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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15
16 ANIMAL WELLNESS ACTION, a non-
profit corporation, CANA FOUNDATION, a
17 non-profit corporation, LAURA LEIGH,
individually, and WILD HORSE
18 EDUCATION, a non-profit corporation,

19 Plaintiffs,

20 v.

21 UNITED STATES DEPARTMENT OF
22 INTERIOR, BUREAU OF LAND
MANAGEMENT, and JON RABY, Nevada
23 State Director of the Bureau of Land
24 Management,

25 Defendants.
26

CASE NO.

**PLAINTIFFS' VERIFIED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 Action's principal place of business is at 611 Pennsylvania Avenue, SE, #136, Washington D.C.,
2 20003. It maintains 135,000 supporters nationwide, with several thousand in Nevada. The further
3 gathering and removal of wild horses in the Pancake Complex due to the challenged actions will
4 adversely affect the substantial recreational, aesthetic, and conservational interests of Animal
5 Wellness Action and its staff, volunteers, members, and supporters.

6 6. Plaintiff CANA FOUNDATION is a non-profit corporation that works with
7 science-backed information to create rewilding initiatives for wild horses and environments.
8 CANA Foundation's principal place of business is at 6150 Northern Boulevard, East Norwich,
9 NY 11732. CANA Foundation's re-wilding initiatives foster community empowerment, land
10 conservation, and the sustainable management and preservation of America's wild horse
11 populations. CANA Foundation rescues, re-wilds, and re-homes wild horses in order to improve
12 their quality of life and ensure that they can live with dignity in a protected habitat. CANA
13 Foundation actively monitors for any Herd Management Area Plans that are available for public
14 comment in the United States and routinely submits comments throughout the public
15 commenting process. The Pancake Herd Management Area is one of the wild horse herds that
16 CANA Foundation monitors and advocates for. The further gathering and removal of wild horses
17 in the Pancake Complex due to the challenged actions will adversely affect the substantial
18 recreational, aesthetic, and conservational interests of CANA Foundation and its staff,
19 volunteers, members, and supporters.

20 7. Plaintiff WILD HORSE EDUCATION is a national non-profit corporation
21 dedicated to research, journalism, and public education concerning the activities and operations
22 of federal and state management of the free roaming horse and wild burro populations. Wild
23 Horse Education Wild Horse Education's principal place of business is 216 Lemmon Drive, #
24 316, Reno, NV 89506. Wild Horse Education has more than 150,000 members and educates and
25 informs the public about wild horses and burros through articles, photographs, videos, and
26 sharing data and other information. Wild Horse Education also frequently submits comments on
27 Herd Management Area Plans, Environmental Assessments, and other wild horse management
28 documents and hearings made available for public comment. Wild Horse Education has

1 previously held Board meetings and outreach sessions in the Pancake Complex and advocating
2 for the wild horses in the Pancake Complex is a past, present, and future important issue for Wild
3 Horse Education. Wild Horse Education actively participated in the public commenting process
4 of the Environmental Assessment for the Pancake Complex Gather Plan, which was finalized on
5 May 4, 2021. Wild Horse Education has actively participated in the review of wild horse and
6 burro management and gather plans, and their members and supporters regularly attend and
7 observe wild horse and burro roundups, removals, and holding pens. The further gathering and
8 removal of wild horses in the Pancake Complex due to the challenged actions will adversely
9 affect the substantial recreational, aesthetic, and conservational interests of Wild Horse
10 Education and its staff, volunteers, members, and supporters.

11 8. Plaintiff LAURA LEIGH is the founder and President of Plaintiff WILD HORSE
12 EDUCATION. In addition, Plaintiff works with multiple non-profit organizations engaged in
13 public land issues and provides in-field documentation and commentary on public land issues
14 such as wild horse gathers and removals. Ms. Leigh is also a free-lance and photojournalist,
15 whose work has appeared internationally in media broadcast outlets, such as CNN, BBC/ITV,
16 ABC, Common Dreams, and CounterPunch. Ms. Leigh has visited, observed, and photographed
17 the wild horses at the Pancake Complex so many times, that she has formed unique and special
18 relationships with individual horses that she has named and monitored throughout the years. Ms.
19 Leigh experiences great enjoyment from watching young foals born in the Pancake Complex
20 become curious and strong adult horses who then create their own families. Ms. Leigh has also
21 attended several wild horse roundups throughout the United States, and frequently reviews
22 photographs and videos from any roundups she is not able to attend in person. When Ms. Leigh
23 recognizes individual horses that she has previously observed as wild, free-roaming horses, she
24 experiences great sadness, but feels it is her responsibility to the horses to observe their treatment
25 and capture and share it with others to educate them on the plight of wild horses.

26 9. Animal Wellness Action, CANA Foundation, and Wild Horse Education
27 (collectively, the Nonprofit Plaintiffs) and their members, supporters, and staff have a long-
28 standing interest in wild, free-roaming horses and routinely advocate for wild horses in Nevada.

1 If they had been given the opportunity, Nonprofit Plaintiffs would have submitted comments to
2 the Bureau of Land Management regarding a Herd Management Area Plan for the Pancake
3 Complex.

4 10. Wild Horse Education's members, supporters, and staff visit the Pancake
5 Complex Herd Management Area for photography, observing wildlife, and other recreational
6 and professional pursuits. Plaintiffs' members, supporters, and staff gain aesthetic enjoyment
7 from observing, attempting to observe, hearing, seeing evidence of, and studying wild horses.
8 The opportunity to possibly view wild horses, or signs of horses, in these areas is of significant
9 interest and value to Nonprofit Plaintiffs' members, supporters, and staff, and increases their use
10 and enjoyment of Nevada's public lands. Nonprofit Plaintiffs' members, supporters, and staff
11 have engaged in these activities in the past and have specific plans to continue to do so in the
12 future.

13 11. Nonprofit Plaintiffs' members and supporters are adversely impacted by the
14 gathering and removal of wild horses from the Pancake Complex Herd Management Area.
15 Nonprofit Plaintiffs' members also have an interest in the health and humane treatment of
16 animals, and work to rehabilitate sick and injured wildlife, including horses. Nonprofit Plaintiffs'
17 members, staff, volunteers, and supporters have engaged in these activities in the past and intend
18 to do so again soon.

19 12. Nonprofit Plaintiffs, as well as their members, supporters, and staff, are dedicated
20 to ensuring the long-term survival of the wild, free-roaming horses throughout the contiguous
21 United States, and specifically in Nevada, and to ensuring that Defendants comply with all
22 applicable state and federal laws related to the survival and humane treatment of wild horses in
23 Nevada. In furtherance of these interests, Nonprofit Plaintiffs' members, supporters, and staff
24 have worked, and continue to work, to protect and advocate for wild horses in Nevada and
25 throughout the contiguous United States.

26 13. The interests of Nonprofit Plaintiffs' members, supporters, and staff have been,
27 and will continue to be, injured by Defendants' improper and inhumane gather and removal of
28 wild horses in the Pancake Complex. The interests of Nonprofit Plaintiffs' members, supporters,

1 and staff have been, and will continue to be, injured by Defendants’ failure to comply with their
2 obligations under the Administrative Procedures Act (“APA”), the First Amendment, and the
3 Wild Horse Act in rounding up and removing wild, free-roaming horses in gruesome and
4 inhumane ways in the Pancake Complex without a Herd Management Area Plan.

5 14. Injunctive Relief alone will redress the injuries of Nonprofit Plaintiffs’ members,
6 supporters, volunteers, and staff. The relief requested by Plaintiffs, if granted, would require
7 Defendants to comply with the requirements of the APA, the First Amendment, and the Wild
8 Horse Act before further gathering and removing over 2,000 wild, free-roaming horses from the
9 Pancake Complex. The relief requested by Plaintiffs, if granted, would reduce the number of
10 wild, free-roaming horses needlessly injured, killed, or removed by Defendants.

11 15. Defendant JON RABY is Nevada State Director of the BLM, and is charged by
12 Federal statute with managing, administering, and protecting the wild horses and burros in the
13 State of Nevada, including the Pancake Complex of Herd Management Areas, pursuant to the
14 Wild Horse Act.

15 16. Defendant DEPARTMENT OF INTERIOR, BUREAU OF LAND
16 MANAGEMENT is charged by federal statute to manage administer and protect the wild horses
17 and burros in the State of Nevada, including the Pancake Complex of Herd Management Areas,
18 pursuant to the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340.

19 **FACTS GIVING RISE TO PLAINTIFFS’ CLAIMS**

20 **Statutory and Regulatory Framework**

21 17. Finding that “wild free-roaming horses and burros are living symbols of the
22 historic and pioneer spirit of the West,” and that “they contribute to the diversity of life forms
23 within the Nation and enrich the lives of the American people,” Congress enacted the Wild
24 Horse Act to ensure that “wild-free roaming horses and burros shall be protected from capture,
25 branding, harassment, [and] death,” and will “be considered in the area where presently found, as
26 an integral part of the natural system of the public lands.” 16 U.S.C. § 1331.

27 18. “Wild free-roaming horses” are defined under the Act as “all unbranded and
28 unclaimed horses ... on public lands of the United States,” which include lands “administered by

1 the Secretary of the Interior through the Bureau of Land Management or by the Secretary of
2 Agriculture through the Forest Service.” *Id.* §§ 1332(b), (d); *see also* 36 C.F.R. § 222.60(b)(13).

3 19. The Wild Horse Act provides the statutory authority for the removal of “excess”
4 wild free-roaming horses and burros from the public range. “[E]xcess animals” are defined in the
5 statute as wild free-roaming horses and burros “which must be removed from an area in order to
6 preserve and maintain *a thriving natural ecological balance* and multiple-use relationship in that
7 area.” 16 U.S.C. § 1332(f) (1982) (emphasis added).

8 20. The Wild Horse Act provides that the Secretary of the Interior “shall manage wild
9 free-roaming horses and burros as components of the public lands ... in a manner that is designed
10 to achieve and maintain a thriving natural ecological balance on the public lands.” § 1331. To
11 further ensure this objective, the statute provides that “[a]ll management activities shall be at the
12 minimal feasible level.” *Id.* § 1333(a). The Secretary’s duties have been delegated to the BLM
13 with respect to horses on BLM lands. 43 C.F.R. § 4700.0-3.

14 21. The BLM’s regulations require that the Secretary establish Herd Management
15 Areas for the maintenance of wild horse and burro herds. *See* 40 CFR § 4710.3-1. In delineating
16 each herd management area, the BLM must consider the appropriate management level for the
17 herd, the habitat requirements of the animals, the relationships with other uses of the public and
18 adjacent private lands, and the constraints contained in § 4710.4, which limits management of
19 wild horses and burro “the minimum level necessary to attain the objective identified in
20 approved land use plans and herd management area plans.” 40 CFR § 4710.4.

21 22. Consistently, the BLM’s regulations state that the BLM “**shall** prepare a herd
22 management area plan, which may cover one or more herd management areas.” 40 CFR § 4710.4
23 (emphasis added).

24 23. The BLM implements its regulations through a policy document referred to as the
25 Wild Horses and Burros Management Handbook, or the (“BLM Handbook”). According to
26 Chapter 6 of the Handbook, “Herd Management Area Plans (HMAPs) identify and set objectives
27 for [wild horse and burro] herds and their habitat. BLM Handbook, Chap. 6, p. 36. HMAPs are
28 prepared with public involvement through a site-specific environmental analysis and decision

1 process [as required by the National Environmental Policy Act, or NEPA]. During the NEPA
2 process, the environmental impacts associated with a range of alternative management strategies
3 for the herd and its habitat are analyzed.

4 24. Also, according to the BLM Handbook, the approved HMAP outlines the selected
5 management actions, together with the management and monitoring objectives which, when
6 implemented, would make progress toward achieving land health standards, including Land Use
7 Plan goals/objectives, and other relevant objectives. *Id.* at p. 37.

8 25. “Activities are carried out with the objective of maintaining free-roaming
9 behavior and at the minimum feasible level of management necessary” to attain the objectives
10 identified in approved land use plans and HMAPs. BLM Handbook, Chap. 1, p. 6. To achieve
11 these goals, HMAPs include a plan for monitoring and evaluating management actions and
12 decisions and require the collection of data/information necessary to evaluate the effectiveness of
13 those decisions. *Id.* at § 6.2, p. 43.

14 26. The HMAP affirms that the BLM uses the HMAP to attain the mandate in the
15 Wild Horse & Burros Act to establish a “thriving ecological balance” between and among wild
16 horses, burros, and their habitat. The BLM has identified no other mechanism to attain this goal,
17 so it cannot remove excess horses from rangelands unless the HMAP is in place.

18 27. The HMAP is also meant to ensure that the Wild Horse Act’s mandates regarding
19 humane handling are followed. The Wild Horse Act instructs that excess horses must be
20 “humanely captured and removed.” 16 U.S.C § 1333(b)(2)(B). “[H]umane treatment” is defined
21 as “handling compatible with animal husbandry practices accepted in the veterinary community,
22 without causing unnecessary stress or suffering to a wild horse or burro.” 43 C.F.R. § 4700.0-
23 5(e). Inhumane treatment is defined as “any intentional or negligent action or failure to act that
24 causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with
25 animal husbandry practices accepted in the veterinary community.” *Id.* § 4700.0-5(f).

26 28. According to the Pancake Complex Gather Plan Environmental Assessment, the
27 Comprehensive Animal Welfare Policy (CAWP) developed by BLM would be implemented to
28 “ensure a safe and humane gather occurs” and to “minimize potential stress and injury to wild

1 horses.” Pancake Complex Gather Plan Environmental Assessment (DOI-BLM-NV-L060-2021-
2 0005-EA), May 4, 2021, at p. 33.

3 29. The CAWP provides standards for facility design, capture technique, wild horse
4 and burro care, handling, transportation, and euthanasia or death. Bureau of Land Management
5 (BLM), 2015, Instruction Memorandum 2015-151.

6 30. The CAWP Gather Standards state that “[t]he rate of movement and distance the
7 animals travel must not exceed limitations set by the Lead COR/COR/PI who will consider
8 terrain, physical barriers, access limitations, weather, condition of the animals, urgency of the
9 operation (animals facing drought, starvation, fire, etc.) and other factors.” *Id.* at p. 1-7.

10 11 **The Pancake Complex Gather**

12 31. The Pancake Complex consists of 1,228,739 acres of land, 849,613 acres of which
13 is public land managed by the BLM. The Pancake Complex is located approximately 30 miles
14 west of Ely, Nevada. Within the Pancake Complex, there is the Sandy Springs West and Pancake
15 Herd Management Areas, the Jakes Wash Herd Area, and the Monte Cristo Wild Horse
16 Territory.

17 32. The BLM has not prepared a Herd Management Area Plan for the Pancake
18 Complex, or for any of the Herd Managements Areas, Herd Areas, or Wild Horse Territories
19 within the Complex.

20 33. BLM issued a final decision approving the Pancake Complex Gather Plan
21 Environmental Assessment (DOI-BLM-NV-L060-2021-0005-EA) on May 4, 2021. This
22 assessment will be referred to as the EA throughout this Complaint.

23 34. According to the EA, the BLM plans to conduct a series of “phased gathers to
24 remove excess animals” over a 10-year period. The BLM will also apply fertility control
25 methods, such as vaccines and/or IUDs to released mares, and attempt to maintain a sex ratio
26 adjustment of 60% male and 40% female among the released animals. In addition, the BLM
27 would release up to 138 geldings, or non-reproducing males.

28 35. In total, the EA analyzed the removal of 2,342 excess wild horses within the

1 Pancake Complex over the ten-year period contemplated by the EA. Accordingly, the EA
2 analyzed the environmental impacts of removing more than 2,000 wild horses and burros from
3 the Pancake Complex over ten years.

4 36. On June 2, 2021, Plaintiffs Wild Horse Education and Ms. Leigh timely appealed
5 defendants' May 4, 2021 approval of the EA to the United States Interior Board of Land Appeals
6 and petitioned for an order staying the decision.

7 37. On July 7, 2021, the petition for stay was denied by the United States Interior
8 Board of Land Appeals.

9 38. On January 6, 2022, Plaintiffs Wild Horse Education and Ms. Leigh filed a
10 Motion to Reconsider the Stay of the EA.

11 39. On January 6, 2022, and without any prior notice to Plaintiffs, BLM issued a
12 press release announcing its plan to begin the FY2022 Pancake Complex Wild Horse Gather on
13 or around January 10, 2022. The press release further stated that "BLM plans to gather up 2,060
14 horses and remove up to 2,030 excess wild horses" and that BLM would be using helicopters
15 during the gather. The press release stated that the gather is being conducted under the DOI-
16 BLM-NV-L060-2021-0005-EA Pancake Complex Wild Horse Gather Plan Environmental
17 Assessment decision signed on May 4, 2021.

18 40. Plaintiffs filed an Amended Motion to Reconsider the Stay Due to New
19 Circumstances on January 10, 2022, given the BLM's plan to implement the EA before the
20 IBLA had rendered its decision over Plaintiffs' appeal.

21 41. The IBLA denied Plaintiffs' Amended Motion to Reconsider the Stay on January
22 14, 2022, after the Gather had already begun.

23 42. Several of Nonprofit Plaintiffs' members, supporters, and staff made
24 arrangements to attend, observe, photograph, and film the gather that began on January 11, 2022,
25 at the Pancake Complex.

26 43. On January 11, 2022, the Pancake Complex Wild Horse Gather began. As of the
27 filing of this complaint, the Gather has taken place on eight consecutive days: January 11-18,
28 2022.

1 44. On January 11, 2022, a group of three young wild horses fell behind a band, or
2 family, of horses that BLM was pursuing by a low-flying helicopter. One of the young horses, a
3 colt, was observed limping and in obvious distress from several hundred feet away.

4 45. The helicopter continued to drive the three young horses toward the holding area
5 even though the colt's leg was clearly broken and the colt was struggling to walk and run.

6 46. The helicopter pursued the rest of the band toward the holding area, while the colt
7 was left behind.

8 47. For 29 minutes, the colt was clearly suffering with a broken leg. The colt would
9 stand without weight on his front left leg, try to take a few steps, and then stand still with the
10 front leg held up and dangling at an unnatural angle. This continued until personnel reached the
11 colt and euthanized him.

12 48. On January 17, 2022, a single wild horse was pursued for over an hour. At the
13 time of capture, the BLM Incident Commander did not know why this particular horse was
14 pursued for so long.

15 49. During the course of the gather, most days begin at temperatures below freezing,
16 warm up slightly during the afternoon which melts away the ice and snow, and then returns to
17 freezing by the end of the day.

18 50. When the temperature rises during the afternoon, the ground that the horses are
19 being pursued on becomes muddy and slick, and the horses struggle to run without slipping and
20 injuring themselves and others when the helicopters are pursuing them.

21 51. The gather has not been paused or stopped due to unsafe ground conditions at any
22 time.

23 52. According to BLM's website, as of January 18, 2022, 786 wild horses have
24 already been gathered from the Pancake Complex, and 673 of those wild horses have already
25 been "shipped." There have been 10 wild horse deaths, and only four wild mares have been
26 released back onto the Complex.

27 53. Once gathered from the land, the wild horses are placed in a temporary holding
28 facility. At the Pancake Complex, the public has been denied access to view the temporary

1 holding facilities immediately once the horses are gathered. The public is denied any meaningful
2 access to document and observe the conditions and activities taking place in the temporary
3 holding facilities.

4 **FIRST CAUSE OF ACTION**

5 54. Plaintiffs hereby incorporate all previous allegations contained in this Complaint
6 as though fully set forth herein.

7 55. The BLM's decision to authorize the gather of horses in the Pancake Complex
8 without first developing a Herd Management Area Plan violated the agency's duties to protect
9 such horses under the Wild Horse Act. 16 U.S.C. §§ 1334, 1338; 36 C.F.R. §§ 222.60, 222.61,
10 222.65. That decision was therefore, arbitrary and capricious, and not in accordance with law in
11 violation of NEPA, 42 U.S.C. § 4331 et seq. and the APA, 5 U.S.C. § 706(2).

12 56. Defendants' failure to adopt a Herd Management Area Plan for the Pancake
13 Complex and the herd management areas that make up the complex has contributed and will
14 continue to cause defendants to inhumanely capture wild horses and burros in violation of the
15 CAWP as they conduct the Gather, in violation of the Wild Horse Act. 16 U.S.C §
16 1333(b)(2)(B). That decision was therefore, arbitrary and capricious, and not in accordance with
17 law in violation of NEPA, 42 U.S.C. § 4331 et seq. and the APA, 5 U.S.C. § 706(2).

18 57. Defendants' actions have injured plaintiffs in the manner described in this
19 Complaint.

20 **SECOND CAUSE OF ACTION**

21 58. Plaintiffs hereby incorporate all previous allegations contained in this Complaint
22 as though fully set forth hererin.

23 59. The BLM failed to analyze the significant environmental impacts of removing all
24 2,030 allegedly excess animals from the Pancake Complex at once, rather than over the analyzed
25 ten-year, phased period. The BLM's decision to adopt the EA and not follow it was therefore,
26 arbitrary and capricious, and not in accordance with law in violation of NEPA, 42 U.S.C. § 4331
27 et seq. and the APA, 5 U.S.C. § 706(2).

28 60. The BLM's EA does not identify or analyze the significant impacts to the

1 environment caused by removing nearly 85% of the horses and burros that make up the Pancake
2 Complex during a three-week period. The BLM's decision to adopt the EA was therefore,
3 arbitrary and capricious, and not in accordance with law in violation of NEPA, 42 U.S.C. § 4331
4 et seq. and the APA, 5 U.S.C. § 706(2).

5 61. Defendants' actions have injured plaintiffs in the manner described in this
6 Complaint.

7 **THIRD CAUSE OF ACTION**

8 62. Plaintiffs hereby incorporate all previous allegations contained in this Complaint
9 as though fully set forth hererin.

10 63. Plaintiffs have a right, under the First Amendment to the U.S. Constitution, to
11 observe and document the BLM's gather of the wild horses and burros at the Pancake Complex.

12 64. Defendants have interfered with plaintiffs' protected right under the First
13 Amendment by refusing them access to certain aspects of the gather and only providing them
14 access from vantage points with known obstructed views.

15 65. This Court is authorized to enjoin defendants from further violations of plaintiffs'
16 First Amendment rights, including by compelling defendants to provide plaintiffs meaningful
17 access to the gather in order to accurately and timely document the BLM's activities.

18 66. Defendants' actions have injured plaintiffs in the manner described in this
19 Complaint.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully requests that this Court:

- 22 A. Issue a temporary restraining order, preliminary, and permanent injunction
23 compelling defendants to immediately stop implementation of the Pancake
24 Complex Herd Management Environmental Assessment until defendants have
25 fully complied with the Wild Horses & Burros Act, National Environmental
26 Policy Act, and Administrative Procedures Act;

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- B. Maintain jurisdiction over this action until defendants are in compliance with the Wild Horses & Burros Act, the Administrative Procedure Act, the National Environmental Policy Act, and every order of this Court;
- C. Award plaintiffs attorney fees and costs pursuant to and 28 USC § 2412; and
- D. Grant such additional and further relief to which plaintiffs may be entitled.

DATED: January 21, 2022

Respectfully Submitted,

s/ Danielle M. Holt

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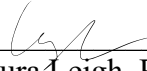
Attorneys for Plaintiffs

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VERIFICATION

I, Laura Leigh, am a plaintiff in this action. I have read the foregoing Plaintiffs' Verified Complaint for Injunctive and Declaratory Relief. The facts alleged in the above Complaint are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct and that this declaration is executed on January 21, 2022, at Reno, Nevada.



Laura Leigh, Plaintiff