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20 *Attorneys for Plaintiffs Animal Legal Defense Fund,*
21 *American Wild Horse Campaign, and Carla Bowers*

22 **UNITED STATES DISTRICT COURT**
23 **NORTHERN DISTRICT OF CALIFORNIA**
24 **SAN FRANCISCO DIVISION**

25 ANIMAL LEGAL DEFENSE FUND;
26 AMERICAN WILD HORSE CAMPAIGN; and
27 CARLA BOWERS

28 Plaintiffs,

v.

VICKI CHRISTIANSEN, in her official capacity
as Chief of the United States Forest Service;
GEORGE “SONNY” PERDUE, in his official
capacity as Secretary of the United States
Department of Agriculture; RANDY MOORE, in
his official capacity as Regional Forester for the
Pacific Southwest Region; and AMANDA
MCADAMS, in her official capacity as Forest
Supervisor of the Modoc National Forest

Defendants.

Case No. 3:18-cv-06410

Assigned to:

Referred to:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Administrative Procedure Act Case

PRELIMINARY STATEMENT

1
2 1. This case challenges a recent decision by the United States Forest Service
3 (“Forest Service”) to sell federally-protected wild horses “without limitation,” which the agency
4 and its staff have acknowledged means that such horses will be sold to buyers who will send the
5 horses to slaughter, likely for purposes of human consumption. These wild horses will be
6 removed from the Devil’s Garden Wild Horse Territory (“WHT”) located in the Modoc
7 National Forest in northern California.

8 2. Neither the Forest Service, nor its sister agency the Bureau of Land Management
9 (“BLM”), which also manages federally-protected wild horses, has previously adopted a policy
10 allowing excess wild horses to be sold to buyers “without limitation,” and thus with knowledge
11 that horses will be slaughtered for human consumption. In fact, the longstanding policy and
12 practice of both agencies after removing excess wild horses from the public range has been to
13 either place horses for adoption or sell them “with limitations” to ensure that they are *not* sold
14 for slaughter. Despite this longstanding policy and practice, the Forest Service announced this
15 major reversal of position concerning the disposition of federally-protected wild horses through
16 agency press releases and emails, and never subjected this drastic shift in approach to notice-
17 and-comment procedures under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551-
18 706; nor conducted any analysis of this action or feasible alternatives to it under the National
19 Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370h; nor prepared an environmental
20 impact statement (“EIS”) under NEPA for this precedent-setting action that is likely to violate
21 California state law (California Penal Code section 598c) and the National Forest Management
22 Act (“NFMA”), 16, U.S.C. §§ 1600-1687. Nor did the Forest Service supply any legally
23 coherent, non-arbitrary explanation for its sharp reversal in longstanding agency policy and
24 practice in implementing the Wild Free-Roaming Horses and Burros Act of 1971 (“Wild Horse
25 Act”), 16 U.S.C. §§ 1331-1340.

26 3. For all of these reasons, the Forest Service’s decision to sell wild horses “without
27 limitation” must be “set aside” and remanded to the agency as an action that is “arbitrary,
28

1 capricious, an abuse of discretion, or otherwise not in accordance with law” and/or “without
2 observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

3 **JURISDICTION AND VENUE**

4 4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
5 question) and 5 U.S.C. § 702 (APA).

6 5. Venue is proper under 28 U.S.C. § 1391(e) because Plaintiff Animal Legal
7 Defense Fund’s (“ALDF”) principal place of business is in the Northern District of California.

8 **INTRADISTRICT ASSIGNMENT**

9 6. Pursuant to Civil Local Rules 3-5(b), 3-2(c), and 3-2(d), this action is properly
10 assigned to the San Francisco Division of this Court because Plaintiff ALDF resides in and
11 maintains offices in Sonoma County.

12 **PARTIES**

13 **PLAINTIFFS**

14 7. Plaintiff AMERICAN WILD HORSE CAMPAIGN (“AWHC”) is a national
15 nonprofit organization dedicated to protecting and preserving wild horses. Its mission is
16 endorsed by a broad-based coalition of public interest groups, environmentalists, humane
17 organizations, and historical societies representing over ten million supporters. A major focus of
18 AWHC’s mission is to ensure that wild horses that are removed from public lands are never
19 allowed to be sold for slaughter. AWHC has been working on this effort for more than 14 years.
20 As part of that effort, AWHC has engaged in grassroots organizing, public education, legislative
21 and regulatory lobbying, and other advocacy to ensure that any wild horses removed from the
22 public lands are never allowed to be sold for slaughter.

23 8. As part of its overall wild horse advocacy, AWHC is extremely familiar with the
24 Forest Service’s wild horse management actions in the Devil’s Garden Wild Horse Territory,
25 and for several years has been actively involved in efforts to protect and preserve these specific
26 horses.

27 9. To date, AWHC has been successful in its efforts to make sure that no wild horses
28 removed from the public lands, including the Devil’s Garden horses, may be sold for slaughter.

1 As part of those efforts, AWHC has conducted polling showing that 80 percent of Americans
2 oppose the slaughter of federally-protected wild horses and burros, and has been successful in
3 convincing Congress to maintain annual Congressional appropriations language that prohibits
4 BLM from allowing the sale or transfer for slaughter of wild horses removed from the public
5 lands. AWHC has also worked to ensure that the Forest Service continues to abide by this same
6 prohibition with respect to the wild horses under its jurisdiction, including the Devil’s Garden
7 horses. Specifically with regard to the Devil’s Garden wild horses, AWHC has participated in
8 placement committees to ensure that any wild horses removed from Devil’s Garden are not sold
9 for slaughter, and has met with the Forest Service to plan a pilot fertility control program for the
10 Devil’s Garden wild horses, with a goal of reducing population growth rates and reducing the
11 number of horses that will be removed from the public lands in the area.

12 10. The Forest Service’s recent decision to suddenly allow the sale of wild horses
13 removed from the Devil’s Garden WHT “without limitation”—meaning that they will likely be
14 sold for slaughter and human consumption—frustrates AWHC’s ability to carry out one of its
15 core missions to protect these wild horses. This decision also undermines AWHC’s overall
16 mission to protect all wild horses from such a fate, and sets a precedent that dilutes AWHC’s
17 ability to ensure that no wild horses may ever be sold for slaughter. As a result of the Forest
18 Service’s decision, AWHC has had to—and will continue to have to—spend additional
19 resources opposing this terrible practice with respect to the Devil’s Garden horses and all wild
20 horses. AWHC has already had to spend considerable resources on this advocacy, including
21 conducting emergency public alerts and education on the matter, pursuing media opportunities
22 to further educate the public and lawmakers about this drastic turn of events, initiating an
23 organizing campaign around this issue, writing letters to appropriate government officials, and
24 retaining legislative consultants to work at the state and federal levels to stop the Forest Service
25 from carrying out this new practice. Accordingly, the Forest Service’s decision has not only
26 greatly impeded and frustrated AWHC’s mission to protect the Devil’s Garden horses and all
27 wild horses from being sold for slaughter, but it has caused an immediate and continuing drain
28 on AWHC’s very limited resources that could otherwise be used for AWHC’s other advocacy

1 on wild horse issues, including preserving viable free-roaming herds of wild horses on public
2 lands throughout the West for future generations, and helping to devise and implement
3 alternative approaches to reducing the population of wild horses in the Devil's Garden WHT.

4 11. This impairment of AWHC's mission and the concomitant drain on AWHC's
5 resources is directly caused by the Forest Service's new decision to allow the sale of wild horses
6 removed from the Devil's Garden WHT "without limitation." AWHC has also been denied the
7 opportunity to comment on this new approach and to submit information to the Forest Service to
8 convince it not to proceed in this manner. All of these injuries will be redressed if AWHC
9 prevails in this action because it will mean that the Forest Service will revert to its prior practice
10 of *not* allowing the sale of wild horses for slaughter.

11 12. Plaintiff ALDF's mission is to protect the lives and advance the interests of
12 animals through the legal system. ALDF is a national nonprofit organization that has spent more
13 than three decades advocating for the protection of animals through public communications,
14 education, litigation, and legislation. ALDF's advocacy includes the protection of wild horses
15 on public lands, and in particular, advocating that no wild horses removed from public lands be
16 sold for slaughter. ALDF also advocates against slaughter of domesticated horses. ALDF's
17 investment in wild horse and horse slaughter issues include public education, member outreach,
18 government advocacy, and litigation. ALDF's efforts to end the suffering and unnecessary
19 killing of animals are supported by hundreds of dedicated attorneys and more than 200,000
20 members and supporters.

21 13. ALDF is extremely familiar with the Forest Service's management of the wild
22 horses in the Devil's Garden WHT and has spent considerable resources in efforts to protect
23 these horses. The Forest Service's recent decision to allow some of these horses that have been
24 removed from the WHT to now be sold "without limitation" severely impairs ADLF's efforts to
25 protect these horses, and to protect wild horses from being sold for slaughter. ALDF has already
26 spent resources opposing this practice, and will continue to have to spend resources on such
27 efforts. Specifically, ALDF attorneys have reviewed and signed a letter to the California
28 Attorney General asking for enforcement of a state cruelty law against Forest Service's decision

1 to sell wild horses “without limitation.” In addition, ALDF has fielded several inquiries from the
2 public and media about the Forest Service’s decision, which caused ALDF staff to divert
3 resources to further investigate the issue and provide responses. If ALDF refused to divert
4 resources to combat the Forest Service’s decision, it would suffer a loss of credibility, support,
5 and organizational goodwill among its donors, its peers, and the legal community. Therefore,
6 the Forest Service’s decision both impairs and frustrates ALDF’s ability to carry out its mission,
7 and is causing a drain on ALDF’s resources for advocacy that could otherwise be used on many
8 of ALDF’s other extremely pressing animal protection projects.

9 14. These injuries are directly caused by the Forest Service’s decision to allow the
10 sale of Devil’s Garden wild horses “without limitation,” and will be redressed if the Plaintiffs
11 prevail in this action because it will mean that the Forest Service will not be allowed to sell any
12 of these horses for slaughter.

13 15. Plaintiff CARLA BOWERS is a resident of Volcano, California and for many
14 years has advocated for the preservation and protection of the wild horses that live in the Devil’s
15 Garden WHT. She has regularly visited the Devil’s Garden WHT since the spring of 2012, and
16 very much enjoys observing, photographing, and studying the wild horses who live there and
17 their habitat. Ms. Bowers derives immense recreational and aesthetic enjoyment from observing
18 these wild horses and the public lands on which they live, and she has definitely bonded with
19 these horses in a very personal way. She has also used her research to present relevant data
20 concerning these horses and their habitat to the Forest Service. In fact, because of her unique
21 knowledge and interest in these particular horses, the Forest Service invited her to be a member
22 of a “Wild Horse Placement Group” established to determine the appropriate disposition of wild
23 horses removed from the Devil’s Garden WHT. While Ms. Bowers opposes the removal of any
24 of these horses from the public lands, she has an intense interest in ensuring that any horses that
25 *are* removed from the WHT are placed in the most humane environment possible, and that no
26 horses removed from the WHT are ever sold for slaughter or any other inappropriate purpose.

27 16. Ms. Bowers’ personal, aesthetic, and recreational interests in the Devil’s Garden
28 wild horses and the public lands on which they live are severely impaired by the Forest

1 Service’s recent decision to now allow the sale of some of these horses “without limitation”—
2 meaning that they may be sold for slaughter. Knowing that some of these horses will meet such
3 a horrific fate is causing her extreme emotional anguish and ruining her ability to continue to
4 enjoy visiting the Devil’s Garden WHT—she simply cannot go back to these public lands to
5 observe the wild horses and their habitat knowing that many of these horses will soon be sold
6 for slaughter. The Forest Service’s decision also undercuts and dilutes Ms. Bowers’ influence
7 with that agency regarding the current and future placement of wild horses removed from the
8 public range. In particular, should the Forest Service begin selling horses without limitation to
9 buyers who will slaughter the horses, the agency will be far less motivated to collaborate with
10 Ms. Bowers and other advocates to ensure humane placement of excess horses after their
11 removal from the range. All of these injuries are directly caused by the Forest Service’s decision
12 and will be ameliorated if Plaintiffs prevail in this action, because this will mean that none of
13 these horses may be sold for slaughter.

14 **DEFENDANTS**

15 17. Defendant VICKI CHRISTIANSEN is Chief of the Forest Service and is sued in
16 that capacity. She is charged with ensuring the Forest Service’s compliance with its
17 environmental obligations, and she has ultimate responsibility for the decision to sell federally-
18 protected wild horses “without limitation,” including to buyers who will slaughter the horses
19 for human consumption.

20 18. Defendant GEORGE “SONNY” PERDUE is Secretary of the U.S. Department
21 of Agriculture (“USDA”), and is sued in that capacity. Because the Forest Service is an agency
22 within USDA, Defendant Perdue has ultimate responsibility for the decisions of the Forest
23 Service, including its recent decision to sell federally-protected wild horses “without
24 limitation” including to buyers who will slaughter horses for human consumption.

25 19. Defendant RANDY MOORE is Regional Forester for the Pacific Southwest
26 Region, and is sued in that capacity. He is charged with overseeing all decisions issued by
27 national forest officials in the Pacific Southwest Region of the Forest Service, including in the
28 Modoc National Forest. Accordingly, he has ultimate responsibility for the recent decision of

1 the Modoc National Forest to sell federally-protected wild horses “without limitation”
2 including to buyers who will slaughter horses for human consumption.

3 20. Defendant AMANDA MCADAMS is Forest Supervisor of the Modoc National
4 Forest and is sued in that capacity. She is charged with issuing all decisions on behalf of the
5 Modoc National Forest, and thus has ultimate responsibility for the recent decision by the
6 Modoc National Forest to sell federally-protected wild horses “without limitation” including to
7 buyers who will slaughter them for human consumption.

8 **STATUTORY AND REGULATORY FRAMEWORK**

9 **A. WILD HORSE ACT**

10 21. Congress enacted the Wild Horse Act in 1971 out of concern that wild horses
11 were quickly “disappearing from the American scene.” 16 U.S.C. § 1331. Congress declared
12 that “wild free-roaming horses and burros are living symbols of the historic and pioneer spirit
13 of the West” and that “they contribute to the diversity of life forms within the Nation and
14 enrich the lives of the American people.” *Id.* As a result, by enacting the Wild Horse Act,
15 Congress sought to guarantee that “wild free-roaming horses and burros *shall be protected*
16 from capture, branding, harassment, [and] death,” and “be considered in the area where
17 presently found, as an integral part of the natural system of the public lands.” *Id.* (emphasis
18 added).

19 22. The vast majority of wild horses in the United States are under BLM’s
20 jurisdiction—an agency within the Department of the Interior—and are managed in “herd
21 management areas” on public lands managed by BLM. *See* 43 C.F.R. § 4710.3-1. In addition,
22 the Forest Service manages a much smaller number of wild horses in “wild horse territories”
23 (“WHT”) on public lands at several national forests under its jurisdiction, as an agency within
24 USDA. *See* 36 C.F.R. § 222.60.

25 23. Section 3 of the Wild Horse Act allows BLM or the Forest Service to manage
26 wild horses by removing “excess” animals from “a given area of the public lands,” but only
27 after the agency specifically determines that: (1) “an overpopulation [of wild horses] exists on a
28 given area of the public lands,” and (2) “action is necessary to remove excess animals,” as

1 opposed to undertaking other approaches to managing wild horse populations. 16 U.S.C. §
2 1333(b)(2). The Wild Horse Act defines “excess” horses as those “which must be removed
3 from any area in order to preserve and maintain a thriving natural ecological balance and
4 multiple-use relationship in that area.” 16 U.S.C. § 1332(f).

5 24. Once BLM or the Forest Service makes an “excess determination,” it may
6 remove from public lands only those “excess animals from the range so as to achieve
7 appropriate management levels,” which are population thresholds that the agency has
8 previously determined will ensure a thriving natural ecological balance. 16 U.S.C. §
9 1333(b)(1). Although the Wild Horse Act contemplates that BLM or the Forest Service must
10 “determine whether appropriate management levels should be achieved by the removal or
11 destruction of excess animals,” *id.*, the Act also specifies “other options” . . . such as . . . natural
12 controls on population levels” that might achieve a thriving natural ecological balance *Id.*

13 25. In the event that BLM or the Forest Service elects to remove excess horses from
14 the range—as opposed to undertaking other options for achieving a thriving natural ecological
15 balance—the Wild Horse Act instructs that the agency shall, “in the following order and
16 priority,” (1) “order old, sick, or lame animals to be destroyed in the most humane manner
17 possible”; (2) ensure “private maintenance and care [of horses] for which [the agency]
18 determines an adoption demand exists by qualified individuals, and for which [the agency]
19 determines [it] can assure humane treatment and care (including proper transportation, feeding,
20 and handling)”; and (3) “cause additional excess wild free-roaming horses and burros for which
21 an adoption demand by qualified individuals does not exist to be destroyed in the most humane
22 and cost efficient manner possible.” 16 U.S.C. § 1333(b)(2); *see also* 36 C.F.R. § 222.69(c).

23 C. NATIONAL FOREST MANAGEMENT ACT

24 26. NFMA requires the Forest Service to “develop, maintain, and, as appropriate,
25 revise land and resource management plans for units of the National Forest System.” 16 U.S.C.
26 § 1604(a). In developing and amending land and resource management plans (“Forest Plans”),
27 the Forest Service “shall use a systematic interdisciplinary approach to achieve integrated
28 consideration of physical, biological, economic, and other sciences.” *Id.* § 1604(b). Congress

1 mandated that the Forest Service “shall provide for public participation in the development,
2 review, and revision of land management plans.” *Id.* § 1604(d).

3 27. NFMA’s implementing regulations provide that “[t]he first priority for planning
4 to guide management of the National Forest System is to maintain or restore ecological
5 sustainability of national forests and grasslands to provide for a wide variety of uses, values,
6 products, and services.” 36 C.F.R. § 219.2(a). Subsequent site-specific decisions to implement a
7 Forest Plan “must be consistent with the applicable plan,” and, if not, “the responsible official
8 may modify the proposed decision to make it consistent with the plan, reject the proposal, or
9 amend the plan to authorize the action.” *Id.* § 219.10. The Forest Service’s Range Management
10 Manual provides that “Wild Horse and Burro Territory plans are to conform with the Forest land
11 and resource management plans,” *id.* § 2263.11; territory plans must be in “compliance with the
12 management direction identified in Regional Guides and Forest land and resource management
13 plans,” *id.* §2263.1; and a territory plan must “describe[] desired population level, detailed
14 management practices, interagency coordination, scheduling, and monitoring requirements for
15 managing each herd unit, within the direction established in the Forest plan,” *id.* § 2260.5.
16
17

18 **D. NATIONAL ENVIRONMENTAL POLICY ACT**

19 28. NEPA requires all federal agencies to prepare a “detailed statement”—i.e., an
20 EIS—regarding all “major federal actions significantly affecting the quality of the human
21 environment.” 42 U.S.C. § 4332.

22 29. Agencies must take a “hard look” at all of the consequences, environmental
23 impacts, and adverse effects of their proposed actions. *See Kleppe v. Sierra Club*, 427 U.S. 390,
24 410 n.21 (1976).

25 30. Under NEPA, an EIS must describe (1) the “environmental impact of the
26 proposed action,” (2) any “adverse environmental effects which cannot be avoided should the
27 proposal be implemented,” (3) alternatives to the proposed action, (4) “the relationship between
28 local short-term uses of man’s environment and the maintenance and enhancement of long-

1 term productivity,” and (5) any “irreversible or irretrievable commitment of resources which
2 would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(C).

3 31. Regulations promulgated by the Council on Environmental Quality (“CEQ”)
4 guide an agency’s determination of whether the impacts of an action are “significant” and thus
5 require preparation of an EIS. 40 C.F.R. § 1508.27. An agency must consider, among other
6 factors, “[t]he degree to which the action may establish a precedent for future actions with
7 significant effects or represents a decision in principle about a future consideration,” and
8 “[w]hether the action threatens a violation of Federal, State, or local law or requirements
9 imposed for the protection of the environment.” *Id.* § 1508.27(b).

10 32. Federal agencies “shall to the fullest extent possible . . . encourage and facilitate
11 public involvement in decisions which affect the quality of the human environment.” 40 C.F.R.
12 § 1500.2. “NEPA procedures must insure that environmental information is available to public
13 officials and citizens before decisions are made and before actions are taken.” *Id.* § 1500.1(b).
14 “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to
15 implementing NEPA.” *Id.* “Most important, NEPA documents must concentrate on the issues
16 that are truly significant to the action in question, rather than amassing needless detail.” *Id.*

17 **FACTS GIVING RISE TO PLAINTIFFS’ CLAIMS FOR RELIEF**

18 **A. THE DEVIL’S GARDEN WHT AND THE 1991 FOREST PLAN**

19 33. The Devil’s Garden WHT is located north of the town of Alturas, California in
20 Modoc County. The Devil’s Garden WHT, which lies primarily within the Modoc National
21 Forest, consists of approximately 258,000 acres of public land. It is the last large wild horse
22 territory on Forest Service land in California. While a small portion of the WHT—8,300
23 acres—falls on lands under the jurisdiction of BLM, the Forest Service takes the lead role in
24 managing the entire territory pursuant to an inter-agency Memorandum of Understanding since
25 the vast majority of the WHT’s acreage is on Forest Service land.

26 34. In late 1980s and early 1990s, the Forest Service went through the formal Land
27 and Resource Management Plan development process for the Modoc National Forest pursuant to
28 NFMA. At the conclusion of that process, the Forest Service issued the 1991 Forest Plan for the

1 Modoc National Forest, an accompanying EIS, and a Record of Decision (“ROD”). None of
2 those documents references—let alone analyzes—selling wild horses “without limitation” for
3 commercial purposes such as slaughter for human consumption.

4 35. The Forest Service has not issued a revised Forest Plan. Thus, the 1991 Forest
5 Plan remains the legally operative programmatic planning document for the Modoc National
6 Forest, including on wild horse management matters related to the Devil’s Garden WHT.

7 **B. THE GOVERNMENT’S ADOPTION AND SALE POLICY AND PRACTICE**

8 36. In the mid-1990s, the Fund for Animals sued BLM due to concerns that wild
9 horses were being adopted or purchased by individuals who then sold the horses to commercial
10 slaughterhouses. In 1997, BLM entered into a court-approved settlement agreement to resolve
11 that lawsuit, in which BLM agreed to require that anyone adopting or purchasing a wild horse
12 must swear under penalty of perjury at the time of adoption or purchase that they did not intend
13 to kill or sell the horses for commercial slaughter, nor would they transfer ownership to anyone
14 who they knew or had reason to believe would kill the horses for commercial purposes.

15 37. Since 1997, pursuant to this settlement agreement, BLM has included in all wild
16 horse adoption and sale transactional forms a statement requiring an adopter or purchaser to
17 sign, under penalty of perjury, attesting that s/he will not kill the horse for commercial
18 purposes, nor will s/he transfer ownership to anyone who would kill the horse for commercial
19 purposes. Specifically, BLM’s adoption and sale forms require certification that “I have no
20 intent to sell this wild horse or burro for slaughter or bucking stock, or for processing into
21 commercial products, within the meaning of the Wild and Free Roaming Horse and Burro Act,
22 16 U.S.C. 1331 et seq., and regulations 43 CFR 4700.0-5(c).”

23 38. Likewise, because the Forest Service looks to BLM for guidance in managing
24 wild horses as the expert resource agency that manages the vast majority of our nation’s wild
25 horses, the Forest Service has, for several decades, required anyone adopting or purchasing a
26 wild horse to sign a statement certifying that “I will provide humane care for such animals and
27 will not sell or transfer ownership of any such animals that I purchase to any person or
28 organization that intends to resell, trade, or give away such animals for processing into

1 commercial products.” Until 2018, the Forest Service used BLM’s adoption and sale forms,
2 which included the certification language explained above.

3 39. In 1998, California voters adopted Proposition 6, which codified in the
4 California Penal Code that “it is unlawful for any person to possess, to import into or export
5 from the state, or to sell, buy, give away, hold, or accept any horse with the intent of killing, or
6 having another kill, that horse, if that person knows or should have known that any part of that
7 horse will be used for human consumption.” Cal. Penal Code 598c(a). This criminal prohibition
8 on the sale or transfer of horses to be killed for human consumption applies not only to
9 federally-protected wild horses, but more broadly to “any equine, including any horse, pony,
10 burro, or mule.” Cal. Penal Code 598c(b).

11 40. After the California State Legislature enacted Cal. Penal Code 598c in 1998,
12 BLM and Forest Service field offices in California incorporated the California state law
13 prohibitions into their adoption and sale forms. For example, those forms expressly require a
14 purchaser to “certify that [he/she] will not violate either section of the California Penal Code”
15 contained in Cal. Penal Code 598c or 598d (both of which are quoted in full on the form),
16 which must be signed by the purchaser.

17 41. Because for decades BLM and the Forest Service have refused to sell horses
18 “without limitation,” any horses that could not be adopted or sold with limitation were placed
19 in holding facilities until they could be adopted.

20 42. In 2004, in response to the government’s longstanding approach of only selling
21 wild horses “with limitations,” which prohibited slaughter and/or commercial processing of
22 such horses, Senator Conrad Burns from Montana introduced the “Burns Amendment” to the
23 Wild Horse Act through an omnibus bill. This bill amended Section 3 of the Wild Horse Act by
24 allowing BLM and the Forest Service to sell excess horses of more than ten years of age or that
25 have been offered unsuccessfully for adoption at least three times. *See* 16 U.S.C. § 1333(e)(1).
26 The amendment clarified that excess wild horses meeting these criteria would be “made
27 available for sale *without limitation*, including through auction to the highest bidder, at local
28 sale yards or other convenient livestock selling facilities, until such time as . . . all excess

1 animals offered for sale are sold; or the appropriate management level, as determined by the
2 [agency], is attained in all areas occupied by wild free-roaming horses and burros.” *Id.* §
3 1333(e)(2) (emphasis added).

4 43. Despite the 2004 amendment to the Wild Horse Act authorizing the sale of wild
5 horses “without limitation,” Congress has repeatedly rejected implementation of that effort by
6 routinely making clear in appropriations language included in the Department of Interior
7 annual appropriations that the sale of wild horses for slaughter is strictly prohibited. *See, e.g.*,
8 Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (“Appropriations herein made
9 shall not be available for the destruction of healthy, unadopted, wild horses and burros in the
10 care of [BLM] or its contractors or for the sale of wild horses and burros that results in their
11 destruction for processing into commercial products”).

12 44. Since 2004, consistent with Congress’ mandate in the Interior Department’s
13 annual appropriations bills, BLM has continued to adhere to its pre-2004 approach of only
14 selling horses “with limitations,” thereby requiring anyone adopting or purchasing a wild horse
15 to certify at the time of adoption or purchase that they do not intend to kill or sell the horses for
16 commercial slaughter, nor would they transfer ownership to anyone who they knew or had
17 reason to believe would kill the horses for commercial purposes. Although the appropriations
18 language prohibiting sale for slaughter specifically applies to BLM, the Forest Service has
19 followed BLM’s policy of ensuring that Forest Service wild horses were sold only “with
20 limitations,” and requiring all buyers of wild horses to certify that no horse will be killed for
21 commercial slaughter or transferred to anyone who will slaughter them for commercial
22 purposes. In addition, for all actions taking place in California, BLM and the Forest Service
23 have continued to require purchasers to also certify that they will not violate Cal. Penal Code
24 598c and 598d.

25 45. In 2014, BLM adopted and issued Instruction Memorandum 2014-132, which
26 “outlines policies and procedures for the Wild Horse and Burro (WH&B) Sale Program.” The
27 memorandum explains that “[t]his policy was developed to provide additional assurances that
28 animals will not be processed into commercial products.” This memorandum remains operative

1 and governs BLM's sale of excess horses, and, pursuant to contractual agreements authorizing
2 BLM to oversee Forest Service wild horse sales, has applied to the sale of all Forest Service
3 horses since 2014.

4 C. RECENT WILD HORSE ACTIONS IN THE MODOC NATIONAL FOREST

5 46. In 2013, the Forest Service issued the Devil's Garden Wild Horse Territory
6 Management Plan, Environmental Assessment ("EA"), Finding of No Significant Impact
7 ("FONSI"), and ROD. Although these long-term planning documents analyzed various issues
8 related to wild horse management in the Devil's Garden WHT, none references—let alone
9 examines—the sale of excess wild horses “without limitation,” the impacts of such an action,
10 or any feasible alternatives to that approach.

11 47. In 2014, Plaintiffs AWHC and Carla Bowers brought a lawsuit challenging one
12 aspect of the 2013 Wild Horse Territory Management Plan and the accompanying NEPA
13 documents—i.e., the Forest Service's elimination of more than 23,000 acres from the middle of
14 the Devil's Garden WHT. In September 2017, the U.S. Court of Appeals for the District of
15 Columbia Circuit ruled in Plaintiffs' favor that the Forest Service's arbitrarily and capriciously
16 eliminated this middle section from the Devil's Garden WHT, and vacated the portions of the
17 Wild Horse Territory Management Plan, EA, FONSI, and ROD pertaining to the elimination of
18 this acreage from the Devil's Garden WHT. *See American Wild Horse Preservation Campaign*
19 *v. Perdue*, 873 F.3d 914 (D.C. Cir. 2017). The remainder of the Wild Horse Territory
20 Management Plan and the accompanying NEPA documents remain operative.

21 48. During the pendency of the D.C. Circuit litigation, the Forest Service
22 commissioned an internal working group to consider options for achieving the appropriate
23 management level in the Devil's Garden WHT. One option considered internally by this
24 working group was “Sales Without Limitation,” which the working group concluded was *not*
25 “consistent with the [Wild Horse Territory Management Plan] and Forest Plan” and *would*
26 require “[a]dditional NEPA” review. The working group also determined that if the Forest
27 Service ultimately decided to pursue this option, “100% of the animals sold would likely end
28 up slaughtered,” a “[h]uge public outcry can be expected,” “Congress is likely to react by

1 placing a rider on the Forest Service’s appropriations [similar to BLM],” the “Forest Service is
2 likely to end up with very black eyes and unceasing scrutiny,” and this approach “[m]ay be
3 contrary to a California state law that prohibits knowingly selling a horse for slaughter.”

4 49. In April 2016, the Forest Service’s internal working group circulated to Forest
5 Service staff a draft implementation document for the 2013 Wild Horse Territory Management
6 Plan. This document once again considered the option of “Sale Without Limitation
7 (Slaughter),” but explained that this approach has “not been implementable due to enormous
8 public controversy.” The document concluded that “using [this] tool” would: “[r]equire
9 additional environmental analysis to amend the [Wild Horse Territory Management Plan]”;
10 “[l]ead to enormous public controversy and lengthy litigation”; and [r]isks Congressional
11 limitations on the Forest Service’s budget appropriations.” The document once again concluded
12 that this approach is *not* “consistent with the [Wild Horse Territory Management Plan] and
13 Forest Plan” and *would* require “[a]dditional NEPA” review.

14 50. In September 2016, the Forest Service conducted a wild horse roundup, which
15 resulted in the agency removing 221 excess horses from the range. It was the first wild horse
16 roundup in the Devil’s Garden WHT in more than ten years. On information and belief,
17 approximately 110 of those horses were adopted, 76 horses were sold “with limitations,” and
18 the remainder died or ended up in long-term holding facilities. In undertaking its 2016 wild
19 horse roundup, the Forest Service did not issue any decision document, excess determination,
20 or NEPA review document, and did not analyze the sale of excess wild horses “without
21 limitation,” the impacts of such action, or any feasible alternatives to this disposition approach.

22 51. In July 2018, the Forest Service issued an “Updated Excess Wild Horse
23 Determination” accompanied by a “Supplemental Information Report” pursuant to NEPA.
24 While acknowledging that “[t]he desired placement of all horses is through adoptions and sales
25 to avoid putting horses in long-term holding,” those documents did not suggest in any way that
26 the agency would depart from its longstanding policy and practice of selling horses “with
27 limitations” that would prohibit killing or slaughtering horses for commercial purposes. Nor, in
28 the absence of any suggestion that such sales would be “without limitation,” did the Forest

1 Service examine the impacts of, and alternatives to, selling wild horses to individuals who
2 might kill them for commercial purposes, or solicit public comment on this question of
3 immense public interest and controversy. Indeed, the Forest Service clarified that “[t]he Forest
4 Service has generally relied on the BLM expertise . . . for operational management of
5 individual [wild horse] herds, including: gathers, removals, transport, holding facilities, animal
6 care, *adoption and sale events*.” (Emphasis added). Again, BLM’s longstanding approach—
7 which that agency continues to follow at this time—is only selling excess wild horses “with
8 limitations.”

9 **D. THE FOREST SERVICE’S DECISION TO SELL HORSES “WITHOUT**
10 **LIMITATION”**

11 52. Although the Forest Service has never engaged in any notice-and-comment
12 decisionmaking concerning the possibility of selling excess wild horses “without limitation”
13 for the first time in agency history (and in the history of the federal government), nor has it
14 examined this highly controversial action under NEPA or alternatives to it, the Forest Service
15 announced in a September 25, 2018 press release that it would soon begin rounding up and
16 removing nearly 1,000 excess horses from the Devil’s Garden WHT, and that those horses
17 would be made available for adoption and sale. At the Devil’s Garden Wild Horse Placement
18 Group Conference Call that took place the same day, Forest Service officials (Ken Sandusky
19 and Leigh Sevy) explained to the Placement Group (including Plaintiff Carla Bowers) that the
20 agency had decided to sell excess horses with limitations (i.e., *not* for slaughter for human
21 consumption) for the first thirty days for \$25 per horse for up to 24 horses per day per buyer,
22 and that after thirty days the Forest Service would sell older horses *without limitation* for \$25
23 per horse for up to 36 horses per buyer per week.

24 53. On October 4, 2018, a Forest Service official (Ken Sandusky) publicly clarified
25 to the media that any horses that are not adopted or sold “with limitations” would be sold
26 “without limitation” because, in the agency’s view, “unlimited sale [is] the only fiscally
27 responsible option.” Mr. Sandusky also acknowledged that this approach is unprecedented and
28 stated that “[b]asically everything we’re doing is new.”

1 54. Also on October 4, 2018, Mr. Sandusky sent an email to Plaintiff Carla Bowers
2 in which he explained that “Amanda’s decision”—i.e., the decision made by Modoc National
3 Forest Supervisor Amanda McAdams—“was to begin the 30-day adoption and sale with
4 limitations period for 10+ year olds.” He then explained that “[s]ale with limitations will be
5 \$25/horse and adoption fee will be the same as BLM.” Importantly, he also explained that
6 “[u]pon completion of that 30-day period, horses will also be *available for sale without*
7 *limitations at \$1/horse.*” (Emphasis added). His email provided no explanation for the
8 agency’s decision adopting a completely different approach to selling excess horses than the
9 Forest Service had previously used.

10 55. Upon discovering that the Forest Service was planning to take the unprecedented
11 action of selling excess horses “without limitation,” Plaintiff AWHC sent a letter to the Forest
12 Service on October 4, 2018 urging the agency to “[p]rohibit the sale without limitation of all
13 Devil’s Garden wild horses,” and explaining that the action “will result in hundreds of these
14 horses being sold for slaughter against the wishes of 80 percent of Americans and in violation
15 of California law that prohibits the slaughter of horses for human consumption and the export
16 of horses for slaughter for human consumption.” To date, the Forest Service has not responded
17 to this letter.

18 56. On October 9, 2018, the Forest Service began rounding up and removing horses
19 from the Devil’s Garden WHT. The agency intends to remove approximately 1,000 excess
20 horses by early November.

21 57. On October 9, 2018, Senator Dianne Feinstein of California sent a letter to the
22 Forest Service raising concerns “that many of these animals will end up being sold to
23 slaughterhouses.” She also asked the agency to respond to the following question: “Can the
24 Forest Service certify that no horses that are sold will be transferred to third-party buyers who
25 may end up slaughtering the animals for commercial use?”

26 58. On October 10, 2018, Pacific Southwest Regional Forester Randy Moore
27 formally issued an op-ed in which he stated that “[h]orses that do not get adopted will be
28 offered for limited sales.” For those sales with limitations, he stated that “we will include

1 stipulations for buyer[s], one of which prohibits using horses for food consumption.” He then
2 explained that “[a]fter that, the only remaining path for the U.S. Forest Service to pursue [is]
3 *unlimited sale without restrictions.*” (Emphasis added).

4 59. On October 12, 2018, the Forest Service “extended the timeline for wild horses
5 to be adopted or sold with limitations.” “The new timeline will be a total of 90 days from when
6 the gather started on Oct. 10.” The press release stated that “[i]t will take approximately thirty
7 days to gather and process one thousand horses and the adoption and sale period will run for
8 sixty days after that.” Based on this press release, it is Plaintiffs’ understanding that the Forest
9 Service will not begin selling excess horses “without limitation” before January 9, 2019.

10 60. On October 15, 2018, twenty-three members of the California State Legislature
11 signed and submitted a letter to the Forest Service urging the agency “to take immediate action
12 to halt the wild horse roundup in the Modoc National Forest” because “[t]his could very well
13 mean that many of these horses will end up being sold to slaughter plants.” They explained that
14 “Republican and Democratic administrations have respected federal and state law’s clear intent
15 to prevent the sale of federally-protected wild horses for slaughter by ensuring that the [Forest
16 Service] maintained a no-slaughter policy for the much smaller number of federally-protected
17 wild horses and burros it manages.” The letter concluded by requesting that the Forest Service
18 halt the roundup until the agency can “[p]rovide credible assurances and follow up with
19 evidence that no wild horses from the Devil’s Garden Wild Horse Territory that are sold will
20 wind up slaughtered.”

21 **E. SELLING HORSES WITHOUT LIMITATION WILL RESULT IN**
22 **SLAUGHTER FOR HUMAN CONSUMPTION**

23 61. It is well-documented that the *only* commercial use for slaughtered horses
24 shipped out of this country is human consumption. Although no horse slaughter plants operate
25 in the United States, some American horses are purchased at livestock auctions in the U.S. by
26 middlemen known as “kill buyers,” who transport the horses across the border and sell them to
27 commercial slaughter facilities in Canada and Mexico. Each of these commercial slaughter
28 facilities make products that are solely for human food products. The only commercial

1 slaughter market for horses that exists is for slaughter in Canada and Mexico to produce
2 horsemeat that is sold into overseas markets for human consumption. This is why the Forest
3 Service’s own internal working group concluded that “100% of the animals sold would likely
4 end up slaughtered” in the event that the Forest Service sells excess horses “without
5 limitation.”

6 62. A recent blog post by a Modoc National Forest intern summarizing the agency’s
7 new approach to selling excess Devil’s Garden horses “without limitation” explains that “sale
8 without limitation will begin and buyers can purchase up to 36 horses for as low as a \$1
9 apiece.” The blog post further explains that “[h]orses can also be sold to sanctuaries, become
10 ranch stock horses, packing horses, *or to buyers that may send them to slaughter.*” (Emphasis
11 added). This blog is maintained with direct financial support from the Forest Service.

12 **PLAINTIFFS’ CLAIMS FOR RELIEF**

13 **CLAIM ONE: VIOLATIONS OF THE APA**

14 63. Each and every allegation above is incorporated herein by reference.

15 64. By reversing the Forest Service’s longstanding policy and practice concerning the
16 disposition of excess wild horses and by selling them “without limitation” knowing that they will
17 be slaughtered for human consumption, the Forest Service has violated the APA by abandoning its
18 policy and practice without supplying any legally coherent, non-arbitrary justification for its
19 decision.

20 65. By failing to conduct any notice-and-comment decisionmaking process, and instead
21 adopting a drastically different approach to selling excess wild horses without soliciting any public
22 input in the decision and by announcing the agency’s decision through emails, press releases, and
23 media statements, the Forest Service’s decision contravenes elementary APA requirements.

24 66. By jettisoning the longstanding policies and practices concerning the sale of excess
25 wild horses by BLM—the agency from which the Forest Service admittedly seeks guidance with
26 respect to the appropriate way to sell excess wild horses, and which in the past the Forest Service
27 contracted with to round up, hold, adopt, and sell Forest Service excess horses—the Forest Service
28 has acted arbitrarily, capriciously, and in contravention of the APA.

1 67. By failing to consider and evaluate as part of a public decisionmaking process
2 whether the agency’s new approach of selling excess wild horses without limitation will violate
3 Cal. Penal Code 598c—or to solicit public comment on that issue—the Forest Service acted
4 arbitrarily, capriciously, and in violation of the APA.

5 68. For all of these reasons, the Forest Service’s recent decision to sell excess wild
6 horses without limitation must be set aside as an agency action that is “arbitrary, capricious, an
7 abuse of discretion, or otherwise not in accordance with law” and/or “without observance of
8 procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

9 69. These unlawful actions injure Plaintiffs as described in paragraphs 7-16.

10 **CLAIM TWO: VIOLATIONS OF NEPA AND THE APA**

11 70. Each and every allegation above is incorporated herein by reference.

12 71. By failing to conduct any NEPA review whatsoever disclosing to the public that the
13 agency was contemplating the sale of excess wild horses without limitation, and by failing to
14 analyze in an EIS (or even an EA) the impacts of, and alternatives to, the agency’s new approach
15 of selling excess horses without limitation, the Forest Service violated NEPA, its implementing
16 regulations, and the APA.

17 72. By failing to prepare an EIS for this highly controversial, precedent-setting decision
18 that will result in extremely significant impacts to federally-protected wild horses and that will
19 also likely violate both NFMA and Cal. Penal Code 598c (and intensely implicate various NEPA
20 “significance” factors”), the Forest Service violated NEPA, its implementing regulations, and the
21 APA.

22 73. By failing to ensure that “high quality” information was made “available [to]
23 officials and citizens before decisions are made and before actions are taken,” 40 C.F.R. §
24 1500.1(b), and by failing “to the fullest extent possible . . . [to] encourage and facilitate public
25 involvement in decisions which affect the quality of the human environment,” *id.* § 1500.2, the
26 Forest Service acted in a manner that is arbitrary and capricious, an abuse of discretion, and
27 contrary to law, in violation of NEPA and the APA.

28

1 74. For all of these reasons, the Forest Service’s recent decision to sell excess wild
2 horses without limitation violated NEPA and its implementing regulations, and must be set aside
3 as an agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
4 accordance with law” and/or “without observance of procedure required by law.” 5 U.S.C. §
5 706(2)(A), (D).

6 75. These unlawful actions injure Plaintiffs as described in paragraphs 7-16.

7 **CLAIM THREE: VIOLATIONS OF NFMA AND THE APA**

8 76. Each and every allegation above is incorporated herein by reference.

9 77. By taking an action that the Forest Service’s own internal working group concluded
10 does not conform to the 1991 Forest Plan or the 2013 Wild Horse Territory Management Plan, and
11 which was never disclosed or analyzed in either of those legally binding planning documents or
12 their accompanying NEPA reviews, the agency’s decision to sell excess wild horses without
13 limitation violated NFMA, its implementing regulations, and the APA.

14 78. By failing to formally revise or amend the 1991 Forest Plan (or the 2013 Wild
15 Horse Territory Management Plan) pursuant to the procedures set forth in NFMA and its
16 implementing regulations—including the solicitation of public comment on any such revisions
17 and/or amendments—to account for this new decision that the Forest Service has never before
18 proposed or evaluated, the agency violated NFMA, its implementing regulations, and the APA.

19 79. For all of these reasons, the Forest Service’s recent decision to sell excess wild
20 horses without limitation violated NFMA and its implementing regulations, and must be set aside
21 as an agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
22 accordance with law” and/or “without observance of procedure required by law.” 5 U.S.C. §
23 706(2)(A), (D).

24 80. These unlawful actions injure Plaintiffs as described in paragraphs 7-16.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Defendants have violated the National Environmental Policy Act, the National Forest Management Act, the Administrative Procedure Act, and relevant implementing regulations;
 2. Set aside the challenged agency decision for failing to comply with federal law and the agency’s own binding Forest Plan, and remand the decision for further consideration by the Forest Service;
 3. Enjoin Defendants from taking any further actions to implement the decision until the agency has fully complied with these laws;
 4. Award Plaintiffs their reasonable attorneys’ fees and litigation costs in this action;
- and
5. Grant Plaintiffs such other and further relief the Court may deem just and proper.

1 Dated: October 19, 2018

Respectfully submitted,

2
3 /s/ Christopher Berry _____

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