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*Pro hac vice forthcoming*

*Attorneys for Plaintiffs*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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DANIELLE BARRANI; KADRI  
BARRANI; LIESA COVEY; SCOTT  
EVANS; JIM GRISLEY; JUAN  
GUTIERREZ; CLOTILDE HOUCHON;  
DAVID IBARRA; AND RANDY  
TOPHAM, individuals and Utah  
entities

Plaintiffs,

*vs.*

SALT LAKE CITY, a Utah municipal  
corporation;

Defendant.

**VERIFIED COMPLAINT**

**(TIER II)**

Case No. 230907360

Judge Andrew H. Stone

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Plaintiffs Danielle Barrani, Kadri Barrani, Liesa Covey, Scott Evans, Jim Grisley, Juan Gutierrez, Clotilde Houchon, David Ibarra, and Randy Topham hereby complain and allege against Defendant Salt Lake City as follows:

## INTRODUCTORY STATEMENT

This case is about whether Salt Lake City may lawfully create public and private nuisances on the streets, sidewalks, and public parks that it owns and controls by allowing homeless encampments to proliferate in violation of existing City ordinances and state laws. Plaintiffs allege that such actions and policies on the part of the City are unlawful. They therefore seek a court order instructing the City to abate the nuisances that it has created by permitting the erection of tents and the associated unlawful and disorderly behaviors on public lands for which it is responsible. Although this is a nuisance case, it is also a plea for sanity and common sense, and a plea to address the humanitarian crisis that the City's intentional actions (and inactions) have caused and continue to cause.

For several years now, Salt Lake City has adopted a policy of inviting and fostering vagrancy, public camping, public urination, public defecation, and the public use of illegal drugs (including fentanyl and heroin) on its property, to the detriment of several neighborhoods and businesses. It has thereby encouraged unsheltered individuals from other cities who often suffer from substance abuse and mental health issues to move to Salt Lake City and live on its streets and public easements. The City admits that most of the unsheltered individuals living in encampments are there by choice and prefer living on the street over going into shelter. And this year's annual point-in-time count carried out on January 25, 2023, establishes that there were 485 unsheltered homeless persons living on the streets in Salt Lake County this past winter, while there were 600 available and unoccupied emergency shelter beds or supportive, rapid, and transitional housing

beds for those who would willingly accept them. Simply put, the City's choice instead to allow the unsheltered to engage in public camping is a public nuisance for which the City is liable. The Plaintiffs reside and work in a part of downtown Salt Lake City near Pioneer Park and Gateway Plaza where the nuisance is particularly acute. They are entitled to relief.

### PARTIES

1. Plaintiff Danielle Barrani is a resident of 332 South 800 East, Salt Lake City, which is located in the East Central part of the city a couple of blocks from Liberty Park.

2. Plaintiff Kadri Barrani lives at 328 South 800 East Salt Lake City, where he has lived the majority of the last 35 years. He and Danielle Barrani together own a rental property at 330 South 800.

3. Plaintiff Liesa Covey is a resident of Altitude on Fifth in Salt Lake City, located at 135 South 500 West, in the "Gateway" neighborhood—the neighborhood within and immediately surrounding the Gateway Mall along 400 West and between 200 South and South Temple in Salt Lake City. She has lived in the area for six years.

4. Plaintiff Scott Evans owns Euro Treasures, an antique store located in central Salt Lake City at 470 West 600 South. It is a couple of blocks south of Pioneer Park and between two streets that are divided by tree-lined medians.

5. Plaintiff Jim Grisley owns a business located at 1485 South 300 West in Salt Lake City. He has been in the location for over 40 years. It is near the Smith Ball Park, and The Road Home - Gail Miller Resource Center.

6. Plaintiff Juan Gutierrez is a long-time Salt Lake City resident. He and his wife Irena McKenzie have owned and managed the Estilo Hair and Brow Salon located at 380 W 200 S, Unit 203, in Salt Lake City for 22 years. Their salon is near the Gateway Center and Pioneer Park.

7. Plaintiff Dr. Áine Clotilde Houchon Ph.D., FRGS is a child rights advocate, artist, and academic who has been a homeowner and resident in the Pioneer Park neighborhood for 15 years.

8. Plaintiff David Ibarra is a long-time resident of Salt Lake City and owns the Ibarra Business Centre located at 438 East 200 South Salt Lake City, Utah 84111.

9. Plaintiff Randy Topham is a resident of Salt Lake City and is the owner of Cake Hair Salon located at 1010 South State Street Salt Lake City, UT 84111.

10. Defendant Salt Lake City is a Utah municipal corporation, organized under the laws of the State of Utah.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction in this matter pursuant to Utah Const. Art. VIII, §§ 1, 5 and UTAH CODE Section 78A-5-102(1).

12. This Court has personal jurisdiction over Defendant.

13. Venue is proper before this Court pursuant to UTAH CODE Sections 78B-3-307(1), (2).

### **GENERAL ALLEGATIONS**

12. Plaintiffs hereby incorporate all preceding paragraphs as if expressly set forth herein.

13. Over the past four to five years the City has allowed the erection of encampments on public lands and easements in front of or nearby Plaintiffs' residences and businesses.

14. Various photographs taken by the Plaintiffs demonstrate that over the last few years, the City has allowed unsheltered individuals to sleep, lie down, camp, and otherwise reside in the public right of ways and parks in front of their businesses and residences:





15. Various Plaintiffs have also witnessed public drug use in front of their businesses and properties:



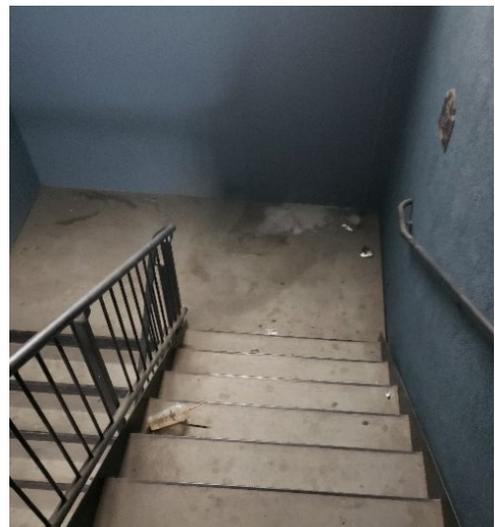
16. Various Plaintiffs have also photographed human feces and urine on or near their properties or businesses:



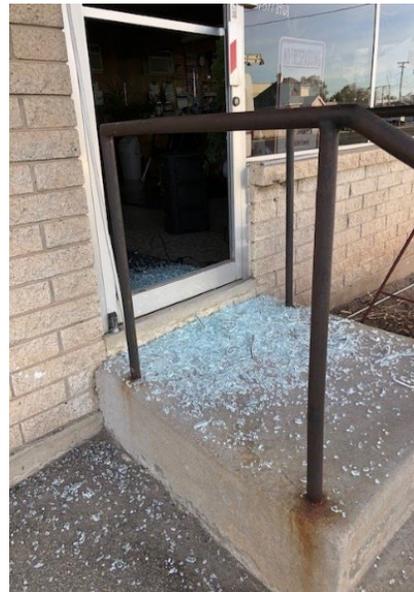
17. Various Plaintiffs have also photographed the accumulation of garbage and trash on their properties or businesses, which they are forced to clean up:



18. The Plaintiffs are required to clean up or avoid drug residue and paraphernalia:



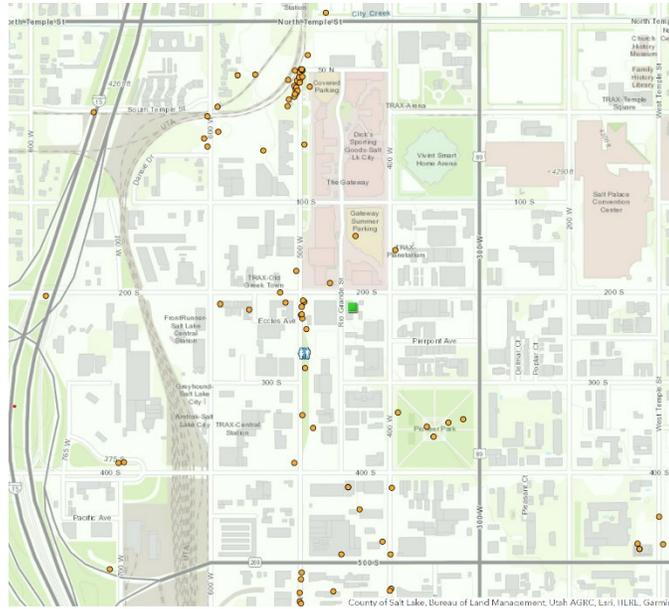
19. Plaintiffs have suffered property damage, including multiple broken windows and doors:



20. Salt Lake City publishes an interactive map that displays homelessness-related incidents since 2017.

<https://slcgov.maps.arcgis.com/apps/webappviewer/index.html?id=41d87239080d4963aa2c64ea60994c21>

21. The following incidents were reported in the thirty days prior to August 28, 2023, around the Plaintiffs' homes and businesses:



22. The following photographs were submitted with these incident reports:

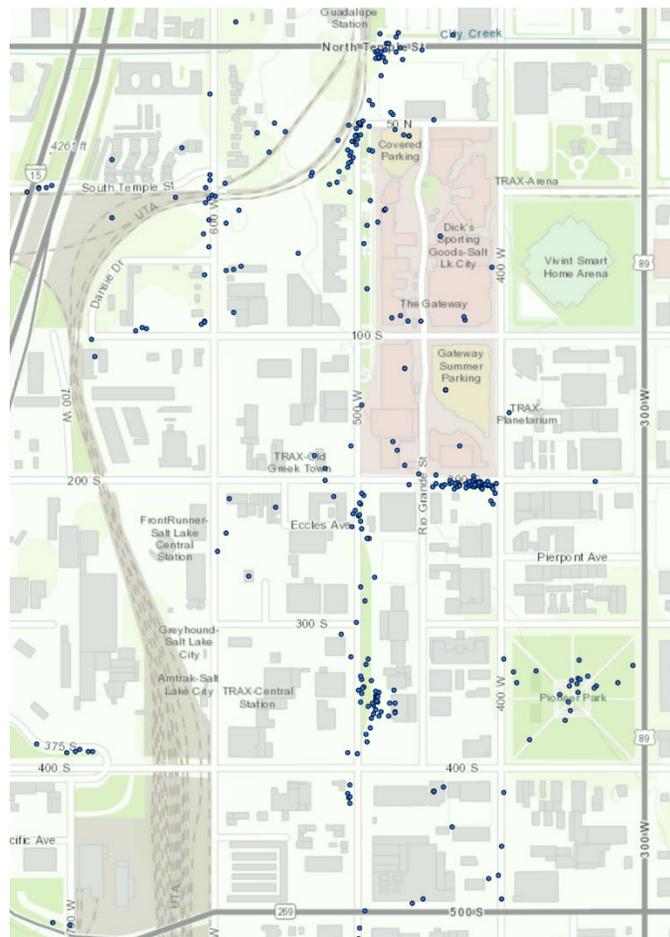








23. There are even more incident reports going back 120 days:



24. Plaintiffs have individually experienced first-hand the consequences of the nuisance that the City has created: their windows have been broken, some have been robbed, and some have even been attacked and held hostage in their businesses along with their customers and employees. The police response is always inadequate.

25. Ms. Barrani and Mr. Barrani are prisoners in their own homes.

26. Over the last 4 years, Mr. Barrani has been unable to sleep on his front porch because of threats from the unsheltered. He has a daughter with Down Syndrome. She cannot play in the front yard or on the front porch.

27. The Barranis have been robbed. They have had a laptop, tools, a pressure washer, and other items taken by the unsheltered. Ms. Barrani's car was broken into and an individual slept in the vehicle.

28. The unsheltered openly inject themselves with drugs in the public right of way in front of their homes and leave the needles and other residue. The unsheltered defecate and urinate on the Barranis' properties.

29. The unsheltered break down the fences surrounding the Barranis' connected yards and sleep in their yards and on their front porches.

30. The unsheltered use Ms. Barrani's hose to bathe and wash their clothes.

31. The Barranis are constantly being watched by the unsheltered who are constantly roaming the neighborhood looking for an opportunity to pilfer objects to support their drug and alcohol addiction.

32. Ms. Covey is regularly confronted with drug addled and/or mentally ill individuals roaming the neighborhood who often yell at her and threaten to assault her. She avoids walking her dog at night and in some areas because of fear of the individuals.

33. Ms. Covey's building was recently set on fire by an unsheltered individual. After setting the fire the individual attempted to break into the apartments of vacating tenants.

34. Ms. Covey's car has been broken into twice.

35. Ms. Covey recently had an unsheltered individual attempt to break into her patio.

36. The unsheltered regularly use her stairwell to take drugs and have left drug paraphernalia.

37. A female employee of Mr. Evan's business, Euro Treasures, had to fight off two men attempting to break into the store. Upon information and belief, the men were unsheltered individuals living in the neighborhood. She called the police; they arrived 45 minutes later and advised her to make the retail business less attractive to thieves.

38. Mr. Evans regularly arrives at Euro Treasures to find 20-30 individuals camped out on his property.

39. Mr. Gutierrez recently had a drug addled individual occupy the landing into his business where the individual began ranting and raving incoherently. Mr. Gutierrez' clients, mostly older women, were unable to leave the premises until the individual finally departed. Mr. Gutierrez called the police. They responded by text.

40. Mr. Gutierrez business has no dedicated parking. Therefore, his patrons must park on the street and often must walk a few blocks to the salon. They are constantly complaining of being approached by unsheltered individuals seeking money or simply acting incoherently. The unsheltered further leave trash around his business that he is forced to clean up.

41. Mr. Grisley regularly has individuals defecate on his business, break windows, and steal property. They also strew his business with used liquor bottles and other trash.

42. Dr. Houchon and three other women were molested by a noted felon, who had been living on the street, one city block from her home.

43. She regularly observes unhoused men and women near the local Test Prep (SAT, ACT, AP) tutoring center, sleeping, undressing, and having sex on the sidewalks and public rights of way around her home with untethered, dangerous dogs. Her cat was attacked by one of those dogs.

44. Dr. Houchon has been forced to accept as normal, the clearing of drugs, including Black Tar Heroin and Spice, from the periphery of her property, along with having to repeatedly wash down human feces and urine from street campers.

45. She has repeatedly called the Salt Lake City Police for help. In most cases, she has been told, "Due to heavy call volume, our officers are currently handling other calls for service." She has been left to her own devices.

46. She recently requested some no-trespassing signs from the police department. She was told no arrests could be made on private property without these signs. The police department informed her it had no signs to provide at that time.

47. Dr. Houchon feels stuck in place, trapped, and diminished. She is afraid to empty her rubbish and collect her mail after dark. So many artists and art-related businesses have been driven away by street camping. She has lost her community; in many ways her life has been ruined.

48. Mr. Ibarra has been a resident of downtown Salt Lake City since 1999.

49. Mr. Ibarra owned a condominium in The Club located at 150 S. 300 East in Salt Lake City. The City permitted the unsheltered to inject themselves with illegal drugs in the public spaces around the building and then wander about the streets in various states of consciousness. As a result, prospective purchasers were scared to purchase in the building. When Mr. Ibarra recently went to sell his condominiums, he was forced to take a price below what he otherwise would have fetched but for the nuisance.

50. Mr. Ibarra's office building is constantly under siege from the unhoused. He has been forced to spend approximately \$25,000 to install cameras and electronic door locks in his building to keep the unhoused from coming in and stealing from him and his tenants and otherwise damaging the building. As a result, he and his tenants are now locked into the building and he must "buzz" clients and other guests into the building.

51. Mr. Ibarra has had his vehicle broken into at his business and has grappled with a homeless individual stealing his property who pulled a knife on Mr. Ibarra. Mr. Ibarra was able to disarm the individual, but while restraining him for the police to arrive

(they did not respond), a crowd of street dwellers began to arrive and began yelling at Mr. Ibarra to let “Johnny” go. Fearing that the situation might get further out of hand, Mr. Ibarra was forced to release the thief.

52. Over the last several years, Mr. Topham has suffered various injuries from the unsheltered.

53. Mr. Topham has been physically attacked inside his store by an unsheltered individual living in the nearby encampments.

54. Mr. Topham found an individual passed out in the alleyway behind his business with a needle still in his arm.

55. Mr. Topham encountered an individual defecating on the back door of his business. When confronted, the man threatened Mr. Topham, claiming he would “gut” him. The police did nothing. The gentleman continued to camp at an adjacent building.

56. Mr. Topham has on two separate occasions come upon unsheltered men openly masturbating in his parking lot. His surveillance cameras also captured an unsheltered couple having sex there.

57. Mr. Topham has observed multiple fires set by the unsheltered.

58. The foregoing are just some instances of what has become an intolerable, increasing burden on the Plaintiffs and their property over the last several years. The Plaintiffs have repeatedly asked the City to relieve their plight, but the City has taken no meaningful steps to do so. Instead, the City knowingly continues inappropriately to place the burden of the homeless issue on the shoulders of the Plaintiffs and others in the area, who simply wish to lead a normal, reasonable existence where they can live, work,

and conduct business in sanitary conditions without threats from individuals with drug addiction, mental illness, or other anti-social condition or disposition.

**FIRST CAUSE OF ACTION**  
**(Public Nuisance)**

59. Plaintiffs hereby incorporate all preceding paragraphs as if they were expressly set forth herein.

60. Utah's public nuisance statute provides,

A public nuisance is a crime against the order and economy of the state and consists in unlawfully doing any act or omitting to perform any duty, which act or omission: (a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons; (b) offends public decency; (c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway; (d) is a nuisance as described in Section 78B-6-1107; or (e) in any way renders three or more persons insecure in life or the use of property.

Utah Code Ann. § 76-10-803.

61. Utah law permits private persons to file a civil action for public nuisance if they are especially affected by the nuisance. *Erickson v. Sorensen*, 877 P.2d 144 (Utah Ct. App. 1994); *Whaley v. Park City Mun. Corp.*, 190 P.3d 1 (Utah Ct. App. 2008).

62. The elements of public nuisance are (1) unlawfully doing any act or omitting to perform any duty, (2) which act or omission renders three or more persons insecure in life or the use of property, (3) the plaintiff suffers damages different from those of society at large, (4) the defendant caused or is responsible for the nuisance, and (5) if Defendant's conduct does not violate any specific public nuisance provision, then

their conduct must also be shown to be unreasonable. *Erickson*, 877 P.2d at 148–49; *Whaley*, 190 P.3d at 6.

63. Here, the public encampments and associated activities are “unlawful” pursuant to SLC Municipal Code § 11.12.080(A) which makes it “unlawful for any person to camp, lodge, cook, make a fire or pitch a tent, fly, lean-to, tarpaulin, or any other type of camping equipment on any ‘Public Grounds’...on any portion of a street...or in any park or playground...” and SLC Municipal Code §§ 14.12.070, 14.20.100, which prohibit parties controlling property from obstructing sidewalks or free use and enjoyment of the sidewalks.

64. The City’s actions in allowing the unlawful encampments are themselves unlawful. The first element of a public nuisance includes “unlawfully ... omitting to perform any duty.” Utah Code Ann. § 76-10-803. A long line of municipal corporation cases provide that a municipality is obligated to remove nuisances from the public streets, sidewalks, and other public areas. *See, e.g., Salt Lake City v. Schubach, United Pac. Ins. Co., Intervener*, 108 Utah 266, 272, 159 P.2d 149, 151–52 (1945).

65. The City’s actions are also unlawful because, as the Restatement (Second) of Torts, cited favorably by the Utah courts, provides, “[a] possessor of land” is liable for nuisances on his property if he “knows or should know of the condition and the nuisance” and fails “to take reasonable steps to abate the condition.” *Restatement (Second) of Torts* § 839.

66. The Restatement further provides that “[a] possessor of land upon which a third person carries on an activity that causes a nuisance is subject to liability for the

nuisance” if the possessor “knows or has reason to know” of the activity and “consents to the activity or fails to exercise reasonable care to prevent the nuisance.” *Id.* § 838.

67. Here, the City has *de facto* exempted itself from the operation of the nuisance laws and has exempted certain individuals in certain areas from the operation of the City’s anti-camping laws.

68. The public nuisance that the City has created renders three or more persons insecure in life or the use of property.

69. The Plaintiffs, as neighboring residents and business owners, suffer damages different from those of society at large.

70. Defendant caused the nuisance through creating an amenity – the allowing of public camping – that attracts the unsheltered population to create encampments on its land.

71. The Defendant is “responsible” for the nuisance because it is on Defendant’s land. Restatement (Second) of Torts §§ 838, 839.

72. The City’s actions are unreasonable as a matter of law as they violate state law.

73. According to the City, the “most common” reasons unsheltered individuals “form encampments” are because “[t]he individuals feel that shelter options available don’t work for them and they feel a sense of relative safety and community in encampments,” “[t]hey are looking for a sense of autonomy and privacy that they don’t think they can get in shelter,” and “[t]he individual prioritizes access to illegal substances

over shelter services.” Salt Lake City, Housing Stability Division, “Homeless Services Dashboard,”

<https://www.slc.gov/housingstability/homeless-services-dashboard/>(<https://perma.cc/7P3H-K5NT>).

74. Additionally, Salt Lake City and County annually conduct a point-in-time (“PIT”) count of unsheltered individuals, individuals in homeless shelters, and available beds and housing units.

75. In the January 2023 PIT count, there were 485 unsheltered individuals in Salt Lake County, while there were 600 available emergency shelter beds or supportive, rapid, or transitional housing units.

76. In short, the City is allowing the encampments by choice. A court order is necessary to clarify the City’s legal obligations and give Plaintiffs the relief they so desperately need.

77. The City is permitting individuals to sleep, pitch tents, consume illegal drugs, urinate, defecate and perform public sex acts on property it controls.

78. Allowing these individuals to live on the streets of the City and engage in the behaviors they exhibit is a nuisance to the Plaintiffs and other residents, property and business owners in the City.

79. Plaintiffs are therefore entitled to judgment against Salt Lake City.

**SECOND CAUSE OF ACTION**  
**(Private Nuisance)**

80. Plaintiffs hereby incorporate all preceding paragraphs as if they were expressly set forth herein.

81. A private nuisance “is anything that is injurious to health, indecent, 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.” Utah Code Ann. § 78B-6-1101(1).

82. “A nuisance may be the subject of an action,” and “[a]n action may be brought by a person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.” *Id.* § 78B-6-1101(6).

83. “Upon judgment, the nuisance may be enjoined or abated, and damages may be recovered.” *Id.* § 78B-6-1102.

84. The elements of a private nuisance claim are: (1) a substantial invasion in the private use and enjoyment of land, (2) caused by Defendants or for which Defendants are responsible, and (3) the invasion is either (a) intentional and unreasonable, or (b) unintentional and otherwise actionable. *Whaley*, 190 P.3d at 9. Private nuisance claims do not require that the defendant’s actions be unlawful. *Id.*

85. Specific authorization from a municipality does not defeat a private nuisance claim because a private nuisance, unlike a public nuisance, focuses on unreasonable injury to the Plaintiff. *Id.*

86. Plaintiffs are experiencing an unreasonable and substantial invasion of their private use and enjoyment of their businesses and properties because of the nature of the harm, the extent of the harm, the social value of their activities, and the suitability of the

downtown business and living district for their ordinary activities. *Restatement (Second) of Torts* § 824.

87. The City is responsible for the nuisance that occurs on its lands. *Restatement (Second) of Torts* §§ 838, 839.

88. The City's actions are intentional. "An invasion of another's interest in the use and enjoyment of land or an interference with the public right, is intentional if the actor (a) acts for the purpose of causing it, or (b) knows that it is resulting or is substantially certain to result from his conduct." *Restatement (Second) of Torts* § 825.

89. "Conduct" includes both an act or a failure to act: "The conduct necessary to make the actor liable for either a public or a private nuisance may consist of (a) an act; or (b) a failure to act under circumstances in which the actor is under a duty to take positive action to prevent or abate the interference with the public interest or the invasion of the private interest." *Id.* § 824.

90. The City's actions in allowing nuisances on its land are therefore intentional.

91. The City further has a general duty to enforce its ordinances and to protect the life, liberty, and property of the citizens, and a specific duty to abate nuisances, and its failure to act is intentional conduct.

92. The creating and/or maintaining of the nuisance is also unreasonable. "An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if . . . the gravity of the harm outweighs the utility of the actor's conduct." *Restatement (Second) of Torts* § 826.

93. The nuisance is also unreasonable because substantially similar operations could be conducted nearby without causing the interference with property rights, for example by creating a managed campsite or by requiring unsheltered individuals to utilize available emergency shelter beds and available supportive, rapid, and transitional housing units.

94. The nuisance is also unreasonable because “the social value” of allowing encampments is low; in fact, City ordinances specifically prohibit the activities that the City is currently allowing. Thus, the social value of the nuisance-creating activity has been legislatively declared to be nil. *Restatement (Second) of Torts* § 828(a).

95. The nuisance is also unreasonable because the conduct of the City and the residents of the encampments are not “suitable” to the “character of the locality.” *Restatement (Second) of Torts* § 828(b).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment in its favor against the Defendants in the following forms:

1. **On the First Cause of Action (Public Nuisance):**
  - a.** Judgment against the Defendant finding that its actions have created a public nuisance.
  - b.** That the court enter a preliminary and permanent injunction directing the Defendant immediately to take all steps necessary to abate the nuisance.

c. In the alternative to (b), that the court issue a writ of mandamus requiring Defendant to abate the public nuisances on its streets, sidewalks, easements, and parks.

d. That the court award costs and attorneys' fees under the private attorney general doctrine and under any other applicable law, rule, or authority.

2. **On the Second Cause of Action (Private Nuisance):**

a. Judgment against the Defendant finding that its actions have created a private nuisance.

b. That the court enter a preliminary and permanent injunction directing the Defendant immediately to take all steps necessary to abate the nuisance.

c. That the court award costs and attorneys' fees under the private attorney general doctrine and under any other applicable law, rule, or authority.

DATED this 28th day of September, 2023.

VOGELER, PLLC

/s/ Eric Vogeler  
Eric Boyd Vogeler  
*Attorney for Plaintiffs*

LEE NIELSEN, PLLC

/s/ John Nielsen  
John J. Nielsen  
*Attorney for Plaintiffs*

TULLY BAILEY, LLP

/s/ Stephen Tully  
Stephen Tully  
Ilan Wurman  
Michael Bailey  
Attorneys for Plaintiffs  
(*Pro Hac Admission Pending*)

VERIFICATION

The following undersigned Plaintiffs hereby verify under criminal penalty of the laws of the State of Utah that the foregoing allegations and statements of fact contained in this Complaint are true and accurate to the best of their knowledge:

/s/ Danielle Barrani\*  
Danielle Barrani

/s/ Juan Gutierrez\*  
Juan Gutierrez

/s/ Kari Barrani\*  
Kadri Barrani

/s/ Clotilde Houchon\*  
Clotilde Houchon

/s/ Liesa Covey\*  
Liesa Covey

/s/ David Ibarra\*  
David Ibarra

/s/ Scott Evans\*  
Scott Evans

/s/ Randy Topham\*  
Randy Topham

/s/ Jim Grisley\*  
Jim Grisley

*\*signed electronically with permission by  
Eric Vogeler as authorized in email  
communications received on September 27,  
2023 and September 28, 2023*