

1 **\$1425**
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9
10 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 COMMNV, LLC, a Nevada limited liability
13 company,

14 Plaintiff,

15 v.

16 UPRISE, LLC, a Nevada limited liability
company; STEPHEN A. KROMER, an
17 individual, KROMER INVESTMENTS,
INC., a California corporation; NEVADA
18 DEPARTMENT OF TRANSPORTATION,
a division of the State of Nevada; ROCKY
19 MOUNTAIN WEST TELECOM, INC., a
Utah corporation; RMWT CONSULTING,
20 LLC, an unknown entity; SURETEC
INSURANCE COMPANY,
21 DOES 1-10,

22 Defendant.

CASE NO.:

DEPT. NO.:

COMPLAINT

**[Arbitration Exempt Pursuant to
NAR 3: Amount in Controversy
Exceeds \$50,000 and Declaratory and
Injunctive Relief Requested]**

23
24 Plaintiff COMMNV, LLC ("CommNV"), by and through its attorneys of the firm of
25 SIMONS HALL JOHNSTON, hereby alleges as follows:
26
27
28

SIMONS HALL JOHNSTON PC
690 Sierra Rose Drive
Reno, NV 89511
Phone: (775) 785-0088

1 **I. PARTIES**

2 1. Plaintiff CommNV is a Nevada limited-liability company doing business in
3 Washoe County, Nevada.

4 2. Defendant UPRISE, LLC is a Nevada limited liability company doing
5 business in Washoe County, Nevada ("Uprise").

6 3. Defendant Stephen A. Kromer is an individual residing and/or conducting
7 business in Washoe County, Nevada ("Kromer").

8 4. Defendant KROMER INVESTMENTS, INC. is a California corporation
9 registered to do business in the State of Nevada ("Kromer Investments").

10 5. Defendant Nevada Department of Transportation is a division of the State of
11 Nevada ("NDOT").

12 6. Defendant Rocky Mountain West Telecom, Inc. is a Utah corporation doing
13 business in the State of Nevada ("Rocky Mountain").

14 7. Defendant RMWT Consulting, LLC is an unknown entity purporting to do
15 business in the State of Nevada ("Consulting").

16 8. CommNV is informed and believes Rocky Mountain is purporting to conduct
17 its business operations as Consulting using a false and fraudulent name and these two
18 purported entities will be jointly referred to herein as "RMWT".

19 9. Defendant Suretec Insurance Company, is an unknown business
20 conducting business in Washoe County, State of Nevada ("Suretec").

21 10. CommNV is informed and believes Kromer Investments is the alter ego of
22 Uprise and has represented to CommNV that all decisions, all financing, and all business
23 operations of Uprise are managed and controlled by Kromer Investments and is merely a
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1 paper shell company, with no employees or internal operations, through which Kromer
2 Investments conducts its own business operations.

3 11. Plaintiff does not know the true names and capacities of defendants sued as
4 DOES 1 to 10, inclusive, and therefore sues these defendants by fictitious names.
5 Plaintiff is informed and believes, and thus alleges, that each of these fictitiously named
6 defendants is responsible in some actionable manner for the damages alleged. Plaintiff
7 requests leave of Court to amend its Complaint to name the defendants specifically when
8 their identities become known.
9

10 **II. JURISDICTION**

11 12. This Court has jurisdiction over this matter under Nev. Const. Art. VI, §6,
12 since this Court has original jurisdiction in all matters not assigned to the justice courts,
13 and since the contracts were negotiated in Washoe County, the alleged work was
14 performed in Washoe County, defendants reside and/or conduct business in Washoe
15 County, and/or the damages that are the subject of the underlying claim in this complaint
16 occurred in Washoe County.
17

18 **III. GENERAL ALLEGATIONS**

19 **A. THE USDA RECONNECT PROGRAM**

20 13. The United States Department of Agriculture ("USDA") implements a
21 national program called the "ReConnect Program" which offers loans, grants, and/or loan-
22 grant combinations to facilitate broadband deployment in areas of rural America that
23 currently do not have sufficient access to broadband.
24

25 14. The ReConnect Program is administered by the Administrator of the Rural
26 Utilities Service of the United States of America ("RUS").
27
28

1 15. The ReConnect Program is a fund of \$600 million for use in facilitating the
2 expansion of broadband services and infrastructure into rural areas of the country and is
3 intended to fuel long-term rural economic development and opportunities in rural America.

4 16. Only projects that RUS determines to be financially feasible and sustainable
5 will be eligible for an award under the ReConnect Program.
6

7 17. RUS has designated specific "service areas" that a potential broadband
8 service provider can bid on to construct a network within the service area to be funded
9 from the ReConnect Program.

10 18. Applicants to the ReConnect Program may request funding up to
11 \$35,000,000 to be awarded as a grant and/or loan for a designated service area.

12 19. To qualify for this USDA program, relevant to this action, applicants must
13 provide a matching contribution equal to at least twenty-five percent (25%) of the cost of
14 the overall project (the "Matching Funds").
15

16 20. The applicant must clearly identify the source of the matching funds even if
17 it is to be provided from the applicant's operating account and/or from a third-party.

18 21. The applicant's Matching Funds must be deposited into a Pledged Deposit
19 Account ("Pledged Account") controlled by RUS which is an account that is restricted to
20 funding the applicant's portion of the construction project.
21

22 22. In the event the applicant's Matching Funds are provided by a third party,
23 the third party must provide a commitment letter indicating that the funds will be available
24 at the closing of the award if approved and will be deposited into the Pledged Account.

25 **B. UPRISE—THE LOVELOCK PROJECT APPLICATION.**

26 23. Uprise is a privately owned internet service provider headquartered in Reno,
27 Nevada.
28

24. It is believed Kromer is the principal owner of Uprise and holds 100% ownership of this entity either directly and/or through Kromer Investments.

25. Uprise purports to deliver residential fiber internet service in Nevada, Oregon, Washington and California.

26. In or about 2022, Uprise applied for financial assistance under the USDA ReConnect Program with RUS (the "Application").

27. The Application sought a grant to fund among other things, construction of a trench and installation of telecommunications infrastructure within NDOT's right of way along I-80 in Lovelock, Nevada (the "Lovelock Project"). Of note, certain documents also refer to the Lovelock Project as the "Lovelock Exchange" and/or "NV-1702-A61" as identifiers of the project.

28. Uprise's Application identified the construction of the Lovelock Project would cost \$36,206,128 of which \$27,154,596 would be funded by a USDA ReConnect Program Grant and Uprise would fund its Matching Fund amount of \$9,051,532.

29. Uprise represented to RUS its Matching Fund amount of \$9,051,532 was to be funded by a payment from NDOT in the amount of \$3.2 million only with the balance of approximately \$5.8 million to be self-funded by Uprise.

C. UPRISE—THE LOVELOCK PROJECT GRANT.

30. On or about October 24, 2022, RUS entered into its "grant" with Uprise to fund \$27,154,596 under the USDA ReConnect Program with Uprise's Matching Fund amount of \$9,051,532 payable by Uprise as its Matching Fund contribution (the "Grant").

31. CommNV is informed and believes the application for the Grant was based upon the Matching Fund amount of \$9,051,532 funded by a payment from NDOT in the

1 amount of \$3.2 million only with the balance of approximately \$5.8 million to be self-
2 funded by Uprise.

3 32. CommNV is informed and believes RUS was not initially informed that
4 Uprise's Matching Fund would be exclusively provided by NDOT as a third-party and that
5 Uprise was not self-funding any portion of the Matching Funds amount.
6

7 33. CommNV is informed and believes the Initial NDOT Payment of \$9,051,532
8 paid by NDOT to Uprise was then deposited by Uprise into a Pledged Account by Uprise
9 to fulfill its Matching Funds obligation under the Grant.

10 **D. NDOT'S CONTRACT WITH UPRISE FOR THE LOVELOCK PROJECT.**

11 34. NDOT agreed to pay funds to Uprise as part of the Lovelock Project
12 because NDOT desired to enhance and buildout its Intelligent Transportation Systems
13 ("NDOT ITS") for its own network and broadband services for underserved areas in
14 Nevada which services are independent of the ReConnect Program.
15

16 35. These types of "joint" or "shared" construction is commonly employed at
17 costs for only one trench and related infrastructure had to occur which would benefit both
18 entities, thereby promoting and enhancing cooperative and joint procedures.
19

20 36. Uprise initially represented NDOT would pay to Uprise \$9,051,532 for
21 installing NDOT conduit and fiber optic infrastructure in the same trench that Uprise was
22 planning on constructing when installing its own equipment under the Lovelock Project
23 ("Initial NDOT Payment").

24 37. Subsequently, on or about February 18, 2023, NDOT entered into a Non-
25 Interstate Telecommunications Location-Specific Agreement Number P611-22-016 (the
26 "NDOT Agreement") whereby NDOT agreed to pay Uprise \$11,619,298.75 million to
27 perform certain designated construction services for it.
28

1 38. CommNV is informed and believes the full payment of \$11,619,298.75 has
2 not been paid by NDOT to Uprise.

3 39. As will be discussed in detail below, at all relevant times, Uprise only held a
4 C-2D Low Voltage Contractor License No. 0088561 with the State of Nevada with a bid
5 limit of \$5,000,000.00.
6

7 40. At all times CommNV is informed and believes Uprise was in violation of
8 applicable statutes and administrative codes in bidding upon and entering into
9 construction contracts in excess of its bid limit.

10 **E. UPRISE'S CONTRACT WITH RMWT.**

11 41. On or about June 26, 2023, Uprise contracted with RMWT under a
12 standardized RUS contract with standardized Attachments, to perform, among other
13 things, engineering services, construction staking activities and construction inspection
14 services (the "RMWT Contract").
15

16 42. RMWT purports to have expertise in assisting applicants such as Uprise to
17 comply with the ReConnect Program and "to obtain engineering assistance in completing
18 a Project, while complying with RUS postloan construction regulations."
19

20 43. RMWT contracted with Uprise to perform the following services and duties:
21 [D]iligently and competently render the engineering services required in this
22 Agreement. These engineering services shall be reasonably necessary or
23 advisable for the expeditious, economical, and sound design and
24 construction of the Project . . . by means of services described in this
25 agreement and its attachments.

26 RMWT Contract, ¶2.03

27 44. CommNV has recently discovered that pursuant to the RMWT Contract,
28 RMWT was obligated to provide not only all plans and specification for the construction of
the Lovelock Project, but also to provide the following:

- Perform a pre-construction meeting with CommNV and take detailed notes and circulate all notes to ensure proper interpretation of the plans and specifications are understood and/or discussed;
- To provide staking activities to ensure the trenching was completed in accordance with the plans and specifications and/or if field conditions required alterations.
- To receive and respond to requests for information from CommNV relating to interpretation of plans and/or modifications required by field conditions;
- To maintain a Resident and an Inspector at the site at all times to ensure the project is being constructed by CommNV according to the plans and specifications;
- Maintain a brick and mortar field office in the vicinity of the Project to assist in construction inspection and oversight of the construction being performed by CommNV;
- To conduct daily inspections and prepare corresponding field notes and reports of any construction activities undertaken by CommNV purportedly not in compliance with the plans and specifications;
- Immediately report any issues relating to alleged non-compliance of the construction activities performed by CommNV and to notify CommNV of any such alleged deviations or non-compliance; and
- To maintain billing records for all Residents and Inspectors and their daily activities in inspecting and overseeing the construction activities being performed by CommNV.

45. RMWT was also under a duty to ensure the design and construction of the Project complied with USDA ReConnect Program guidelines and mandates along with all RUS contract obligations.

46. CommNV is informed and believes that RMWT never conducted any due diligence to ensure that Uprise was capable of performing under the RUS Grant and/or had the appropriate contractor's license to perform the contract.

1 47. Other than generating the plans and specifications, RMWT failed to perform
2 any of the above-referenced mandated actions required of it under the terms of the
3 RMWT Contract and the related RUS contracts and attachments.

4 **F. COMMNV'S CONTRACTS WITH UPRISE.**

5 48. Uprise and Kromer induced CommNV to perform the construction services
6 required for the Lovelock Project by promising CommNV it would perform the totality of
7 the construction of such project for the total price of \$23,021,580.41.

8 49. In reliance upon Uprise's and Kromer's representations, CommNV turned
9 down other work, upstaffed its operations, ordered materials and supplies in advance of
10 different segments of the construction project and undertook additional financial
11 commitments to ensure it could complete the totality of the Lovelock Project within the 60
12 month construction period.

13 50. NDOT further requested CommNV provide confirmation it would commit and
14 proceed with construction of the Lovelock Project and to provide as a condition of its
15 funding of its payment to Uprise.

16 51. In reliance upon Uprise's and NDOT's representations and confirmations
17 CommNV would be paid for its services on the Lovelock Project, CommNV confirmed its
18 commitment to complete the totality of the Lovelock Project.

19 52. Uprise did not initially contract with CommNV to complete the totality of the
20 Lovelock Project but instead elected to create "Segments" of the job to be documented by
21 separate but related contracts.

22 53. For the initial "Segment 1", Uprise and CommNV entered into a RUS
23 Contract Form 773 for the amount of \$958,485.92 (the "CommNV Contract").
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1 54. However, prior to entering into the CommNV Contract, CommNV repeatedly
2 notified Uprise that it could not complete the totality of Segment 1 without interim draws
3 and/or payment.

4 55. At all times Uprise agreed and represented CommNV would be paid an
5 interim draw and/or payment for Segment 1.
6

7 56. CommNV would never have agreed to proceed with Segment 1 without the
8 repeated assurances and representations by Uprise that it would be paid an interim draw
9 and/or payment.

10 57. Despite the foregoing repeated representations, Uprise included in the
11 CommNV Contract a provision that CommNV would only receive payment upon
12 completion of Segment 1.
13

14 58. Uprise represented to CommNV this language was a mere formality and
15 that it was not intended to be enforceable or applicable.

16 59. Subsequently, on October 18, 2023, CommNV invoiced Uprise the amount
17 of \$811,603.60 for work performed for Uprise and NDOT which amounts are outstanding
18 and owed to CommNV. **Exhibit 1** (Inv. No. 140).
19

20 60. In breach of its representations and promises, Uprise refused to pay
21 CommNV even though the scope of Segment 1 was nearing completion.

22 61. At all times, CommNV is informed and believes Uprise has had the funds to
23 pay it an interim payment yet Uprise wrongfully has refused to pay such payment.

24 62. Due to Uprise's and Kromer's breach of their representations and CommNV
25 Contract, CommNV ceased all work.
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63. In addition, Uprise contracted with CommNV to provide additional services outside the scope of the CommNV Contract for which CommNV is owed \$222,274.81 which has been invoiced to Uprise yet remains unpaid. **Exhibit 2** (Inv. No. 88).

64. In addition, Uprise contracted with CommNV to provide additional services outside the scope of the CommNV Contract for which CommNV is owed \$11,122.50 which has been invoiced to Uprise yet remains unpaid. **Exhibit 3** (Inv. No. 147).

65. CommNV is informed that Uprise has received funding for payment of CommNV's work reflected in the foregoing invoices but has wrongfully refused to use such funds for paying these justly owed debts.

66. CommNV is informed and believes Uprise, Kromer and/or Kromer Investments is wrongfully diverting funds from NDOT and the USDA ReConnect Project to fund other unrelated expenses to the detriment of CommNV, NDOT and the USDA.

G. COMMNV'S CONTRACTS WITH RMWT.

67. In addition to the foregoing, RMWT contracted with CommNV to provide services on behalf of RMWT for which CommNV is owed \$22,664.00 which amounts have been invoiced to RMWT yet remains unpaid. **Exhibit 4** (Inv. Nos. 138, 139, 142, 146).

H. COMMNV'S DEMAND ON UPRISE'S BOND.

68. Defendant Suretec is obligated under its bond Number 6008212 in the amount of \$50,000.00.

69. CommNV had made demand upon Suretec to pay these sums to CommNV due to Uprise's failure to pay all sums due and owing to CommNV stated herein.

70. Suretec has refused to respond to CommNV's demand.

FIRST CLAIM FOR RELIEF
(Fraud-Fraud in the Inducement—Uprise, Kromer, Kromer Investments)

71. CommNV incorporates all prior allegations as if fully set forth herein

72. At all times Defendants Uprise and Kromer represented to CommNV that CommNV would (1) receive an interim payment for the CommNV Contract prior to completion of the scope of work (2) the payment upon completion clause in the CommNV Contract was a mere formality and that it was not intended to be enforceable or applicable; and (3) CommNV was the contractor hired to complete the totality of the Lovelock Project for the contract price of \$23,021,580.41.

73. These Defendants, and each of them, knew, or in the exercise of reasonable diligence would have known, that such representations were false as these Defendants never intended to honor and abide by their representations.

74. These Defendants intended CommNV to rely upon their representations.

75. CommNV did justifiably rely upon these Defendants', and each of their, representations as stated herein.

76. The representations by these Defendants were false.

77. Kromer Investments is liable for the acts of Uprise and/or Kromer as these defendants are its agents and/or its alter ego.

78. As a result of these Defendants' fraudulent representations, CommNV has been harmed in excess of \$5,000,000.00.

79. When these Defendants' complained of conduct was performed, these Defendants acted with oppression, fraud and malice and/or with the willful, intentional and reckless disregard of CommNV's rights and interest and CommNV is entitled to punitive damages in excess of \$15,000.00 to be proven at trial.

80. CommNV has been forced to retain the law firm of Simons Hall Johnston PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in bringing this action.

SECOND CLAIM FOR RELIEF

(Negligent Misrepresentation—Uprise, Kromer, Kromer Investments)

81. CommNV incorporates all prior allegations as if fully set forth herein.

82. Uprise, Kromer and Kromer Investments, in the course of an action in which they had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to CommNV, including, among other things, CommNV would be paid interim payments and the limitation on payment upon completion was a mere formality and that it was not intended to be enforceable or applicable and that it was the retained contractor for the entirety of the Lovelock Project.

83. CommNV justifiably relied on this information.

84. As a result of these Defendants' negligent representations, CommNV has been harmed in excess of \$5,000,000.00.

85. When these Defendants' complained of conduct was performed, these Defendants acted with oppression, fraud and malice and/or with the willful, intentional and reckless disregard of CommNV's rights and interest and CommNV is entitled to punitive damages in excess of \$15,000.00 to be proven at trial.

86. CommNV has been forced to retain the law firm of Simons Hall Johnston PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in bringing this action.

THIRD CLAIM FOR RELIEF

(Breach of CommNV Contract—Uprise, Kromer Investments)

87. CommNV incorporates all prior allegations as if fully set forth herein.

1 88. Uprise, and Kromer Investments as its alter ego, are parties to the
2 CommNV Contract.

3 89. At all times these Defendants represented to CommNV that CommNV
4 would (1) receive an interim payment for the CommNV Contract prior to completion of the
5 scope of work, and (2) the payment upon completion clause in the CommNV Contract
6 was a mere formality and that it was not intended to be enforceable or applicable.
7

8 90. Based upon these oral representations made both before and after the
9 parties entered into the CommNV Contract, the pay upon completion term of this contract
10 was inapplicable and if applicable, was waived, modified and/or excused.

11 91. CommNV has performed all obligations required of it under the CommNV
12 Contract and/or has been excused or released from such obligations.
13

14 92. These Defendants have breached the terms of the CommNV Contract by
15 failing to pay CommNV for services and materials provided.

16 93. As a result of these Defendants' conduct, CommNV has been harmed in
17 excess of \$811,000.00.

18 94. CommNV has been forced to retain the law firm of Simons Hall Johnston
19 PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in
20 bringing this action.
21

22 **FOURTH CLAIM FOR RELIEF**
23 **(Tortious Breach of Covenant of Good Faith and Fair Dealing CommNV Contract—**
Uprise, Kromer Investments)

24 95. CommNV incorporates all prior allegations as if fully set forth herein.

25 96. Uprise, and Kromer Investments as its alter ego, are parties to the
26 CommNV Contract.
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1 to provide additional services outside the scope of the CommNV Contract for which
2 CommNV is owed \$222,274.81 under Invoice Number 88 (see Ex. 2) and is owed
3 \$11,122.50 under Invoice Number 147 (see Ex. 3).

4 107. CommNV has performed all obligations required of it under this contract
5 and/or has been excused or released from such obligations.
6

7 108. These Defendants have breached the terms of this contract by failing to pay
8 CommNV for services rendered.

9 109. As a result of these Defendants' conduct, CommNV has been harmed in
10 excess of \$233,397.31.

11 110. CommNV has been forced to retain the law firm of Simons Hall Johnston
12 PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in
13 bringing this action.
14

15 **SIXTH CLAIM FOR RELIEF**
16 **(Implied In Law Contract—Uprise, Kromer Investments, NDOT)**

17 111. CommNV incorporates all prior allegations as if fully set forth herein.

18 112. In the event the CommNV Contract is deemed unenforceable due to Uprise
19 failing to comply with NRS 624.700, NAC 624.640 and/or any other basis, then the parties
20 entered into an implied at law contract to pay CommNV for its services.

21 113. This implied at law contract is based upon the solicitation and use of
22 CommNV to perform services for Segment 1 of the Lovelock Project for compensation.

23 114. This implied in law contract is founded upon the parties' meetings of the
24 mind and is inferred from the parties' conduct, statements and actions, in light of the
25 surrounding circumstances and their tacit understanding.
26

27 115. Uprise, Kromer Investments and NDOT have breached the terms and
28 conditions of the implied in law contract by failing to timely pay CommNV for its services.

116. As a result of these Defendants' conduct, CommNV has been harmed in excess of \$1,000,000.00.

117. CommNV has been forced to retain the law firm of Simons Hall Johnston PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in bringing this action.

SEVENTH CLAIM FOR RELIEF
(Unjust Enrichment/Quantum Meruit—Uplift, Kromer, Kromer Investments and NDOT)

118. CommNV incorporates all prior allegations as if fully set forth herein.

119. CommNV's actions described herein conferred a benefit on Uplift, Kromer, Kromer Investments and NDOT.

120. Should any of the above-described written agreements for any reason be invalid and/or inapplicable, these Defendants nevertheless remain liable to CommNV for the reasonable value of the services provided for their benefit in an amount to be determined by the Court on the basis of quantum meruit and/or unjust enrichment.

121. As a result of these Defendants' conduct, CommNV has been harmed in excess of \$1,000,000.00.

122. CommNV has been forced to retain the law firm of Simons Hall Johnston PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in bringing this action.

EIGHTH CLAIM FOR RELIEF
(Breach of Contract (Inv. Nos. 138, 139, 142, 146)—RMWT)

123. CommNV incorporates all prior allegations as if fully set forth herein.

124. RMWT contracted with CommNV to provide services on behalf of RMWT for which CommNV is owed \$22,664.00 which amounts have been invoiced to RMWT yet remains unpaid. Ex. 4.

1 125. CommNV has performed all obligations required of it under this contract
2 and/or has been excused or released from such obligations.

3 126. This Defendant has breached the terms of this contract by failing to pay
4 CommNV for services rendered.

5 127. As a result of this Defendant's conduct, CommNV has been harmed in
6 excess of \$22,664.00.

7 128. CommNV has been forced to retain the law firm of Simons Hall Johnston
8 PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in
9 bringing this action.

10 **NINTH CLAIM FOR RELIEF**

11 **(Civil Conspiracy—Uprise, Kromer, Kromer Investments, RMWT)**

12 129. CommNV incorporates all prior allegations as if fully set forth herein.

13 130. Uprise, Kromer, Kromer Investments, and RMWT, and each of them,
14 engaged in concerted action to induce CommNV into entering into the CommNV Contract
15 and to commit all of its resources and efforts into performing the entirety of the Lovelock
16 Project, along with the multitude of other tasks performed by CommNV for which it was
17 promised payment, without the intention to pay CommNV.

18 131. In addition, these Defendants have subsequently engaged in a series of
19 actions making demand upon CommNV for baseless claims of payment, for baseless
20 claims of improper construction and have embarked in a slander campaign to cast
21 aspersion at CommNV.

22 132. In addition, these Defendants, intended to exploit CommNV to gain
23 CommNV's assistance and impeccable credentials to perform the construction services
24 for the USDA ReConnect Grant intending CommNV to perform such services without
25 payment so that CommNV would be forced to declare bankruptcy and these Defendants
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1 would pocket the funds payable to CommNV.

2 133. The Defendants, and each of them, knew of the general conspiratorial
3 objective, the essential nature and general scope of the concerted action directed towards
4 CommNV.

5 134. As a result of these Defendants' conduct, CommNV has been harmed in
6 excess of \$5,000,000.00.

7 135. When these Defendants' complained of conduct was performed, these
8 Defendants acted with oppression, fraud and malice and/or with the willful, intentional and
9 reckless disregard of CommNV's rights and interest and CommNV is entitled to punitive
10 damages in excess of \$15,000.00 to be proven at trial.

11 136. CommNV has been forced to retain the law firm of Simons Hall Johnston
12 PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in
13 bringing this action.

14 **TENTH CLAIM FOR RELIEF**

15 **(Aiding and Abetting—Uprise, Kromer, Kromer Investments, RMWT)**

16 137. CommNV incorporates all prior allegations as if fully set forth herein.

17 138. Uprise, Kromer, Kromer Investments, and RMWT, and each of them, knew
18 of and sanctioned the wrongful conduct directed towards CommNV as described herein.

19 139. These Defendants were well aware of their roles and intended to exploit
20 CommNV as stated herein and to assist Uprise in gaining the USDA ReConnect Grant so
21 as to receive payment from such Grant to the detriment of CommNV, the USDA and
22 NDOT.

23 140. RMWT furthered this scheme by purporting to enter into inspection services
24 to oversee and monitor CommNV's contract performance to ensure daily inspection and
25 supervision so that its plans and specification were being followed by CommNV.

141. RMWT never performed any of its inspection services and CommNV is informed and believes that RMWT submitted invoices for payment of such services which were never rendered.

142. These Defendants have subsequently engaged in a series of actions making demand upon CommNV for baseless claims of payment, for baseless claims of improper construction and have embarked in a slander campaign to cast aspersion at CommNV.

143. As a result of these Defendants' conduct, CommNV has been harmed in excess of \$5,000,000.00.

144. When these Defendants' complained of conduct was performed, these Defendants acted with oppression, fraud and malice and/or with the willful, intentional and reckless disregard of CommNV's rights and interest and CommNV is entitled to punitive damages in excess of \$15,000.00 to be proven at trial.

145. CommNV has been forced to retain the law firm of Simons Hall Johnston PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in bringing this action.

ELEVENTH CAUSE OF ACTION
(Violation of NRS 598.0915 and 598.0923 - Nevada Deceptive Trade Practices Act -Uprise, Kromer Investments, RMWT)

146. CommNV incorporates all prior allegations as if fully set forth herein

147. Pursuant to NRS 598.0915, a person engages in a "deceptive trade practice" if, in the course of his or her business or occupation, he or she: (a) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease; (b) Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such

1 goods are of a particular style or model, if he or she knows or should know that they are
2 of another standard, quality, grade, style or model; and/or (c) Knowingly makes any other
3 false representation in a transaction.

4
5 148. Pursuant to NRS 598.0923(2), a person also engages in a "deceptive trade
6 practice" when in the course of his or her business or occupation he or she knowingly
7 "[f]ails to disclose a material fact in connection with the sale or lease of goods or
8 services."

9
10 148. CommNV has recently discovered that Uprise, and Kromer Investments as
11 its alter ego, did not hold the proper Contractor's License to contract with NDOT.

12
13 149. CommNV has recently discovered that RMWT is falsely purporting to enter
14 into contracts as a limited liability company when this representation is false and
15 misleading because it is a Utah corporation.

16
17 150. These Defendants violated NRS 598.0915 when they knowingly made false
18 representations to CommNV as to the characteristics and benefits of their services and
19 capabilities related to the Lovelock Project.

20
21 151. These Defendants violated NRS 598.0915 when they falsely represented to
22 CommNV their services and capabilities related to the Lovelock Project were of a
23 particular standard, quality or grade when in fact; these Defendants concealed material
24 information from CommNV then failed to provide adequate services to facilitate the
25 performance of work by CommNV.

26
27 152. These Defendants violated NRS 598.0923(2) when, in the course of their
28 business with CommNV, they knowingly failed to disclose material facts in connection
with the performance of their services to CommNV.

153. In doing so, these Defendants engaged in deceptive trade practices in violation of NRS 598.0915 and NRS 598.0923(2)

154. As a result of these Defendants' conduct, CommNV has been harmed in excess of \$5,000,000.00.

155. When these Defendants' complained of conduct was performed, these Defendants acted with oppression, fraud and malice and/or with the willful, intentional and reckless disregard of CommNV's rights and interest and CommNV is entitled to punitive damages in excess of \$15,000.00 to be proven at trial.

156. CommNV has been forced to retain the law firm of Simons Hall Johnston PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in bringing this action.

TWELFTH CAUSE OF ACTION
(Equitable Lien--Uprise, Kromer Investments, RMWT, NDOT)

157. CommNV incorporates all prior allegations as if fully set forth herein

158. Both the USDA and NDOT have provided funds to Uprise to pay for the Lovelock Project and Segment 1.

159. The funds provided to Uprise and/or for Uprise's distribution for construction services provided in furtherance of the Lovelock Project and/or Segment 1, conclusively demonstrates the intent to pay CommNV from these funds.

160. CommNV, therefore, is entitled to an equitable lien on any of these funds distributed to Uprise, Kromer Investments, RMWT or NDOT to pay all amounts owed to CommNV, any interest thereon, and any additional damages sustained by CommNV.

161. CommNV detrimentally relied upon the promise of payment from these funds in performing the work and services identified herein in furtherance of the Lovelock Project and Segment 1.

162. CommNV has been forced to retain the law firm of Simons Hall Johnston PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in bringing this action.

THIRTEENTH CLAIM FOR RELIEF
(Declaratory Relief—All Defendants)

163. CommNV incorporates all prior allegations as if fully set forth herein.

164. There exists a current justiciable controversy between CommNV and the Defendants, and each of them, as set forth herein.

165. Pursuant to NRS 30.030 and 30.040, CommNV is entitled to seek declaratory relief as requested.

166. This controversy is ripe for adjudication.

167. CommNV seeks a declaration from this Court setting forth CommNV's rights and the Defendants' obligations and liabilities as follows:

- a. the payment upon completion of the CommNV Contract is inapplicable and/or unenforceable due to pre and post transaction oral and written representations, waiver, estoppel and/or fraudulent conduct by Uprise.
- b. a determination that Uprise's contract with NDOT is void under Nevada law.
- c. A determination that because Uprise's contract with NDOT is void under Nevada law, the CommNV Contract is also void and the pay upon completion clause is of no legal force or effect and Uprise, Kromer Investments and NDOT are jointly and severally liable for all amounts due to CommNV.

- 1 d. RMWT is fraudulently holding itself out as a limited liability company
2 when it is in fact a Utah corporation seeking to avoid and/or limit its
3 liability and/or responsibilities owed to CommNV, the USDA and
4 NDOT.
5
6 e. CommNV is entitled to an equitable lien on all Grant funds and all
7 NDOT funds as requested herein.

8 168. CommNV has been forced to retain the law firm of Simons Hall Johnston
9 PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in
10 bringing this action.

11 **FOURTEENTH CLAIM FOR RELIEF**
12 **(Bond—Suretec)**

13 169. CommNV incorporates all prior allegations as if fully set forth herein.

14 170. Defendant Suretec, by License Bond No. 6008212, in the amount of
15 \$50,000, assumed all rights, obligations and responsibilities as surety for principal,
16 Stephen Kromer.

17
18 171. Pursuant to NRS 624.273, a surety is bound unto CommNV for damages
19 caused by its principal, Stephen Kromer, in an amount not to exceed the bond limit.

20 172. CommNV has been damaged in an amount exceeding the bond limit of
21 \$50,000 by the actions of Defendants and hereby make its claim against the bond held by
22 Suretec.

23 173. CoummNV is entitled to recover from Suretec the entire proceeds of the
24 \$50,000 bond.

25
26 174. CommNV has been forced to retain the law firm of Simons Hall Johnston
27 PC to protect its rights and it is entitled to an award of its attorneys' fees and costs in
28 bringing this action.

1 WHEREFORE, Plaintiff for judgment against the Defendants, and each of them, as
2 follows:

- 3 1. For general damages in excess of \$15,000 as against each Defendant;
4 2. For special damages in excess of \$15,000 as against each Defendant;
5 3. For punitive damages as requested;
6 4. For declaratory relief;
7 5. For attorneys' fees and costs; and
8 6. Such other further relief as may be proper and appropriate under the
9
10 circumstances.

11 **AFFIRMATION:** This document does not contain the social security number of any
12 person.
13

14 DATED this 17th day of November, 2023.

15 SIMONS HALL JOHNSTON PC
16 690 Sierra Rose Drive
17 Reno, NV 89511

18 By: /s/ Mark G. Simons
19 MARK G. SIMONS
20 JACEE T. HARDING
21 Attorneys for CommNV
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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Inv. No. 140	1
2	Inv. No. 88	1
3	Inv. No. 147	1
4	Inv. Nos. 138, 139, 142, 146	4