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REAL ESTATE COMMISSION
Robert Hall

8 **BEFORE THE REAL ESTATE COMMISSION**
9 **STATE OF NEVADA**

10
11 JOSEPH R. DECKER, Administrator, REAL
12 ESTATE DIVISION, DEPARTMENT OF
13 BUSINESS & INDUSTRY, STATE OF
14 NEVADA,

Case No. REN 14-05-07-047

15 Petitioner,

MOTION TO DISMISS

16 vs.

17 KYLE KRCH,

18 Respondent.

19 Respondent, Kyle Krch ("Krch"), hereby moves for dismissal of the Complaint filed by
20 the Administrator of the Real Estate Division of the Department of Business and Industry of
21 the State of Nevada (the "Division") on December 3, 2014. This Motion is supported by the
22 following Points and Authorities as well as the exhibits attached hereto.

23 **INTRODUCTION**

24 Based on long-standing legal principles, the Complaint and the alleged violations stated
25 therein must be dismissed with prejudice. Specifically, because the Nevada Real Estate
26 Commission (the "Commission") has previously decided in another matter the very same
27 issues raised by the Krch Complaint, the Division is precluded from litigating them again in
28 this proceeding, and the Commission is precluded from considering them.

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1 and regulations: (i) NRS 645.633(1)(h) – Gross Negligence; (ii) NAC 645.605(6) – Absolute
2 Fidelity; (iii) NRS 645.252(2) – Reasonable Care; and (iv) NRS 645.633(1)(i) – Deceitful
3 Conduct.¹

4 2. The Division Filed Several Other Complaints in December 2014 That Included
5 the Same Alleged Facts and Violations as the Krch Complaint

6 At the same time that the Division filed its Complaint against Krch, it also filed several
7 other complaints in early December 2014. In fact, the Division filed ten complaints against
8 other brokers, and these complaints are described below:

- 9 a) Jason Allen Lococo (“Lococo”), Case No. 2014-3324, filed on December 1,
10 2014 – this matter includes the same alleged facts and violations as the Krch
11 Complaint regarding NRS 645.633(1)(h) (Gross Negligence), NRS 645.252(2)
12 (Reasonable Care), NRS 645.633(1)(i) (Deceitful Conduct), and NAC
13 645.605(6) (Absolute Fidelity). The Lococo Complaint is attached hereto as
14 **Exhibit “2”**.
- 15 b) Steven P. O’Brien (“O’Brien”), Case No. REN 14-05-02-042, filed on
16 December 1, 2014 – this matter includes the same alleged facts and violations as
17 the Krch Complaint regarding NRS 645.633(1)(h) (Gross Negligence), NRS
18 645.252(2) (Reasonable Care), and NAC 645.605(6) (Absolute Fidelity). The
19 O’Brien Complaint is attached hereto as **Exhibit “3”**.
- 20 c) Hope C. Lewis, (“Lewis”), Case No. 2014-3323, filed on December 1, 2014 –
21 this matter includes the same alleged facts and violations as the Krch Complaint
22 regarding NRS 645.633(1)(h) (Gross Negligence), NRS 645.252(2)
23 (Reasonable Care), NRS 645.633(1)(i) (Deceitful Conduct), and NAC
24 645.605(6) (Absolute Fidelity). The Lewis Complaint is attached hereto as
25 **Exhibit “4”**.

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28 ¹ As previously stated, the alleged violation detailed in Paragraph 104 of the Krch Complaint is not a part of this Motion, and this alleged violation is therefore not discussed.

- 1 d) Michael Cullum Harding (“Harding”), Case No. 2014-3378, filed on December
2 3, 2014 – this matter includes the same alleged facts and violations as the Krch
3 Complaint regarding NRS 645.633(1)(h) (Gross Negligence), NRS 645.252(2)
4 (Reasonable Care), and NAC 645.605(6) (Absolute Fidelity).² The Harding
5 Complaint is attached hereto as **Exhibit “5”**. Harding was and is affiliated with
6 Krch Realty LLC.
- 7 e) Jason A. Jairam (“Jairam”), Case No. 2014-3377, filed on December 3, 2014 –
8 this matter includes the same alleged facts and violations as the Krch Complaint
9 regarding NRS 645.633(1)(h) (Gross Negligence), NRS 645.252(2)
10 (Reasonable Care), and NAC 645.605(6) (Absolute Fidelity). The Jairam
11 Complaint is attached hereto as **Exhibit “6”**. Jairam was and is affiliated with
12 Krch Realty LLC.
- 13 f) Anita Spencer (“Spencer”), Case No. 2014-3376, filed on December 3, 2014 –
14 this matter includes the same alleged facts and violations as the Krch Complaint
15 regarding NRS 645.633(1)(h) (Gross Negligence), NRS 645.252(2)
16 (Reasonable Care), and NAC 645.605(6) (Absolute Fidelity). The Spencer
17 Complaint is attached hereto as **Exhibit “7”**. Spencer was and is affiliated with
18 Krch Realty LLC.
- 19 g) Michael Carrasco (“Carrasco”), Case No. REN 14-05-04-044, filed on
20 December 2, 2014 – this matter includes the same alleged facts and violations as
21 the Krch Complaint regarding NRS 645.633(1)(h) (Gross Negligence), NRS
22 645.252(2) (Reasonable Care), NRS 645.633(1)(i) (Deceitful Conduct), and
23 NAC 645.605(6) (Absolute Fidelity). The Carrasco Complaint is attached
24 hereto as **Exhibit “8”**.
- 25 h) Joshua Fontenot (“Fontenot”), Case No. REN 15-08-07-012, filed on December
26 2, 2014 – this matter includes the same alleged facts and violations as the Krch

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28 ² The Harding Complaint includes an alleged violation in Paragraph 97 that is the same alleged violation detailed in Paragraph 104 of the Krch Complaint.

1 Complaint regarding NRS 645.633(1)(h) (Gross Negligence), NRS 645.252(2)
2 (Reasonable Care), and NAC 645.605(6) (Absolute Fidelity). The Fontenot
3 Complaint is attached hereto as **Exhibit "9"**.

4 i) Katrina Karasawa ("Karasawa"), Case No. REN 15-08-08-013, filed on
5 December 2, 2014 – this matter includes the same alleged facts and violations as
6 the Krch Complaint regarding NRS 645.633(1)(h) (Gross Negligence), NRS
7 645.252(2) (Reasonable Care), and NAC 645.605(6) (Absolute Fidelity). The
8 Karasawa Complaint is attached hereto as **Exhibit "10"**.

9 j) Michelle Plevel ("Plevel"), Case No. REN 14-06-06-061, filed on December 2,
10 2014 – this matter includes the same alleged facts and violations as the Krch
11 Complaint regarding NRS 645.633(1)(h) (Gross Negligence), NRS 645.252(2)
12 (Reasonable Care), and NAC 645.605(6) (Absolute Fidelity). The Plevel
13 Complaint is attached hereto as **Exhibit "11"**.³

14 The uniform nature of the alleged facts and violations in the Krch Complaint and the
15 complaints filed by the Division against Lococo, O'Brien, Lewis, Harding, Jairam, Spencer,
16 Carrasco, Fontenot, Karasawa, and Plevel and the timing of the filing of those complaints is
17 striking. The Division obviously sees these complaints as related and as sharing common
18 alleged facts, common alleged violations, and common legal theories. This is, of course, why
19 each of the complaints are structured the same and include the same alleged facts and alleged
20 violations of the statutes and regulations.

21 Against this backdrop, the Division went forward with the disciplinary hearings against
22 Lococo and O'Brien in early January 2015.

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26 ³ The Division also filed a Complaint against Susan Kay Lowe ("Lowe") on December 2, 2014, Case No. REN 14-
27 04-11-040. The Lowe Complaint includes a single violation of NAC 645.600(1) (Adequate Supervision), and
28 although some of the aforementioned complaints include a similar claim, the alleged violation of NAC 645.600(1) is
a secondary violation in that it necessarily rests on a determination that other statutes or regulations have been
violated. Because dismissal of the Krch Complaint and the other complaints is warranted, the Lowe Complaint and
any alleged violation of NAC 645.600(1) by Lowe or any of the other respondents similarly fail.

1 3. January 2015 Hearing

2 Based on the bare and vague allegations in the Lococo and O'Brien Complaints, the
3 Division first presented the Lococo matter to the Commission as one of "first impression." See
4 Transcript of Hearing on January 7, 2015, at page 8, lines 4-5, which is attached hereto as
5 **Exhibit "12"**. The Division argued based on the alleged facts in the Lococo Complaint –
6 which are the same alleged facts in the Krch Complaint and all of the other complaints – that it
7 was "very concerned" about this "unique situation." See id. at page 11, lines 15-16.
8 Specifically, the Division asked for the Commission's determination on the question of
9 "whether the way this [property] was marketed and sold and then resold rises to the level of a
10 violation. And that violation would be not dealing fairly with the . . . sellers, not representing
11 the sellers with absolute fidelity and not dealing fairly with the sellers' mortgage lender." See
12 id. at page 8, lines 13-18. Based on this question, the Division "wanted to get a determination
13 from the [Commission] on whether this was done with respect to the NRS 645.633(1)(h) and
14 (1)(i) pursuant to NAC 645.605(6) and/or NRS 645.252(2)." See id. at page 11, lines 17-20.

15 Critically, the question that the Division put before the Commission in the Lococo
16 matter is the identical question and issue in the Krch Complaint – and all of the other
17 complaints too. Based on the way the transaction was done in the Lococo matter, the Division
18 sought the Commission's determination on "whether this rose to the level of a violation." See
19 id. at page 116, line 20. After having heard all of the evidence presented, the Commission
20 determined that with this type of transaction, Lococo did not violate NRS 645.633(1)(h), NRS
21 645.633(1)(i), NAC 645.605(6), or NRS 645.252(2). See Lococo Decision, dated January 23,
22 2015, which is attached as **Exhibit "13"**. Therefore, after having been presented with the
23 Division's "concern" about this "unique situation" and transaction, the Commission provided
24 its "first impression" to the Division, and the Commission answered explicitly and
25 unequivocally – the type of transaction in the Lococo matter, which is the same type of
26 transaction in the Krch matter and every other case currently before the Commission, did not
27 violate any Nevada statute or regulation. Upon receiving the Commission's answer, the
28 Division then acted.

1 4. As a Result of the Commission’s Decision at the January 2015 Hearing, the
2 Division Voluntarily Dismissed Two Other Complaints That Included the Same Allegations as
3 the Krch Complaint

4 At the January 2015 hearing, the Commission determined that the type of transaction
5 detailed in the Lococo Complaint did not violate Nevada statutes or regulations – the same
6 statutes and regulations cited in the Krch Complaint. Specifically because of that ruling and at
7 the end of the Lococo proceedings, the Division voluntarily dismissed the O’Brien Complaint.
8 See Exhibit “12”, at page 137, lines 11-22. Not only was the Division’s decision appropriate,
9 but it was also prudent because the alleged facts and violations against Lococo were the same
10 against O’Brien. Compare Exhibits “2” and “3”. The Commission rejected the legal theory at
11 the core of the Division’s Complaint against Lococo, and on that basis, the Division rightly
12 recognized that the O’Brien Complaint was similarly flawed. Thus, dismissal was warranted,
13 and the Division acted accordingly.

14 In addition, after the January hearing and specifically because of the Commission’s
15 ruling, the Division also voluntarily chose to dismiss the Lewis Complaint on or about January
16 13, 2015. This too was an appropriate disposition of the Lewis matter because it also shared
17 the same alleged facts and violations that were rejected by the Commission. Compare Exhibits
18 “2”, “3”, and “4”. All of the statutes and regulations and the alleged facts supposedly in
19 violation thereof in the Lococo matter were present in the O’Brien and Lewis matters and are
20 also present in the Krch matter.

21 Through a letter on February 12, 2015, Krch, along with all of the other remaining
22 respondents that are subject to the complaints listed above, requested that the Division dismiss
23 the complaints in accordance with the Commission’s previous decision in the Lococo, O’Brien,
24 and Lewis matters. To date, the Division has refused. Because of the precedent created by the
25 Commission’s previous decisions and because of principles of fundamental fairness and Due
26 Process, this Motion now follows.

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1 litigation. Collins v. D.R. Horton, Inc., 505 F.3d 874, 880 (9th Cir. 2007); see also Parklane
2 Hosiery Co., 439 U.S. at 326. Put simply, courts acknowledge “the extremely important policy
3 underlying the doctrine of collateral estoppel – that litigation of issues at some point must
4 come to an end.” James Talcott, Inc. v. Allahabad Bank, Ltd., 444 F.2d 451, 463 (5th Cir.
5 1971).

6 Additionally, issue preclusion applies to administrative proceedings. Campbell v. State,
7 Dep’t of Taxation, 108 Nev. 215, 218, 827 P.2d 833, 835 (1992) (citations omitted); Jerry’s
8 Nugget v. Keith, 111 Nev. 49, 54, 888 P.2d 921, 925 (1995). This makes intrinsic sense
9 because when governmental or administrative bodies assert a position on matters of law or
10 policy, they have an obligation to explain themselves and to be consistent. And if not,
11 consistency is enforced through the application of issue preclusion. United States v. Stauffer
12 Chemical Co., 464 U.S. 165 (1984) (approving defensive collateral estoppel against the
13 government).

14 In this case, it is clear that issue preclusion applies to prevent the Division from
15 relitigating against Krch previously litigated issues that have already been before and decided
16 by the Commission. The Division litigated the same alleged violations and the same legal
17 theories in both the Lococo matter and the Krch Complaint; namely, alleged violations of NRS
18 645.633(1)(h) (Gross Negligence), NRS 645.252(2) (Reasonable Care), NRS 645.633(1)(i)
19 (Deceitful Conduct), and NAC 645.605(6) (Absolute Fidelity). Compare Exhibits “1” and “2”.
20 In the Lococo hearing, the Division had a full and fair opportunity to litigate these identical
21 issues and alleged violations, and the Lococo matter resulted in a final ruling on the merits in
22 which the Commission rejected the Division’s arguments in totality. See Exhibit “13”.
23 Because the Division is a party to both the Lococo proceedings and these proceedings and
24 because all of the Five Star Capital elements are met, the Division is precluded from
25 relitigating against Krch the same alleged violations that were rejected by the Commission.

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1 In practical terms, the Division already recognized the public policy benefit in
2 defensive collateral estoppel when it dismissed the O'Brien Complaint and the Lewis
3 Complaint after the Commission rejected the Division's arguments in the Lococo matter. Not
4 only did that decision protect O'Brien and Lewis from the burden of relitigating an identical
5 issue that had already been before the Commission as a matter of "first impression," but it also
6 promoted judicial economy by preventing needless litigation from both the Division's
7 perspective and the perspective of O'Brien and Lewis. Now, as it pertains to Krch, he too
8 should receive the same legal and equitable treatment that O'Brien and Lewis received. Law
9 and equity demand dismissal in this case, and for these reasons, the Krch Complaint must be
10 dismissed.

11 Lastly, it is important to note that by failing to treat Krch and the other respondents the
12 same as Lococo, O'Brien, and Lewis – which is, of course, what issue preclusion requires the
13 Division and the Commission to do – the Division is also abusing its discretion, acting in an
14 arbitrary and capricious manner, and acting in excess of its statutory authority, all of which
15 subjects the Division and the Commission to judicial review under NRS 233B.135(3)⁵ as well
16 as immediate writ proceedings in the District Court. See NRS 34.320 (a "writ of prohibition
17 . . . arrests the proceedings of any tribunal, corporation, board or person exercising judicial
18 functions, when such proceedings are without or in excess of the jurisdiction of such tribunal,
19 corporation, board or person"); Olsen Family Trust v. District Court, 110 Nev. 548, 552, 874
20 P.2d 778, 781 (1994) (the purpose of a writ of prohibition is to restrain a party "from acting
21 without authority of law in cases where wrong, damage and injustice are likely to follow from

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26 ⁵ NRS 233B.135(3) provides that a Court may set aside the Commission's decision if that decision is "(a) In
27 violation of constitutional or statutory provisions; (b) In excess of the statutory authority of the agency; (c) Made
28 upon unlawful procedure; (d) Affected by other error of law; (e) Clearly erroneous in view of the reliable,
probative and substantial evidence on the whole record; or (f) Arbitrary or capricious or characterized by abuse of
discretion."

1 such action”); see also NRS 34.160 (a “writ [of mandamus] may be issued . . . to compel the
2 performance of an act”).⁶

3 2. This Proceeding and the Krch Complaint Are Fundamentally Flawed, and the
4 Krch Complaint Must Therefore Be Dismissed

5 There are two defects with the Krch Complaint and this proceeding – first, the statutes
6 and regulations that Krch allegedly violated are unconstitutionally vague and therefore void;
7 and second, compounding this vagueness, the Division fails to allege in the Krch Complaint
8 *why* or *how* Krch allegedly violated the relevant statutes and regulations. Together or alone,
9 both of these defects must result in dismissal for offending principles of Due Process, and both
10 defects are discussed fully below.

11 A. *The Statutes and Regulations At Issue Are Vague and Therefore Void*

12 The void for vagueness doctrine is not a narrowly applied outlier in American
13 jurisprudence. Rather, courts for decades have applied it across the legal landscape in order to
14 patrol and uphold critical principles of Due Process. For example, Nevada courts have applied
15 it to city and county ordinances and have concluded that “[a]n ordinance which either forbids
16 or requires the doing of an act in terms so vague that men of common intelligence must
17 necessarily guess at its meaning, and differ as to its application, violates the first essential of
18 due process, i.e., the notion of fair notice or warning” and must be declared void for vagueness.
19 Eaves v. Board of Clark County Comm’rs, 96 Nev. 921, 923, 620 P.2d 1248, 1249-50 (1980)
20 (*citing* Connally v. General Constr. Co., 269 U.S. 385, 391 (1926); Papachristou v. City of
21 Jacksonville, 405 U.S. 156, 162 (1972); Note, The Void-For-Vagueness Doctrine in the
22 Supreme Court, 109 U.Pa.L.Rev. 67, 68 (1960); accord Smith v. Goguen, 415 U.S. 566, 572
23 (1974); Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939)). Aside from Due Process concerns,

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25 ⁶ Even if issue preclusion somehow does not prevent the Division from pursuing the Krch Complaint, the Complaint
26 must nonetheless be dismissed because Krch owes no fiduciary duty to the lenders involved in the transactions
27 detailed in the Complaint. See, e.g., Miller & Starr California Real Estate 3D, Section 3:55; Saffie v. Schmeling,
28 224 Cal. App. 4th 563, 568, 168 Cal. Rptr. 3d 766, 769 (2014) (“while the real estate brokers owe their clients
fiduciary duties, they owe third parties who are not their clients, including the adverse party in a real estate
transaction, only those duties imposed by regulatory statutes”). Moreover, in reaching its conclusion in the Lococo
matter, the Commission already necessarily determined that Lococo did not owe a fiduciary duty to lenders. See
Exhibit “13”. The Division recognized this determination when it dismissed the O’Brien and Lowe matters.

1 a vague law permits, and even encourages, arbitrary and discriminatory enforcement.
2 Papachristou v. City of Jacksonville, 405 U.S. 156, 170 (1972).

3 In a criminal context, Nevada law demands that a statute be clear and unambiguous in
4 the conduct which it seeks to criminalize. Sheriff, Washoe County v. Burdg, 118 Nev. 853,
5 857, 59 P.3d 484, 486-7 (2002) (“A statute is void for vagueness if it fails to define the
6 criminal offense with sufficient definiteness that a person of ordinary intelligence cannot
7 understand what conduct is prohibited and if it lacks specific standards, encouraging arbitrary
8 and discriminatory enforcement”); see also Cunningham v. State, 109 Nev. 569, 570, 855 P.2d
9 125, 125 (1993) (stating that a statute that does not give fair notice of prohibited conduct, “is
10 violative of the Due Process Clause, Article 1, Section 8 of the Nevada Constitution”).

11 The void for vagueness doctrine applies with similar and equal force to these
12 proceedings initiated by the Division and before the Commission. In fact, the doctrine has
13 been applied to administrative and regulatory matters. Gentile v. State Bar of Nevada, 501 U.S.
14 1030, 1048-53 (1991) (holding that rules subjecting attorney to discipline for speech were
15 unconstitutionally vague); F.C.C. v. Fox Television Stations, Inc., 567 U.S. ___, 132 S.Ct.
16 2307 (2012) (applying the void for vagueness doctrine to F.C.C. regulations).

17 Here, in the Krch Complaint, the Division has alleged violations of NRS 645.633(1)(h),
18 NRS 645.633(1)(i), NRS 645.252(2), and NAC 645.605(6). However, in each of these
19 instances the statute or regulation “fails to define the . . . offense with sufficient definiteness
20 that a person of ordinary intelligence cannot understand what conduct is prohibited.” For
21 example, NRS 645.252(2) requires an agent such as Krch to “exercise reasonable skill and
22 care,” but the statute fails to articulate *how* Krch is supposed to satisfy this requirement and it
23 fails to give any hint as to what conduct is or is not prohibited. Similarly, NAC 645.605(6)
24 states that an agent such as Krch has an “obligation of absolute fidelity” to his client and must
25 “deal fairly” in the transaction, but again this regulation fails to *how* Krch is supposed to
26 satisfy these requirements and it fails to give any hint as to what conduct is or is not prohibited.
27 One wonders how a person is supposed to know when s/he is “dealing fairly” with another
28 when the penalty for not doing so can be the loss of his/her license. Also, NRS 645.633(1)(h)

1 and (i) mention “gross negligence” and “deceit,” but it does not define these terms or detail a
2 particular standard of care.

3 In all areas of the law, including proceedings such as this, courts emphasize that “a
4 fundamental principle of our legal system is that laws which regulate persons or entities must
5 give fair notice of conduct that is forbidden or required... [t]his requirement of clarity in
6 regulation is essential to the protections provided by the Due Process Clause of the Fifth
7 Amendment.” F.C.C., 567 U.S. at ___, 132 S.Ct. at 2317 (citing United States v. Williams,
8 553 U.S. 285, 304 (2008)). Because all of the statutes and regulations referenced in the Krch
9 Complaint fail to articulate any concrete and unambiguous conduct that is prohibited, these
10 statutes and regulations are unconstitutionally vague and are therefore void. Pursuant to the
11 void for vagueness doctrine, the Krch Complaint must therefore be dismissed.

12 As detailed below, the vagueness of the statutes and regulations is compounded by the
13 vagueness of the Krch Complaint itself.

14 B. The Krch Complaint Does Not Sufficiently Describe the Allegedly
15 Violative Conduct

16 Under NRS 233B.121(2), the Division is required, at a minimum, to provide sufficient
17 notice to Krch of “the statutes and regulations” he is alleged to have violated and “a short and
18 plain statement of the matters asserted.” The purpose, of course, is to provide proper and
19 adequate notice to Krch of the allegations against him so that he has an “opportunity [which]
20 must be afforded all parties to respond and present evidence and argument on all issues
21 involved” pursuant to NRS 233B.121(4).

22 NRS 233B.121(2)(d)’s usage of the “short and plain statement” language is no
23 accident. The language echoes that of NRCP 8(a), which provides that in a civil complaint, a
24 party asserting a claim must provide “a short and plain statement of the claim showing that the
25 pleader is entitled to relief.” As the U.S. District Court of Nevada recently stated in Couturier
26 v. American Invsco Corp., 10 F.Supp.3d 1143 (2014), in applying the federal equivalent of
27 NRCP 8, “[w]hile Rule 8 does not require detailed factual allegations, it demands more than
28 ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action.’” Id. at

1 1148 (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). Indeed, “[m]ere recitals of the
2 elements of a cause of action, supported only by conclusory statements, do not suffice.” Iqbal,
3 556 U.S. at 678. Thus, in a civil lawsuit, a complaint must, at a minimum, “set forth sufficient
4 facts to establish all necessary elements of a claim for relief so that the adverse party has
5 adequate notice of the nature of the claim and relief sought.” Hay v. Hay, 100 Nev. 196, 198,
6 678 P.2d 672, 674 (1984) (citing Johnson v. Travelers Ins. Co., 89 Nev. 467, 472, 515 P.2d 68,
7 71 (1973)).

8 In applying these standards, the Court in Couturier dismissed a complaint’s allegations
9 when the plaintiffs asserted conclusory allegations against the defendant: “The Couturiers fail
10 to allege any facts to explain *how* their units are sub-par in quality . . . [and] [t]his is merely a
11 conclusory allegation that does not satisfy the pleading standards of Iqbal and Twombly.”
12 Couturier, 10 F.Supp.3d at 1152 (emphasis added). These standards all act to protect a party’s
13 Due Process rights by ensuring that the defendant is given notice of the allegations against
14 him/her so that s/he can fairly and adequately mount a defense. Due Process applies with
15 equal force to administrative proceedings, especially where those proceedings affect a person’s
16 rights and his/her livelihood.

17 In the present case, even a cursory review of the Krch Complaint reveals its substantial
18 and fatal defects. The Krch Complaint lists certain alleged facts about various transactions, but
19 none of these factual allegations state or specify that Krch did or did not perform any particular
20 act. See Exhibit “1”. Instead, in a section entitled “Violations,” the Complaint states – in a
21 conclusory fashion and without explanation – that Krch violated certain statutes or regulations.
22 Remarkably, the “Violations” section does not even articulate what alleged conduct violated a
23 statute or regulation, and it does not even specify what transactions and Krch’s alleged actions
24 regarding these transactions allegedly were violative of statutes or regulations. See generally
25 id. Krch therefore is not provided “adequate notice of the nature of the claim” or put on notice
26 regarding *why* or *how* he allegedly violated the statutes or regulations.

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1 As a result, Krch is left completely in the dark as to what he did that allegedly violated
2 a statute or regulation, what he did not do that allegedly violated a statute or regulation, or
3 regarding to which transaction these supposed acts or non-acts relate. Consequently, the Krch
4 Complaint's vagueness and lack of notice concerning the allegations against him violates
5 Krch's substantive and procedural Due Process rights because he is simply not in a position to
6 respond to these vague and conclusory allegations. Krch cannot mount a defense under NRS
7 233B.121(4), Couturier, or Iqbal under these circumstances, and the Krch Complaint must
8 therefore be dismissed.

9 **CONCLUSION**

10 For the above-stated reasons, all allegations and alleged violations set forth in the Krch
11 Complaint – except for the alleged violation detailed in Paragraph 104 – must be dismissed
12 with prejudice.

13 The undersigned does hereby affirm that the preceding document does not contain the
14 social security number of any person.

15 DATED this 9th day of March 2015.



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