch was negotiating with First

1 Solar for the First Solar Contracts, Defendant NVE was also negotiating with First Solar for
2 the First Solar Contracts.

3 3. Upon information and belief, Defendant committed acts intended or designed
4 to disrupt Switch's prospective economic advantage inherit in directly contracting with First
5 Solar for the First Solar Contracts.

6 4. As a direct and proximate result of Defendants' intentional interference with
7 Switch's prospective economic advantage, Switch has expended over \$1,000,000.00 to
8 obtain renewable energy in a biased and partial process (the Switch 704B Docket), suffered,
9 and will continue to suffer irreparable injury and monetary damages in excess of
10 \$30,000,000.00, been required to pay NVE increased costs for renewable energy, and has
11 been deprived of its statutory and constitutional rights.

12 5. It has been necessary to retain the services of counsel to prosecute this action
13 and Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys'
14 fees, and costs related to the same.

16 SEVENTH CAUSE OF ACTION

17 (Deceptive Trade Practices Under N.R.S. § 598.0915)

18 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
19 forth herein.

20 2. Upon information and belief, in the course of conducting their business,
21 Defendant NVE knew or should have known it made false representations and/or omitted
22 material information regarding the PUCN, PUCN Regulatory Operations Staff, and
23 TANNER's use of the Handle to increase the likelihood of Switch signing the Settlement
24 Agreement and relinquishing its rights to unbundle.

25 3. As the direct and proximate result of Defendants' conduct, Switch suffered,
26 and will continue to suffer, monetary damages and irreparable injury to its business,
27 reputation, and goodwill. Switch expended over \$1,000,000.00 to pursue its 704B
28 application to obtain 100% renewable energy in a biased and partial process (the Switch

1 704B Docket), suffered monetary damages in excess of \$30,000,000.00 and has been
2 required to pay NVE deceptive costs for renewable energy.

3 4. It has been necessary to retain the services of counsel to prosecute this action
4 and Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys'
5 fees, and costs related to the same.

6 **EIGHTH CAUSE OF ACTION**

7 **(Fraud)**

8 1. Switch incorporates the allegations in the preceding paragraphs as if fully set
9 forth herein.

10 2. Defendants knew or should have known that the Switch 704B Docket was not
11 properly handled with impartiality and that Switch had been and was being denied due
12 process, equal protection and access to interstate commerce.

13 3. Defendants knew or should have known TANNER was violating her quasi-
14 judicial obligations of impartiality imposed by Nevada Rules, Nevada Revised Statutes, the
15 Nevada Constitution and the United States Constitution.

16 4. Specifically, Defendants knew or should have known that TANNER, the very
17 individual tasked with protecting the due process and legality of the Switch 704B Docket as
18 General Counsel to the PUCN, was impairing the process by engaging in *ex parte*
19 communications, either directly or indirectly, in violation of NRS 703.373, with ELLIOT,
20 SANCHEZ, NVE, and PUCN Regulatory Operations Staff; or,

21 5. Specifically, Defendants knew or should have known that TANNER, the very
22 individual tasked with protecting the due process and legality of the Switch 704B Docket and
23 maintaining appropriate decorum and impartiality of PUCN process, violated Rules 2.9 and
24 2.10 of the Revised Nevada Judicial Code of Conduct by discussing a pending docket
25 publicly, and engaging in *ex parte* discussions with ELLIOT, SANCHEZ, NVE, and PUCN
26 Regulatory Operations Staff;

27 6. Specifically, TANNER knew or should have known that she was violating
28 Rule 3.5 of the Nevada Rules of Professional Conduct by seeking to influence a proceeding

1 by means prohibited by law (including but not limited to NRS 703.301 prohibiting *ex parte*
2 communications) by posting tweets on Twitter and communicating on other social media
3 platforms viewable by ELLIOT, SANCHEZ, NVE, and PUCN Regulatory Operations Staff
4 and outlets regarding the Switch 704B Docket, during the pendency of the docket.

5 7. TANNER knew or should have known that she was violating Rule 3.6 of the
6 Nevada Rules of Professional Conduct by seeking to influence a proceeding with publicity
7 by posting comments on social media regarding the Switch 704B Docket, during the
8 pendency of the docket.

9 8. Despite Defendants' knowledge of the foregoing unlawful facts, Defendants
10 intentionally withheld this information and intentionally misrepresented to Switch that the
11 Switch 704B Docket and the Denial Order were impartial and proper.

12 9. Despite Defendants' knowledge of the foregoing facts, Defendants
13 intentionally withheld facts about TANNER's actions, knowing that sharing such facts with
14 Switch would have stopped Switch from agreeing to the Settlement Agreement.

15 10. Despite Defendants' knowledge of the foregoing facts, Defendants maintained
16 that the Denial Order was lawful, and that the process was legal, thereby intentionally
17 misrepresenting circumstances surrounding the Settlement Agreement and the Denial Order.

18 11. Throughout the process, Defendant TANNER as General Counsel, ELLIOT,
19 and SANCHEZ, as attorneys, along with counsel for the Regulatory Operations Staff, and
20 NVE had a duty to disclose the partiality of the process under Rule 3.4 of the Rules of
21 Professional Conduct and had several opportunities to correct the omissions and
22 misrepresentations; yet Defendants failed to do so.

23 12. Instead, Defendants intentionally perpetrated these omissions and
24 misrepresentations so that NVE could interfere with Switch's ability to contract with First
25 Solar; so NVE could take the First Solar Contracts for itself; thereby enabling NVE to sign
26 the First Solar Contracts and realize the economic benefit of forcefully interjecting itself on
27 some of the most economically priced renewable power contracts for 2015 in the United
28 States, if not the world; all while keeping Switch as a customer and charging Switch a

1 premium and further enriching NVE.

2 13. Defendants knew that Switch would reasonably rely upon the intentional
3 omissions and misrepresentations referenced above, view the Settlement Agreement as the
4 only option and sign the Settlement Agreement because of Switch's publicly declared desire
5 to obtain 100% renewable energy as promptly as possible.

6 14. Switch reasonably relied on Defendants' misrepresentations and omissions by
7 signing the Settlement Agreement, thereby foregoing rights to pursue other remedies.

8 15. Switch was damaged by its reasonable reliance because Switch agreed to pay
9 NVE a premium for the renewable power it would have otherwise obtained directly from
10 First Solar, resulting in millions of dollars in increased costs to Switch and depriving Switch
11 of its ability to unbundle from NVE and engage in interstate commerce.

12 16. As a result of the Defendants' unlawful actions, Switch expended over
13 \$1,000,000.00 to pursue its 704B application to obtain 100% renewable energy in a biased
14 and partial process (the Switch 704B Docket), suffered monetary damages in excess of
15 \$30,000,000.00, has been required to pay NVE increased costs for renewable energy and has
16 been deprived of its statutory and constitutional rights, including Switch's rights to access
17 interstate commerce and is entitled to punitive and/or exemplary damages as this Court sees
18 fit, including under NRS § 42.005.

19 17. It has been necessary to retain the services of counsel to prosecute this action
20 and Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys'
21 fees, and costs related to the same.

22 NINTH CAUSE OF ACTION

23 (Civil Conspiracy)

24 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
25 forth herein.

26 2. TANNER, SANCHEZ and/or ELLIOT agreed either explicitly or tacitly to act in
27 concert to unlawfully influence the Switch 704B Docket including using TANNER's Handle
28 to influence the Switch 704B Docket, to engage in *ex parte* communications, and to affect

1 public opinion, with the common goal to keep Switch as a bundled customer of NVE, to
2 prevent Switch from accessing the interstate market, and to prevent Switch from executing
3 the First Solar Contracts.

4 3. Defendants knew that injury to Switch was likely because it would deprive Switch of
5 its rights, remedies and economic advantages associated with unbundling, allowing Switch to
6 gain direct access to the interstate energy market, and direct access to the First Solar
7 Contracts.

8 4. As a result, NVE was able to force Switch to remain a customer, execute the First
9 Solar Contracts and take advantage of some of the most economical renewable energy in the
10 United States, if not the world, and charge Switch a premium for such electricity.

11 5. TANNER commented about official government hearings on Facebook and posted
12 inappropriate material online during such hearings. See a copy of TANNER's
13 communications on Facebook during a government hearing attached herewith as **Exhibit**
14 **10.4**.

15 6. Defendants TANNER and SANCHEZ are friends on Facebook and have used that
16 social media platform to communicate. See a copy of TANNER's Facebook friends attached
17 herewith as **Exhibit 10.3**. TANNER communicated with other government officials via
18 social media including during government hearings. Because SANCHEZ was friends with
19 TANNER on Facebook, and because of TANNER's conduct, SANCHEZ knew or should
20 have known of TANNER's unlawful and inappropriate use of the Handle.

21 7. As counsel for NV Energy actively working on the Switch 704B Docket, ELLIOT
22 knew or should have known about TANNER's unlawful and inappropriate use of the Handle.

23 8. Defendants TANNER, SANCHEZ, and/or ELLIOT violated their heightened duty of
24 care as licensed attorneys and officers of the Court by engaging in such unlawful
25 communications and activities and using such activities to conspire.

26 9. TANNER violated her judicial or quasi-judicial duties as General Counsel by
27 engaging in such unlawful activities.

28 10. Working in concert or in combination, the Defendants did damage Switch by using

1 TANNER's Handle and/or by engaging in *ex parte* communications in person and/or on
2 social media platforms to conspire to and to impair the Switch 704B Docket, deprive Switch
3 of its rights, remedies and economic advantages associated with the NRS 704B Docket and
4 prevent Switch from unbundling from NVE.

5 11. As a result of the Defendants' unlawful actions, Switch expended over \$1,000,000.00
6 to pursue its 704B application to obtain 100% renewable energy in a biased and partial
7 process (the Switch 704B Docket), suffered monetary damages in excess of \$30,000,000.00,
8 has been required to pay NVE increased costs for renewable energy and has been deprived of
9 its statutory and constitutional rights, including Switch's rights to access interstate commerce
10 and is entitled to punitive and/or exemplary damages as the Court sees fit, including under
11 NRS § 42.005.

12 12. It has been necessary to retain the services of counsel to prosecute this action and
13 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
14 and costs related to the same.

15 **TENTH CAUSE OF ACTION**

16 **(Conspiracy to Commit Fraud)**

17 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
18 forth herein, specifically including the facts pled in the First Cause of Action for Fraud.

19 2. Defendants TANNER, SANCHEZ, and/or ELLIOT agreed either explicitly or tacitly
20 to act in concert to unlawfully defraud Switch to execute the Settlement Agreement, forego
21 its procedural rights and remedies, and direct access to the national energy market and the
22 First Solar Contracts.

23 3. As a result, NVE was able to keep Switch as a customer and the profits associated
24 therewith, execute the First Solar Contracts and the resulting savings, and charge Switch a
25 premium for the same power Switch would have otherwise obtained if it had been permitted
26 to unbundle.

27 4. TANNER commented about official government hearings on Facebook, and posted
28 inappropriate material online during such hearings. See a copy of TANNER's

1 communications on Facebook during a government hearing attached herewith as **Exhibit**
2 **10.4.**

3 5. Defendants TANNER and SANCHEZ are friends on Facebook and have used that
4 social media platform to communicate. See a copy of TANNER's Facebook friends attached
5 herewith as **Exhibit 10.3.** Because SANCHEZ was friends with TANNER on Facebook,
6 SANCHEZ knew or should have known of TANNER's unlawful and inappropriate use of the
7 Handle.

8 6. As counsel for NV Energy actively working on the Switch 704B Docket, ELLIOT
9 knew or should have known about TANNER's unlawful and inappropriate use of the Handle.

10 7. Defendants TANNER, SANCHEZ, and/or ELLIOT violated their heightened duty of
11 care as licensed attorneys and officers of the court, by engaging in such unlawful activities
12 and using such activities to conspire.

13 8. TANNER violated her judicial or quasi-judicial duties as General Counsel by
14 engaging in such unlawful activities.

15 9. Working in concert or in combination, the Defendants did damage Switch by
16 engaging in *ex parte* communications, or using the Handle to defraud Switch, all to deprive
17 Switch of its rights, remedies and economic advantages associated with the NRS 704B
18 Docket and the First Solar Contracts and unlawfully keep Switch as an NVE customer.

19 10. As a result of the Defendants' unlawful actions, Switch expended over \$1,000,000.00
20 to pursue its 704B application to obtain 100% renewable energy in a biased and partial
21 process (the Switch 704B Docket), suffered monetary damages in excess of \$30,000,000.00,
22 has been required to pay NVE increased costs for renewable energy and has been deprived of
23 its statutory and constitutional rights, including Switch's rights to access interstate commerce
24 and is entitled to punitive and/or exemplary damages as the Court sees fit, including under
25 NRS § 42.005.

26 11. It has been necessary to retain the services of counsel to prosecute this action and
27 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
28 and costs related to the same.

ELEVENTH CAUSE OF ACTION

(Negligence)

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4 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
5 forth herein.

6 2. Defendants the PUCN, PUCN Regulatory Staff, TANNER, SANCHEZ, and/or
7 ELLIOT were negligent in their handling of the Switch 704B Docket.

8 3. Defendants had a duty to Switch to inform Switch of TANNER's conduct.

9 4. Defendants knew or should have known of TANNER's inappropriate and unlawful
10 conduct.

11 5. Defendants wantonly disregarded the potential damage to Switch arising from
12 TANNER's conduct to Switch.

13 6. Defendants TANNER, PUCN, and the PUCN Regulatory Operations Staff were
14 grossly negligent in the exercise of their administrative and legal duties toward Switch
15 including but not limited by failing to inform Switch of TANNER's unlawful activities, and
16 *ex parte* communications.

17 7. Defendants TANNER, SANCHEZ, and ELLIOT had a heightened duty of care as
18 licensed attorneys and officers of the court and as such had a duty to disclose the partiality of
19 the process under Rule 3.4 of the Rules of Professional Conduct and had several
20 opportunities to correct the omissions and misrepresentations; yet Defendants failed to do so.

21 8. TANNER had a duty to disclose to Switch her conflict, her bias against solar and her
22 inability to act in a quasi-judicial, or judicial manner; and TANNER had a duty to recuse
23 herself from any interaction with the Switch 704B Docket. TANNER failed to do so.

24 9. Defendants TANNER, PUCN, and the PUCN Regulatory Operations Staff were
25 grossly negligent in the exercise of their administrative and legal duties toward Switch by
26 failing to implement and/or enforce policies, procedures, and rules preventing unlawful
27 communications including *ex parte* communications; and procedures regarding the disclosure
28 and response to such violations.

1 10. As a result, Switch was damaged, deprived of its constitutional rights, deprived of its
2 rights, remedies and economic advantages associated with the NRS 704B Docket and the
3 First Solar Contracts, prevented from engaging in interstate commerce, and unlawfully
4 detained as an NVE customer.

5 11. As a result of the Defendants' unlawful actions, Switch expended over \$1,000,000.00
6 to pursue its 704B application to obtain 100% renewable energy in a biased and partial
7 process (the Switch 704B Docket), suffered monetary damages in excess of \$30,000,000.00,
8 has been required to pay NVE increased costs for renewable energy and has been deprived of
9 its statutory and constitutional rights, including Switch's rights to access interstate
10 commerce.

11 12. It has been necessary to retain the services of counsel to prosecute this action and
12 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
13 and costs related to the same.

14 **TWELFTH CAUSE OF ACTION**

15 **(Gross Negligence)**

16 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if fully set
17 forth herein.

18 2. Defendants the PUCN, PUCN Regulatory Staff, TANNER, SANCHEZ, and/or
19 ELLIOT were grossly negligent in their handling of the Switch 704B Docket.

20 3. Defendants had duty and a heightened duty to Switch to inform Switch of
21 TANNER's conduct.

22 4. Defendants knew or should have known of TANNER's inappropriate and unlawful
23 conduct.

24 5. Defendants wantonly disregarded the potential damage to Switch arising from
25 TANNER's conduct to Switch and failed to protect Switch from the unlawful and
26 inappropriate actions of TANNER.

27 6. Defendants TANNER, PUCN, and the PUCN Regulatory Operations Staff were
28 grossly negligent in the exercise of their administrative and legal duties toward Switch

1 including but not limited by failing to inform Switch of TANNER's unlawful activities, and
2 *ex parte* communications.

3 7. Defendants TANNER, PUCN, and the PUCN Regulatory Operations Staff, were
4 grossly negligent in the exercise of their administrative and legal duties toward Switch by
5 failing to implement and/or enforce policies, procedures, and rules preventing unlawful
6 communications including *ex parte* communications and procedures regarding the disclosure
7 and response to such violations.

8 8. Defendants TANNER, SANCHEZ, and ELLIOT had a heightened duty of care as
9 licensed attorneys and officers of the court *and* had a duty to disclose the partiality of the
10 process under Rule 3.4 of the Rules of Professional Conduct and had several opportunities to
11 correct the omissions and misrepresentations; yet DEFENDANTS failed to do so.

12 9. TANNER had a duty to disclose to Switch her conflict, her bias against solar, and her
13 inability to act in a quasi-judicial, or judicial manner, and TANNER had a duty to recuse
14 herself from any interaction with the Switch 704B Docket; TANNER failed to do so.

15 10. As a result, Switch was damaged, deprived of its constitutional rights, deprived of its
16 statutory rights, remedies and economic advantages associated with the NRS 704B Docket
17 and the First Solar Contracts, prevented from engaging in interstate commerce, and
18 unlawfully detained as an NVE customer.

19 11. As a result of the Defendants' unlawful actions, Switch expended over \$1,000,000.00
20 to pursue its 704B application to obtain 100% renewable energy in a biased and partial
21 process (the Switch 704B Docket), suffered monetary damages in excess of \$30,000,000.00,
22 has been required to pay NVE increased costs for renewable energy and has been deprived of
23 its statutory and constitutional rights, including Switch's rights to access interstate commerce
24 and is entitled to punitive and/or exemplary damages as this Court sees fit, including under
25 NRS § 42.005.

26 12. It has been necessary to retain the services of counsel to prosecute this action and
27 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
28 and costs related to the same.

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THIRTEENTH CAUSE OF ACTION

(Personal Liability pursuant to 42 U.S.C.S. § 1983)

1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if herein.

2. TANNER, PUCN staff, PUCN Regulatory Operations Staff and other government actors engaged in the unlawful activity discussed herein are personally liable under U.S.C.S. § 1983.

3. TANNER, PUCN staff, PUCN Regulatory Operations Staff and other government actors engaged in the foregoing unlawful activities under the color of law by:

a. Using state government resources, time and means to engage in such unlawful activity and communications including with the use of PUCN computers, devices, computer networks (including Wifi), PUCN offices and conference rooms, vehicles, titles, associations, and other resources; and/or,

b. Permitting TANNER to use the Handle to improperly discuss the Switch 704B Docket publicly and engage in *ex parte* communications regarding the Switch 704B Docket with Defendants and with the Chairman of the PUCN’s full knowledge and permission, as claimed by TANNER. See Exhibit 12.1 and Exhibit 12.3.

4. TANNER, PUCN staff, PUCN Regulatory Operations Staff and other government actors knew or should have known that their failure to implement certain policies and procedures preventing *ex parte* communications, and instead, allowing their General Counsel (TANNER), the head individual tasked with preventing such unlawful activity, would result in miscarriage of justice and deprive Switch of its constitutional rights.

5. As a result of the Defendants’ unlawful actions, Switch expended over \$1,000,000.00 to pursue its 704B application to obtain 100% renewable energy in a biased and partial process (the Switch 704B Docket), suffered monetary damages in excess of \$30,000,000.00, has been required to pay NVE increased costs for renewable energy and has been deprived of its statutory and constitutional rights, including Switch’s rights to access interstate commerce and is entitled to punitive and/or exemplary damages as this Court sees fit, including under

1 NRS § 42.005.

2 6. It has been necessary to retain the services of counsel to prosecute this action and
3 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
4 and costs related to the same.

5 **FOURTEENTH CAUSE OF ACTION**

6 **(Request for Declaratory Relief)**

7 1. Plaintiff Switch incorporates the allegations in the preceding paragraphs as if herein.

8 2. An actual and justiciable controversy now exists between Switch and Defendants
9 regarding the rights of the respective parties.

10 3. Switch requests a declaration that Switch's NRS 704B Docket was unlawfully
11 handled and the Denial Order was issued in a manner expressly prohibited by NRS 703.373
12 because the Denial Order was:

- 13 a. issued in clear violation of constitutional and statutory provisions;
- 14 b. in excess of the statutory authority of the PUCN;
- 15 c. made upon unlawful procedure;
- 16 d. affected by other error of law;
- 17 e. clearly erroneous in view of the reliable, probative and substantial evidence on
18 the whole record; or
- 19 f. arbitrary and capricious or characterized by an abuse of discretion.

20 4. It has been necessary to retain the services of counsel to prosecute this action and
21 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees,
22 and costs related to the same.

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2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, for the reasons stated above, Plaintiff Switch prays the Court grant
4 the following relief:

- 5 a) A preliminary and permanent injunction ordering preservation of all data on
6 social media platforms Defendants have ever used so that Switch might use the
7 Order to preserve all evidence related to this action, including all documents,
8 comments, messages, posts, images, recordings, images, videos and related
9 materials associated with such use.
- 10 b) A preliminary and temporary injunction directing TANNER to immediately sign
11 into Twitter, reactive her Twitter account, and also to preserve all evidence on
12 Facebook, Pinterest, Instagram, and SoundCloud, as well as any other social
13 media outlets which are or have been utilized by TANNER, including but not
14 limited to all posts by TANNER and/or under the Handle (@DixieRaeSparx,
15 #DixieRaeSparx or DixieRaeSparx);
- 16 c) A preliminary and temporary injunction directing Twitter, Facebook, Pinterest,
17 Instagram, and SoundCloud, as well as any other social media outlets which are
18 or have been utilized by TANNER, to preserve all posts by TANNER and/or
19 under the Handle (@DixieRaeSparx, #DixieRaeSparx or DixieRaeSparx);
- 20 d) A preliminary and permanent injunction prohibiting Defendants, and their
21 respective officers, agents, servants, lobbyists, employees and/or all persons
22 acting in concert or participation with them, or any of them, from: (1) destroying
23 any evidenced related to Switch, the Switch 704B Docket, the First Solar
24 Contracts, the Denial Order or the other 704B Entities (including, but not limited
25 to, information on websites, such as social media websites, cell phones, devices,
26 emails, text messages, instant messages, or communications on any electronic
27 device or platform, regardless of their personal or public nature);
- 28

- 1 e) An Order directing all Defendants to preserve, retain, and deliver to Switch in
2 electronic copy:
- 3 a. All evidence, including documentation, communications, notes and other
4 evidence regardless of form, related to TANNER and/or the Handle in any
5 way;
- 6 b. All evidence, including documentation, communications, notes and other
7 evidence regardless of form, related to in any way to Switch and/or the
8 Switch 704B Docket;
- 9 c. All evidence and documentation relating to the names and addresses
10 (including electronic mail addresses, social media accounts, blogs, or other
11 electronic platforms, handles, pseudonyms or otherwise) of any person to
12 whom the Defendants have communicated regarding Switch, the Switch
13 704B Docket, or the 704B Entities;
- 14 d. All financial evidence and documentation relating to Defendants' use of in
15 house and outside lobbyists, including governmental and/or regulatory
16 affairs personnel;
- 17 f) For at least \$30,000,000.00 in monetary damages, as well as costs and attorneys'
18 fees incurred by Switch in the Switch 704B Docket which exceed \$1,000,000.00;
- 19 g) For an Order finding the Denial Order and the Settlement Agreement *void ab*
20 *initio*;
- 21 h) For an Order permitting Switch to unbundle from NVE;
- 22 i) For damages reimbursing and compensating Switch for overpaying NVE as the
23 injected middleman for the First Solar Contracts.
- 24 j) For an Order permitting assignment of the First Solar Contracts to Switch and all
25 other 704B Entities who have unbundled from the electric utility;
- 26 k) Alternatively, for an Order from this Court setting aside the Denial Order and the
27 Settlement Agreement under NRS 703.374 and permitting Switch to unbundle
28 from NVE without further administrative review;

1 permitted to pursue its procedural rights; finding the Settlement Agreement *void*
2 *ab initio*; and permitting Switch to pursue all associated remedies and rights
3 including further administrative review with a new and unbiased PUCN, PUCN
4 and Regulatory Operations Staff.

5 m) Award Switch costs, disbursements, and attorney's fees incurred by Switch in
6 bringing this action.


7 n) Award statutory, compensatory, consequential, statutory, punitive (including but
8 not limited to under Nev. Rev. Stat. § 42.005), and treble damages to Switch in an
9 amount to be determined at trial or by declaratory relief;

10 o) Award of interest, costs and attorneys' fees, including in-house attorneys' fees,
11 incurred by Switch in prosecuting this action; and

12 p) For all other relief as this Court deems just and equitable.

13
14 DATED this 12th day of July, 2016.

15 **SWITCH, LTD.**

16 
17 _____
18 SAMUEL CASTOR, ESQ.

19 Nevada Bar No. 11532

20 7135 S. Decatur Blvd.

21 Las Vegas, Nevada, 89118

22 702-333-6566

23 *Attorney for Plaintiff*
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CERTIFICATE OF MAILING

I certify that I am an employee of Switch, Ltd., and that on the __ day of ____, 201__,
I deposited for mailing at Las Vegas, Nevada a true copy of the foregoing **Complaint** in the
above matter, as addressed as follows:

Attorney for Defendant

Employee of SWITCH, LTD.