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5 Attorney for Plaintiff LAURA LEIGH

6 **IN THE UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 LAURA LEIGH,

9 Plaintiff,

10 **Case No. 2:10-cv-1634-JCM-LRL**

11 vs.

12 KEN SALAZAR, in his official capacity as
Secretary of the U.S. DEPARTMENT OF
13 THE INTERIOR, BOB ABBEY, in his official
capacity as Director of the BUREAU OF
14 LAND MANAGEMENT; RON WENKER in his
official capacity as Nevada State Director of
the BUREAU OF LAND MANAGEMENT, et
15 al.,

16 Defendants.
17 _____/

18 **MOTION FOR TEMPORARY RESTRAINING ORDER**

19 Plaintiff LAURA LEIGH seeks a temporary restraining order precluding
20 Defendants from the harmful conduct described herein below.

21 This Motion is made in accordance with Fed.R.Civ.P. 65(b). The Motion is
22 based on the pleadings and papers on file herein, the accompanying Memorandum of
23 Points and Authorities and supporting documents and on such other matters as may be
24 presented before the court.

25 Dated this 24th day of September 2010

26 RESPECTFULLY SUBMITTED,
LAW OFFICE OF GORDON M. COWAN

27 /S/

28 _____
Gordon M. Cowan Esq. (SBN 1781)
Attorney for Plaintiff LAURA LEIGH

1 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
2 **MOTION FOR TEMPORARY RESTRAINING ORDER**

3 Plaintiff LAURA LEIGH submits the following Memorandum of Points &
4 Authorities in support of her Motion for a Temporary Restraining Order:

5 ***The Requested Immediate Relief***

6 Plaintiff asks the court to impose an immediate injunction *sua sponte* until such
7 time as the court is able to hear evidence on this requested TRO. Respectfully, the
8 requested immediate injunction should include the following:

- 9 a. Cessation of all helicopter operations wherever situated, where some or
10 all the Defendants are paying private contractors relative to *any* aspect of
11 wild horse movement, gathering, rounding up activities;
- 12 b. Cessation of all transporting, wherever situated or intended, of captured
13 wild horses, feral horses, those horses the Defendants do not consider as
14 “horses” (because of their age or location) but which the Defendants
15 nevertheless manage in some manner;
- 16 c. Cessation of any and all bulk shipment of horses from long-term holding
17 facilities, short-term holding facilities, of sale horses outside the regular
18 BLM adoption program;
- 19 d. Mandate immediate public access to captured wild horses in privately
20 contracted long-term and short-term facilities currently “off limits” and
21 closed to the public;
- 22 e. Mandate the immediate disclosure of all addresses and contacts for
23 facilities, long-term and short-term, to be provided the court and Plaintiff;
- 24 f. Mandate the preservation of all evidence to include but not be limited to all
25 contracts, agreements, flight logs, memos, receipts, documents, expense
26 reports, concerning all aspects of the management, gathering, rounding
27 up, shipment and ultimate disposition of wild horses taken from American
28 public rangelands, from the year 2004 through the present.

1 **Background**

2 This motion is reflective of what the case is about: It's all about *access*. It's
3 about the necessity of *transparency*. It's about monitoring and tracking the wild horses
4 the Defendants intend to remove from the landscape in the area they call the Silver
5 King Herd Management Area ("Silver King")("Silver King horses").

6 Plaintiff seeks to correct and make transparent what has occurred too long
7 behind closed doors, in secret relative to the management of wild horses. The Bureau
8 of Land Management ("BLM") and Department of Interior ("DOI") systematically and
9 repeatedly and to this day, operate a stealthy program where they,

- 10 a. refuse reasonable and daily public access to areas where they capture
11 wild horses such that the public, the media and Plaintiff are precluded or
12 are stood back far enough from roundup activities to independently
13 assess the health and welfare of those wild horses the Defendants
14 remove from public lands; and such that the public, the media and Plaintiff
15 are precluded or are stood back or foreclosed from independently
16 assessing the conduct of those who handle these horses;
- 17 b. refuse public access to certain facilities where they house wild horses
18 captured from their native rangelands;
- 19 c. refuse public access to the loading, the transportation of, and unloading of
20 wild horses captured by the Defendants from their native rangelands;
- 21 d. refuse public access to documentation concerning contracts with private
22 entities the agreements of which, Plaintiff is informed and believes, cause
23 negative impacts to designated wild horse herd management areas which
24 in turn, cause those wild horses to be removed or eliminated from those
25 area;
- 26 e. refuse public access to documentation concerning contracts or
27 agreements with those who house wild horses removed from their native
28 rangelands;

- 1 f. refuse public access to documentation and/or identities of those who
2 receive captured wild horses in bulk and outside the normal wild horse
3 adoption program;
- 4 g. refuse to provide the public with credible, solid information concerning the
5 ultimate disposition or demise of those wild horses captured from their
6 native rangelands;
- 7 h. Refuse to provide the public with credible, solid information concerning
8 the inventory of horses they house, they dispose of, they send to third
9 parties, of foals that the Defendants do not count as wild horses because
10 of their young age.

11 In truth, there is no transparency. Change, accordingly, is needed beginning at
12 the bare minimum, with the horses the Defendants intend to remove from Silver King.

13 Plaintiff would agree this very moment, to hold off pursuing this motion and case
14 further, if the Defendants would formally agree to consent to public transparency in all
15 aspects of their wild horse and burro program and their management of wild horses and
16 also feral horses taken from public lands. But, they won't agree.

17 Plaintiff challenges the final decision of the Bureau of Land Management ("BLM")
18 and Department of Interior ("DOI") to drive wild horses by helicopter from public lands in
19 Lincoln County and to restrict the public, the media including Plaintiff, from gaining true
20 access to all activities of the Defendants' involving wild horses they intend to remove
21 during the helicopter roundup the Defendants reference "Silver King Herd Management
22 Area Wild Horse Gather" ("Silver King Roundup" or "Roundup"). See BLM Notice of
23 roundup at **EXHIBIT "1"**.

24 Plaintiff challenges the Defendants' decision to limit and restrict access by the
25 Plaintiff, by media and by the public to the most essential and important portions of the
26 Defendants' activities in capturing, shipping and housing wild horses to be taken from
27 Silver King.

28 On "paper" and in their "feel good" announcements, the Defendants appear to

1 provide at least *some* transparency to *some* of their wild horse roundup, shipment and
2 housing activities.

3 In practice however, “access” is a masquerade. The public, the Plaintiff and
4 media are kept at bay, at significant and unreasonable distances from roundup
5 activities. The public, media and Plaintiff are precluded from the Defendants’ wild horse
6 shipment activities. The public, media and Plaintiff are completely restricted from much
7 of the housing of captured wild horses. And, where horses leave the Defendants’
8 “system” by means *other* than through the formal public BLM adoption program, no
9 record or trace or accountability is forthcoming for their dispositions or demise.

10 In all, where horses may spend days, or weeks, or months, or even years in
11 captivity with the Defendants, the public and media gets to see them, if allowed, just the
12 few hours in between two difficult processes. Those few hours granted to some, if
13 allowed, do not usually occur “up close.” And if the experience is on that rare occasion,
14 granted “up close,” the Defendants make sure the timing is such that their roughshod
15 “handling” of the horses is hidden and the Defendants ensure debilitating injuries if
16 occurring, are hidden; and the Defendants usually preclude the Plaintiff, the public, and
17 media from observations such that they could independently assess the health and
18 welfare of such captured wild horses.

19 When injured horses are discovered or where deaths occur in roundup and
20 related activities, the Defendants offer up an excuse or a reason or a condition that
21 involves their habitat, or that they are sick, or “club footed,” or have a pre-existing
22 condition; or that they were lame beforehand. They never take responsibility in having
23 caused the harm even though, as but on example, thirty-four horses perished in but a
24 few short days during the BLM’s Tuscarora Gather in July just north of Elko, Nevada;
25 and all deaths occurred while the horses were under the management of, or in the
26 exclusive custody or control of the Defendants. The Defendants found difficulty in
27 accepting blame for the death of just one horse.

28 Plaintiff, the media and the public are precluded arbitrarily by the Defendants

1 from many areas when there is no reasonable basis for precluding them from such
2 areas. The Plaintiffs are unduly and unnecessarily restricted in their movement; they
3 are precluded and foreclosed altogether from certain horse detention facilities; they are
4 told to “stop video taping;” their camera lenses are pushed back. The Defendants
5 instead, engage in the pretense that all is well and “transparent” on the range when in
6 fact, this is far from the truth.

7 If the Defendants had nothing to hide, the Plaintiff’s request for honest
8 transparency would not be a “deal breaking” request. Instead, the court will soon find
9 the Defendants will fight these simple requests to the bitter end, to hide whatever it is
10 they seek to keep from public eyes.

11
12 ***Legal Principles - First Amendment***

13 This *effective* exclusion by Defendants, of those interested in observing and
14 reporting the Defendants’ management of public lands, as practiced, as it relates to
15 their handling of wild horses, censors fair observation and reporting of their activities by
16 journalists, by media and by Plaintiff (also a journalist and writer) of newsworthy matters
17 involving government action involving matters of significant public interest. It results in
18 an impermissible prior restraint of free speech, freedom of expression and thought and
19 censors media, press, journalists from reporting government activities and it prevents
20 and censors those who inform the public, who *always* have the right to know, what their
21 government is up to. Such censorship and restraints are of course, prohibited by the
22 First Amendment to our Constitution.

23 Disturbingly, the Defendants have also singled-out Plaintiff for “special
24 treatment.” The Defendants impose more restrictions on her access to areas during the
25 Defendants’ wild horse roundups compared with the access granted other media. The
26 Defendants engage in an unwritten policy that discriminates against her because they
27 (Defendants) are dissatisfied with the content of the Defendants’ articles, they are
28 dissatisfied with the content of her videos and they are dissatisfied with the content of

1 her photos of the Defendants' activities involving questionable wild horse handling and
2 management practices.

3 Plaintiff believes the Defendants' custom and practice of unduly restricting
4 Plaintiff from observing and reporting the Defendants' wild horse roundup activities in
5 the past are repeating with the Silver King roundup. Such discrimination is an
6 unconstitutional and impermissible restriction and prior restraint on Plaintiff's First
7 Amendment rights to free speech, the right to freedom of expression and the right to
8 publish what she observes to the public. Such conduct by the Defendants unduly
9 censors the content of her journalistic pieces and stories.

10 Plaintiff further believes the Defendants' custom and practice of discriminating
11 against her by imposing more restrictive hurdles to her than is required of others, to
12 observe the Defendants' roundup activities, is the result of the Defendants'
13 dissatisfaction with the content of her reporting; and this type preclusion and restrictive
14 action is likewise unconstitutional and causes impermissible restrictions and prior
15 restraints to Plaintiff's First Amendment rights to free speech, freedom of expression,
16 and it unduly censors her content when reporting to the public.

17 The Plaintiff's and public's First Amendment rights are likewise denigrated when
18 the Defendants choose to foreclose altogether, the location of, and access to, facilities
19 where captured wild horses are housed, either for a "short-term" duration or for a "long-
20 term" duration.

21 The First Amendment to the United States Constitution provides that "Congress
22 shall make no law...abridging the freedom...of the press."

23 Justice Hugo Black said it best in the 1971 "Pentagon Papers" case. With a 6-3
24 decision and in his concurring opinion with Justice Douglas, he wrote,

25 The Press was protected so that it could bare the secrets of
26 the government and inform the people. Only a free and
27 unrestrained press can effectively expose deception in
28 government. And paramount among the responsibilities of a

1 free press is the duty to prevent any part of the government
2 from deceiving the people.

3 *New York Times v. U.S.*, 403 U.S. 713, 714, 91 S. Ct. 2140 (1971).

4 In another case, after a series of mistrials in a Virginia murder case a State trial
5 judge closed all court proceedings to the media and to the public. Two reporters and
6 the local newspaper were ousted from the courtroom. The Richmond Newspaper
7 brought suit challenging the judge's closure of the public forum. The newspaper's writs
8 were dismissed by the Virginia Supreme Court. The issue went from there to the U.S.
9 Supreme Court.

10 In a 7-to-1 decision the Court held that the right of access by the press and
11 public to criminal trials is "implicit in the guarantees of the First Amendment." The Court
12 held the First Amendment encompassed not only the right to speak but also the
13 freedom to listen and to receive information and ideas. The Court also noted the First
14 Amendment guarantees the right of assembly in public places such as courthouses.
15 The Court emphasized that "certain unarticulated rights" were implicit in enumerated
16 guarantees and were often "indispensable to the enjoyment of rights explicitly defined."
17 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814 (1980).

18 Justice Black's comments and also *Richmond Newspaper's* ideology of
19 openness and publicity is no less instructive or germane here. The area of the
20 Defendants' helicopter roundup in Silver King occurs on public lands to which the public
21 has a right to be.

22 The public also has the right to know *everything* occurring to each and every wild
23 horse removed from Silver King rangelands, from the time of their capture to their
24 ultimate disposition or demise. Wild horses are iconic and protected as is confirmed by
25 the following stated intent:

26 Congress finds and declares that wild free-roaming
27 horses and burros are living symbols of the historic
28 and pioneer spirit of the West; that they contribute to

1 the diversity of life forms within the Nation and enrich
2 the lives of the American people; and that these
3 horses and burros are fast disappearing from the
4 American scene. It is the policy of Congress that wild
5 free-roaming horses and burros shall be protected
6 from capture, branding, harassment, or death; and to
7 accomplish this they are to be considered in the area
8 where presently found, as an integral part of the
9 natural system of the public lands.

10 The Wild Free-Roaming Horses and Burro Act of 1971,
11 P.L.92-195, 16 U.S.C. §1331.

12 The Defendants' "management" of, "living symbols of the historic and pioneer
13 spirit of the West" (16 USC §1331) is an issue of significant public interest, particularly
14 where the Defendants are hiding what should not be hidden, or where they conduct
15 their affairs under a blanket of preclusion and secrecy where they should not be kept
16 secret.

17 The Defendants' Wild horse "management" doesn't end once these animals are
18 captured. Management which piques the public's interest includes the journey these
19 horses make through the Defendants' system, from the time of their capture to their
20 ultimate destination or demise. All of it is important to the public. All of it has significant
21 public interest. All of it should be open to public scrutiny.

22 To restrict, even a little bit, the Plaintiff, the media, the public and others'
23 freedoms to speech, thought, expression and ideas, and to a free press, is an
24 impermissible limitation to rights enumerated under the First Amendment to the U.S.
25 Constitution.

26 ///

27 ///

28 ///

1 ***Discrimination through Retaliation;***
2 ***Discrimination Restricting Content***

3 Attached hereto are the Declarations of Laura Leigh (**EXHIBIT “2”**), R.T. Fitch
4 (**EXHIBIT “3”**) and Terry Fitch (**EXHIBIT “4”**) and Debra Coffey (**EXHIBIT “5”**). Also
5 attached is the letter from the editor of Horseback Magazine, Steve Long (**EXHIBIT**
6 **“6”**). These self-explanatory exhibits (incorporated herein) need no embellishment.
7 They strongly demonstrate the significant barriers and discrimination Ms. Leigh must
8 endure from the Defendants when she seeks to observe, photograph and report the
9 Defendant’ in action when handling wild horses.

10 Discriminatory governmental action aimed at the communicative impact of
11 expression is presumptively at odds with the First Amendment. Above all else, the First
12 Amendment means that the government cannot restrict freedom of expression on the
13 basis of its ideas, message or content. See, *Cohen v. Cox*, 403 U.S. 75, 91 S. Ct. 1780
14 (1971); *NAACP v Button*, 371 U.S. 415, 445, 83 S. Ct. 328.

15 Official discrimination against a news media organization in retaliation for the
16 content of its news stories violates 42 U.S.C. §1983. *North Mississippi*
17 *Communications, Inc. V. Jones*, 792 F. 2d 1330, 1337 (5th Cir. 1986).

18 A policy that discriminates against particular reporters or news organizations by
19 public officials who are dissatisfied with the contents of news coverage is
20 unconstitutional unless the policy furthers a compelling state interest and is the least
21 restrictive means available to achieve the asserted governmental purpose. See,
22 *Borreca v. Fasi*, 369 F. Supp. 906 (D. Haw. 1974); *Quad-City Community News*
23 *Service, Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971). See also, *Sherrill v. Knight*,
24 569 F. 2d 124, 129 (D.C. Cir. 1977)(holding that, because the White House has
25 established press facilities that are perceived as being open to all bona fide
26 Washington-based journalists, access to those facilities may not be “denied arbitrarily
27 or for less than compelling reasons”).

28 Plaintiff cannot fathom *any* compelling government interest that justifies her

1 exclusion over that of others, from accessing daily, close-up, the Defendants' wild horse
2 roundup activities where others have been granted such access but which she has not.

3 Government restrictions that regulate speech based on its content cannot be
4 viewed as time, place and manner restrictions. Such restrictions can only be justified, if
5 ever, upon a showing of a compelling governmental interest and that the restriction is
6 the least restrictive means available to achieve the asserted governmental purpose.
7 *Consolidated Edison v. Public Service Comm'n*, 447 U.S. 530, 100 S. Ct. 2326 (1980).

8 It seems clear that media have a right to be in public places and on public
9 property to gather information photographically or otherwise. *Channel 10, Inc. v.*
10 *Gunnerson*, 337 F. Supp. 634, 638 (D.Minn. 1972). All persons, not just news
11 organizations, have First Amendment right to make and display videotapes of events
12 and plaintiff's First Amendment rights were violated by police seizure of his camera.
13 *Lambert v. Polk City*, Iowa 723 F. Supp. 128, 133 (S.D.Iowa 1989). See also *Fordyce v.*
14 *City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995), [Recognizing a First amendment
15 right[s] to film matters of public interest....]; *Smith v. City of Cumming*, 212 F.3d 1332,
16 1333 (11 Cir. 2000), [The First Amendment protects the right to gather information ...
17 and specifically, a right to record matters of public interest.].

18 **No Adequate Remedy**

19 Plaintiff has no adequate or speedy remedy at law when her Constitutional
20 freedoms are limited by government action. The restricting of Plaintiff from clearly
21 observing the Defendants' wild horse roundup activities in Silver King, limits her ability
22 as a journalist to visualize, observe and then report what transpires in an event that has
23 public interest and is newsworthy. No action for damages is sufficient; nor would it be
24 timely. No other relief appears prudent except that in equity which allows for injunctive
25 relief.

26 **Irreparable Harm**

27 The Supreme Court has made clear that "[t]he loss of First Amendment
28 freedoms, for even minimal periods of time, unquestionably constitutes irreparable

1 injury” for purposes of the issuance of a preliminary injunction. *Elrod v. Burns*, 427 U.S.
2 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); see also *S.O.C., Inc. v. County of*
3 *Clark*, 152 F.3d 1136, 1148(9th Cir.1998) (holding that a civil liberties organization that
4 had demonstrated probable success on the merits of its First Amendment overbreadth
5 claim had thereby also demonstrated irreparable harm). See also, *Sammartano v. First*
6 *Judicial District Court, in and for County of Carson City*, 303 F.3d 959 (2002)(The loss
7 of First Amendment freedoms, for even minimal periods of time, unquestionably
8 constitutes irreparable injury for purposes of the issuance of a preliminary injunction).

9 The court in *American Trucking Associations, Inc. v. City of Los Angeles*, 559
10 F.3d 1046 (9th Cir 2009) found mandatory concession agreements for drayage trucking
11 services at ports, likely preempted by federal law, caused irreparable harm to the
12 Appellant. In so doing, the court made this observation:

13 We end this part of the discussion essentially where we began, but here
14 with a quotation (or with all of the changes we have wrought, really a
15 paraphrase) of what we said in *Nelson*, 530 F.3d at 881-82 (citations
16 omitted):

17 Appellants ... face a stark choice-either violation of their
18 constitutional rights or loss of their [businesses]. The district
19 court erroneously concluded that Appellants will not suffer
20 any irreparable harm because they could be retroactively
21 compensated for any temporary [loss or expenses]. It is true
22 that “monetary injury is not normally considered irreparable,”
23 and the [motor carriers] who choose to give up their
24 [businesses] may later be made whole financially if the
25 policy is struck down. However, in the meantime, there is a
26 substantial risk that a number of [motor carriers] will not be
27 able to finance such a principled position and so will be
28 coerced into submitting to the allegedly unconstitutional

1 [Concession agreements]. Unlike monetary injuries,
2 constitutional violations cannot be adequately remedied
3 through damages and therefore generally constitute
4 irreparable harm. Moreover, the loss of one's [business]
5 does not carry merely monetary consequences; it carries
6 emotional damages and stress, which cannot be
7 compensated by mere back payment of [losses].

8 Therefore, there is a likelihood of irreparable damages in this case.

9 **Likelihood of Success on Merits**

10 In *Alliance for Wild Rockies v. Cottrell*, --- F.3d ----, (9th Cir. Sep. 22, 2010) the
11 court concluded a Montana District committed reversible error when denying injunctive
12 relief without employing the Ninth Circuit's sliding scale approach. The court held the
13 "serious questions" approach survives *Winters*.

14 *Alliance* reaffirms employment of the test that, **"serious questions going to**
15 **the merits' and a hardship balance that tips sharply toward the plaintiff can**
16 **support issuance of an injunction."** *Alliance*. Emphasis added.

17 *Alliance* did not stop there. The decision emphasized the importance of the
18 sliding scale approach where, **"[f]lexibility is the hallmark of equity jurisdiction"**
19 (quoting Justice Ginsburg's dissent in the *Winters* decision). The court brought to
20 attention *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir.2009), where the district court
21 applied the "serious questions" test and held that "there are serious questions on the
22 merits and the balance of hardships tips sharply in favor of plaintiff." The Ninth Circuit
23 affirmed the decision because the record supported a finding of a "likelihood of
24 irreparable harm." *Id.* at 1085.

25 **Serious Questions are Raised Concerning the Merits of Plaintiff's Case**

26 The Plaintiff's Complaint seeks two types of relief: Injunctive and a Declaration
27 of Rights among the parties.

28 **Declaratory Relief and Injunctive Relief**

1 A judgment declaring rights or establishing the legal status or interpretation of a
2 law or instrument is binding although distinguished from other judgments or court
3 opinions. The principal distinguishing feature of Declaratory Relief is, there is no
4 executive element or an order that something be affirmatively completed like for
5 instance, the payment of money. To prevail, Plaintiff need only demonstrate a violation
6 of law or of a governing principal or document such as a contract, which based on
7 interpretation, has some effect on the Plaintiff. Thereafter, a court simply declares or
8 defines rights to be observed or wrongs to be eschewed by litigants, or the court
9 expresses the court's view on a contested question of law.

10 Injunctive relief on the other hand *is* the claim resulting in the executive order
11 which compels or mandates that a party either do something or refrain from doing
12 something. To prevail here, the Plaintiff satisfies the factors expressed in *Winter v.*
13 *Natural Resources Defense Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 374 (2008).

14 Where the Plaintiffs' First Amendment rights are at stake, and have clearly been
15 demonstrated to have been violated in her encounters with the Defendants thus, far,
16 Plaintiff believes she prevails on the merits. The Hon. Larry R. Hicks thought so in the
17 companion case involving these identical parties. Judge Hicks stated the following:

18 As to Leigh's First Amendment challenge to the
19 closure of public lands during the gather, the court shall
20 grant Leigh's temporary restraining order. Leigh argues that
21 a blanket closure of 27,000 acres of public land on which the
22 Tuscarora Gather is going to take place is a prior restraint on
23 her First Amendment rights because she will be unable to
24 observe and report on the health of the horses and the
25 BLM's management of the gather. The court agrees and
26 finds that she has made a sufficient showing of probable
27 success on the merits to warrant granting the motion. As
28 such, the court enjoins the blanket closure of public land

1 access during the gather and shall lift the closure as written
2 with regard to land access.

3 The court is cognizant of the public interest in this
4 matter and of the right of the public and press to have
5 reasonable access to the gather under the First
6 Amendment. . . .

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

9 If anything, the government Defendants are “issue precluded” and collaterally
10 estopped on the subject where this very issue had already been briefed and litigated
11 through a hearing, as between the same parties which involved another roundup site in
12 Nevada, which involved the same issue, which involved the same activity, and which
13 involved the same parties. See *Leigh v. Salazar*, 2010 WL 2834889 (D. Nev. Jul. 16,
14 2010).

15 Where the Plaintiff would clearly suffer irreparable harm from Constitutional
16 infringements intended by the Defendants, Plaintiff believes she has raised at a
17 minimum, serious questions as to the merits of her case. The media must have the
18 freedom to observe and then report newsworthy matters including and without
19 limitation, abuses of power by governing authorities, cover-ups of unofficial government
20 action, or the like. The citizenry should be made aware of matters involving public
21 interest. There should be a free exchange of both information and opinion *sans*
22 government hindrance, between the press and the public who are interested recipients
23 of these reports. Even if the news is critical of government action, the First Amendment
24 protects from government interference, the free exchange of that information, of ideas
25 and of opinions.

26 Just like the court proceedings in the Virginia murder trial discussed in *Richmond*
27 *Newspaper*, the BLM’s helicopter Gather may not be a “front page,” national event.
28 Nevertheless, the BLM’s methodology in managing, herding, moving and capturing wild

1 horses from public lands via helicopter is a newsworthy matter. Their subsequent
2 shipping, housing and ultimate disposition or demise of these horses should likewise be
3 open to public scrutiny.

4 The Other Factors

5 Clearly the hardships tip heavily toward the Plaintiff were injunctive relief not
6 issued. She loses assignments in her job as a journalist when she cannot reasonably
7 observe and visualize the gather. She cannot observe and report which is part of the
8 Plaintiff's job. She is denied First Amendment protections from a prior restraint in being
9 shut out from effectively reporting events involving government in action in an issue of
10 significant public interest.

11 Once again, the Supreme Court has made clear that "[t]he loss of First
12 Amendment freedoms, for even minimal periods of time, unquestionably constitutes
13 irreparable injury" for purposes of the issuance of a preliminary injunction. *Elrod v.*
14 *Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); see also *S.O.C., Inc.*
15 *v. County of Clark*, 152 F.3d 1136, 1148(9th Cir.1998) (holding that a civil liberties
16 organization that had demonstrated probable success on the merits of its First
17 Amendment overbreadth claim had thereby also demonstrated irreparable harm). See
18 also, *Sammartano v. First Judicial District Court, in and for County of Carson City*, 303
19 F.3d 959 (2002)(The loss of First Amendment freedoms, for even minimal periods of
20 time, unquestionably constitutes irreparable injury for purposes of the issuance of a
21 preliminary injunction).

22 Given the Plaintiff's chosen vocation and her station in life and her dedication to
23 wild horses, the Court's thoughts in *Lujan* are instructive. In *Lujan v. Defenders of*
24 *Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130 (1992) the Court stated, "It is clear that
25 the person who observes ... a particular animal threatened by a federal decision is
26 facing perceptible harm, since the very subject of his interest will no longer exist." *Lujan*,
27 504 U.S. at 566, 112 S.Ct. 2130.

28 On the other side of the scale, how would the Defendants explain their harm in

1 “coming clean?”

2 There has been no question that the gathering of wild horses in Nevada, involves
3 a matter of significant public interest. This is not a controversial element, here.

4 ***Certificate of Counsel***

5 In the companion case to this, the identical government defendants are
6 represented by those on the attached service list. The undersigned provided the listed
7 counsel with a copy of this Motion via email. Plaintiff also emailed a courtesy copy of
8 the Complaint when filed, to attorney Erik Peterson who is the senior counsel in the
9 companion case.

10 ***Conclusion***

11 Plaintiff respectfully requests the following:

12 1. That a mandatory or prohibitive injunction issue preliminarily and permanently,
13 mandatorily precluding or requiring as the case may be, the Defendants from the
14 following:

15 a. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
16 also others similarly situated, from accessing trap sites and holding pen
17 sites, whether placed on public property or placed on private property; that
18 if the Defendants choose private property on which to set trap sites or
19 holding pens, that as a condition precedent to doing so, the Defendants
20 obtain clear authorization from landowners in advance of such activities,
21 to allow Plaintiff, her colleagues and others similarly situated, onto the
22 property as part and parcel to the Defendants’ horse, gather, roundup,
23 capture activities;

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

26 c. Require clear daily visual access without unduly restrictive conditions or
27 impediments to such areas by Plaintiff, her colleagues and others similarly
28 situated at any and all times during which the Defendants’ helicopters are

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- in flight;
- d. Prohibit the flying of helicopters to gather, roundup or move horses at all times where the public has not been adequately notified of such activity; and prohibit the practice of continuing to fly helicopters for such purposes after advising the public that gather or roundup activities are completed for the day;
- e. Prohibit the requirement of having those interested in viewing horses, to make “reservations” or to require the public notify the Defendants in advance that they would be there to observe; and prohibit preclusion through “wait lists;” and to prohibit the preclusion of members of the public merely because they didn’t make a reservation, or make a call in advance, or comply with a restrictive time frame or unreasonable processes 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

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- 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 assessment of such horses may be accomplished, if so desired by the person(s) seeking to observe these horses; and that such facilities shall be open for such inspections during normal business hours;
- i. Require the Defendants to identify and record, whether by photographs or other methods, each Silver King wild horse removed therefrom, in a manner which effectively allows the Defendants, the Plaintiff and the public to track their whereabouts to their ultimate destination;
- j. Require the Defendants to keep accurate and copious records of: (a) persons to whom Silver King horses are given or sold outside of formal horse adoption programs; (b) the identification of each Silver King horse given or sold to each such person receiving them outside of formal adoption programs; (c) allow the Plaintiff or others similarly situated and the public to review or inspect such records without censorship or restriction, and without having to proceed with a Freedom of Information request;
- k. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and

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also others similarly situated from photographing or documenting their observations of Silver King operations and Silver King horses wherever situated;

- l. Require the Defendants to keep accurate records of Silver King horses having incurred injury or illness or debilitating conditions occurring while such horses are in the custody or control of the Defendants or their chosen contractors;
- m. Require the Defendants to provide any and all records discussed herein, without censorship or having to obtain same through a Freedom of Information formal request and to provide copies of said records at the request of Plaintiff or others, at the expense of the requesting person(s);
- n. To cease all wild horse roundup activities in Silver King until such time as the Defendants are able to accommodate Plaintiff and others similarly situated by providing access as herein outlined;
- o. Require the implementation of all other action necessary to effectuate the purpose and intent of that being requested herein, in injunctive form;
- p. Such other and further injunctive relief as the court deems appropriate to implement the injunctive relief;

Dated this 24th day of September 2010

RESPECTFULLY SUBMITTED,
LAW OFFICE OF GORDON M. COWAN

/S/

Gordon M. Cowan Esq. (SBN 1781)
Attorney for Plaintiff LAURA LEIGH

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EXHIBITS

- Exhibit 1: BLM Silver King Horse Gather Notice
- Exhibit 2: Declaration Laura Leigh
- Exhibit 3: Declaration R.T. Fitch
- Exhibit 4: Declaration Terry Fitch
- Exhibit 5: Declaration Debra Coffey
- Exhibit 6: Letter Horseback Magazine (Steven Long, Editor)

CERTIFICATE OF SERVICE

[Pursuant to Fed. R. Civ. P. 5(b) & Local Rules for Electronic Filing]

I certify that I am employed at 1495 Ridgeview Drive, #90, Reno, Nevada, 89519; and, on this date, in absence of having received indication of assignment of new counsel, I served the foregoing document(s) on the following counsel who are known by me to represent the identical parties in the companion case entitled *Leigh v. Salazar, et al.*, Case 3:10 -cv-417-LRH-VPC:

 X Electronic service:

Erik Petersen, Esq.
Ayako Sato, Esq.
Greg Addington

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DATED this 24th day of September 2010

/S/

G.M. Cowan