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Attorney for Plaintiff LAURA LEIGH

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

LAURA LEIGH,

Plaintiff,

Case No.

vs.

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

Defendants.

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

Plaintiff LAURA LEIGH, avers as follows:

1. Plaintiff seeks to postpone the Bureau of Land Management's ("BLM") intended "Tuscarora Wild Horse Gather" ("Tuscarora Gather" or "Gather") initially scheduled this week on public lands in Elko County, Nevada. New foals are on the ground. Neither the foals nor their mothers are in physical condition to withstand the push, the journey or the BLM's methodology in using a helicopter to remove them from public lands. The Defendants' method and timing of the Gather contravene its own published standards.

2. Plaintiff also seeks to lift the BLM's closure to public access of the area

1 where the Gather would take place. Plaintiffs are informed and believe citizens of the
2 United States and others lawfully within the United States maintain the right to observe
3 and if they so choose, record and report publicly how the BLM handles and manages
4 controversial issues that involve public lands, and how the BLM manages our public
5 lands, and also how the BLM manages resources found within our public lands.

6 3. The gathering and removal of wild horses from public lands during peak
7 foaling times are contrary to the BLM's own published standards. The intended
8 conduct is therefore, arbitrary and capricious.

9 4. The Gathering, at least in timing and by methodology the BLM seeks to
10 employ is contrary to clear public policy of the United States of America relative to
11 management practices of wild horses. See, The Wild Free-Roaming Horses and Burro
12 Act of 1971 seeks to protect. See, P.L.92-195, 16 U.S.C. 1331 et. seq.

13 5. The prohibition of the public from viewing and if they so wish, recording
14 and reporting what transpires in the management of "public lands," particularly over a
15 controversial topic involving such a significant and compelling public interest, amounts
16 to an intolerable censoring or suppression of a debate and topic which involves
17 significant and compelling public interest. The "closure" of the Gather area effectively
18 precludes the public from observing and reporting what transpires during the Tuscarora
19 Gather which "closure" is contrary to the, "profound national commitment to the principle
20 that debate on public issues should be uninhibited, robust and wide-open." *Curtis*
21 *Publishing Co. v. Butts and Associated Press v. Walker*, 388 U.S. 130 (1967). The
22 censoring of the public from the area where the Tuscarora Gather is to commence,
23 contravenes rights enumerated in the First Amendment to the U.S. Constitution as an
24 impermissible infringement on the freedom of the press to report matters involving
25 government actions which have a significant and compelling public interest; that the
26 Defendants are not able to demonstrate an interest, compelling or otherwise, that could
27 be achieved with the least restrictive means necessary to achieve its purported interest.
28

JURISDICTION AND VENUE

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

7. Venue remains proper in the Northern Division of the District of Nevada pursuant to 28 U.S.C. §1391(a) where the Gathering which gives rise to the matters asserted herein are occurring and causing an effect within the northeastern portion of the State of Nevada on public federal lands contiguous to and within the boundaries of Elko County, Nevada.

PLAINTIFF

8. Plaintiff LAURA LEIGH receives revenues from fair reporting to the public as a journalist on issues involving wild horses and also their management by both private organizations and by governing authorities including the BLM. Her participation has included magazine, internet and television including CNN.

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

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

11. Plaintiff is also the person in charge on behalf of the Cloud Foundation, of the "Herd Watch" Program. Information concerning the Cloud Foundation is obtained on the internet at www.thecloudfoundation.org. The purpose underlying the "Herd

1 Watch” program is as follows:

2 [t]o create a concise database of information that tracks
 3 public lands range health, gather operations and the
 4 disposition of American wild equids. The database will be
 5 utilized as a tool to educate and inform the public to provide
 6 accurate responses in the public process of democratic
 7 government.

8 DEFENDANTS

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

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

26 ///

27 ///

28 ///

GENERAL ALLEGATIONS

14. The BLM plans, beginning today and continuing several days there after, to gather and remove about 1,100 horses from Owyhee, Rock Creek and Little Humboldt Herd Management areas, all located in Elko County, Nevada, roughly ninety miles north of Elko. The BLM's official notice of this event is obtained from the BLM's official News Release No 2010-021, a copy of which is at **EXHIBIT "A"** attached. This BLM news release references the "Tuscarora Wild Horse Gather."

15. During the Tuscarora Gather the BLM is excluding the public citizenry from approximately 27,000 acres of public lands. The BLM's stated purpose to exclude the public from the area is, "to help ensure the safety of the public . . . *and wild horses*, and to ensure the orderly progress of the Tuscarora wild horse gather operations." (Emphasis added). (See, Exhibit A).

16. The news release confirms the BLM intends to *drive* the horses (meaning stampede or run the horses for the sake of expediting the Gather) from the air with the use of helicopters. (See Exhibit A). Plaintiff is prepared to show in court, the deleterious effects, the injuries and the fatalities to horses caused when gathering and driving wild horses several miles by helicopter, but particularly those horses that are recent foals, their mares from whom they've yet to be weaned, and also pregnant mares who are near the completion of their pregnancy term.

17. Plaintiff is informed and believes helicopter driving of horses from their natural range causes physical and emotional stress on the horses; that although many horses are nevertheless fit and able to take the long journey, the young foals and their moms who recently gave birth and also pregnant mares in late term, are neither physically nor mentally prepared to be "run out of town" or shoved out of their habitat.

18. Plaintiff is informed and believes the Defendants are aware that driving horses, particularly by helicopter, is deleterious and dangerous to the health, safety and welfare of horses.

19. Plaintiff is informed and believes reasonable and responsible horse owners would never drive their own new born foals, birthing mares and soon-to-be birthing mares, several miles at a run to relocate them; that reasonable and responsible horse owners appreciate that such activity is more likely than not injurious and/or fatal to horses' health, to their safety and to their welfare.

20. Plaintiff is informed and believes the Defendants are aware of the injurious consequences to new foals, to birthing mares and to pregnant mares that more likely than not results from driving horses via helicopter; and that the underlying or unpublished purpose in excluding the public from the area during the Gather is to hide and cover up the grim aftermath that could be anticipated from the event.

21. Plaintiff is informed and believes the Defendants' purpose in "short noticing" the Gather is to catch the public, journalists and news publishers and agencies, "off guard" such that they are unable to make arrangements in time to cover what actually transpires during such gathers, including this Gather.

22. Plaintiff is informed and believes the Defendants recognize at least by implication in their own publications and literature that gathering and removing young foals from their natural habitat via helicopter is detrimental to the health, safety and welfare of such wild horses.

23. The "BLM Handbook H-4700-1" entitled, "Wild Horses and Burros Management Handbook" ("BLM Handbook") provides in relevant part as follows:

4.4.4 Foaling Period

[T]he *capture of wild horses by using a helicopter to herd the animals is prohibited during the foaling period, which is defined as six weeks on either side of the peak of foaling to assure that young foals are mature enough* to be able to remain with their band during gather activities. This period is generally March 1 to June 30 for most wild horse herds

BLM Handbook, Section 4.4.4 "Foaling Period"
(See **EXHIBIT "B"** attached)(Emphasis added).

24. Plaintiff asks the court to take judicial notice of the Defendants' BLM Handbook which is an official government publication, and to take judicial notice of the heretofore section entitled "4.4.4 Foaling Period" from the BLM Handbook.

25. By the Defendants' own publication (BLM Handbook) and resultant of the recognized foaling period, the Defendants intend to violate their own published standards implemented for the health, safety and welfare of resident wild horses. By the Defendants' own publicized standards, the *earliest*, following the foaling period, a wild horse gather could take place on public lands, with the use of helicopters, would be mid-August of *any* year. See BLM Handbook.

26. Plaintiff is informed and believes the intended Gather as is planned and contemplated, would result in action conducted contrary to the public policy of the United States relative to the management of wild horses on federal lands which provides in relevant part, as follows:

Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.

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

1 27. Plaintiff is informed and believes that currently, there are many mares that
2 remain pregnant and near term in the Gather area; that there are many newborn foals
3 in the Gather area; that there are a number of mares who have yet to wean their new
4 foals in the Gather area; that there are mares who newly and recently gave birth in the
5 Gather area.

6 28. Plaintiff is informed and believes the "foaling period" can and does
7 fluctuate, as is likewise recognized in the BLM handbook with the statement that the
8 foaling, "period is *generally* March 1 to June 30" (see EXHIBIT B); and that the foaling
9 season this particular year, being somewhat delayed due to an extended winter, has
10 caused several mares to foal later than the recognized "foaling period."

11 29. Plaintiff is informed and believes that numerous newly born foals,
12 unweaned foals, recent birthing mares who continue to breast feed their young and
13 pregnant mares, have been observed in the Gather just prior to the official "exclusion"
14 of the public from the Gather area. Plaintiff is prepared to provide evidence of same in
15 open court.

16 30. Plaintiff is informed and believes that currently, other public lands as well,
17 also managed by the Defendants, have conditions in wild horse management areas
18 with respect to pregnant and foaling mares and with foals, representative to that found
19 in the Gather area. Plaintiff is informed and believes that by example, in an area of
20 public lands managed by the Defendants north of Las Vegas which has elevations the
21 same and/or similar to that of the Gather area, that as of July 7, 2010, numerous
22 pregnant mares, recently birthing mares and young, unweaned foals were observed in
23 the area. Plaintiff is prepared to provide evidence of same in open court.

24 31. As a journalist Plaintiff is informed and believes the gathering and removal
25 of wild horses from public lands is a newsworthy item in which the public maintains a
26 substantial and compelling interest. Plaintiff is informed and believes the gathering and
27 removal of wild horses from public lands in a manner contrary to the very published
28 guidelines the Defendants are to follow, is a newsworthy item in which the public

1 maintains a significant and compelling interest and on which the press and journalists
2 maintain the freedom and right to observe and fairly report.

3 32. Plaintiff and other journalists similarly situated are stymied and precluded
4 from covering and reporting on the intended Gather where the Defendants arbitrarily
5 exclude the public from observing the Gather, to the extent of 27,000 acres; or where
6 the Defendants offer up a sanitized method of allowing the public into restricted areas
7 not readily identified and only in certain locations far from the Defendants' activities,
8 such that harm to such young foals, to birthing mares and to pregnant mares, would
9 remain unrecorded and in effect, censored and hidden from the public.

10 33. Defendants' management practices in this regard interfere with and stifles
11 the Plaintiff in her work and vocation on the several fronts discussed herein.

12 34. Plaintiff does not seek to prevent proper management of wild horses on
13 public lands. Rather, for the reasons stated herein, Plaintiff seeks delay (not to
14 prevent) the Gather, until sometime mid-August or later such that gathering of horses
15 from the Tuscarora area is implemented in accordance with the Defendants' own
16 published standards. And, Plaintiffs seeks to lift or modify the arbitrary closure of the
17 Gather area to allow fair observation, recording and reporting of such activities by
18 interested persons including Plaintiff, occurring on public lands and which activities are
19 newsworthy and in which the public has valid, significant and compelling interest.

20 **FIRST CLAIM FOR RELIEF**

21 35. Plaintiff incorporates herein by reference the averments contained in
22 Paragraphs 1 through 34 of the Complaint and also in following Claims for Relief as
23 though the same were fully set forth herein.

24 36. Plaintiff is informed and believes the Defendants' intended Gather
25 contravenes the Defendants' own stated, publicized policies with respect to the proper
26 management and care of wild horses in their native habitats on public lands.

27 37. Plaintiff is informed and believes the Defendants' intended course and
28 actions are accordingly, arbitrary, capricious, and an abuse of discretion, or otherwise

1 not in accordance with law, and are implemented without observance of procedure
2 required by law, and must be set aside.

3 **SECOND CLAIM FOR RELIEF**

4 38. Plaintiff incorporates herein by reference the averments contained in
5 Paragraphs 1 through 37 of the Complaint and also in following Claims for Relief as
6 though the same were fully set forth herein.

7 39. Plaintiff is informed and believes the Defendants' intended course and
8 action contravenes the public policy of the United States of America relative to the
9 treatment of wild horses on federal public lands as is clearly stated by Congress within
10 The Wild Free-Roaming Horses and Burro Act of 1971, 16 U.S.C. 1331, which governs
11 the conduct of such activities on BLM-managed lands;

12 40. Plaintiff is informed and believes the Defendants' intended course and
13 actions are accordingly, arbitrary, capricious, and an abuse of discretion, or otherwise
14 not in accordance with law, and are implemented without observance of procedure
15 required by law, and must be set aside.

16 **THIRD CLAIM FOR RELIEF**

17 41. Plaintiff incorporates herein by reference the averments contained in
18 Paragraphs 1 through 40 of the Complaint and also in following Claims for Relief as
19 though the same were fully set forth herein.

20 42. The Defendants' intended course of censoring, suppressing and excluding
21 journalists and the public from viewing and documenting the Gather, interferes with the
22 Plaintiffs' activities and vocation as a journalist who reports and works in the subjects at
23 hand. The Defendants' "exclusion" of the public and of Plaintiff interferes with Plaintiffs'
24 activities and vocation to write children's stories on how the Defendants manage and
25 handle horses. The Defendants' "exclusion" of the public and of Plaintiff interferes with
26 Plaintiffs' activities in determining and performing independent herd counts and the
27 assimilation of data on wild horses and the demographics of wild horses located in their
28 habitats on public lands, which Plaintiff performs on behalf of the Cloud Foundation.

- 1 43. Plaintiff is informed and believes the following:
- 2 a. the activities of Defendants as alleged herein, interferes with the free flow
- 3 of information on subjects and matters involving government regulation of
- 4 public resources and lands and in which the citizenry and public of the
- 5 United States maintain a significant and compelling public interest in the
- 6 subject matter and in the intended course of the Defendants;
- 7 b. the Defendants' intended course creates in essence, an unacceptable
- 8 censoring and suppression of information that should otherwise be made
- 9 available to the citizenry and public of the United States, in contravention
- 10 to relevant provisions of the First Amendment to the United States
- 11 Constitution;
- 12 c. the Defendants' intended course contravenes rights enumerated in the
- 13 First Amendment to the U.S. Constitution, and said conduct is and would
- 14 be an impermissible infringement on the freedom of the press to report
- 15 matters involving government action which carry a significant and
- 16 compelling public interest;
- 17 d. that the Defendants are not able to demonstrate an interest, compelling or
- 18 otherwise, that could be accomplished with the *least restrictive means*
- 19 *necessary* to achieve its own interests and which is again, contrary to
- 20 rights enumerated in the First Amendment to the U.S. Constitution;
- 21 e. the Defendants' prohibition and exclusion of public citizens and in
- 22 particular the Plaintiff who is a journalist, interferes with her right to
- 23 observe and report matters involving government action which carry a
- 24 significant and compelling public interest, in violation of her rights
- 25 enumerated in the First Amendment to the U.S. Constitution.
- 26 44. Plaintiff is informed and believes the Defendants' intended course and
- 27 actions are accordingly, arbitrary, capricious, unconstitutional, and an abuse of
- 28 discretion, or otherwise not in accordance with law, and are implemented without

1 observance of procedure required by law, and must be set aside.

2 **FOURTH CLAIM FOR RELIEF**

3 45. Plaintiff incorporates herein by reference the averments contained in
4 Paragraphs 1 through 44 of the Complaint and also in the following Claim for Relief as
5 though the same were fully set forth herein.

6 46 Plaintiff as well as others similarly situated, in this instance, have no
7 adequate and speedy remedy at law against the Defendants conduct or from with which
8 she would be able to recoup such loss. There is no measure of damages which can
9 account for the loss of a constitutionally guaranteed freedom. There is no such thing as
10 but a mere or permissively "small infringement" to a guaranteed constitutional right to
11 one's freedom of speech and freedom of the press.

12 47. For the reasons outlined, the Defendants should be preliminarily and
13 permanently enjoined from the following:

- 14 a. from conducting the Gather until after mid August, 2010;
15 b. from censoring, removing or excluding journalists, news media and the
16 public who remain interested in such newsworthy matters, from the area,
17 which effectively precludes and censors the public and journalists from
18 recording, observing and reporting on items of significant public interest.

19 48. For the reasons stated the Defendants should be preliminarily and
20 permanently enjoined from denying access to view and record the Defendants'
21 activities; and for the reasons stated herein, the Defendants should be preliminarily and
22 permanently enjoined from conducting the Gather at anytime prior to mid-August of any
23 year where it interferes with the foaling season and the health of wild horses on public
24 lands, and where it is contrary to the Defendants' own publicized standards.

25 **FIFTH CLAIM FOR RELIEF**

26 49. Plaintiff incorporates herein by reference the averments contained in
27 Paragraphs 1 through 48 of the Complaint as though the same were fully set forth
28 herein.

51. Plaintiff seeks a declaration of her rights to be allowed to view, to observe and report on the Gather, and to require the Defendants to conduct their activities at a minimum, in accordance with their own published standards in managing public lands.

52. Plaintiff seeks a declaration that the Defendants' plan as currently intended and implemented, is arbitrary and capricious.

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

54. Plaintiff seeks a declaration that the Defendants' current plan as currently contemplated would violate public laws of the United States, in particular, The Wild Free-Roaming Horses and Burro Act of 1971, P.L.92-195, 16 U.S.C. 1331.

WHEREFORE, Plaintiff respectfully prays for judgment and relief as against all Defendants, as follows:

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- 1 others similarly situated access to the area of the Gather, during the Gather, in
2 locales such that she/they are able to view and observe, photograph, and then
3 report to the public the activities occurring in the gather;
- 4 4. A declaration that Plaintiff maintains the right to view, to observe and report on
5 the Gather and not be precluded from the area;
- 6 5. A declaration that Defendants must adhere to, and conduct their activities in
7 connection with managing wild horses, at least in accordance with their own
8 published standards in managing public lands and also, in strict adherence and
9 conformance to the intent and purposes underlying The Wild Free-Roaming
10 Horses and Burro Act of 1971, P.L.92-195, 16 U.S.C. 1331;
- 11 6. A declaration that the Defendants' current plan and implementation of the Gather
12 is arbitrary and capricious;
- 13 7. A declaration that the Defendants' plan as currently implemented, amounts to
14 an unconstitutional censoring of the public's right to be made aware of, and
15 advised of matters involving government action involving public lands and
16 resources and in which there remains a significant public interest and in clear
17 contravention to the First Amendment to the United States Constitution;
- 18 8. A declaration that the Plaintiff's constitutional right to fairly report the activities of
19 the gather, have been violated by Defendants in their closure to the public and to
20 the Plaintiffs of the Gather area, and accordingly, the closure should be set
21 aside;
- 22 9. A declaration that the Plaintiff's activities and vocation as a journalist and also as
23 a children's book illustrator and publisher, and also as one collecting data on wild
24 horses, has been stymied, interfered with;
- 25 10. A declaration that the Defendants' current plan as currently contemplated
26 violates public laws of the United States, in particular, The Wild Free-Roaming
27 Horses and Burro Act of 1971, P.L.92-195, 16 U.S.C. 1331, and accordingly
28 should be set aside;

11. A declaration that Plaintiff has no speedy or adequate remedy at law and that Plaintiff has and will suffer irreparable harm from the manner in which the Gather proceeds and is implemented, and also as the result of the prohibition of the public from such public lands during the Gather;

12. That the Court award Plaintiff:

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

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

Dated this 9th day of July, 2010

LAW OFFICE OF GORDON M. COWAN

/S/

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

DEMAND FOR JURY

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

Dated this 9th day of July, 2010

LAW OFFICE OF GORDON M. COWAN

/S/

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