

1 Lee Iglody  
Nev. Bar No. 7757  
2 2580 St Rose Parkway, Suite 330  
Henderson, Nevada 89074  
3 Telephone: 702-425-5366  
lee@iglody.com

4 Anastasia P. Boden  
5 Cal. Bar No. 281911\*  
Pacific Legal Foundation  
6 555 Capitol Mall, Suite 1290  
Sacramento, California 95814  
7 Telephone: (916) 419-7111  
ABoden@pacificlegal.org

8 Brandon C. Beyer  
9 Minnesota Bar No. 403249\*  
Pacific Legal Foundation  
10 3100 Clarendon Boulevard, Suite 1000  
Arlington, VA 22201  
11 Telephone: 202-888-6881  
BBeyer@pacificlegal.org

12 \* *Pro Hac Vice Pending*  
13 *Will comply with LR IA 11-2 within 1 day.*

14 *Attorneys for Plaintiff*

15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE DISTRICT OF NEVADA**

17  
18 DEREK EISENBERG,

19 Plaintiff,

20 v.

21 DR. KRISTOPHER SANCHEZ, in his  
22 official capacity as the Director of the  
Department of Business and Industry;  
23 DARRELL PLUMMER, in his official  
24 capacity as President of the Nevada Real  
Estate Commission; DONNA A. RUTHE, in  
25 her official capacity as Vice President of the  
Nevada Real Estate Commission;  
26 FORREST BARBEE, in his official capacity  
27 as Secretary of the Nevada Real Estate  
Commission; DAVID TINA, in his official  
28 capacity as Commissioner of the Nevada

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

1 Real Estate Commission; and WILLIAM  
2 BRADLEY SPIRES, in his official capacity  
3 as Commissioner of the Nevada Real Estate  
Commission,

4 Defendants.  
5

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **INTRODUCTION**

2 1. Plaintiff Derek Eisenberg is an entrepreneur who seeks to introduce a new way  
3 of buying and selling homes to the real estate market. Thanks to advancements in  
4 technology, real estate agents can offer their services virtually and à la carte rather  
5 than traditional, full-scale in-person representation. But Nevada’s antiquated,  
6 arbitrary, and anticompetitive in-state office and work requirements prevent  
7 Mr. Eisenberg from conducting his business virtually in the state in violation of the  
8 United States Constitution.

9 2. Nevada requires anyone with a Nevada broker’s license to maintain a brick-  
10 and-mortar office in the state and to conduct business there. Nev. Rev. Stat.  
11 §§ 645.550, 645.510; Nev. Admin. Code §§ 645.627, 645.655. Those demands are not  
12 related to ensuring broker competency, maintaining access to records, or otherwise  
13 protecting Nevadans. Instead, the only apparent purpose is to protect in-state real  
14 estate brokers from legitimate out-of-state competition. And the effect is to  
15 discriminate against out-of-state brokers, burden the interstate market for real estate  
16 services, and stifle innovative companies like Plaintiff’s.

17 3. Mr. Eisenberg has a Nevada broker’s license but the in-state office  
18 requirements make it difficult, if not impossible, for him to pursue his online business  
19 in the state. He has therefore brought this lawsuit to vindicate his rights under the  
20 United States Constitution’s Interstate Commerce Clause, Privileges and Immunities  
21 Clause of Article IV, and the Equal Protection, Due Process, and Privileges or  
22 Immunities Clauses of the Fourteenth Amendment.

23 **JURISDICTION AND VENUE**

24 4. Mr. Eisenberg alleges, pursuant to 42 U.S.C. § 1983, the deprivation of rights  
25 secured by the Interstate Commerce Clause (U.S. Const. art. I, § VIII), the Privileges  
26 and Immunities Clause (U.S. Const. art. IV, § II), and the Due Process, Equal  
27 Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment.  
28 Jurisdiction over his claims is proper under 28 U.S.C. § 1331 (federal question) and

1 § 1343(a)(3) (redress for deprivation of civil rights). Declaratory relief is authorized  
2 under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

3 5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial  
4 part of the conduct giving rise to the claims occurred and continues to occur in the  
5 District of Nevada.

### 6 **PARTIES**

7 6. Plaintiff Derek Eisenberg is a United States citizen and resident of Maywood,  
8 New Jersey. His primary office is in Hackensack, New Jersey.

9 7. Mr. Eisenberg has spent his entire career, spanning over three decades, in the  
10 real estate industry. He holds a real estate broker license in the District of Columbia  
11 and 26 states, including Nevada, and is the President of Continental Real Estate  
12 Group, Inc.

13 8. Defendant Dr. Kristopher Sanchez is the Director of the Department of  
14 Business and Industry Nevada Real Estate Division (“Division”). Dr. Sanchez is  
15 authorized in his official capacity to supervise the Division’s administration of real  
16 estate broker licensing laws. Nev. Rev. Stat. §§ 645.045; 645.190. This includes  
17 administering the state’s requirements for an in-state office and conducting business  
18 in the office. Nev. Rev. Stat. §§ 645.550, 645.510; Nev. Admin. Code §§ 645.627,  
19 645.655. Dr. Sanchez is being sued in his official capacity.

20 9. Defendants Darrell Plummer, Donna A. Ruthe, Forrest Barbee, David Tina,  
21 and William Bradley Spires are members of the Nevada Real Estate Commission  
22 (“Commission”). In their official capacities, they are authorized to act in an advisory  
23 capacity to the Nevada Real Estate Division, adopt regulations, and conduct hearings  
24 under the state’s real estate brokerage licensing laws. Nev. Rev. Stat. § 645.050.  
25 Defendants are being sued in their official capacity pursuant to *Ex parte Young*, 209  
26 U.S. 123 (1908).

**FACTUAL ALLEGATIONS**

**PLAINTIFF DEREK EISENBERG**

1  
2  
3 10. Derek Eisenberg is the founder and President of Continental Real Estate  
4 Group, Inc. (“Continental”). Mr. Eisenberg started Continental in 1995 with the  
5 dream of offering a nationwide real estate brokerage firm that empowers consumers  
6 by providing access to real estate services in a cost-effective and flexible manner.

7 11. Continental is an online brokerage firm that allows customers to choose from a  
8 fee-for-service model rather than the conventional suite of services offered by  
9 traditional brokers.

10 12. While traditional brokers force consumers to accept full-scale representation  
11 and demand a set percentage in return, Continental allows consumers to select only  
12 the specific services they want. Customers tailor their experience to match their  
13 needs.

14 13. For example, buyers can choose between listing their home in the Multiple  
15 Listing Service (MLS), downloading digital forms, purchasing brochure tubes or lawn  
16 signs, renting lockboxes, using computer telephony to route calls from interested  
17 parties to sellers, setting up lockbox monitoring with text notification, and having  
18 Continental agents engage in different levels of closing assistance on a fee-for-service  
19 basis.

20 14. Like many discount brokerage firms, Continental leverages technology to lower  
21 its expenses and to pass on those savings to its clients. And like many businesses  
22 across all industries, Continental uses the internet and other technologies to operate  
23 mainly online and across state lines.

24 15. Continental employees are licensed as brokers in 42 states, and applications in  
25 four more states are pending.

26 16. Mr. Eisenberg is personally licensed as a broker in 26 states and D.C. and has  
27 been a real estate broker in Nevada since 2018. Neither Mr. Eisenberg nor  
28

1 Continental has been subject to any disciplinary action under Nevada’s real estate  
2 brokerage licensing laws.

3 17. In order to keep his Nevada license, Mr. Eisenberg is forced to maintain a  
4 “definite place of business” in Nevada. This requirement is expensive; it includes  
5 paying rent, redirecting deliveries from couriers (including large title policies and  
6 payment checks) to the Nevada office, satisfying various administrative burdens (for  
7 example, producing a physical copy of licensure at the location with each renewal  
8 cycle), and paying any additional fees that Nevada localities impose on businesses  
9 with a physical office in the area.

10 18. Nevada law also requires brokers to perform all transactions authorized by  
11 their Nevada license at the mandated place of business. This, too, comes at a  
12 considerable cost, including staffing, maintaining physical records, and significant  
13 travel and logistical expenses.

14 19. Mr. Eisenberg is capable of doing everything required of a real estate broker  
15 without a brick-and-mortar office. That is, he can send forms, secure signatures, offer  
16 regulators access to his records, and communicate with clients virtually. The in-state  
17 office requirements therefore impose costs solely for anticompetitive purposes without  
18 offering any real benefit to Nevadans.

19 20. If not for the in-state office and work requirements, Mr. Eisenberg would not  
20 maintain an office in Nevada.

21 **THE CHALLENGED LAWS**

22 21. Nev. Rev. Stat. § 645.230(1)(a) forbids any person from working as a real estate  
23 broker within the State of Nevada without the appropriate license from the Real  
24 Estate Division.

25 22. Nev. Rev. Stat. § 645.030 defines “real estate broker” as any person receiving  
26 compensation who:

- 27 a. “[s]ells, exchanges, options, purchases, rents or leases, or negotiates or offers,  
28 attempts or agrees to negotiate the sale, exchange, option, purchase, rental or

1 lease of, or lists or solicits prospective purchasers, lessees or renters of, any  
2 real estate or the improvements thereon or any modular homes, used  
3 manufactured homes, used mobile homes or other housing offered or conveyed  
4 with any interest in real estate;”

5 b. “[e]ngages in or offers to engage in the business of claiming, demanding,  
6 charging, receiving, collecting or contracting for the collection of an advance  
7 fee in connection with any employment undertaken to promote the sale or lease  
8 of business opportunities or real estate by advance fee listing advertising or  
9 other offerings to sell, lease, exchange or rent property;”

10 c. “[e]ngages in or offers to engage in the business of property management; or”

11 d. “[e]ngages in or offers to engage in the business of business brokerage.”

12 23. Nev. Rev. Stat. § 645.550 requires every real estate broker to maintain a  
13 definite place of business within the State that will be “used for the transaction of real  
14 estate business” under the authority of the broker’s license. Nev. Rev. Stat. § 645.510  
15 requires brokers to perform the services regulated by the licensing laws at the place  
16 of business specified on the broker’s license. Licensees may not transact business from  
17 any office other than the one designated in the license.

18 24. Nev. Admin. Code § 645.627 allows resident brokers to designate a room in  
19 his/her home or existing business location to serve as the definite place of business in  
20 the state.

21 25. Each city, town, or county in Nevada may require an additional license to raise  
22 revenue for brokers who maintain an office within its jurisdiction. Nev. Rev. Stat.  
23 § 645.550.

24 26. Nev. Admin. Code § 645.655 requires brokers to maintain a complete record of  
25 each real estate transaction in their Nevada office and to make such records open to  
26 inspection by the Division at all hours in which the licensee regularly conducts their  
27 business.

28

1 27. Any person who does not comply with the provisions of the licensing laws is  
2 subject to an administrative fine from the Commission of up to \$10,000 for each  
3 violation. Nev. Rev. Stat. §§ 645.630, 645.633(1)(b).

4 28. Any person who does not comply with Nev. Admin. Code §§ 645.627 and  
5 645.655 is subject to an administrative fine of up to \$500 and \$1,000, respectively, for  
6 each violation. Nev. Admin. Code § 645.695.

7 **CLAIM FOR RELIEF**

8 **First Cause of Action**

9 **(Commerce Clause — U.S. Const. art. I, § VIII)**

10 29. Mr. Eisenberg incorporates and re-alleges each and every allegation contained  
11 in the preceding paragraphs of this Complaint.

12 30. The Interstate Commerce Clause of the U.S. Constitution, Article I, Section 8,  
13 delegates to Congress the exclusive power to regulate interstate commerce. This  
14 power operates as a restraint on the legislative power of the states even when  
15 Congress has not expressly exercised that power, a doctrine known as the “dormant”  
16 Commerce Clause.

17 31. Any law that discriminates against interstate commerce in purpose or effect is  
18 generally *per se* unconstitutional. Any evenhanded burden on interstate commerce  
19 must be invalidated if it is excessive in relation to its putative local benefits.

20 32. Nev. Rev. Stat. § 645.550 and Nev. Admin. Code § 645.627 have a  
21 discriminatory effect on interstate commerce and out-of-state real estate brokers  
22 wishing to do business in Nevada. Nevada residents may designate their home or first  
23 office as their definite place of business, while non-resident brokers must incur  
24 additional costs to establish an in-state office.

25 33. Nev. Rev. Stat. § 645.510 has a similarly discriminatory effect: it requires non-  
26 residents to travel to Nevada to do business there, subjecting them to substantially  
27 higher costs and putting them on an unequal playing field.

28



1 34. This discrimination serves no legitimate local purpose, and even if it did, those  
2 purposes could be served by nondiscriminatory means.

3 35. Nevada’s in-state office requirements also unduly burden interstate commerce.  
4 They impose significant burdens on non-resident Nevada real estate brokers,  
5 including paying for additional rent, utilities, maintenance, and travel. They force real  
6 estate brokers to perform services in Nevada even if they can be done more efficiently  
7 in another state. This gives resident brokers a competitive advantage over non-  
8 resident brokers and dissuades non-residents from doing business in the state.

9 36. The burden on interstate commerce is not justified by any putative local  
10 benefit. It bears no relationship to ensuring real estate brokers are fit for the trade, to  
11 regulating the profession, to accessing records, or to otherwise protecting consumer  
12 welfare. Instead, it serves only to protect resident brokers from legitimate out-of-state  
13 competition, and economic protectionism is not a constitutionally legitimate local  
14 benefit.

15 37. The in-state office requirements’ burdens on interstate commerce are excessive  
16 in relation to the local benefits.

17 38. Plaintiff has suffered and will continue to suffer substantial and irreparable  
18 harm unless Nevada’s in-state office requirements are declared unlawful and enjoined  
19 by this Court.

20 **Second Cause of Action**

21 **(Privileges and Immunities Clause — U.S. Const. art. IV, § 2)**

22 39. Mr. Eisenberg incorporates and re-alleges each and every allegation contained  
23 in the preceding paragraphs of this Complaint.

24 40. Under the Privileges and Immunities Clause, states may not discriminate  
25 against citizens from another state in their ability to exercise their privileges or  
26 immunities, including their right to pursue a common calling within the state.

27 41. Nev. Rev. Stat §§ 645.510 and 645.550 and Nev. Admin. Code §§ 645.627 and  
28 645.655 put resident and non-resident brokers on substantially unequal terms in their

1 ability to conduct business in Nevada because it forces non-residents to shoulder  
2 increased costs, including the costs of maintaining an office in and traveling to  
3 Nevada.

4 42. Neither non-resident real estate brokers—nor the proximity of their office—  
5 threatens the public health, safety, or welfare of Nevadans. Nor do they significantly  
6 limit the state’s ability to regulate the profession.

7 43. Nevada’s discrimination against non-residents does not further any  
8 substantial or even legitimate government interest, and instead operates solely to  
9 protect Nevada brokers from legitimate out-of-state competition. Whatever interest  
10 the government has in forcing real estate brokers to maintain and work from an office  
11 in Nevada can be served by less restrictive means.

12 44. By enforcing Nevada’s discriminatory, onerous, and arbitrary in-state office  
13 requirements, Defendants, acting under color of state law, are depriving Plaintiff of  
14 his fundamental right to engage in business in Nevada on equal terms with residents  
15 of that State.

16 **Third Cause of Action**

17 **(Equal Protection Clause — U.S. Const. amend. XIV)**

18 45. Mr. Eisenberg incorporates and re-alleges each and every allegation contained  
19 in the preceding paragraphs of this Complaint.

20 46. Nevada’s in-state office requirements arbitrarily treat similarly situated real  
21 estate brokers unequally. Non-resident brokers must incur higher costs, including  
22 duplicating expenses to maintain offices in their home state and Nevada. Meanwhile,  
23 resident brokers can use their first office or even their homes to satisfy the statutory  
24 requirement.

25 47. Non-resident brokers are forced to pass these unequal expenses onto  
26 consumers. This puts them at a considerable disadvantage in terms of competing, let  
27 alone entering, the Nevada market.

28

1 48. The in-state office requirements are not tailored to achieve any legitimate state  
2 interest. They serve only to insulate resident brokers from competition at the expense  
3 of out-of-state brokers and the Nevadans they'd like to serve.

4 49. By enforcing these discriminatory, unequal, and arbitrary requirements,  
5 Defendants, acting under color of state law, are depriving Plaintiff of equal protection  
6 before the law.

7 **Fourth Cause of Action**

8 **(Due Process and Privileges or Immunities Clauses —**

9 **U.S. Const. amend. XIV)**

10 50. Mr. Eisenberg incorporates and re-alleges each and every allegation contained  
11 in the preceding paragraphs of this Complaint.

12 51. The Due Process and Privileges or Immunities Clauses of the Fourteenth  
13 Amendment guarantee Mr. Eisenberg the right to pursue a lawful calling without  
14 arbitrary government interference.

15 52. The in-state office requirements burden Mr. Eisenberg's right to pursue a  
16 lawful calling of his choice, yet they serve no legitimate government interest. Instead,  
17 they arbitrarily restrict the entry of real estate brokers into the market and serve the  
18 unconstitutional end of protecting resident brokers from competition.

19 53. By artificially limiting the ability of non-resident real estate brokers to enter  
20 the market, the in-state office requirements decrease competition, increase costs, and  
21 reduce consumer choice.

22 54. By enforcing these irrational and protectionist requirements, Defendants are  
23 depriving Mr. Eisenberg of his Fourteenth Amendment right to earn a living.

24  
25  
26  
27  
28

**PRAYER FOR RELIEF**

**WHEREFORE, Plaintiff respectfully requests the following relief:**

A. A declaration that Nev. Rev. Stat. §§ 645.510 and 645.550 and Nev. Admin. Code §§ 645.627 and 645.655 facially violate the Commerce Clause of the United States Constitution;

B. A declaration that Nev. Rev. Stat. §§ 645.510 and 645.550 and Nev. Admin. Code §§ 645.627 and 645.655 facially violate the Privileges & Immunities Clause as protected by Article IV of the United States Constitution;

C. A declaration that Nev. Rev. Stat. §§ 645.510 and 645.550 and Nev. Admin. Code §§ 645.627 and 645.655 facially violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

D. A declaration that Nev. Rev. Stat. §§ 645.510 and 645.550 and Nev. Admin. Code §§ 645.627 and 645.655 facially violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

E. A declaration that Nev. Rev. Stat. §§ 645.510 and 645.550 and Nev. Admin. Code §§ 645.627 and 645.655 facially violate the Privileges or Immunities Clause of the Fourteenth Amendment of the United States Constitution;

F. A permanent injunction prohibiting Defendants, their agents, representatives, and employees from enforcing Nev. Rev. Stat. §§ 645.510 and 645.550 and Nev. Admin. Code §§ 645.627 and 645.655;

G. An award for the cost of this suit;

H. An award of reasonable attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

1 I. Such other relief the Court deems just and proper.

2 DATED: December 19, 2024.

3 Respectfully submitted,

4 /s/ Lee Iglody

5 Lee Iglody

6 Nev. Bar No. 7757

7 2580 St Rose Parkway, Suite 330

8 Henderson, Nevada 89074

9 Telephone: 702-425-5366

10 lee@iglody.com

11 /s/ Anastasia P. Boden

12 Anastasia P. Boden

13 Cal. Bar No. 281911\*

14 Pacific Legal Foundation

15 555 Capitol Mall, Suite 1290

16 Sacramento, CA 95814

17 Telephone: 916-419-7111

18 ABoden@pacificlegal.org

19 /s/ Brandon C. Beyer

20 Brandon C. Beyer

21 Minn. Bar. No. 0403249\*

22 Pacific Legal Foundation

23 3100 Clarendon Boulevard, Suite 1000

24 Arlington, VA 22201

25 Telephone: 202-888-6881

26 BBeyer@pacificlegal.org

27 *\*Pro Hac Vice Pending*

28 *Will comply with LR IA 11-2 within 1 day.*

*Attorneys for Plaintiff*