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6 **IN THE UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 LAURA LEIGH,

9 Plaintiff,

10 Case No. 2:10-cv-1634

11 vs.

12 KEN SALAZAR, in his official capacity as
Secretary of the U.S. DEPARTMENT OF
THE INTERIOR, BOB ABBEY, in his official
13 capacity as Director of the BUREAU OF
LAND MANAGEMENT, RON WENKER in his
14 official capacity as Nevada State Director of
the BUREAU OF LAND MANAGEMENT,
15 DOES I through XX, inclusive, BLACK &
WHITE ENTITIES I through XX, inclusive,
16

16 Defendants.
17 _____/

18 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF;**
19 **JURY DEMAND**

20 Plaintiff LAURA LEIGH, avers as follows:

21 **JURISDICTION AND VENUE**

22 1. Jurisdiction of this matter, involving a federal question, is governed in
23 accordance with 28 U.S.C. § 1331. Relief is sought under applicable provisions of the
24 Administrative Procedures Act, 5 U.S.C. §§ 701 et seq.

25 2. Plaintiff is unsure where venue remains proper, whether in the Southern
26 or Northern Division of the District of Nevada [pursuant to 28 U.S.C. §1391(a)] where
27 the roundup which gives rise to the matters asserted herein, occurs in the Silver King
28 Herd Management Area located in Lincoln County, Nevada, although the transportation

1 and intended housing and destination of the captured wild horses removed from the
2 Silver King Herd would occur in Washoe and/or Churchill Counties in the northern
3 portion of Nevada; and the Defendant Bob Wenker's office and the State BLM's office
4 is located in Reno, Nevada. Admittedly, the bulk of the activity occurs in Lincoln County.

5 **GENERAL ALLEGATIONS**

6 3. Plaintiff, a citizen of Nevada, is a wild horse journalist, and correspondent
7 and credentialed media representative for Horseback Magazine. Plaintiff LAURA
8 LEIGH receives revenues from fair reporting to the public as a journalist on issues
9 involving wild horses and also their management by both private organizations and by
10 governing authorities including the BLM. Her participation has included magazine,
11 internet and television including CNN. Plaintiff also writes articles/photojournalism for
12 print and electronic media and she collects data relevant to wild horses for equine
13 welfare organizations.

14 4. Plaintiff is also a regarded, talented publisher, artist and illustrator of art.
15 Her more recent works involve horses as her subjects. She is also involved in
16 publishing children's books. She has completed art projects for significant charitable
17 organizations including by example, the United Way. Samples of her work are available
18 on the internet at www.barndoorstudio.com .

19 5. Much of the Plaintiff's current work is dedicated to educating children
20 about horses, wild horses, mustangs and particularly of horse rescue stories. Her new
21 works are dedicated to teaching young children good practices relative to the
22 management of wild horses. The unique aspect of the Plaintiff's publications and
23 illustrations directed to children and to the public relative to wild horses is this: her
24 stories and illustrations emanate from true subjects and are far from fiction.

25 6. Plaintiff spent the past several months observing wild horses on their
26 native habitats. Plaintiff spent the past several months also documenting the
27 Defendants' capture, removal and management of wild horses, at least where allowed
28 to do so by the Defendants, at previous roundups conducted by the Defendants

1 elsewhere in Nevada and in other states.

2 7. The named Defendants collectively comprise the governing authorities of
3 the United States of America responsible for managing certain public lands in the
4 United States. The U.S. Department of Interior is a cabinet-level agency headed by Mr.
5 Ken Salazar. The BLM is a U.S. Department of Interior “bureau” headed by Mr. Bob
6 Abbey. Mr. Ron Wenker is the BLM’s Nevada State Director. The BLM manages 47
7 million acres of public land in Nevada. The individually named Defendants are sued in
8 their official capacities only, as those most senior in decision-making processes and
9 responsible for their respective governing agency/bureau/department.

10 8. Plaintiff does not know the true names and capacities of the Defendants
11 sued herein as DOES I through XX, inclusive, or of BLACK & WHITE ENTITIES I
12 through XX, inclusive, and, therefore, Plaintiff sues said Defendants by such fictitious
13 names. Plaintiff prays for leave of Court to amend this Complaint to allege their true
14 names and capacities when ascertained and if jurisdiction may be asserted against
15 them. Plaintiff is informed and believes each of the fictitiously named Defendants is in
16 some manner responsible for the occurrences and events herein alleged, and Plaintiff’s
17 rights against such fictitiously named Defendants arises from such occurrences and
18 events.

19 9. Plaintiff seeks to observe, obtain impressions and then report her
20 observations and impressions concerning the Defendants’ management and handling
21 of Silver King wild horses, the subject of which involves a matter of significant public
22 interest. Plaintiff also seeks to lift the BLM’s closure to public access of the area where
23 the Silver King Roundup is taking place.

24 10. Plaintiff seeks injunctive and declaratory relief prohibiting the Bureau of
25 Land Management’s (“BLM”) and Department of Interior’s (“DOI”) helicopter-driven
26 roundup of wild horses from the area known as the Silver King Herd Management Area
27 (“Silver King” or “Silver King Roundup” or “Silver King HMA”) until such time as they
28 provide access to Plaintiff as herein set forth.

1 11. Silver King is located in the northern portion of Lincoln County, Nevada.
2 This helicopter roundup is scheduled from September 14 through October 1, 2010,
3 according to an official BLM publication. Plaintiff is informed and believes the Silver
4 King Roundup has yet to commence although the event is imminent.

5 12. Plaintiff is informed and believes the rounding up by helicopter, the
6 capturing, the removal, the shipment, the holding and housing of captured wild horses
7 from western rangelands and in particular from Nevada rangelands, and the true
8 ultimate disposition or demise of captured wild horses occurring at the hands of the
9 government Defendants, involve matters of significant public interest, particularly to
10 Americans, to westerners, to citizens of Nevada, and even to off-shore cultures; and,
11 contrary to the public and Plaintiff's right to know how these "spirits of the west" are
12 being truly managed and handled, the government Defendants have systematically and
13 effectively precluded Plaintiff and the public from closely observing and monitoring the
14 Defendants' methods in handling and managing America's wild horses from the time
15 the Defendants capture and remove them from their native habitats and long-time herd
16 families, to when these removed horses reach their ultimate destination or meet their
17 demise; and in doing so, the government Defendants have, and continue to make a
18 mockery of the most fundamental freedoms our citizenry and Plaintiff are provided
19 through the First Amendment to the Constitution of the United States.

20 13. Plaintiff is informed and believes the systematic preclusion of her and the
21 public from closely observing and monitoring the systematic removal of America's wild
22 horses, is destined to repeat again at Silver King and would cause her irreparable harm
23 as the result of the deprivation of her rights under the First Amendment to the U.S.
24 Constitution.

25 14. Plaintiff is informed and believes there is no true oversight or
26 accountability of the Defendants' conduct in managing wild horses; that resultantly, the
27 American free-roaming wild horse is in jeopardy as is the Constitutional, First
28 Amendment rights and freedoms of the citizenry and of Plaintiff which the Defendants

1 continue to besmirch and dishonor; that the only true, independent oversight of the
2 Defendants' wild horse activities is that of public scrutiny accomplished through
3 observation and reporting by interested media; and when public scrutiny through a free
4 press is restricted or denied access, authoritarian rule becomes the norm, contrary to all
5 notions of fundamental freedoms nurtured and protected by the U.S. Constitution.

6 15. Based on the BLM's and DOI's conduct displayed at prior roundups which
7 restricted or altogether "blacked out" and censored the Plaintiff and the public's
8 observation of the Defendants' handling of wild horses, from the point of their capture to
9 the horses' ultimate disposition, and based also on the government Defendants'
10 publications and notices concerning Silver King, Plaintiff is informed and believes the
11 government Defendants' course at Silver King would cause irreparable harm to Plaintiff
12 and the public by impermissibly restricting and precluding her and others from
13 observing the Defendants' activities in key places, times, events and situations; that
14 undue restricting or prohibiting altogether the Plaintiff and other media from observing,
15 monitoring and then reporting to the public how the Defendants carry out their wild
16 horse roundups and subsequent wild horse handling activities, constitutes
17 impermissible prior restraints and censorship of the Plaintiff's and citizenry's right to
18 know, and rights to a free press, to free speech and to freedoms nurturing expression
19 and opinion, contrary to fundamental notions protected by the First Amendment to the
20 U.S. Constitution.

21 16. Plaintiff is informed and believes, in 1971 a noted jurist instructed
22 profoundly on the subject, stating the following:

23 The Press was protected so that it could bare the secrets of the
24 government and inform the people. Only a free and unrestrained press
25 can effectively expose deception in government. And paramount among
26 the responsibilities of a free press is the duty to prevent any part of the
27 government from deceiving the people. *Justice Hugo Black, 1971.*

28 17. Plaintiff is informed and believes, in addition to the foregoing, the

1 Defendants have on multiple occasions, singled-out Plaintiff, precluding her from
2 accessing areas where other media or press were otherwise permitted to gain access
3 during the Defendants' roundups, resulting in allowing other media to observe and then
4 report what occurred at these prior roundups, but which at the same time, denied and
5 precluded Plaintiff from gaining equal access to the same vantage points, causing her
6 to miss reporting assignments where, from her vantage points, she could not observe
7 the Defendants' processes, or observe the health and well being of the horses they
8 captured; and in turn she was denied the opportunity and her right to observe and then
9 report the Defendants' horse roundup activities to the public. Plaintiff is informed and
10 believes said offensive conduct is retaliatory, it is impermissible content-based
11 censorship, it effectuates a discriminatory policy toward the Plaintiff, and it causes
12 Plaintiff irreparable harm from the Defendants' intentional violation of her First
13 Amendment Constitutional rights protecting speech, a free press, free thought and free
14 expression; and such offensive conduct is scheduled and destined to repeat at Silver
15 King.

16 18. Based on the repeated, historical conduct of the Defendants in how they
17 have treated Plaintiffs thus far at multiple wild horse roundups, Plaintiff is informed and
18 believes the Defendants' conduct,

- 19 a. precludes and unnecessarily and unreasonably restricts Plaintiff and
20 some or all of those similarly situated, and the public, from observing and
21 viewing the government Defendants' roundup activities, their trapping of
22 wild horses, their temporary holding of wild horses, their shipping of wild
23 horses and their handling of wild horses after their capture, their
24 temporary and also long-term housing thereafter, and their ultimate
25 disposition or demise;
- 26 b. amounts to an impermissible "prior restraint" or censorship which
27 denigrates free speech and fundamental notions of a free press, contrary
28 to Constitutional underpinnings;

- 1 c. causes impermissible content-based censorship;
- 2 d. is injurious to Plaintiff's (and members of the public and media) First
- 3 Amendment rights to free speech, to Plaintiff's right of freedom of
- 4 expression and thought, and to Plaintiff's right to observe and then report
- 5 the government's activity and conduct to the public;
- 6 e. causes irreparable injury and harm to Plaintiff from depriving her of
- 7 Constitutional freedoms, the price tag for which is unfathomable;
- 8 f. effectuates a discriminatory policy toward Plaintiff;
- 9 g. amounts to arbitrary denials of reasonable access to viewing government
- 10 activity, government in action, and to the government Defendants'
- 11 management of wild horses in Silver King, from the point of their capture
- 12 to their ultimate disposition or demise;
- 13 h. involves a matter of significant public interest which necessitates
- 14 transparency rather than secrecy.

15 19. The BLM and DOI published their intent to close public lands for the Silver
16 King Roundup. Plaintiff is informed and believes the intended closure of public lands
17 amounts to a "prior restraint" and censorship of Plaintiff's and public's First Amendment
18 rights of free speech, freedom of expression, freedom of ideas, freedom of the press,
19 and freedom to publish her observations of the government Defendants' activities.

20 20. The government Defendants had already been admonished by this very
21 court (the Hon. Larry R. Hicks) when previously seeking to close public lands in Elko
22 County earlier this year; and Judge Hicks instructed these same government
23 Defendants as follows:

24 As to Leigh's First Amendment challenge to the
25 closure of public lands during the gather, the court shall
26 grant Leigh's temporary restraining order. Leigh argues that
27 a blanket closure of 27,000 acres of public land on which the
28 Tuscarora Gather is going to take place is a prior restraint on

1 her First Amendment rights because she will be unable to
2 observe and report on the health of the horses and the
3 BLM's management of the gather. The court agrees and
4 finds that she has made a sufficient showing of probable
5 success on the merits to warrant granting the motion. As
6 such, the court enjoins the blanket closure of public land
7 access during the gather and shall lift the closure as written
8 with regard to land access.

9 The court is cognizant of the public interest in this
10 matter and of the right of the public and press to have
11 reasonable access to the gather under the First
12 Amendment. . . .

13 *Leigh v. Salazar*, 2010 WL 2834889 (D. Nev. Jul. 16, 2010)
14 (Published Slip Opinion)

15 21. Plaintiff is informed and believes the government Defendants are "issue
16 precluded" and collaterally estopped from closing public lands during wild horse
17 roundups where this very issue had already been briefed and litigated through a
18 hearing, as between the same parties which involved another roundup site in Nevada,
19 which involved the same issue, which involved the same activity, and which involved
20 the same parties. See *Leigh v. Salazar*, 2010 WL 2834889 (D. Nev. Jul. 16, 2010).

21 22. Plaintiff is informed and believes the BLM and DOI intend to utilize private
22 lands on which to place wild horse traps such that the Defendants can enlist the
23 assistance of local law enforcement to keep the citizenry and Plaintiff at bay and to
24 keep the citizenry and Plaintiff from viewing wild horse trap areas where the
25 government Defendants capture wild horses; that the government Defendants would
26 claim as they claimed on occasions in the past, that they do not have the private
27 landowner's permission to let the public or press or Plaintiff onto private landowners'
28 property. In the past the government Defendants made advance arrangements with the

1 local Sheriff's office; and when the Plaintiff arrived, the government Defendants had
2 coaxed or requested local law enforcement officials to instruct Plaintiff that, should she
3 trespass in the trap areas to observe the government Defendants' activities there, that it
4 would cause her to be arrested for trespassing. Plaintiff is informed and believes such
5 "private property" arrangements tactically create an impenetrable barrier to the Plaintiff
6 and the public which prevents their access to, and observation of, the process of the
7 government Defendants at work when capturing and holding wild horses taken from
8 public lands during these roundups. Plaintiff is informed and believes such intentional
9 choices cause Plaintiff and the public to suffer irreparable harm from impermissible
10 Constitutional, First Amendment prior restraints. Plaintiff is informed and believes this
11 offensive tactic is being employed once again at Silver King.

12 23. Plaintiff is informed and believes the Defendants' choice of using a sliver
13 of private property on which to capture wild horses over choosing some portion of the
14 606,000 acres comprising the Silver King Herd Management Area available to them, is
15 arbitrary and capricious and amounts to an intentional prior restraint on Plaintiff's First
16 Amendment rights and accordingly causes her irreparable harm.

17 24. The government Defendants cunningly utilized this "private property" tactic
18 in a roundup in Northern Nevada earlier this summer and effectively blacked out
19 completely, the ability of the Plaintiff and public and press from independently observing
20 and reporting on the government Defendants' "management" and capture of wild
21 horses taken from the Owyhee Herd Management Area; and they unreasonably
22 restricted public access to view roundups in the Tuscarora area. Resultantly, thirty-four
23 wild horses (at least those that were acknowledged by the government Defendants)
24 perished while in the custody and control of the government Defendants during these
25 roundups. And, Plaintiff and other members of the public were completely closed out
26 from observing any portion of the Defendants at work while they removed several
27 hundred horses over the course of several days, there.

28 25. Plaintiff is informed and believes, based on the Defendants' historical

1 conduct that the intended course at Silver King of precluding the public from observing
2 the true health of horses as they are helicopter driven off the range and into traps, or
3 shortly thereafter, so as to independently document and report their true health status
4 and physical condition (rather than having to accept the “word” and representation of
5 the Defendants thereafter that the horses are just fine), is arbitrary and capricious and
6 amounts to an impermissible prior restraint on Plaintiff’s First Amendment rights and
7 accordingly causes her irreparable injury and harm.

8 26. Plaintiff is informed and believes, based on the Defendants’ historical
9 conduct, that the intended course at Silver King of precluding Plaintiff and others from
10 observing, documenting and reporting their activity, is injurious to the Plaintiff’s
11 reputation where the Defendants and/or their agents had in the past falsely blamed
12 horse deaths on the Plaintiff, even though those deaths occurred while such horses
13 were in the exclusive custody and control of the Defendants and while such horses
14 were being continually “managed” exclusively by the Defendants; and, that when the
15 Defendants are allowed to effectively operate under a blanket of secrecy and avoid
16 public scrutiny, the Defendants are able to “spin” their own tale of what transpires there,
17 unchecked and unverified by media or the public or the Plaintiff, at least until such time
18 as the Defendants vacate the area and leave evidence of a different story; that such
19 conduct by the government Defendants is offensive, outrageous and is arbitrary and
20 capricious and amounts to an impermissible prior restraint on Plaintiff’s First
21 Amendment rights and accordingly causes her irreparable injury and harm; and when
22 the government Defendants had already been instructed that closures of public lands
23 during wild horse roundups amounted to prior restraints on Plaintiff’s First Amendment
24 rights, that when they repeat the same course, Plaintiff is informed and believes such
25 conduct is oppressive or malicious.

26 27. Plaintiff is informed and believes, based on the Defendants’ historical
27 conduct, that the intended course at Silver King of keeping the Plaintiff, media and the
28 public at bay from the Defendants’ activity of loading and shipping captured wild horses,

1 is arbitrary and capricious and amounts to an impermissible prior restraint on Plaintiff's
2 First Amendment rights and accordingly causes her irreparable injury and harm.

3 28. Plaintiff is informed and believes, based on the Defendants' historical
4 conduct, that the intended course at Silver King of precluding Plaintiff and others from
5 being advised of the true locations where captured wild horses are shipped, amounts to
6 impermissible censorship, is arbitrary and capricious and amounts to an impermissible
7 prior restraint on Plaintiff's First Amendment rights and accordingly causes her and the
8 public irreparable injury and harm.

9 29. Plaintiff is informed and believes, based on the Defendants' historical
10 conduct, that the intended course at Silver King of precluding Plaintiff and others from
11 observing, documenting and reporting the arrival, the "processing," the boarding and
12 feeding and the medical treatment of captured wild horses from their native rangelands,
13 is arbitrary and capricious and amounts to an impermissible prior restraint on Plaintiff's
14 First Amendment rights and accordingly causes her irreparable injury and harm, where
15 the press, media, the Plaintiff are excluded from these processes and where such
16 activity is conducted under the Defendants' repeated blanket of secrecy.

17 30. Plaintiff is informed and believes, based on the Defendants' historical
18 conduct, that the intended course at Silver King of precluding Plaintiff and others from
19 accurately tracking captured wild horses taken from their native rangelands at Silver
20 King, to their ultimate destination or demise, allows the Defendants to handle and
21 dispose of these horses under a blanket of secrecy, away from public scrutiny; and
22 such conduct is arbitrary and capricious and amounts to an impermissible prior restraint
23 on Plaintiff's First Amendment rights and accordingly causes her and the public
24 irreparable injury and harm.

25 31. Plaintiff is informed and believes, based on the Defendants' historical
26 conduct, that the intended course at Silver King of precluding Plaintiff and others from
27 observing, documenting and reporting captured wild horses sent, housed or boarded at
28 short-term holding, or long-term holding, or temporary holding, or permanent holding,

1 including those to be taken from their native rangeland at Silver King, who reside
2 (temporarily or otherwise) either at federal facilities or federally funded private facilities,
3 is arbitrary and capricious and amounts to an impermissible prior restraint on Plaintiff's
4 and others First Amendment rights and accordingly causes her and the public
5 irreparable injury and harm.

6 32. Plaintiff is informed and believes the Defendants' choice to close to the
7 public, the media and Plaintiff of observing, documenting and reporting the handling
8 and disposition of those horses shipped to private facilities which receive federal funds
9 for their board and/or care, where such private facilities preclude and close out the
10 public, the media and Plaintiff from observing, documenting and reporting the handling
11 and disposition of these horses, including Silver King horses, is arbitrary and capricious
12 and amounts to an impermissible prior restraint on Plaintiff's and others First
13 Amendment rights and accordingly causes her and the public irreparable injury and
14 harm.

15 33. Plaintiff is informed and believes that wild horses captured from public
16 lands or driven from public lands and thereafter captured by the Defendants, and in this
17 instance the horses of Silver King, are protected natural resources; that they are
18 America's wild horses; and no matter where they are taken or how they are disposed of,
19 that their status, beginning with their management on the range to the end involving
20 their ultimate disposition or demise, involves matters of significant public interest; and
21 when the public, the media, the Plaintiff are precluded or denied access to
22 independently verify and assess these wild horses' health, handling, condition at any
23 point from beginning to end, that such preclusion is arbitrary and capricious and
24 amounts to an impermissible prior restraint on Plaintiff's and others First Amendment
25 rights and accordingly causes her and the public irreparable injury and harm.

26 34. Plaintiff is informed and believes the Defendants do not account with
27 accuracy, the whereabouts or disposition or demise of each wild horse they capture
28 from their native habitat and that the same would occur with Silver King horses. Plaintiff

1 is informed and believes the Defendants keep no accurate records or data of each wild
2 horse they capture from their native habitat which would include the horses removed
3 from Silver King, and that their ultimate demise or disposition would not be accountable;
4 that transactions occurring where such wild horses are delivered to third parties in bulk,
5 are not accounted for even though those horses remain the property of, and are to be
6 held in trust on behalf of the American public; and therefore, to preclude and close out
7 the public, the media and Plaintiff from observing, documenting and reporting the
8 handling and disposition of these horses, including Silver King horses, from beginning
9 to end, is arbitrary and capricious and amounts to an impermissible prior restraint on
10 Plaintiff's and others First Amendment rights and accordingly causes her and the public
11 irreparable injury and harm.

12 35. This Complaint is about the public's and the Plaintiff's access to America's
13 wild horses where they are captured and removed from their native lands and where,
14 Plaintiff is informed and believes, many disappear into the black hole of the information-
15 less system the Defendants call their Wild Horse and Burro Program. Plaintiff is
16 informed and believes, based on the Defendants' prior handling of America's wild
17 horses, that the Silver King horses hold the same bleak destiny as do their previously
18 captured relatives; and where the Plaintiff and others are held back from observing and
19 then reporting what transpires with these wild horses, it causes an impermissible prior
20 restraint on Plaintiff's and others First Amendment rights and accordingly causes
21 Plaintiff and the public to suffer irreparable injury and harm.

22 36. Plaintiff is informed and believes both she and other citizens of the United
23 States and others lawfully within the United States maintain the right to observe and if
24 they so choose, record and report publicly how the government Defendants handle and
25 manage controversial issues that involve public lands, and how the BLM manages our
26 public lands, and also how the BLM manages resources found within our public lands,
27 including wild horses and Silver King wild horses.

28 37. Plaintiff is informed and believes the chosen methods employed by the

1 government Defendants to capture, to remove, to house, and in instances to dispose of
2 America's wild horses, would be viewed by groups of reasonable persons as brutal
3 processes. Plaintiff is informed and believes groups of reasonable persons would
4 believe the underlying reason behind the government Defendants' attempts at
5 restricting the Plaintiff's and the public's access to clear viewing of their wild horse
6 capture activities, their wild horse holding facilities, their wild horse transportation
7 activities, is to hide from the public and prevent the public from observing and then
8 reporting to others, the brutal side of the government Defendants' "management" of
9 America's wild horses and to avoid the embarrassment, and public scrutiny and
10 perhaps Congressional scrutiny of their activities should their work, occurring behind
11 closed doors currently, become publicly revealed.

12 38. Plaintiff is informed and believes, if the government Defendants had
13 nothing to hide, or had no activity from which they would suffer embarrassment should it
14 be publicly revealed, that the Defendants would in that instance welcome the Plaintiff
15 and others to scrutinize and view any aspect of their program, at most any time, that the
16 government Defendants would keep accurate records of each horse captured so others
17 including the Plaintiff could review to independently verify proper disposition of such
18 horses.

19 39. Plaintiff is informed and believes groups of reasonable persons would
20 believe the lack of accurate records or data as to the travels and disposition of wild
21 horses removed from native habitats including those removed from Silver King,
22 amounts to spoliation of evidence.

23 40. Plaintiff is informed and believes the prohibition of the public from viewing
24 and if they so wish, recording and reporting what transpires in the management of
25 "public lands," particularly over a controversial topic involving such a significant and
26 compelling public interest, and in this instance as it relates to the government's
27 activities at Silver King, amounts to an intolerable censoring or suppression of a debate
28 and topic which involves significant and compelling public interest. The "closure" of the

1 roundup areas, whether because the government Defendants merely choose to close
2 them or whether they impermissibly choose to place horse trap zones and horse
3 detention pens on private ground, effectively precludes the public from observing and
4 reporting what transpires during the Silver King roundup (the Defendants label a
5 “gather”), which “closure” is contrary to the, “profound national commitment to the
6 principle that debate on public issues should be uninhibited, robust and wide-open.”
7 See, *Curtis Publishing Co. v. Butts and Associated Press v. Walker*, 388 U.S. 130
8 (1967).

9 41. Plaintiff is informed and believes the censoring of the public from the area
10 where the Silver King Roundup is to commence, contravenes rights enumerated in the
11 First Amendment to the U.S. Constitution as an impermissible infringement on the
12 freedom of the press to report matters involving government actions which have a
13 significant and compelling public interest; that the Defendants are not able to
14 demonstrate an interest, compelling or otherwise, that could be achieved with the most
15 least restrictive means necessary to achieve its purported interest in shutting out the
16 public and the Plaintiff. See, US Const., 1st Amend.

17 42. Plaintiff is informed and believes the roundup at least in methodology the
18 Defendants seek to employ at Silver King is contrary to clearly defined public policy of
19 the United States of America relative to management practices of wild horses. See,
20 The Wild Free-Roaming Horses and Burro Act of 1971, P.L.92-195, 16 U.S.C. 1331 et.
21 seq. which states in relevant part as follows:

22 Congress finds and declares that wild free-roaming horses
23 and burros are living symbols of the historic and pioneer
24 spirit of the West; that they contribute to the diversity of life
25 forms within the Nation and enrich the lives of the American
26 people; and that these horses and burros are fast
27 disappearing from the American scene. It is the policy of
28 Congress that wild free-roaming horses and burros shall be

1 Silver King, their shipments of the Silver King wild horses, their temporary short term or
2 long term facilities where Silver King horses would be housed or kept whether on public
3 or private facilities, the processes and ultimate disposition or demise of Silver King
4 horses, when closing out the public and the Plaintiff from such activities results in
5 content-based censorship and denigrates the First Amendment Constitutional rights of
6 the Plaintiff and members of the public. US Const., 1st Amend.

7 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

8 **FIRST CLAIM FOR RELIEF**

9 46. Plaintiff incorporates herein by reference the averments contained in
10 Paragraphs 1 through 45 of the Complaint and also in following Claims for Relief as
11 though the same were fully set forth herein.

12 47. Plaintiff and other journalists similarly situated are stymied and precluded
13 from covering and reporting on the intended Silver King Roundup where the Defendants
14 arbitrarily exclude the public from observing the roundup, close public lands, set traps
15 on private property, and/or where the Defendants offer up a sanitized method of
16 allowing the public into restricted areas for minimal periods, and where public viewing
17 areas are not readily identified in advance either as to their timing or location and where
18 the purported "observation" areas are far from the Defendants' roundup activities such
19 that harm to such captured wild horses including young foals would remain unrecorded
20 and in effect, censored and hidden from the public.

21 48. Plaintiff does not seek to prevent *proper* management of wild horses by
22 the federal Defendants. Rather, for the reasons stated herein, Plaintiff seeks to
23 postpone or stay, *vis-a-vis* injunctive relief, the Silver King Roundup until such time as
24 the Defendants lift or modify the arbitrary closure of the Silver King HMA and allow fair
25 transparency and observation, recording and reporting of such activities by interested
26 persons including Plaintiff.

27 49. The Defendants' intended course otherwise, of censoring, suppressing
28 and excluding journalists and the public from viewing and documenting the Silver King

1 Roundup and all related follow-up actions by the government Defendants and their
2 chosen agents, interferes with the Plaintiffs' activities and vocation as a journalist who
3 reports and works in the subjects at hand. The Defendants' "exclusion" of the public
4 and of Plaintiff interferes with Plaintiffs' activities and vocation to write children's stories
5 on how the Defendants manage and handle horses.

6 50. Plaintiff is informed and believes the following:

- 7 a. the activities of Defendants as alleged herein, interferes with the free flow
8 of information on subjects and matters involving government regulation of
9 public resources and lands and in which the U.S. citizenry and public
10 maintain a significant and compelling public interest in the subject matter
11 and in the intended course of the Defendants;
- 12 b. the Defendants' intended course creates in essence, an unacceptable
13 censoring and suppression of information that should otherwise be made
14 available to the U.S. citizenry and public, in contravention to relevant
15 provisions of the First Amendment to the United States Constitution;
- 16 c. the Defendants' intended course contravenes rights enumerated in the
17 First Amendment to the U.S. Constitution, and said conduct is and would
18 be an impermissible infringement on the freedom of the press to report
19 matters involving government action which carry a significant and
20 compelling public interest;
- 21 d. that the Defendants are not able to demonstrate an interest, compelling or
22 otherwise, that could be accomplished with the *least restrictive means*
23 *necessary* to achieve its own interests and which is again, contrary to
24 rights enumerated in the First Amendment to the U.S. Constitution;
- 25 e. the Defendants' prohibition and exclusion of public citizens and in
26 particular the Plaintiff who is a credentialed journalist, interferes with her
27 right to observe and report matters involving government action which
28 carry a significant and compelling public interest; and the Defendants'

1 prohibition and exclusion of Plaintiff violates her rights enumerated in the
2 First Amendment to the U.S. Constitution.

3 51. Plaintiff is informed and believes the Defendants' intended course and
4 actions are accordingly, arbitrary, capricious, unconstitutional, and an abuse of
5 discretion, or otherwise not in accordance with law, and are implemented without
6 observance of procedure required by law, and must be set aside.

7 WHEREFORE, Plaintiff prays for relief and judgment as hereinafter set forth.

8 **SECOND CLAIM FOR RELIEF**

9 52. Plaintiff incorporates herein by reference the averments contained in
10 Paragraphs 1 through 51 of the Complaint and also in following Claim for Relief as
11 though the same were fully set forth herein.

12 53. Plaintiff as well as others similarly situated, in this instance, have no
13 adequate and speedy remedy at law against the Defendants conduct or from with which
14 she would be able to recoup such loss. There is no measure of damages which can
15 account for the loss of a constitutionally guaranteed freedom. There is no such thing as
16 but a mere or permissively "small infringement" to a guaranteed constitutional right to
17 one's freedom of speech and freedom of the press; and accordingly, Plaintiff and others
18 suffer irreparable injury and harm from the loss of such Constitutional freedoms.

19 54. For the reasons outlined, the Defendants should, relative to their capture,
20 removal, transportation, housing, care and disposition of all wild horses taken from
21 Silver King, be preliminarily and permanently enjoined, mandatorily or prohibitively as
22 the case may be, as follows:

- 23 a. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
24 also others similarly situated, from accessing trap sites and holding pen
25 sites, whether placed on public property or placed on private property; that
26 if the Defendants choose private property on which to set trap sites or
27 holding pens, that as a condition precedent to doing so, the Defendants
28 obtain clear authorization from landowners in advance of such activities,

1 to allow Plaintiff, her colleagues and others similarly situated, onto the
2 property as part and parcel to the Defendants' horse, gather, roundup,
3 capture activities;

4 b. Require the Defendants to accommodate the public and Plaintiff to view
5 the capturing and handling thereafter, of Silver King wild horses;

6 c. Require clear daily visual access without unduly restrictive conditions or
7 impediments to such areas by Plaintiff, her colleagues and others similarly
8 situated at any and all times during which the Defendants' helicopters are
9 in flight;

10 d. Prohibit the flying of helicopters to gather, roundup or move horses at all
11 times where the public has not been adequately notified of such activity;
12 and prohibit the practice of continuing to fly helicopters for such purposes
13 after advising the public that gather or roundup activities are completed for
14 the day;

15 e. Prohibit the requirement of having those interested in viewing horses, to
16 make "reservations" or to require the public notify the Defendants in
17 advance that they would be there to observe; and prohibit preclusion
18 through "wait lists;" and to prohibit the preclusion of members of the public
19 merely because they didn't make a reservation, or make a call in advance,
20 or comply with a restrictive time frame or unreasonable processes
21 mandated by the Defendants;

22 f. Require at a minimum, reasonable notice (to be determined by the court),
23 of modification or changes to roundup activities or schedules, and of
24 notices of roundup activities or schedules; and require Defendants to
25 abide by the notices; and if the Defendants are not able to comply, to
26 require the Defendants to renew such notice requirements before
27 rounding up, or gathering, or removing wild horses from Silver King;

28 g. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and

1 also others similarly situated, from viewing and accessing the loading and
2 transportation of all wild horses captured and removed from Silver King;
3 and require the Defendants to notify the public with sufficient advance
4 notice (to be determined by the court), of the shipment or transportation of
5 Silver King wild horses from the Silver King Roundup and further to notify
6 the specific location of the facilities to which the Silver King horses are
7 intended to be shipped and where they are ultimately shipped; and
8 prohibit the shipment of any or all horses where such notifications have
9 not been sent or met;

10 h. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
11 also others similarly situated, from accessing temporary holding facilities,
12 long-term holding facilities, or any other facilities whether public or private,
13 to which Silver King horses are transported and while such horses remain
14 the property of citizens of the United States held in trust by the
15 Defendants for them; and if the Defendants choose private facilities to
16 ship Silver King horses, that as a condition of using such private facilities,
17 the operators of such private facilities shall make available the facilities for
18 inspection of the Silver King horses to members of the public including
19 Plaintiff and others, if they so choose, in such a manner that the horses
20 may clearly be viewed and documented such that a wellness or clinical
21 assessment of such horses may be accomplished, if so desired by the
22 person(s) seeking to observe these horses; and that such facilities shall
23 be open for such inspections during normal business hours;

24 i. Require the Defendants to identify and record, whether by photographs or
25 other methods, each Silver King wild horse removed therefrom, in a
26 manner which effectively allows the Defendants, the Plaintiff and the
27 public to track their whereabouts to their ultimate destination;

28 j. Require the Defendants to keep accurate and copious records of: (a)

1 persons to whom Silver King horses are given or sold outside of formal
2 horse adoption programs; (b) the identification of each Silver King horse
3 given or sold to each such person receiving them outside of formal
4 adoption programs; (c) allow the Plaintiff or others similarly situated and
5 the public to review or inspect such records without censorship or
6 restriction, and without having to proceed with a Freedom of Information
7 request;

8 k. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
9 also others similarly situated from photographing or documenting their
10 observations of Silver King operations and Silver King horses wherever
11 situated;

12 l. Require the Defendants to keep accurate records of Silver King horses
13 having incurred injury or illness or debilitating conditions occurring while
14 such horses are in the custody or control of the Defendants or their
15 chosen contractors;

16 m. Require the Defendants to provide any and all records discussed herein,
17 without censorship or having to obtain same through a Freedom of
18 Information formal request and to provide copies of said records at the
19 request of Plaintiff or others, at the expense of the requesting person(s);

20 n. To cease all wild horse roundup activities in Silver King until such time as
21 the Defendants are able to accommodate Plaintiff and others similarly
22 situated by providing access as herein outlined;

23 o. Require the implementation of all other action necessary to effectuate the
24 purpose and intent of that being requested herein, in injunctive form;

25 p. Such other and further injunctive relief as the court deems appropriate to
26 implement the injunctive relief;

27 WHEREFORE, Plaintiff prays for relief and judgment as hereinafter set forth.
28

THIRD CLAIM FOR RELIEF

1
2 55. Plaintiff incorporates herein by reference the averments contained in
3 Paragraphs 1 through 54 of the Complaint as though the same were fully set forth
4 herein.

5 56. For the reasons stated herein, a controversy exists between Plaintiff and
6 Defendants relative to the Defendants' management of wild horses from Silver King.

7 57. Plaintiff seeks a declaration of her rights to be allowed to view, to observe
8 and report on the Silver King Roundup, to have access to all facets of the roundup, to
9 have access to Silver King horses captured by Plaintiffs, from the time of their capture
10 to their ultimate destination or demise;

11 58. Plaintiff seeks a declaration that the Defendants' plan as currently
12 intended and implemented, is arbitrary and capricious, is unconstitutional, and is an
13 abuse of discretion, or otherwise not in accordance with law, and is implemented
14 without observance of procedure required by law, and must be set aside.

15 59. Plaintiff seeks a declaration that the Defendants' plan as currently
16 implemented, amounts to an unconstitutional censoring of the public's right to be made
17 aware of, and advised of matters involving government action involving public lands and
18 resources and in which there remains a significant public interest, the effective
19 censoring of which and the preclusion of access to which is in clear contravention to the
20 First Amendment to the United States Constitution.

21 60. Plaintiff seeks a declaration that the Defendants' current plan as currently
22 contemplated would violate public laws of the United States, in particular, The Wild
23 Free-Roaming Horses and Burro Act of 1971, P.L.92-195, 16 U.S.C. 1331 relative to
24 their "humane" treatment.

PRAYER FOR RELIEF

25
26 WHEREFORE, Plaintiff respectfully prays for judgment and relief as against the
27 Defendants and each of them, as follows:

28 1. That a mandatory or prohibitive injunction issue preliminarily and permanently,

1 mandatorily precluding or requiring as the case may be, the Defendants from the
2 following:

- 3 a. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
4 also others similarly situated, from accessing trap sites and holding pen
5 sites, whether placed on public property or placed on private property; that
6 if the Defendants choose private property on which to set trap sites or
7 holding pens, that as a condition precedent to doing so, the Defendants
8 obtain clear authorization from landowners in advance of such activities,
9 to allow Plaintiff, her colleagues and others similarly situated, onto the
10 property as part and parcel to the Defendants' horse, gather, roundup,
11 capture activities;
- 12 b. Require the Defendants to accommodate the public and Plaintiff to view
13 the capturing and handling thereafter, of Silver King wild horses;
- 14 c. Require clear daily visual access without unduly restrictive conditions or
15 impediments to such areas by Plaintiff, her colleagues and others similarly
16 situated at any and all times during which the Defendants' helicopters are
17 in flight;
- 18 d. Prohibit the flying of helicopters to gather, roundup or move horses at all
19 times where the public has not been adequately notified of such activity;
20 and prohibit the practice of continuing to fly helicopters for such purposes
21 after advising the public that gather or roundup activities are completed for
22 the day;
- 23 e. Prohibit the requirement of having those interested in viewing horses, to
24 make "reservations" or to require the public notify the Defendants in
25 advance that they would be there to observe; and prohibit preclusion
26 through "wait lists;" and to prohibit the preclusion of members of the public
27 merely because they didn't make a reservation, or make a call in advance,
28 or comply with a restrictive time frame or unreasonable processes

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mandated by the Defendants;

f. Require at a minimum, reasonable notice (to be determined by the court), of modification or changes to roundup activities or schedules, and of notices of roundup activities or schedules; and require Defendants to abide by the notices; and if the Defendants are not able to comply, to require the Defendants to renew such notice requirements before rounding up, or gathering, or removing wild horses from Silver King;

g. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and also others similarly situated, from viewing and accessing the loading and transportation of all wild horses captured and removed from Silver King; and require the Defendants to notify the public with sufficient advance notice (to be determined by the court), of the shipment or transportation of Silver King wild horses from the Silver King Roundup and further to notify the specific location of the facilities to which the Silver King horses are intended to be shipped and where they are ultimately shipped; and prohibit the shipment of any or all horses where such notifications have not been sent or met;

h. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and also others similarly situated, from accessing temporary holding facilities, long-term holding facilities, or any other facilities whether public or private, to which Silver King horses are transported and while such horses remain the property of citizens of the United States held in trust by the Defendants for them; and if the Defendants choose private facilities to ship Silver King horses, that as a condition of using such private facilities, the operators of such private facilities shall make available the facilities for inspection of the Silver King horses to members of the public including Plaintiff and others, if they so choose, in such a manner that the horses may clearly be viewed and documented such that a wellness or clinical

1 assessment of such horses may be accomplished, if so desired by the
2 person(s) seeking to observe these horses; and that such facilities shall
3 be open for such inspections during normal business hours;

4 i. Require the Defendants to identify and record, whether by photographs or
5 other methods, each Silver King wild horse removed therefrom, in a
6 manner which effectively allows the Defendants, the Plaintiff and the
7 public to track their whereabouts to their ultimate destination;

8 j. Require the Defendants to keep accurate and copious records of: (a)
9 persons to whom Silver King horses are given or sold outside of formal
10 horse adoption programs; (b) the identification of each Silver King horse
11 given or sold to each such person receiving them outside of formal
12 adoption programs; (c) allow the Plaintiff or others similarly situated and
13 the public to review or inspect such records without censorship or
14 restriction, and without having to proceed with a Freedom of Information
15 request;

16 k. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
17 also others similarly situated from photographing or documenting their
18 observations of Silver King operations and Silver King horses wherever
19 situated;

20 l. Require the Defendants to keep accurate records of Silver King horses
21 having incurred injury or illness or debilitating conditions occurring while
22 such horses are in the custody or control of the Defendants or their
23 chosen contractors;

24 m. Require the Defendants to provide any and all records discussed herein,
25 without censorship or having to obtain same through a Freedom of
26 Information formal request and to provide copies of said records at the
27 request of Plaintiff or others, at the expense of the requesting person(s);

28 n. To cease all wild horse roundup activities in Silver King until such time as

- 1 the Defendants are able to accommodate Plaintiff and others similarly
2 situated by providing access as herein outlined;
- 3 o. Require the implementation of all other action necessary to effectuate the
4 purpose and intent of that being requested herein, in injunctive form;
- 5 p. Such other and further injunctive relief as the court deems appropriate to
6 implement the injunctive relief;
- 7 2. That a mandatory or prohibitive injunction issue preliminarily and permanently,
8 precluding Defendants from closing off to the public and to Plaintiff, areas within
9 public lands where the intended Silver King Roundup is to take place, and to
10 allow Plaintiff and others similarly situated access to the area of the Silver King
11 Roundup, during the roundup;
- 12 3. A declaration that Plaintiff is allowed to view, to observe and report on the Silver
13 King Roundup, to have access to all facets of the roundup, to have access to
14 Silver King horses captured by Plaintiffs, from the time of their capture to their
15 ultimate destination or demise wherever situated, and that in no uncertain terms,
16 such public access is clear, that it occurs daily, that it is sufficiently visual such
17 that Plaintiff is able to clinically observe such horses, and such that access is to
18 all facets of the Silver King roundup activities and to the Silver King horses at
19 any and all times from the time of their capture to their ultimate disposition;
- 20 4. A declaration that the Defendants' plan as currently intended and implemented,
21 is arbitrary and capricious, is unconstitutional, and is an abuse of discretion, or
22 otherwise not in accordance with law, and is implemented without observance of
23 procedure required by law, and must be set aside;
- 24 5. A declaration that the Defendants' plan as currently implemented, amounts to an
25 unconstitutional censoring of the public's right to be made aware of, and advised
26 of matters involving government action involving public lands and resources and
27 in which there remains a significant public interest, the effective censoring of
28 which and the preclusion of access to which is in clear contravention to the First

- 1 Amendment to the United States Constitution;
- 2 6. A declaration that the Defendants' plan as currently implemented is a prior
3 restraint on the Plaintiff's First Amendment rights to free speech, to her freedom
4 of expression and thought;
- 5 7. A declaration that the Defendants' plan as currently implemented, amounts to an
6 unconstitutional censoring of the public's right to be made aware of, and advised
7 of matters involving government action involving public lands and resources and
8 in which there remains a significant public interest and in clear contravention to
9 the First Amendment to the United States Constitution;
- 10 8. A declaration that the Defendants' plan as currently implemented, irreparably
11 harms and interferes with Plaintiff in her work and activities as a credentialed
12 correspondent and journalist, and illustrator;
- 13 9. A declaration that the Defendants' current plan as currently contemplated would
14 violate public laws of the United States, in particular, The Wild Free-Roaming
15 Horses and Burro Act of 1971, P.L.92-195, 16 U.S.C. 1331 relative to their
16 "humane" treatment of the Silver King horses.
- 17 10. A declaration that the Defendants' current plan as currently contemplated
18 violates public laws of the United States, in particular, The Wild Free-Roaming
19 Horses and Burro Act of 1971, P.L.92-195, 16 U.S.C. 1331, and accordingly
20 should be set aside;
- 21 11. A declaration that Plaintiff has no speedy or adequate remedy at law and that
22 Plaintiff has and will suffer irreparable harm from the manner in which the Silver
23 King Roundup proceeds and is implemented, and also as the result of the
24 preclusion to access of public lands during the Silver King Roundup;
- 25 12. A declaration that the Defendants are "issue precluded" from defending against
26 Plaintiff's contention that the closure of public lands at Silver King is
27 unconstitutional; and that the Defendants are collaterally estopped from closing
28 public lands at Silver King;

1 13. That the Court award Plaintiff:

2 a. her costs of suit and expenses including expert witness and
3 consultant fees and reasonable attorney fees; and

4 b. such other and further relief as the Court deems appropriate under
5 the circumstance.

6 Dated this 22nd day of September 2010

7
8 LAW OFFICE OF GORDON M. COWAN

9 /S/

10 _____
11 Gordon M. Cowan Esq. (SBN 1781)
12 Attorney for Plaintiff LAURA LEIGH

13 **DEMAND FOR JURY**

14 Plaintiff LAURA LEIGH hereby requests and demands a trial by jury of any and
15 all matters to which the right of jury trial attaches in the above-captioned matter.

16 Dated this 22nd day of September 2010

17
18 LAW OFFICE OF GORDON M. COWAN

19 /S/

20 _____
21 Gordon M. Cowan Esq. (SBN 1781)
22 Attorney for Plaintiff LAURA LEIGH
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