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11 *Protection of Mustangs and*
12 *Burros*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 International Society for the Protection of
11 Mustangs and Burros, a non-profit
organization,

12 Plaintiff,

13 vs.

14
15 United States Government, Department of
16 Agriculture, Tom Vilsack as acting United
17 States Secretary of Agriculture; United States
Forest Service, Judy Palmer as acting U.S.
Forest Supervisor,

18 Defendants.

Case No. _____

**COMPLAINT SEEKING
DECLARATORY RELIEF**

(Jury Trial Demanded)

19
20 Plaintiff, the International Society for the Protection of Mustangs and Burros
21 (“ISPMB”), a non-profit organization, hereby alleges as follows:

22 **NATURE OF THE ACTION**

23 1. This is an action for declaratory relief precipitated by the March 21, 2022
24 notice that the United States Forest Service planned the capturing and removal of “up to 20
25 unauthorized livestock”, specifically, feral horses found on the Apache National Forest. In
26 its notice, the Forest Service alleges that these horses are negatively impacting native plants
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28

1 and animals, watersheds and ecosystems. Once captured, the horses will be impounded and
2 offered for public sale. Upon information and belief, the majority of these horses will be
3 purchased for slaughter and sold for their meat.
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5 JURISDICTION AND VENUE

6 1. Jurisdiction is proper in this action pursuant to 28 U.S.C. Section 1331 (federal
7 question), 28 U.S.C. Section 2201 (declaratory judgment), the Administrative Procedure Act
8 (5 U.S.C. Section 701, et seq.)(“APA”), the National Environmental Policy Act (42 U.S.C.
9 Section 4321, et seq.)(“NEPA”), and 28 U.S.C. 1346 (United States as defendant).
10

11 2. Venue is appropriate in this Court pursuant to 28 U.S.C. Sections 1391(b) and
12 (e).
13

14 THE PARTIES

15 3. Plaintiff, the International Society for the Protection of Mustangs and Burros
16 (“ISPMB”), is a non-profit organization formed for the purpose of furthering the protection
17 and preservation of wild horses and burros. ISPMB is incorporated in the state of California.
18 ISPMB was headquartered in Arizona from approximately 1993 until the year 2000 when it
19 re-located its headquarters to South Dakota. ISPMB is the oldest wild horse and burro
20 organization in the United States. Along with its first president, Wild Horse Annie, ISPMB
21 was instrumental in securing and implementing the 1971 Wild Free-Roaming Horses and
22 Burros Act. ISPMB is an affected and interested party in the State of Arizona.
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1 4. Defendant, the U.S. Department of Agriculture, is a branch of the United States
2 government which has been charged with the responsibility of overseeing the protection and
3 management of wild free-roaming horses on National Forest System lands.

4 5. Defendant, Tom Vilsack, is named only in his capacity as the current Secretary
5 of Agriculture, United States Government.
6

7 6. Defendant, U.S. Forest Service, is a governmental agency of the United States
8 and is under the direction and control of the Secretary of Agriculture.
9

10 7. Defendant, Judy Palmer, is named only in her capacity as the acting U.S. Forest
11 Supervisor for the Apache-Sitgreaves Forests. Her business office is located in Springerville,
12 Arizona.

13 **GENERAL ALLEGATIONS**

14 8. In passing the Wild Free-Roaming Horses and Burros Act of 1971, Congress
15 declared that “wild free-roaming horses and burros are living symbols of the historic and
16 pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation
17 and enrich the lives of the American people; and that these horses and burros are fast
18 disappearing from the American scene. It is the policy of Congress that wild free-roaming
19 horses and burros shall be protected from capture, branding, harassment, or death; and to
20 accomplish this they are to be considered in the area where presently found, as an integral
21 part of the natural system of the public lands.” 16 U.S.C. § 1331 et seq.
22

23 9. Sometime prior to March 21, 2022, the U.S. Forest Service arbitrarily and
24 without adequate investigation, determined that up to 20 horses living on the Apache National
25 Forest were “unauthorized livestock” or feral horses and that their removal was necessary.
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1 10. On or about March 21, 2022 the U.S. Forest Service released a notice
2 memorializing their plan to remove the horses, a copy of which is attached as Exhibit “A”
3 and incorporated herein.

4 11. An updated notice by the U.S. Forest Service, relative to this horse removal,
5 changed the number of horses to be removed from “20” to “a number of unauthorized
6 livestock”, a copy of which is attached as Exhibit “B” and incorporated herein.

7 12. In addition to not disclosing how many horses they intend or have authorized
8 to remove, the U.S. Forest Service notice regarding this removal does not identify where,
9 within the Apache National Forest, these horses are located and living.

10 13. In her memo implementing what she refers to as the “Unauthorized Livestock
11 Project”, Forest Supervisor Judy Palmer authorizes generally, the removal of unauthorized
12 livestock from the Apache National Forest.

13 14. The Apache National Forest consists of three Ranger Districts, Springerville,
14 Alpine, and Clifton.

15 15. In a June 11, 2021 Forest Service “Determination Letter” presumably created
16 or utilized to bolster the “unauthorized livestock” designation, Forest Supervisor Anthony
17 Madrid makes conclusions about the origins of horses found within the Black River
18 Watershed in the Alpine and Springerville Ranger Districts. A copy of this Letter is attached
19 as Exhibit “C” and incorporated herein.

20 16. Similarly, a problematic June 2021 Assessment of the “legal status of the
21 Apache Horses” by Forest Range Program Manager Ralph Fink, purported to establish the
22 origins of horses found in the Black River region of the Apache National Forest, specifically
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1 within the Alpine and Springerville Ranger Districts. A copy of the Assessment is attached
2 as Exhibit “D” and incorporated herein.

3 17. While one could assume that the scope of this capture and removal, based on
4 the Determination Letter and the Assessment, is to remove horses from the Black River region
5 of the Apache National Forest within the Alpine and Springerville Ranger Districts, it is
6 absolutely not clear from the U.S. Forest Service’s notice nor from Ms. Palmer’s Project
7 memo which appear to provide for the removal of horses from the entire Apache National
8 Forest.
9

10 18. Furthermore, the U.S. Forest Service has summarily concluded, without
11 adequate investigation or documentation and in the face of contradictory evidence, that these
12 horses are feral horses as opposed to protected wild free-roaming horses.¹
13

14 19. There is Documentation of wild horses existing in the Apache National Forest
15 as early as 1910 and throughout the following decades that the Forest Service appears to have
16 ignored.
17

18 20. Upon information and belief, the U.S. Forest Service has failed historically and
19 presently to meaningfully survey the Apache National Forest for the presence of wild free-
20 roaming horses.
21

22 21. Upon information and belief, the U.S. Forest Service has not made any attempt
23 historically or presently, via census, inventory, or any other type of survey, to determine how
24 many of the horses slated for removal are branded or unbranded.
25

26 ¹ Wild free-roaming horses are all “unbranded and unclaimed horses...and their progeny that
27 have used lands of the National forest System on or after December 15, 1971, or do hereafter use
28 these lands as all or part of their habitat, but does not include any horse...introduced onto the
National Forest System on or after December 15, 1971, by accident, negligence, or willful disregard
of private ownership.” 36 C.F.R. § 222.60(b)(13).

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