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**MONTANA FOURTH JUDICIAL DISTRICT COURT  
MISSOULA COUNTY**

<p>STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-v-</p> <p>THE COUNTY OF MISSOULA, MONTANA, JOHN and JANE DOES 1-100,</p> <p style="text-align: center;">Defendants.</p>	<p>Dept. _____ Cause No.: _____ Hon. _____</p> <p><b>VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT</b></p>
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COMES NOW, Plaintiff the State of Montana, Montana Department of Transportation (“MDT”), by and through counsel, and alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. MDT is a duly created and organized state agency existing under the laws of the State of Montana and is headquartered in Helena, Lewis and Clark County, Montana.
2. Defendant Missoula County is a subdivision of the State of Montana.
3. Defendants John and Jane Does 1-100 are unknown individuals believed to be continuously and repeatedly trespassing and residing upon MDT property unlawfully.

4. At all times pertinent to this Complaint, Defendants John and Jane Does 1-100 are individuals believed to be improperly residing on MDT property located within Missoula County.

5. This Court has original jurisdiction over this action pursuant to Mont. Code Ann. § 3-5-302 with respect to all claims asserted herein.

6. Venue is proper in this District Court pursuant to Mont. Code Ann. § 25-2-123 as both the Property and the Defendants are located in Missoula County.

#### **MDT PROPERTY, THE ENCAMPMENT AND PRIOR REMOVAL ACTIONS**

7. The property at issue involves the Reserve Street Bridge and the underlying and adjacent real property, all of which is owned and maintained by MDT (collectively “the Property”).

8. Over the course of the past several years, Missoula residents experiencing homelessness have erected an unauthorized encampment on the Property. At its peak, approximately one hundred and forty individuals resided on the Property in tents and temporary structures built with scavenged materials.

9. The density of the encampment in combination with the lack of basic services or infrastructure—such as running water, toilets, showers, and places to prepare food and dispose of waste—presented a serious public health and safety risk.

10. One such health and safety risk involved the continual risk of contamination to the Clark Fork River due to the encampment’s improper waste disposal system and the encampment’s proximity to the river. Additionally, inhabitants of the encampment relied on personal fires, propane tanks, and heaters to maintain warmth throughout the colder months. The quantity of fires, propane tanks, and other heaters, stored in or near flammable tents, posed a significant fire hazard and explosion risk that endangered not only the safety of those in the encampment, but also the safety of the travelling public utilizing the Reserve Street Bridge.

11. The fires, propane tanks, and other heaters present in the encampment also posed a risk of significantly damaging the integrity of the Reserve Street Bridge, a vital aspect of Missoula's public infrastructure. The fires have already caused damage to the Reserve Street Bridge in the form of concrete delamination.

12. As a result of the mounting collection of waste generated by the encampment, the Missoula City-County Health Department issued MDT notices urging MDT to address the garbage and human waste present in the riverbed area and threatened MDT with potential fines and penalties if the waste was not abated.

13. Beginning in approximately 2020, MDT began working closely with Missoula County officials and local outreach programs to arrange a safe and responsible plan for the removal of the encampment and relocation of the inhabitants.

14. The lack of affordable housing in Missoula in addition to the surge of the COVID-19 pandemic made it challenging for many of the inhabitants to find alternative housing. Accordingly, MDT agreed to postpone the removal of the inhabitants until a safe alternative to the encampment could be established.

15. Throughout 2021, local outreach organizations and local Missoula officials worked together to establish an authorized camping area to house Missoula residents experiencing a transitional housing period. On or about January 24, 2022, an authorized camping area behind Super Walmart on Mullan Road in Missoula opened with room for up to four individuals in each of its forty spots.

16. With the new authorized camping area open, MDT worked with local outreach representatives from the Poverello Center and the Hope Rescue Mission to notify inhabitants of

the encampment that they could no longer reside on the Property. Notices were posted on the Property and, in some instances, handed directly to inhabitants of the encampment.

17. In or about February 2022, local outreach representatives helped the inhabitants of the encampment relocate to the new authorized camping area.

18. Although the encampment on the Property was eventually cleared, the human waste and other trash could not be removed at that time due to snow and frozen ground.

19. After the encampment was cleared, MDT also worked with the Poverello Center and the Hope Rescue Mission to store belongings left behind by inhabitants absent at the time of the clearing so those belongings could be retrieved at a later date.

20. After the inhabitants of the encampment were relocated to the new authorized camping area, MDT installed fencing and locked gates to ensure the Property remained clear and to prevent further damage to either the riverbed or the Reserve Street Bridge.

21. However, on or about March 15, 2022, MDT employees and private security personnel hired by MDT noticed inhabitants from the original encampment had returned to the Property after cutting and/or climbing the fencing and locked gates.

22. These individuals have re-erected tents and temporary structures on the Property. They have also begun using hazardous personal fires, propane tanks, and heaters that once again pose a risk to their own safety, the safety of the travelling public, and the integrity of the Reserve Street Bridge.

23. The individuals currently inhabiting the Property lack basic services or infrastructure—such as running water, toilets, showers, and places to prepare food and dispose of waste—once again presenting a serious public health and safety risk.

24. MDT employees and private security personnel have observed evidence of human waste, drug paraphernalia, and trash accumulating on the Property.
25. The only way to abate the ongoing health and safety hazards and threatened damage to public infrastructure is to remove Defendants and their personal belongings from the Property.
26. If the individuals are not removed from the Property in the near future, MDT and others will not be able to properly clean the Property and the contamination will worsen. Further, MDT could be held liable for such contamination per the Missoula City-County Health Department's previous notice(s). Furthermore, the fires and overall unsanitary and unsafe conditions on the Property pose the threat of further damaging the integrity of the Reserve Street Bridge; any such damage to the Reserve Street Bridge would force MDT to close traffic to the travelling public for necessary repairs and ensure the bridge's safety.
27. In the coming weeks the Clark Fork River water flows are set to become higher and faster due to spring runoff. Once this occurs, MDT will be unable to access the Property with necessary equipment to clear the accumulating waste and debris. MDT is concerned that without the relief requested herein, the trash, drug paraphernalia, human waste, and other debris will be swept into the Clark Fork River and cause irreversible contamination.
28. MDT has requested assistance from Missoula County to remove the inhabitants trespassing on the Property and their belongings. However, Missoula County has requested a court order prior to assisting with the removal.
29. Missoula County Sheriff's Office has law enforcement authority to remove the Defendants John and Jane Does 1-100. MDT has requested assistance from the Missoula County Sheriff's Office to remove the inhabitants trespassing on the Property and their belongings. However, the Sheriff's Office has requested a court order prior to assisting with the removal.

## **CLAIMS FOR RELIEF**

### **COUNT ONE: FORCIBLE DETAINER**

30. The allegations of Paragraphs 1-29 above are incorporated herein by this reference as if fully set forth in this Paragraph.

31. Defendant inhabitants, John and Jane Doe 1-100, have forcibly detained Plaintiff MDT's possession of the Property situated at or nearby the Reserve Street Bridge in the city of Missoula, Missoula County, Montana.

32. In accordance with Mont. Code Ann. § 70-27-103(1), Defendant inhabitants, John and Jane Doe 1-100, entered the Property by force through cutting the fence MDT designed and erected to keep the inhabitants out.

33. Alternatively, Defendant inhabitants, John and Jane Doe 1-100, unlawfully entered the Property in the nighttime or during the absence of MDT personnel and, after demand made for the surrender thereof, Defendants refuse to surrender the Property to MDT. Prior to Defendant inhabitants' unlawful entry, MDT was in the peaceable and undisputed possession of the Property.

34. Defendant inhabitants, John and Jane Doe 1-100, have no lawful right to occupy the Property.

35. Written and oral notices to vacate the Property were delivered to the Defendants in January 2022. After the Defendants' receipt of such notices, Defendants vacated the Property. Defendants are aware there is safe and lawful alternative housing available at the newly established transitional housing behind Super Walmart on Mullan Road in Missoula only a short distance from the Property. However, they have returned and are presently occupying the Property unlawfully.

36. MDT is able to provide proof (1) of the forcible detainer as described in Mont. Code Ann. § 70-27-103, and (2) MDT's right to the possession of the Property at the time the forcible detainer took place.

### **COUNT TWO: COMMON LAW TRESPASS**

37. The allegations of Paragraphs 1-36 above are incorporated herein by this reference as if fully set forth in this Paragraph.

38. In Montana, common law trespass is an intentional tort claim for damages caused by an unauthorized entry or holdover upon real property of another. The essential elements of a modern common law trespass claim are: (1) an intentional entry or holdover; (2) by the defendant; (3) without consent or legal right.

39. MDT owns the Property in fee simple.

40. The Defendants have no legal right to access and/or reside on the Property and MDT has not consented to the Defendants' presence on the Property.

41. The Defendants were provided multiple notices that they are not authorized to access and/or reside on the Property. However, Defendants have returned to the Property after cutting and/or scaling the fence erected by MDT.

### **COUNT THREE: PUBLIC AND PRIVATE NUISANCE**

42. The allegations of Paragraphs 1-41 above are incorporated herein by this reference as if fully set forth in this Paragraph.

43. In Montana, a nuisance is defined as “[a]nything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or that unlawfully obstructs the free passage or use, in

the customary manner, of any....public park, square, street, or highway....” Mont. Code Ann. § 27-30-101(1).

44. Defendants’, John and Jane Does 1-100, use of the Property as a place to live, defecate, urinate, dispose of garbage, maintain dangerous fires, and improperly prepare, store, and dispose of food has created a nuisance. The Defendants’ encampment is injurious to health, indecent and offensive to the senses, and an obstruction of MDT’s free use of its property.

45. Pursuant to Mont. Code Ann. § 27-30-103, a nuisance action may be “brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.”

46. MDT is the proper Plaintiff in this matter as MDT’s property has been and continues to be injuriously affected by the nuisance created by the encampment.

47. Pursuant to Mont. Code Ann. § 27-30-102, 103, and 104, MDT is entitled to have the above-described nuisance enjoined or abated and to recover damages proximately caused by the nuisance.

48. MDT seeks injunctive relief because it will be severely and irreparably injured without such relief. MDT has no adequate remedy at law if such relief is not granted. Pecuniary compensation would not afford adequate relief and ascertaining the amount of compensation for such relief will be very difficult. Furthermore, due the Defendants’ indigent status, pecuniary relief is improbable.

49. As previously discussed, on or about June 10, 2020, the Missoula City-County Health Department issued MDT an initial notice urging MDT to address the garbage and human waste

present in the riverbed and threatened MDT with potential fines and penalties if the waste was not abated in a timely manner. MDT responded to this notice on or about July 31, 2020.

50. MDT has incurred and will continue to incur substantial damage to the Property as a proximate result of the nuisance and its obstruction and interference with the use and enjoyment or development of the Property including, without limitation, costly and hazardous damage to the Reserve Street Bridge, damage to the real property, and potential fines and penalties as threatened by the Missoula City-County Health Department.

**COUNT FOUR: INJUNCTION PER MONT. CODE ANN. § 27-19-101, *et seq.***

51. The allegations of Paragraphs 1-50 above are incorporated herein by this reference as if fully set forth in this Paragraph.

52. MDT is the undisputed owner of the Property.

53. Defendants, John and Jane Does 1-100, have no lawful right to enter and/or reside on the Property.

54. In accordance with Mont. Code Ann. § 27-19-101, *et seq.*, MDT is entitled to a permanent injunction enjoining the Defendants, John and Jane Does 1-100, from accessing, residing on, or otherwise occupying the Property.

55. As previously described, MDT personnel and private security officers have repeatedly and continuously observed dangerous fires and improper disposal of waste, including human excrement, on the Property.

56. MDT fears that without a permanent injunction, there is a risk that the Defendants or members of the travelling public may face injury or death from a fire, or contract a serious illness or disease from the innumerable health hazards present on the Property. MDT further fears that if it does not seek relief to abate the nuisance and forcible detainer caused by Defendants, an

individual injured on the Property may seek to hold MDT, or the State, liable for failing to take action to abate the hazards.

57. Furthermore, MDT fears that if does not seek relief to abate the nuisance and forcible detainer caused by Defendants, MDT will be fined and/or penalized by the Missoula City-County Health Department for contamination of the Clark Fork River and damage to the riverbed.

58. The only path to stop the threatened and continued nuisance, forcible detainer, and unauthorized occupation of the Property is to remove Defendants, John and Jane Does 1-100 and their belongings from the Property. MDT has worked closely with local outreach groups and made repeated attempts to advise and warn the Defendants to vacate the Property to no avail.

59. Injunctive relief is necessary to prevent irreparable injury to MDT and the Property. The damage and threatened damage to the Property caused by Defendants' unauthorized presence cannot be fully or effectively remedied by compensatory damages and compensation for the damages is and will be difficult to determine. Furthermore, the indigent status of the Defendants makes the recovery of compensatory damages improbable.

#### **COUNT FIVE: DECLARATORY JUDGMENT**

60. The allegations of Paragraphs 1-59 above are incorporated herein by this reference as if fully set forth in this Paragraph.

61. In accordance with Mont. Code Ann. § 27-8-201, *et seq.*, MDT seeks a declaratory judgment finding: (a) Defendants have created a health hazard on the Property; (b) Defendants are guilty of forcible detainer in violation of Mont. Code Ann. § 70-27-103(1); (c) Defendant's existence on the Property has created a public and private nuisance in accordance with Mont. Code Ann. § 27-30-101(1); and (d) Defendants are trespassers upon the Property, have no lawful right to access and/or reside on the Property, and must vacate the Property immediately.

## PRAYER FOR RELIEF

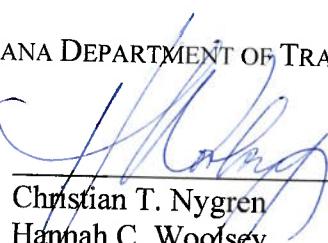
Plaintiff respectfully requests:

1. An injunction enjoining the threatened and continuing trespassing and forcible detainer occurring on MDT Property by ordering Defendants to vacate the Property and remove their belongings and to abate the nuisance they have created.
2. An order directing Missoula County and the Missoula County Sheriff's Office to assist with the enforcement of the above-described injunction;
3. A declaratory judgment that Defendants have created a public health and safety hazard on MDT Property; that Defendants' existence on the Property constitutes forcible detainer; that Defendants' existence on the Property has created a public and private nuisance; and that Defendants have no lawful right to access and/or reside on the Property and must vacate the Property immediately.
4. Reasonable costs and attorney's fees; and
5. Any other relief this Court may deem appropriate.

RESPECTFULLY submitted this 13th day of April 2022.

MONTANA DEPARTMENT OF TRANSPORTATION

BY:

  
Christian T. Nygren  
Hannah C. Woolsey  
Montana Department of Transportation  
P.O. Box 201001

*Attorneys for Plaintiff State of Montana*

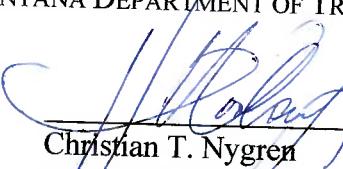
## JURY DEMAND

Plaintiffs hereby demand a jury on all issues so triable in this action.

Dated this 13th day of April 2022.

MONTANA DEPARTMENT OF TRANSPORTATION

By:

  
Christian T. Nygren  
Hannah C. Woolsey  
Montana Department of Transportation  
P.O. Box 201001

*Attorneys for Plaintiff State of Montana*

## VERIFICATION OF COMPLAINT

STATE OF MONTANA

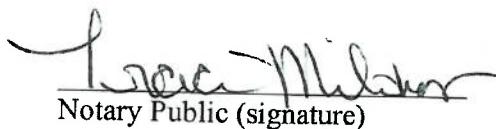
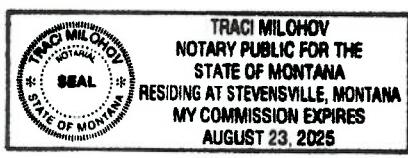
COUNTY OF MISSOULA, to wit:

Montana Department of Transportation, by and through Robert C. Vosen, the Complainant named in the foregoing Complaint being duly sworn, says that the facts and allegations contained therein are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, he believes them to be true.



Complainant (signature)

Taken, sworn to, and subscribed before me this 12 day of April, 2022.



Traci Milohov  
Notary Public (signature)