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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 PUBLIC LANDS FOR THE PEOPLE,
12 INC., a California 501 C-3,
13 non-profit corporation; GERALD
14 E. HOBBS, an individual; ROBERT
15 HAIDUCK, an individual; BRYAN
16 BUNTING, an individual;
17 HILLARIE BUNTING, an
18 individual; STEVE WANDT, an
19 individual; GENE E. BAILEY, an
20 individual; RICHARD NUSS, an
21 individual; and RANDY BURLESON,
22 an individual;

23 Plaintiffs.

24 v.

25 UNITED STATES DEPARTMENT OF
26 AGRICULTURE; UNITED STATES
27 FOREST SERVICE; TOM VILSACK, in
28 his official capacity as
Secretary Of Agriculture; TOM
TIDWELL, in his official
capacity as the Chief Forester
Of The USDA Forest Service;
RANDY MOORE, in his official
capacity as Regional Forester
USDA Forest Service Regional
Office R5; and RAMIRO
VILLALVAZO, in his official

CIVIL ACTION NO.

COMPLAINT FOR:
VIOLATIONS OF THE NATIONAL
ENVIRONMENTAL POLICY ACT,
43 U.S.C. § 4321; TRANSFER
ACT, 16 U.S.C. § 472;
NATIONAL FOREST MANAGEMENT
ACT, 16 U.S.C. §§ 1600 et
seq.; WILDERNESS ACT, 16
U.S.C. § 1131 et seq.;
MULTIPLE USE SUSTAINED
YIELD ACT, 16 U.S.C. §
528; MULTIPLE SURFACE USE
ACT, 30 U.S.C. §§ 612 et
seq.; FEDERAL LAND POLICY
AND MANAGEMENT ACT, 43
U.S.C. §§ 1701 et seq.; RS
2477, 43 U.S.C. § 942;
ADMINISTRATIVE PROCEDURE
ACT, 5 U.S.C. § 706 et.
seq.; MINING AND MINERALS
POLICY ACT OF 1970, 30
U.S.C. § 21a; VIOLATION OF
OTHER FEDERAL STATUTES;
AND REQUEST FOR
DECLARATORY JUDGMENT;
INJUNCTIVE RELIEF; QUIET
TITLE; AND DAMAGES.

1 capacity as Forest Supervisor Of
2 The Eldorado National Forest;
3 Does 1-10.

4 Defendants.

DEMAND FOR JURY TRIAL

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7 **JURISDICTION AND VENUE**

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9 1. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action
10 arises under the laws of the United States. The conduct complained of creates an actual,
11 justiciable controversy and is made reviewable under the Administrative Procedures Act
12 (“APA”), 5 U.S.C. § 701 *et seq.* (1966).

13 2. This Court has jurisdiction, among other matters, pursuant to 28 U.S.C. § 1331
14 (federal question), §§ 2201, 2202 (declaratory relief), § 2202 (injunctive relief), and § 2409(a)
15 (quiet title). Judicial review is also sought pursuant to § 10 of the APA, 5 U.S.C. §§ 701-706.

16 3. This action arises under the various acts, regulations, laws, and constitutions, as
17 set forth in paragraph 8.

18 4. This Court has the power to grant declaratory and injunctive relief pursuant to 28
19 U.S.C. §§ 2201 and 2202.

20 5. This lawsuit requests judicial review of final agency actions taken by the
21 Defendants (or their predecessors in interest). Defendants’ actions unlawfully abrogate,
22 proscribe, and/or prohibit Federal statutorily prescribed rights of miners, prospectors, the off-
23 road community, and other recreational users of the ENF, as well as violating Federal statutorily
24 prescribed procedures relating to forest management and planning decisions in the ENF and on
25 National Forest lands.
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1 6. Defendants are attempting to unlawfully alter the entire Federal regulatory
2 framework for miners and prospectors in the Eldorado National Forest (“ENF”) by adopting a
3 rigid, narrow, and single-focus policy regarding closure of roads, rights of way, and haul roads in
4 the ENF to motorized vehicles. This policy was originally meant to be applied primarily to
5 recreational off-road vehicle users, without any meaningful consideration as to its impact on
6 miners, prospectors and other citizens who are potential miners and prospectors in the ENF.
7 Defendants’ actions not only fail to address, but actually exacerbate, pervasive National Forest
8 environmental problems and risks. Defendants failed to consider any meaningful alternatives
9 which could be applied specifically to miners, prospectors, and other citizens who are potential
10 miners and prospectors.
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12 7. This is an action for declaratory judgment, injunctive relief (Rule 65, Federal
13 Rules of Civil Procedure) and administrative review of agency action, as well as for damages
14 incurred by Plaintiffs. The Plaintiffs request the Court to declare unlawful, enjoin
15 implementation of, and set aside the promulgation and adoption of the ENF Travel Management
16 Plan closing roads, rights of way, and haul roads in the ENF, not only as it applies to miners and
17 prospectors, other members of the public who are potential miners and prospectors, but also off-
18 road recreational users, and other recreational users of the ENF.
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22 8. The Plaintiffs seek an Order from this Court declaring that Defendants’ actions in
23 adopting and implementing the Travel Management Plan as applied to miners and prospectors,
24 and those who intend to become miners and prospectors in the ENF, and off-road recreational
25 users, and other recreational users, violated the following:
26

- 27 A. National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*
28 (1969); and Executive Orders: EO 12291 and EO 12866.

- 1 B. National Forest Management Act (“NFMA”), 16 U.S.C. § 1600 *et seq.*
2 (1976);
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4 C. The Wilderness Act, 16 U.S.C. § 1131, *et seq.* (1964); The California
5 Wilderness Act of 1984, PL98-425, Sec. 111 (b) (6); the California
6 Wilderness Act, Cal. Public Resources Code § 5093.30 *et seq.*; and the
7 California Recreational Trails Act, Cal. Public Resources Code §§ 5070
8 through 5077.8;
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10 D. Multiple Use Sustained Yield Act (“MUSYA”), 16 U.S.C. § 528 *et seq.*
11 (1960);
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13 E. Administrative Procedures Act (“APA”), 5 U.S.C. § 701 *et seq.* (1966);
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15 F. Numerous Sections of the Code of Federal Regulations (“CFR”), as set forth
16 in 36 CFR 212 *et seq.*; 36 CFR 215.1 *et seq.*; 36 CFR 228 *et seq.*; and 36 CFR
17 261 *et seq.*
18
19 G. RS 2477 – Rights of Way
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21 H. The Federal Lands Policy and Management Act (“FLPMA”) 43 U.S.C. § 1701
22 *et seq.*, including without limitation §§ 1732(b), 1761 and 1769;
23
24 I. PL No. 104-208, 110 Stat.3009 § 108 (Omnibus Consolidated Appropriations
25 Act of 1997)
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27 J. 30 U.S.C. §§ 21-54 (Mining Act), including without limitation the Mining and
28 Minerals Policy Act of 1970, 30 U.S.C. § 21(a);
K. 30 U.S.C. § 612, 613, 615 (Multiple Surface Use Act);
L. 16 U.S.C. § 472 (Transfer Act) (The Organic Act of 1897);

1 M. 42 U.S.C. § 12132 (Americans with Disabilities Act); by adversely affecting
2 numerous citizens with disabilities by limiting easy access to general areas
3 and dispersed camping sites;

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5 N. 5 U.S.C. §§ 601, 602, 603(b) and (c) (Regulatory Flexibility Act As Amended
6 By The Small Business Regulatory Enforcement Fairness Act of 1996 (5
7 U.S.C. §§ 801-808) [SBREFA]);

8 O. 18 U.S.C. § 666 (Misappropriation of Federal Funds)

9 P. California Civil Code § 3479;

10 Q. California Code of Civil Procedure § 731;

11 R. The 5th and 14th Amendments to the Constitution of the United States; and

12 S. Article 1 § 7(a) of the Constitution of California.

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14 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1391(b) and (e), and
15 because the events and omissions giving rise to Plaintiffs' claims occurred within this judicial
16 district. This case is connected and related to "*Center for Sierra Nevada et al. vs. John Berry,*
17 *Eldorado National Forest Supervisor et. al.*", United States District Court, Eastern District of
18 California, CIV-S-02-0325 LKK/JFM" and originates from the Order dated Aug. 16, 2005, of
19 the Honorable Lawrence K. Karlton.
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23 **INTRODUCTION**

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25 10. Pursuant to 36 CFR 215, Public Lands for the People, Inc. ("PLP"), a California
26 501 c-3 non profit Corporation, for itself and for all of its members; as well as PLP
27 representative members Bryan and Hillarie Bunting, hereafter individually and collectively
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1 referred to as “The Buntings”; and Steve Wandt, on or about May 15, 2008, appealed to Randy
2 Moore, Regional Forester, USDA Forest Service (“FS”), from the Final Environmental Impact
3 Statement (“FEIS”) and Record of Decision (“ROD”) regarding the Eldorado National Forest,
4 (“ENF”) Public Wheeled Motorized Travel Management Plan Final Environmental Impact
5 Statement (“FEIS”), officially released April 2, 2008, and signed by ENF Supervisor Ramiro
6 Villalvazo. Appeals were also made by Randy Burleson and other PLP members.
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8 11. The ROD, among other matters set forth and approved the closure of roads and
9 rights of way for motorized vehicles in the ENF to the general public, including without
10 limitation, off-road vehicles, prospectors, and miners holding valid mineral estates and claims in
11 the ENF. The FEIS and the ROD were originally and primarily aimed at recreational off-road
12 vehicles and users. However, the FEIS and the ROD also hit hard and impacted prospectors and
13 miners in the ENF. This had the effect of severely limiting and/or prohibiting prospecting,
14 mining, and associated mining activities in the ENF. The closure of roads in the ENF was part of
15 a much larger scheme to close roads in all National Forests throughout the Western United States
16 to motorized vehicles; thus affecting, restricting, and prohibiting off-road vehicles, and mining
17 and prospecting throughout the Western United States. The closing of the numerous existing
18 routes which are contemplated by the ROD and FEIS will result in the overuse and abuse of
19 those routes, roads and rights of way not so closed. Modern prospectors and miners must have
20 access to motorized vehicles in order to move their equipment necessary for such prospecting
21 and mining.
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23 12. The end result of such closures would be to take vast tracks of the National
24 Forests in the Western United States and turn them into roadless areas, and *de facto* wilderness
25 areas, all without any authorization from Congress. Only Congress can create roadless and
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1 wilderness areas in the National Forests. The Wilderness Act of 1964, 16 U.S.C. § 1131 *et seq.*
2 *Wyoming v. United States Department of Agriculture et al.* 570 F.Supp.2d 1309, 1346 (D.
3 Wyoming 2008); *Parker v. United States*, 309 F.Supp. 593, 597 (D.Colo.1970) *aff'd*, 448 F.2d
4 793 (10th Cir.1971) “...no Federal lands shall be designated as ‘wilderness areas’ except as
5 provided for in this chapter or by a subsequent Act.” 16 U.S.C. § 1331 (a). “...the primary
6 purpose of the Wilderness Act was to provide: [a] statutory framework for the preservation of
7 wilderness [that] would permit long-range planning and assure that no further administrator
8 could arbitrarily or capriciously either abolish wilderness areas that should be retained or make
9 wholesale designations of additional areas in which use would be limited.” *Wyoming, supra*, 570
10 F.Supp.2d at 1346. “In this regard, the Wilderness Act functions as a ‘proceed slowly order’
11 until Congress-through the democratic process rather than by administrative fiat-can strike the
12 proper balance between multiple uses and preservation. *Parker*, 448 F.2d at 795. This statutory
13 framework necessarily acts as a limitation on agency action. *Id.* at 797.” *Wyoming, supra*, 570
14 F.Supp.2d at 1347.

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18 13. For over thirty years there has been tremendous interest in and frequent
19 disagreement over, management of “roadless areas” within the National Forest System. See,
20 generally, *Kootenai Tribe v. Veneman*, 313 F.3d 1094 (9th Cir. 2002); *State of Wyoming v. U.S.*
21 *Dept. of Agric.*, 277 F.Supp.2d 1197 (Wyo. 2003) *declared moot and vacated by*, 414 F.3d 1207
22 (10th Cir. 2005); *State of California ex rel Lockyer v. U.S. Dept. of Agric.*, 459 F.Supp.2d 874
23 (N.D.Cal. 2006) (appeals docketed). At the time the ENF ROD was issued, the 2001 Roadless
24 Rule was in effect, although that Rule had previously been declared illegal in 2003, was
25 reinstated in 2006, and was recently declared illegal again on August 12, 2008, in *Wyoming v.*
26 *U.S. Dept. of Agric.*, *supra*. The ENF Travel Management Plan is but a variation on a theme of
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1 the Roadless Rule. “As one scholar has explained, roads, which necessarily facilitate human
2 disturbance and activities, ‘are the coarse filter in identifying and defining wilderness.’ Michael
3 J. Mortimer, *The Delegation of Law-Making Authority to the United States Forest Service:
4 Implications in the Struggle for Nat’l Forest Mgmt.*, 54 Admin. L.Rev. 907, 959 (2002).”
5
6 *Wyoming, supra*, 570 F.Supp.2d at 1347.

7 14. In California, the Forest Service is specifically prohibited from creating roadless
8 and wilderness areas without express Congressional approval. The “California Wilderness Act
9 of 1984,” PL98-425, Sec. 111 (b) (6) states: “unless expressly authorized by Congress, the
10 Department of Agriculture shall not conduct any further statewide roadless area review and
11 evaluation of National Forest System lands in the State of California for the purpose of
12 determining their suitability for inclusion in the National Wilderness Preservation System.” This
13 mandate cannot be evaded by creating *de facto* roadless and wilderness areas in the ENF, or any
14 other National Forest, from areas where none previously existed. The creation of these *de facto*
15 roadless and wilderness areas was never discussed in the DEIS or FEIS or the ROD, and
16 consequently the public never had a chance to adequately comment on them. The Congress has
17 never authorized the FS to create any roadless and wilderness areas in the ENF, or any other
18 National Forest in California.
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22 15. This much larger scheme to effectuate multiple road closures, not only in the
23 ENF, but throughout the National Forests in the Western United States, thereby creating
24 unauthorized roadless and wilderness areas, was not disclosed to the general public in the DEIS
25 or FEIS, or the ROD by Defendants; and was not dealt with in the ROD and FEIS, and thus not
26 commented upon by the general public. For example, the Tahoe National Forest, among
27 numerous other National Forests, is in the process of implementing a Travel Management Plan
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1 which will close roads, rights of way, and haul roads to motorized vehicles, and consequently
2 restrict and/or prohibit off-road vehicles, and prospecting and/or mining in the Tahoe National
3 Forest.
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5 16. The closure of roads in ENF to motorized vehicles serves as the template for the
6 same and similar closures in all other National Forests in the Western United States. The closure
7 of roads in the ENF to motorized vehicles affects access to numerous adjacent National Forests
8 and Management Units in the Western United States. The closure of roads in ENF to motorized
9 vehicles affects the ability of prospectors and miners in other National Forests and Management
10 Units to utilize their right to prospect, and to access their mining claims and mineral estates in
11 these National Forests and Management Units. The closure of roads in the ENF to motorized
12 vehicles affects the recreational use by the off-road community and the general public in other
13 National Forests and Management Units in the Western United States.
14

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16 17. Neither the DEIS, FEIS, or ROD discussed the impact of the closure of roads in
17 the ENF to motorized vehicles or access to, and impact in, other National Forests and
18 Management Units in the Western United States. Consequently, the public never had the
19 opportunity to comment on these issues, or were ever made aware of the full impact and effects
20 of the closure of roads to motorized vehicles in the ENF on other National Forests and
21 Management Units.
22

23 18. The National Forests constitute “one integral system.” 16 U.S.C. § 1609. The
24 Travel Management Plan for the ENF is part and parcel of “national prescription” for all
25 National Forests, and especially the National Forests in the Western United States. National
26 Prescriptions are prohibited. S. Rep. No. 893, 94th Cong. 26 (1976); reprinted in 1976
27 U.S.C.C.A.N. 6685; S. Rep. No.893, 94th Cong. 46 (1976) reprinted in 1976 U.S.C.C.A.N. 6705.
28

1 See ¶122. The closure of roads to motorized vehicles in the ENF cannot be discussed in
2 isolation, but must be dealt with in the totality of all National Forests and Management Units in
3 the Western United States. It must be addressed as part of “one integral system”, and as part of
4 one total integral study, not in a piecemeal fashion designed to minimize the cumulative
5 environmental and economic impact of such closures. The FS having set up road closures to
6 motorized vehicles as part of a “national prescription” has set the boundaries of its own playing
7 field. At the very least, those boundaries include the totality of the National Forests and
8 management units in the Western United States. Various National Forests are adjacent to each
9 other. Unless the road closures are examined in their totality and cumulative affect, one National
10 Forest does prevent access to an adjacent National Forest. Redacted to absurdity, adjacent
11 National Forests could, in a piecemeal fashion, close in their entirety all these National Forests to
12 access by the public.

15
16 19. In addition, the ENF and the FS are closing roads, rights of way, and haul roads
17 that are not FS recognized and numbered roads, but are roads, rights of way, and haul roads
18 customarily and traditionally used by miners and prospectors in the ENF, and all other National
19 Forests; and are recognized and authorized by the Mining Acts of 1866 (RS 2477; 43 U.S.C.
20 § 932; repealed prospectively in 1976, 43 U.S.C. § 1701, *et seq.*) and 1872. RS 2477 constitutes
21 a grant to all citizens of the United States, and applies not only to miners and prospectors, but
22 also the off-road community, and all other recreational users of the National Forests who are
23 citizens of the United States. 16 U.S.C. § 478 gives to all citizens of the United States the right
24 to access their mining claims, mineral estates, and granted rights of way.

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26
27 20. Many of these roads predate the establishment of the National Forest System.
28 These roads, rights of way, and haul roads that are subject to closure were not addressed in the

1 ROD, the DEIS or the FEIS, as required by the National Environmental Policy Act 42 U.S.C.
2 § 4321, *et seq.* These roads are still actively used by miners and prospectors, and are also
3 rightfully used and maintained by owners and operators of off-road vehicles, and other
4 recreational users, who as citizens of United States have the right to become miners and
5 prospectors on Federal lands. These roads are erroneously described by the FS as being
6 “unauthorized” when in fact they are recognized and authorized by the mining laws and the
7 rules, customs and usage of miners and prospectors.
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10 21. The FEIS and the ROD were engendered pursuant to an Order dated Aug. 16,
11 2005 by the Honorable Lawrence K. Karlton in *Center for Sierra Nevada et. al. vs. John Berry,*
12 *Eldorado National Forest Supervisor et. al.,* United States District Court, Eastern District of
13 California, CIV-S-02-0325 LKK/JFM”. The Order of Judge Karlton prohibited the Forest
14 Service from restricting “other permitted uses, or uses under valid pre-existing rights”.
15

16 22. For Plaintiff Public Lands for the People, Inc. (“PLP”), and its members,
17 prospecting and mining in the ENF and other National Forests is not recreational. It is an
18 important economic endeavor that has a direct economic impact on family finances, business
19 finances, and in these hard economic times, often is the difference between having to choose
20 whether to put gas in the car, or buy food or medicine for the family. For PLP and its members,
21 prospecting and mining in the ENF is not merely a question of having “fun”. Closing roads to
22 miners, who are mineral estate grantees and prospectors in the ENF, forces them to face serious
23 economic hardship. With a perilous economy, being able to sell even an ounce of gold for
24 almost \$900 an ounce makes a substantial difference as to the economic choices a family has
25 regarding basic necessities.
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1 23. Prospecting and mining, as well as off-road riding, in the ENF beneficially affects
2 the physical and mental health and well-being of the public, and is beneficial to the human
3 environment. This is a legitimate concern of the government. California Recreational Trails Act:
4 Cal. Public Resources Code § 5070, *et seq.*; United States Outdoor Recreation Programs Act of
5 1963, 16 U.S.C. § 460, *et seq.*, § 460 l-4 “preserving...outdoor recreation resources;” 16 U.S.C.
6 § 4601 (b)(1)(A): “to instill in the public the importance of the appropriate use of, and
7 appreciation for Federal, State, and local lands, facilities, and natural and cultural resources.” An
8 analysis of the physical and mental health benefits, and economic benefits, to prospectors,
9 miners, and off-road riders of being able to access the ENF and all other National Forests, by
10 roads, and the detriment caused by the closure of such roads in the ENF and all other National
11 Forests, was not adequately made.

12 24. Having created numerous *de facto* roadless and wilderness areas affecting not
13 only mining and prospecting, but off-road recreational activities as well, the FEIS recognizes that
14 this will have affects throughout the whole ENF. “---impacts to the recreation systems in one
15 area of the forest can affect the continuity of the system and public access opportunities in other
16 areas.” [FEIS 3-307]

17 25. Both the ROD and the FEIS focus almost exclusively on the use of the ENF for
18 recreational purposes, especially its use by the off-road community. The ROD does not even
19 mention mining and prospecting. The FEIS recognizes that: “Surface uses under the mining
20 laws, include motor vehicle access to and across NFS lands that are open to mineral entry are
21 regulated under the provisions of the FS regulations at 36 CFR 228 Subpart A.” [FEIS p. xxxix]
22 The FEIS in Chapter 3, Section L, Mineral Resources, does in a cursory way deal with mining
23 and prospecting, but what it states is often just plain wrong.

1 26. Section L, and the FEIS in general makes no distinction between the
2 environmental impact caused by the general public, and the limited use of the roads by miners
3 and prospectors. It lumps the limited use by miners and prospectors who have pre-existing rights,
4 including pre-existing property rights granted by Congress, in with the general public whose
5 primary interest is in recreation.
6

7 27. Consequently, there is no consideration or analysis, or has there been any
8 consideration or analysis, of the economic harm caused to miners and prospectors by closure of
9 roads in the ENF to motorized vehicles in the FEIS, although miners and prospectors use of the
10 roads, and their environmental impact, is minimal. This is so even though Section L recognizes
11 that; “Miners, prospectors and owners of unpatented mining claims have a statutory right of
12 reasonable access under the mining law”. That reasonable “right to access” is then negated by
13 Section L when it states:
14

15 “Those alternatives with reduced public wheeled motor vehicle access,
16 particularly within the western portion of the forest where mineral
17 resources are more likely to occur, may have the effect of reducing access
18 for prospecting or exploration, with the subsequent effect of reduction of
19 discovery of new mineral resource commodities.”---“Individuals or
20 Companies that conduct prospecting and exploration activities are not
usually required to obtain a permit or other form of authorization pursuant
to 36 CFR 228...” [FEIS p. 3-312]

21 28. Section L of the FEIS recognizes that “Of most important to the management of
22 the ENF is gold.” But then the FS tends to the “management” of gold by closing roads, thereby
23 making prospecting and mining for gold unduly burdensome, if not impossible. This prohibition
24 is prohibited by Judge Karlton’s Order, as well as the pre-existing rights of miners and
25 prospectors, and users of rights of ways, the Code of Federal Regulations (“CFR”), the mining
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1 laws, and other Acts of Congress, including those acts recognizing the right of the public to
2 utilize the National Forests for mental and physical health. 16 U.S.C. § 460l-4.

3 29. Section L of the FEIS states that: “Very little locatable extraction and
4 development has occurred on the Forest in the last decade and there are no actively producing
5 mines at this time.” This is not accurate.

6 30. The Bureau of Land Management (“BLM”) lists three hundred sixty five (365)
7 valid existing mining estates and claims in the ENF. Many, if not most, of these claims are
8 active. Substantial gold production takes place in the ENF. The ENF in its own literature
9 distributed to the general public emphasizes gold production in the ENF. It invites prospectors
10 and miners to enter the ENF in order to engage in exploration and mining.
11

12 31. Prospecting, placer mining, suction dredge mining, and granted rights of way, all
13 of which are mining operations pursuant to the mining laws and the Code of Federal Regulations
14 (“CFR”), and all of which have valid pre-existing rights pursuant to the mining laws and CFRs,
15 are traditionally common in the ENF, and done in accordance with the rules and customs of
16 miners.
17

18 32. On or about June 27, 2008, Tina Terrell, Appeal Reviewing Officer, Forest
19 Supervisor, Sequoia National Forest, rejected in all respects the appeal of PLP and its members.
20
21 Plaintiffs are informed and believe, and thereon allege, that Ms. Terrell rejected all other appeals.
22

23 33. On or about June 27, 2008, James M. Pena, Appeal Deciding Officer, Deputy
24 Regional Forester, upheld the decision of Ms. Terrell, rejecting the appeal of PLP and its
25 members. Plaintiffs are informed and believe, and thereon allege, that Mr. Pena rejected all other
26 appeals.
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1 34. Plaintiffs are informed and believe, and thereon allege, that closure of roads to
2 motorized vehicles in the ENF has already taken place and is being implemented. This has direct
3 and immediate effect upon prospectors and miners in the ENF, in that they need motorized
4 vehicles in order to prospect, mine, and engage in other associated mining activities in the ENF.
5 This also has an immediate and direct affect upon the off-road community in that it denies them
6 recreational opportunities which they previously enjoyed.
7

8 35. Plaintiffs are informed and believe, and thereon allege, that the Tahoe National
9 Forest is participating in a nationwide plan to close numerous roads and trails to motorized
10 vehicles, including roads and trails used for mining and prospecting in the Tahoe National
11 Forest. ENF is adjacent to and affects the Tahoe National Forest, and all other adjacent National
12 Forests.
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14 36. Plaintiffs are informed and believe, and thereon allege, that the closure of roads in
15 the ENF to motorized vehicles affects approximately 87% of the total area of the ENF, and
16 undetermined amounts of adjacent forest and monuments, which exceeds the scope of the FEIS
17 for the ENF.
18

19 37. Plaintiffs are informed and believe, and thereon allege, that the closure of roads,
20 rights of way, and haul roads in the ENF to motorized vehicles affects over 50% of the total
21 roads and rights of way in the ENF; and will affect millions of acres in National Forests
22 throughout the Western United States.
23

24 38. The FS did not consider any meaningful alternatives to the closure of roads and
25 rights of way to motorized vehicles for citizens of the United States, including the off-road
26 community, miners and prospectors in the ENF in violation of the ENF Land Resource
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1 Management Plan (“LRMP”). The FS did not recognize valid existing rights of access and the
2 rights of use of FS roads and trails under 36 CFR part 212.6 (b) and (c). [FEIS pg. xii]

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4 39. The “no action” alternative did not consider and address all forest uses. The
5 closure of the so called “unauthorized roads” was not addressed. The FS treated these roads and
6 rights of way as nonexistent. Consequently, there could be no valid comparison between the “no
7 action” alternative and any other alternative, where this issue was addressed. In addition, there
8 could be no valid public comment on the “no action” alternative or any of the other alternatives
9 that had to be compared to the “no action” alternative. In addition, the DEIS never adequately
10 dealt with climate change, but the FEIS did substantially address this issue, precluding public
11 comment on the issue, in violation of 43 FR 55997 (Nov. 29, 1978) Sec. 1503.1.
12

13 **PARTIES**

14
15 40. Plaintiff Public Lands for the People, Inc. is a California 501 c-3 non-profit
16 corporation (“PLP”). PLP is a nationwide organization of miners, who are mineral estate
17 grantees, and prospectors. With its constituent members PLP constitutes approximately 40,000
18 people. Its President is Gerald E. Hobbs of San Bernardino, California. PLP, has among its
19 membership, miners and prospectors with mining claims and estates in the ENF, and throughout
20 the United States, who are directly affected in their mining, prospecting and associated
21 operations by the closure of roads, rights of way, and haul roads to motorized vehicles in the
22 ENF, and other National Forests in the Western United States.
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24
25 41. Gerald E. Hobbs is a member of and President of PLP. Mr. Hobbs has mining
26 claims and mineral estates in three National Forests. They are: Angeles National Forest; Tahoe
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1 National Forest; and Six Rivers National Forest. Mr. Hobbs has expressed interest and desire to
2 prospect and mine in the ENF.

3 42. Robert Haiduck is a prospector and miner with mining claims and mineral estates
4 in the Sequoia National Forest, Trinity National Forest, Cleveland National Forest, and other
5 National Forests. Mr. Haiduck has expressed interest and desire to prospect and mine in the
6 ENF. Mr. Haiduck is a member of PLP.

7 43. Plaintiffs Bryan Bunting and Hillarie Bunting, of Fairfield, California, have
8 mining claims and estates in the ENF, prospect and mine in the ENF to supplement their
9 incomes, and are directly affected in their mining, prospecting, and associated operations by the
10 closure of roads, rights of way, and haul roads to motorized vehicles in the ENF. The Buntings
11 are members of PLP. The Buntings list on their mining claims their minor children Drew and
12 Cole Bunting, because they wish to pass on to their children the history and traditions of mining
13 in the Western United States.

14 44. Plaintiff and PLP member Steve Wandt of Foresthill, California, until June 12,
15 2009 had a mining claim in the ENF. He was and is directly affected in his mining, prospecting
16 and associated operations by the closure of roads and rights of way to motorized vehicles in the
17 ENF. As a prudent man, Mr. Wandt sold his mining claim because of a general policy of the
18 ENF to close roads to motorized vehicles, affecting access to his mining claim. The ENF Travel
19 Management Plan is a continuation of that policy. In addition, Mr. Wandt is a 100% disabled
20 American veteran, which because of his disabilities required full vehicular access to his mining
21 claim, and his present prospecting endeavors in the ENF. To deny motorize vehicular access to
22 Mr. Wandt in the ENF was to prohibit his ability to mine his claim and mineral estate, and to
23 presently prospect for mining claims in the ENF. Mr. Wandt intends to continue to prospect in
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1 the ENF. This is a violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C.
2 §§ 12101, 12132, and the Mining Act, 30 U.S.C. §§ 21 through 54; as well as the Multiple Use
3 Sustained Yield Act, 16 U.S.C. § 528 prohibiting the Forest Service from affecting “the use or
4 administration of the mineral resources of national forest lands”; Section 532 setting forth a
5 declaration of policy to build roads for “recreation and other uses of such lands”; and Section
6 535 authorizing the acquisition, construction, and maintenance of “forest development roads” to
7 permit the maximum economy in utilizing the natural resources thereof, not to close roads. Mr.
8 Wandt is a member of PLP.
9
10

11 45. Plaintiff and PLP member Randy Burleson is both a prospector and off-road
12 enthusiast who actively utilizes the ENF.

13 46. Plaintiff Gene E. Bailey of Sacramento, California, has mining claims and estates
14 in the ENF, and is directly affected in his mining and associated operations by the closure of
15 roads and rights of way to motorized vehicles in the ENF. Mr. Bailey is a 40% disabled
16 American veteran. Mr. Bailey prospects and mines in the ENF to supplement his income. Mr.
17 Bailey intends to continue to mine and prospect in the ENF. To deny motorized vehicular access
18 to Mr. Bailey in the ENF is to prohibit his ability to mine his claim and mineral estate, and to
19 presently prospect for mining claims in the ENF. This is a violation of the Americans with
20 Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, 12132, and the Mining Act, 30 U.S.C. §§ 21
21 through 54; as well as the Multiple Use Sustained Yield Act, 16 U.S.C. § 528 prohibiting the
22 Forest Service from affecting “the use or administration of the mineral resources of national
23 forest lands”; Section 532 setting forth a declaration of policy to build roads for “recreation and
24 other uses of such lands”; and Section 535 authorizing the acquisition, construction, and
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1 maintenance of “forest development roads” to permit the maximum economy in utilizing the
2 natural resources thereof, not to close roads. Mr. Bailey is a member of PLP.

3
4 47. Plaintiff Richard Nuss of Canyon Country, California is a sixth generation miner who
5 has had mining claims and estates in the ENF for fourteen years. Over the years, the FS has
6 continually threatened to close roads to his claims. If the ENF continues with their road closures
7 pursuing to the Travel Management Plan, the road to his claims will be closed. Mr. Nuss and his
8 partners have used this road as a haul road for equipment and ore removal for many years.
9
10 Mr. Nuss prospects and mines in the ENF to supplement his income. Mr. Nuss is a member of
11 PLP.

12 48. Defendant United States Department of Agriculture (“USDA”) is the department
13 of the executive branch that is responsible for overseeing the activities of the Defendant United
14 States Forest Service (“FS”), the agency charged with the administration of the National Forests.
15 Defendant FS is charged with the administration of the ENF.

16
17 49. Defendant Tom Vilsack is the Secretary of Agriculture and is sued in his official
18 capacity as Secretary of Agriculture. The FS is an agency of the USDA and is subject to the
19 direction and control of Defendant Vilsack in his official capacity.

20
21 50. Defendant Tom Tidwell is the Chief Forester of the FS and is sued in his official
22 capacity. Defendant Tidwell, or his predecessors in interest, is responsible for the operations and
23 activities of the FS on National Forest System lands.

24
25 51. Defendant Randy Moore is the Regional Forester, who has responsibility for
26 supervising the ENF, and is sued in his official capacity as Regional Forester. Plaintiffs are
27 informed and believe, and thereon allege, that Mr. Moore approved of and authorized the DEIS,
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1 FEIS, and the ROD which led to the closure of roads, rights of way, and haul roads to motorized
2 vehicles in the ENF.

3
4 52. Defendant Ramiro Villalvazo is the Forest Supervisor of the ENF and is sued in
5 his official capacity. Defendant Villalvazo, on or about April 2, 2008, signed the FEIS and the
6 ROD relating to the closure of roads, rights of way, and haul roads to motorized vehicles in the
7 ENF.

8
9 53. The true names and capacities, whether individual, corporate, associate, or otherwise,
10 of Defendants DOE 1 through DOE 10 are unknown to Plaintiffs at this time, who therefore sue
11 said Defendants by such fictitious names and will ask leave of Court to amend this Complaint to
12 show their true names and capacities when the same are ascertained. Said Defendants are sued
13 as principals and/or agents, servants, and employees of said principals, and all of the acts
14 performed by them as agents, servants, and employees were performed within the course and
15 scope of their authority and employment. Each of the Defendants is in some way responsible for
16 the injuries sustained by the Plaintiffs.
17

18 54. At all times herein, all named Defendants and Defendants DOES 1 though 10
19 inclusive, and each of them, were the agents and employees of each of the remaining Defendants
20 and were at all times acting within the purpose and scope of said agency and employment and
21 each Defendant ratified and approved the acts of its agent.
22

23 **STATEMENT OF FACTS**

24 55. Improperly using an Order dated August 16, 2005, by the Honorable Lawrence K.
25 Karlton in "*Center for Sierra Nevada et al. vs. John Berry, Eldorado National Forest Supervisor*
26 *et al.*", United States District Court, Eastern District of California, CIV-S-02-0325 LKK/JFM",
27 on or about March 31, 2008, Ramiro Villalvazo, Forest Supervisor of the ENF, issued the Record
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1 of Decision relating to the Final Environmental Impact Statement of the ENF for “Public
2 Wheeled Motorized Travel Management”. The Order of Judge Karlton prohibited the FS from
3 restricting “other permitted uses, or uses under valid pre-existing rights”.

4
5 56. The ROD and FEIS had the effect of closing numerous roads, rights of way, and
6 haul roads in the ENF to motorized vehicles. The primary object of such closure was the off-
7 road community using the roads, rights of way, and haul roads of the ENF for recreational
8 purposes. No consideration in the ROD, and very little consideration in the FEIS, was given to
9 the impact on miners and prospectors in the ENF.
10

11 57. On or about June 4, 2008, a public meeting was held in Placerville, California,
12 relating to the ROD and FEIS. PLP and some of its members were at that meeting, including
13 PLP’s President Gerald E. Hobbs. Mr. Hobbs represented all members of PLP. Numerous
14 comments in opposition were made regarding the ROD and FEIS by the public and
15 representatives of organizations at that meeting.
16

17 58. On or about June 5, 2008, Mr. Hobbs and other representatives of PLP met in
18 private session with representatives of ENF in Placerville, California. Mr. Hobbs expressed his
19 opposition to the ROD and FEIS as it applied to miners, prospectors, future miners and
20 prospectors, and other users of the ENF. Representatives of the ENF made clear that miners and
21 prospectors would be affected by the proposed closures. Mr. Hobbs expressed his concern that
22 the ENF was interfering with their rights to mine and prospect in the ENF.
23

24 59. On or about June 17, 2008, a conference call was held with Mr. Hobbs and
25 representatives of the ENF. At the end of the conference call, there was no doubt but that the
26 ENF would go forward with its proposed closures of roads, rights of way, and haul roads to
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1 motorized vehicles. Mr. Hobbs again expressed his opposition to its application to miners,
2 prospectors, and other users in the ENF, and those who intend to become miners and prospectors.

3
4 60. On or about June 27, 2008, James M. Pena as Appeal Deciding Officer approved
5 the implementation of the ROD and FEIS as related to the closure of roads, rights of way, and
6 haul roads to motorized vehicles in the ENF. Mr. Pena in his letter-decision stated: “I affirm the
7 Forest Supervisor’s decision to implement Alternative Modified B. The project may be
8 implemented on, but not before, the 15th business day following the date of this letter (36 CFR
9 215, 9(b)). My decision constitutes the final administrative determination of the Department of
10 Agriculture [36 CFR 215.18(c)].”

11
12 61. Plaintiffs are informed and believe, and thereon allege, that the ENF has
13 implemented the closure of roads, rights of way, and haul roads to motorized vehicles in the
14 ENF. This has affected miners and prospectors, and other users with granted rights, in their
15 lawful access to their mineral estates for purposes of prospecting, exploration, mining, and
16 associated mining activities. This has also affected the off-road community in their rights of
17 recreational use of the ENF without any subsequent benefit to the ENF. The closure of roads to
18 motorized vehicles in the ENF is part of a much wider plan to close all national forests in the
19 Western United States to motorized vehicles. To date, the Tahoe, Inyo, and Plumas National
20 Forests are implementing plans to close these forests to motorized vehicles. The Inyo National
21 Forest has in written communication to PLP’s Treasurer B.H. Wetherby stated: “We want to
22 clarify that the Motorized Travel Management project is focused on designating a system of
23 roads and trails for public recreational use. Access for non-recreational uses such as mining will
24 not be directly affected by this project because such access is, and will continue to be, authorized
25 through separate processes.” (Emphasis in original) The ENF has made no such statement.
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CLAIMS FOR RELIEF

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2 62. The ENF failed and refused to describe the interdependent and cumulative nature
3 of its rulemaking leading to closure of roads, rights of way, and haul roads in the ENF on miners,
4 prospectors, and recreational users, including the off-road community. Therefore, public
5 comments of any one individual were based on an incomplete cumulative scheme. The FS failed
6 to assess and document the cumulative environmental, including human environmental impact,
7 social, and economic effects of the closure of roads, rights of way, and haul roads in the ENF as
8 it affects miners, prospectors and recreational users. Hence, the cumulative effect of the
9 aforesaid closure remained undisclosed and undiscussed. None of the cumulative effects
10 mentioned in the FEIS deals with the closure of roads in the ENF or in the National Forests
11 throughout the Western United States. [FEIS p. 3-64; p. 3-116] The cumulative affect of the
12 closure of roads in the ENF and the National Forests throughout the Western United States
13 would exceed \$100,000,000. This would require an economic analysis by the FS before it could
14 implement any such closures. An economic analysis would be required by the National
15 Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.*, and Executive Orders: EO 12291 and
16 EO 12866.
17

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19
20 63. The foregoing interrelated and cumulative actions imposed a dramatically new
21 framework for the ENF as it relates to miners, prospectors, the off-road community and other
22 recreational users. Despite these dramatic changes, the Defendants insisted upon pushing
23 forward with the aforesaid closure, thereby diminishing the ability of miners, prospectors, the
24 off-road community, and other recreational users to adequately address and respond in a
25 meaningful way to the aforesaid closure.
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1 64. While the general public were forced to provide comments on a vast array of
2 rulemakings and draft plans within a short period of time, the FS personnel at the local level
3 were equipped to fully inform the public of the details related to the cumulative affect of each of
4 the aforesaid rulemaking and initiatives described above as it relates to miners, prospectors, the
5 off-road community, and other recreational users in the ENF and the National Forests in the
6 Western United States. The ENF did not personally notify persons with preexisting rights,
7 including miners holding claims and mineral estates in the ENF, of the aforesaid road closures in
8 violation of procedural and substantive due process. The names, addresses and locations of these
9 mineral estate grantees are a matter of public record, and can be easily be obtained from the
10 Bureau of Land Management (“BLM”), a sister Federal agency.

11
12
13 65. The Defendants’ treatment of the Plaintiffs and other miners, prospectors, and
14 recreational users in the ENF is unjustified and contrary to law, including those disabled and
15 less-abled individuals who have been and will be denied access to the ENF for mining,
16 prospecting and recreational pursuits as a result of the aforesaid closures.

17
18 66. The ROD and FEIS is vague and superficial in both content and analysis as it
19 relates to miners, prospectors, and those who intend to become miners and prospectors. The
20 comments submitted by Plaintiffs were ignored by the Defendants.

21
22 67. Defendants’ improper promulgation of the aforesaid closures in the ENF and
23 other National Forests in the Western United States will continue to cause immediate and
24 irreparable harm to Plaintiffs. Access to the ENF for statutorily mandated and approved mining
25 and prospecting will be severely limited or prohibited. That access, without the necessity of FS
26 and ENF approval, is guaranteed by Federal statutes, and the customs and usage of miners and
27 prospectors. 30 U.S.C. §§ 21-54 and 43 U.S.C. § 1701, *et seq.*, including without limitation
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1 §§ 1732(b) and 1769. The potential to develop mining claims and initiate new discoveries in the
2 ENF will be negatively impacted. Mining and prospecting on the public lands of the Western
3 United States, including the ENF, is a self-initiating process that does not need government
4 permitting, and will be negatively impacted by the closures. The aforesaid closures will deny the
5 reasonable right of access to miners and prospectors, including the Plaintiffs, for statutorily
6 approved mining, prospecting, and associated mining activities. The aforesaid closures will cause
7 a dramatic and unreasonable, and in some cases terminal decline in mining and prospecting
8 activities in the ENF, and other National Forests in the Western United States.
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11 68. The aforesaid closure, without full disclosure of its cumulative impact, was
12 prematurely pushed through the NEPA process, and is in violation of Federal law and other
13 agency regulations, and may have numerous unforeseeable and potentially devastating impacts
14 upon mining and prospecting in the ENF, and other National Forests throughout the Western
15 United States.
16

17 69. NFMA, 16 U.S.C. § 1600, *et seq.* (1976), *establishes* the statutory framework for
18 management of the National Forest System. In NFMA and other statutes, “Congress has
19 consistently acknowledged that the Forest Service must balance competing demands in
20 managing National Forest System lands. Indeed, since Congress’ early regulation of the national
21 forests, it has never been the case that “the national forests were...to be ‘set aside for non-use.’”
22 *The Lands Council v. McNair*, 537 F.3d 981, 990 (9th Cir. 2008) (citations omitted). Additional
23 guidance, incorporated expressly within NFMA, is offered in the Multiple-Use Sustained Yield
24 Act (“MUSYA”), which provides that the various surface resources be managed “so that they are
25 utilized in the combination that will best meet the needs of the American people” and to
26 “achieve[] and maintain[] in perpetuity [] a high-level annual or regular periodic output of the
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1 various renewable resources of the national forests without impairment of the productivity of the
2 land.” 16 U.S.C. § 531(a) (definition of “multiple use”) and (b) (definition of “sustained yield”);
3 16 U.S.C. § 1604(g) (incorporating MUSYA provisions in NFMA). Mineral resources constitute
4 a “renewable resource.” The NFMA defines “renewable resources” as “those matters within the
5 scope of responsibilities and authorities of the Forest Service...” 16 U.S.C. § 1610. The FS
6 claims responsibility and authority over mineral activities within the National Forests, including
7 the ENF, through authority over surface disturbance. (See also 16 U.S.C. §§ 607, 609.) Through
8 prospecting, which leads to discovery of additional mineral resources which may have been
9 depleted, the mineral reserves available for mining activity is constantly renewed. Defendants
10 must take this into consideration when drafting their aforesaid plans. 16 U.S.C. § 1607.

13 70. The Multiple Surface Use Act, 30 U.S.C. §§ 612, 613, 615, requires the FS to
14 assure “that any use of the surface of any mining claim by the United States, its permittees or
15 licensees, shall be such as not to endanger or materially interfere with prospecting, mining or
16 processing operations or uses reasonably incident thereto...” 30 U.S.C. § 612(b). The FS may
17 not limit or restrict, or authorize the limitation or restriction of any existing rights of any
18 claimant under any valid mining claim previously located. 30 U.S.C. § 615. The closure of
19 roads in the ENF to motorized vehicles for prospectors and miners constitutes such a restriction.
20

22 71. NFMA procedurally requires the FS to prepare and revise a “forest plan.”
23 16 U.S.C. § 1604. A forest plan lays out broad guidelines to advance numerous goals and
24 objectives, including to “insure consideration of the economic and environmental aspects of
25 various systems of renewable resource management, including the related systems of silviculture
26 and protection of forest resource, to provide for outdoor recreation (including wilderness), range,
27 timber, watershed, wildlife, and fish...” *Id.* at (g)(3)(A). These plans contain desired conditions,
28

1 objectives and guidance for project and activity decision-making, but do not approve or execute
2 projects and activities. 36 C.F.R. § 219.3 (2007). The guidance in the Forest Plan is subject to
3 change through plan amendment in site-specific or project-level planning, or through revision of
4 the Forest Plan itself. 36 C.F.R. § 219.12 (2007). Additional guidance and criteria are presented
5 in activity-specific rules, such as the Travel Management Rule regarding motorized access to the
6 Forest System.
7

8 72. On November 9, 2005, the Forest Service published in the Federal Register a
9 Final Rule entitled “Travel Management; Designated Routes and Areas for Motor Vehicle Use.”
10 70 Fed.Reg. 68264-68291 (Nov. 9, 2005) (the “Travel Management Rule”). The Travel
11 Management Rule was issued following publication of and receipt of public comment upon, a
12 proposed rule and was otherwise promulgated in accordance with notice-and-comment
13 rulemaking procedures of the APA. As such, the Travel Management Rule carries force and
14 effect of law and the procedures and provisions therein are binding upon the Forest Service.
15
16

17 73. The Travel Management Rule generally “requires designation of those roads,
18 trails and areas that are open to motor vehicle use...and will prohibit the use of motor vehicles
19 off the designated system, as well as use of motor vehicles on routes and in areas that is not
20 consistent with the designations.” 70 Fed.Reg. 68264 (Nov. 9, 2005).
21

22 74. The Travel Management Rule requires the agency to apply “general criteria”
23 when designating roads, trails and areas for vehicle use, which include effects on natural and
24 cultural resources, public safety, provision of recreational opportunities, access needs, conflicts
25 among uses of National Forest System lands, the need for maintenance and administration of
26 roads, trails and areas, and the availability of resources for maintenance and administration.
27
28 36 C.F.R. § 212.55(a) The Travel Management Rule further includes “specific criteria” which

1 must be considered, “with the objective of minimizing” effects on specified resources including
2 soils, watersheds, wildlife and associated habitats and conflicts between vehicle and other uses
3 and within vehicle use types. *Id.* at (b).
4

5 75. Congress has declared that the construction and maintenance of an adequate
6 system of roads and trails within and near the National Forests is essential if the natural resources
7 and recreational potential of the National Forests are to be met. 16 U.S.C. §§ 532, 533.

8 76. The FS cannot unilaterally close roads without giving personal notice to those
9 utilizing such roads. 16 U.S.C. § 534. It is the primary intention of Congress that roads in the
10 National Forests be acquired, constructed, and maintained for recreational and resource
11 development, not closed to such development. 16 U.S.C. § 1608, 16 U.S.C. §§ 535, 535a, 537,
12 538.
13

14 **COUNT I: Violation of the National Environmental Policy Act**

15 77. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
16 through 76 of this Complaint.
17

18 78. The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, *et seq.*,
19 establishes a national policy to “prevent or eliminate damage to the environment and biosphere.”
20 NEPA recognizes “the critical importance of restoring and maintaining environmental quality,”
21 declares that the Federal government has a continuing responsibility to use “all practicable
22 means” to minimize environmental degradation, and directs that “to the fullest extent
23 possible...the policies, regulations and public laws of the United States shall be interpreted and
24 administered in accordance with the policies set forth in this chapter.” 42 U.S.C. §§ 4331(a) and
25 4332(1). NEPA further recognizes the right of each person to enjoy a healthful environment. 42
26 U.S.C. § 4331(c). This includes a healthful environment for a person’s mental and physical well-
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1 being, which mining, prospecting, and off-roading recreational activities in the ENF normally
2 would provide, along with the economic benefits incident to prospecting and mining.

3 79. Mining, prospecting and recreation provides an invaluable bond to California's
4 historic past.

5
6 "Historic activities, such as mining, logging, homesteading, recreation,
7 and ranching, also left an imprint on the landscape within the project area.
8 Linked to these activities, access to and through the region had a great
9 impact on the development of California. Some of the most important
10 historic transportation corridors, such as the Carson Emigrant Trail, Pony
11 Express Trail, and the Lincoln Highway, passed directly through what is
12 now the Eldorado National Forest." [FEIS 3-267] ... "As the momentum
13 of people entering California increased, so did the efforts to discover the
14 lowest, easiest, and most direct route to the gold fields and surrounding
15 towns. A series of roads following approximately the alignment of
16 today's U.S. 50, named Johnson's Cut-off, was picked as the favorable
17 passage into the California gold fields (U.S. 50 went through Johnson's
18 Pass until the present highway over Echo Summit, about a mile to the
19 south was completed some time before 1950)." [FEIS 3-267 to 3-268]

20 80. NEPA represents "our basic national charter for protection of the environment."
21 40 C.F.R. § 1500.1. NEPA's protections of the "environment" refer to the "human environment"
22 which "shall be interpreted comprehensively to include the natural and physical environment and
23 the relationship of people with that environment." 40 C.F.R. § 1508.14. Thus, the agency's duty
24 to analyze impacts does not end with impacts to the physical environment, because "[w]hen an
25 [EIS] is prepared and economic or social and natural or physical environmental effects are
26 interrelated, then the [EIS] will discuss all of these effects on the human environment." *Id.*
27 Among its numerous purposes, NEPA procedures are designed to foster informed agency
28 decisionmaking based upon informed public participation and coordination.

29 "The ENF Land and Resource Management Plan (LRMP) provides
30 direction for performing on-the-ground activities, such as the Travel
31 Management project. This management direction is used to achieve the

1 desired future condition of the ENF. ...The Forest recreation goal is to
2 provide a wide range of developed and dispersed recreation opportunities
3 that meet the projected demand. ...Nearly all forest visitors, regardless of
4 the purpose for their visit, use the motorized transportation system to reach
5 their destination. Making changes to the existing forest transportation
6 system to prohibit or allow motorized use has the potential to affect the
7 majority of Forest visitors, including those participating in motorized
8 recreation and those intending to access trailheads, facilities, destinations,
9 or geographic areas that are utilized for non-motorized recreational
10 activities.” [FEIS 3-276]

8 81. The Council for Environmental Quality (“CEQ”) NEPA Regulations (*see* 40
9 C.F.R. § 1501.2), which are binding on the FS, establish a complex system to ensure that the
10 government considers the environmental impacts of its actions *before* taking those actions. This
11 system requires notice to, and comments from an informed public and other affected parties who
12 provide the government with information about the potential environmental impacts the actions
13 may have.

15 82. NEPA requires “responsible [federal] officials” to prepare an Environmental
16 Impact Statement (“EIS”) on proposals for legislation and “other major Federal actions
17 significantly affecting the quality of the human environment.” Under NEPA, an agency must
18 prepare an EIS when an action may have a significant environmental effect. 42 U.S.C. § 4332.

20 83. Federal agencies are required to begin the scoping process as soon as they
21 determine that they will prepare an EIS. 40 C.F.R. § 1501.7. Under these regulations, federal
22 agencies must invite the *meaningful participation* of interested agencies. This requirement
23 expressly includes the appropriate States and State agencies, including State counties, for among
24 other matters meaningful and substantial coordination of policies. The purpose of the scoping
25 process is to identify those issues that the agency should address in the EIS. A failure to conduct
26 the scoping process in a manner that includes all interested parties and identifies all relevant
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1 issues is a violation of NEPA. There was no personal notice to holders of prior existing rights in
2 the ENF, including miners with claims and mineral estates in the ENF, in violation of both
3 procedural and substantive due process; there was no disclosure that the closure of roads, rights
4 of way, and haul roads in the ENF was but the tip of the iceberg, and part of a much larger
5 scheme to close roads, rights of way, and haul roads in all National Forests throughout the
6 Western United States, and thus to hinder, restrict, and prohibit mining and prospecting
7 throughout the Western United States.
8

9
10 84. NEPA requires agencies to include a discussion of “alternatives to the proposed
11 action” in the EIS. 42 U.S.C. § 4332(2)(C)(iii). NEPA also requires the agencies to “study,
12 develop, and describe appropriate alternatives to recommended courses of action in any proposal
13 that involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C.
14 § 4332(2)(E). CEQ NEPA regulations also require that agencies consider “reasonable
15 alternatives not within the jurisdiction of the lead agency,” together with the “no-action”
16 alternative. 40 C.F.R. § 1502.14. No such alternative was ever meaningfully considered as it
17 relates to mining and prospecting in the ENF.
18

19 85. The Omnibus Consolidated Appropriations Act of 1997 (P.L. No. 104-208, 110
20 Stat. 3009, Section 108) prohibits the FS from enacting any final rule or regulation affecting the
21 “recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43
22 U.S.C. 932) --- unless expressly authorized by an act of Congress ---” The FS by considering
23 and closing so-called “unauthorized roads”, the overwhelming majority of which have for years
24 been used by prospectors and miners, and other citizens, pursuant to RS 2477, has violated
25 the aforesaid Omnibus Consolidated Appropriations Act of 1997.
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1 86. When an agency undertakes a major Federal action that constitutes an
2 irretrievable commitment of resources, it is required to prepare a detailed EIS relating to its
3 intention to act upon each particular site that will be impacted. In addition, the EIS must
4 “succinctly describe the environment of the area(s) to be affected by the alternatives under
5 consideration.” 40 C.F.R. § 1502.15. Furthermore, the EIS must describe the direct and indirect
6 environmental effects of the regulation. 40 C.F.R. § 1508.8. The ENF never dealt with the issue
7 of the closure being part of a nationwide scheme to close the National Forests to motorized
8 vehicles, especially in the Western United States, including, without limitation, the National
9 Forests, monuments and management units adjacent to the ENF.
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12 87. CEQ NEPA regulations mandate that agencies “make diligent efforts to involve
13 the public in preparing and implementing their NEPA procedures.” 40 C.F.R. § 1506.6. Each
14 agency “shall...[r]equest comments from the public, affirmatively soliciting comments from
15 those persons or organizations who may be interested or affected.” 40 C.F.R. § 1503.1(a)(4). In
16 addition, an agency’s final EIS must make meaningful reference to all responsible opposing
17 viewpoints. ENF failed to comply with these requirements as it affects miners and prospectors,
18 and associated mining activities, as well as recreational uses, in the ENF. It failed to place in
19 context the closure of roads, rights of way, and haul roads in the ENF to the closure of roads,
20 rights of way, and haul roads in all the National Forests in the Western United States, thus
21 hindering, restricting, and prohibiting mining, prospecting and recreational activities, including
22 off-roading activities, on millions of acres throughout the Western United States.
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25 88. NEPA requires that a Supplemental Environmental Impact Statement (“SEIS”) be
26 prepared whenever “[t]here are significant new circumstances or information relevant to
27 environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R.
28

1 § 1502.9(c)(1)(ii). An SEIS may also be prepared when “the purposes of the Act will be
2 furthered by doing so.” *Id.* Defendants did not issue any SEIS relating to mining, prospecting,
3 incidental, and associated mining activities, or recreational activities, including off-roading
4 activities, in the ENF, and how they relate to the National Forests throughout the Western United
5 States. The Council on Environmental Quality (“CEQ”) regulations regarding NEPA
6 implementation provide that a supplement to a draft or final EIS is required if “(i) the agency
7 makes substantial changes in the proposed action that are relevant to environmental concerns; or
8 (ii) [t]here are significant new circumstances or information relevant to environmental concerns
9 and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9.
10
11

12 89. The Tahoe, Inyo, Plumas and other National Forests in the Western United States
13 were and are actively in the process of implementing Travel Management Plans to restrict the
14 use of motorized vehicles. All these National Forests constitute an integrated system that must
15 be analyzed, discussed, and commented on as a totality. Plaintiffs are informed and believe, and
16 thereon allege, that the cumulative affect of the closure of roads in the ENF and the adjoining
17 National Forests, monuments, and management areas, even without the other National Forests,
18 monuments and management areas in the Western United States, would in economic terms
19 exceed \$100,000,000. With all other National Forests in the Western United States the
20 cumulative economic effect far exceeds \$100,000,000. This requires an economic analysis by
21 the FS before it could implement any such closures in the ENF. An economic analysis would be
22 required by the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.*, and Executive
23 Orders: EO 12291 and EO 12866.
24
25

26 90. The occurrence, magnitude, and impact of the proposed aforesaid closures in
27 National Forest throughout the Western United States constituted “significant new
28

1 circumstances” requiring the Defendants to issue an SEIS to evaluate the proposed closure on
2 mining, prospecting, and recreation in the ENF, as it relates to the closures in all other National
3 Forests throughout the Western United States. The comments of PLP and its members, as well as
4 the general public, would provide “information relevant to environmental concerns and bearing
5 on the proposed action or its impacts.” Defendants never issued an SEIS related to said mining,
6 prospecting, and off-roading activities not only in the ENF, but its relationship to similar closures
7 in numerous other National Forests in the Western United States. This refusal was in direct
8 violation of NEPA.
9

10
11 91. Plaintiffs, and other miners and prospectors, are entitled under NEPA to have the
12 Defendants analyze reasonable alternatives, conduct a meaningful and complete notice and
13 comment period, and to fully analyze cumulative impacts on mining and prospecting, as well as
14 off-roading activities in the ENF, and other National Forests in the Western United States, before
15 they make decisions affecting the proposed closure, and the environment. Defendants have
16 denied Plaintiffs, and other miners and prospectors, and members of the off-road community,
17 these entitlements and protections afforded by NEPA.
18

19 “There are currently 15 open motorized NFS routes that connect the Eldorado
20 with adjacent Forests...there are currently 7 open motorized NFS routes that
21 connect to the Tahoe National Forest. To the east, the ENF boundary is primarily
22 adjacent to the Lake Tahoe Basin Management Unit and the Humboldt Toiyabe
23 National Forest. Currently, there are 3 open motorized NFS routes that connect to
24 the Lake Tahoe Basin Management Unit and 2 open motorized NFS routes that
25 connect to the Humboldt Toiyabe. To the south, the ENF boundary is primarily
26 adjacent to the Stanislaus National Forest. There are currently 3 open motorized
27 NFS routes that connect to the Stanislaus National Forest. These routes are used
28 by the public to travel among the four National Forests and one Management
Unit.” [FEIS 3-216-3-217]

1 92. Plaintiffs, and other miners and prospectors, have a real and concrete interest to
2 secure a maximum long-term sustainable financial return on their mineral claims and estates in
3 the ENF, and their statutory rights to mine and prospect in the ENF, and other National Forests
4 throughout the Western United States. Plaintiffs, and other miners and prospectors, and members
5 of the off-road community, have a real and concrete interest to prevent harm that will result from
6 the implementation of the aforesaid closure of roads, rights of way, and haul roads in the ENF.
7

8 93. The closures will cause harm to Plaintiffs, and result in a decline of mining and
9 prospecting in the ENF, as well as other National Forests in the Western United States, along
10 with recreational opportunities, and be detrimental to the security of the United States, the
11 economic and environmental well-being of miners and prospectors, and off-roaders, and the
12 surrounding communities that depend on such mining, prospecting and recreational activities in
13 the ENF. Such injury would not have occurred but for Defendants' decision to ignore the
14 mandates of NEPA and impose the closure in violation of Plaintiffs, and other miners,
15 prospectors, and off-roaders rights and interests.
16
17

18 94. Plaintiffs and others have made attempts to obtain information concerning the
19 location of the roads and rights of way subject to closure, not only in the ENF, but also in other
20 National Forests throughout the Western United States, and their impact on the substantial
21 mining, prospecting, and recreational activities in the ENF and other National Forests throughout
22 the Western United States. The Defendants have not identified areas that may be subjected to
23 such closure as it impacts mining, prospecting, and recreational activities in the ENF and other
24 National Forests throughout the Western United States. This has prevented Plaintiffs, as well as
25 other miners, prospectors and off-roaders, from meaningful participation in the NEPA process.
26
27 To this day, despite requests, there is no listing that has been provided to Plaintiffs as to which
28

1 roads are open, and which roads are closed, in the ENF pursuant to the ENF Travel Management
2 Plan. Plaintiffs have no knowledge of which roads the ENF considers to be “unauthorized” have
3 been closed. Plaintiffs have been informed by representatives of the ENF that as of at least April
4 3, 2009, only paved roads are open in the ENF, all other roads being closed.

6 95. 16 U.S.C § 1609(a) states: “Congress declares that the National Forest System
7 consists of units of federally owned forest, range, and related lands throughout the United States
8 and its territories, united into a nationally significant system dedicated to the long-term benefit
9 for present and future generations, and that it is the purpose of this section to include all such
10 areas into one integral system.” See also, 16 U.S.C. §§ 1603 and 1604(a) and (b). NEPA
11 regulations promulgated by CEQ require that when two or more proposed Federal actions may
12 “have cumulatively significant impacts [they] should therefore be discussed in the same impact
13 statement.” 40 C.F.R. § 1508.25(a)(2). The closure of roads in National Forests, monuments and
14 management areas adjacent to the ENF, as well as other National Forests, monuments, and
15 management areas in the Western United States should all have been discussed in the same
16 impact statement.

19 96. The proposed closures of roads, rights of way, and haul roads to motorized
20 vehicles in the National Forests throughout the Western United States addressed separate but
21 interrelated and interdependent components. They are “connected actions”. 40 C.F.R.
22 § 1508.25(a)(1), and part of “one integral system.” 16 U.S.C. § 1609(a). Taken together, these
23 components had the cumulative effect of severely limiting and/or prohibiting mining,
24 prospecting, and recreational activities in the ENF, and other National Forests throughout the
25 Western United States. The limitations, prohibitions, and restrictions of these traditional mining,
26 prospecting, and recreational activities in the ENF, and other National Forests throughout the
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28

1 Western United States, were never in any meaningful way considered by Defendants, whether in
2 the ROD, FEIS, or in any other manner.

3 97. Defendants violated NEPA by segmenting the various aspects of the proposed
4 closures and thus failed to consider and articulate to the public the connected and cumulative
5 impacts of the related actions. By segmenting the rule-making process that relates to mining,
6 prospecting, and recreational activities in the ENF, and other National Forests throughout the
7 Western United States, the Defendants avoided their obligations under NEPA to fully analyze
8 and disclose the combined and cumulative impacts of the proposed closures. The closures in the
9 ENF are but the tip of the iceberg. The ENF closures are the model and forerunner for closures in
10 the National Forests throughout the Western United States. The total amount of closures and the
11 total impact on mining, prospecting, and recreational activities throughout the Western United
12 States resulting from said closures were never considered in any NEPA analysis. The total
13 environmental effects throughout the Western United States resulting from such closures are
14 massive. The total economic effects are in the many millions (would well exceed \$100,000,000),
15 if not hundreds of millions of dollars.

16 98. Defendants failed to analyze a reasonable range of alternatives as it relates to
17 mining, prospecting, and recreational activities in the ENF, and other National Forests
18 throughout the Western United States. Defendants predetermined the outcome of the alternative
19 analysis by failing to consider a broader range of alternatives for mining, prospecting, and
20 recreational activities in the ENF, in reality and in relation to the total amount of closures in all
21 National Forests throughout the Western United States. 40 C.F.R. § 1502.14 states that the
22 “alternatives” section is the “heart” of any environmental impact statement. Defendants ignored
23 any alternative that did not comport with their predetermined result, which was limited only to
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1 the ENF, although its affects were well beyond the boundaries of the ENF. The alternatives
2 assessed by Defendants (or their predecessors) predetermined the outcome of the alternative
3 analysis and were designed to justify a decision already made, which was in any case limited
4 only to the ENF.
5

6 99. NEPA imposes a mandatory procedural duty on federal agencies to consider a
7 reasonable range of alternatives in an EIS. 40 C.F.R. § 1502.14. A NEPA analysis is invalidated
8 by the existence of a viable but unexamined alternative. This is especially true as it relates to
9 miners, prospectors, and off-roaders when no viable alternatives as to their interests and
10 activities were ever considered by the Defendants in relation to closures in all National Forests
11 throughout the Western United States.
12

13 100. The FS excluded viable alternatives from the range of alternatives analyzed in
14 detail and made available to public comment in the DEIS. Thus, the FS not only failed to foster
15 and encourage, but in fact precluded, informed public comment on the DEIS and Travel Plan,
16 because the FS withheld its ultimate decision affecting mining, prospecting, off-roading, and
17 other recreational activities from public scrutiny during the planning process, especially by not
18 discussing the proposed closures in the ENF as part of a wider scheme of closures in all National
19 Forests throughout the Western United States.
20

21 101. Defendants' actions in adopting and implementing the aforesaid closure, as it
22 relates to mining, prospecting, off-roading, and other recreational activities in the ENF described
23 above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in
24 accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of
25 statutory jurisdiction, authority, or limitations; without observance of procedure required by law;
26 or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared
27
28

1 unlawful and set aside by this Court. These actions have caused, and will continue to cause,
2 immediate, direct, adverse, and irreversible harm to Plaintiffs, and other miners, prospectors, off-
3 roaders, and other recreational users.
4

5
6 **COUNT II: Violation of 16 U.S.C. § 472 (Transfer Act)**

7 102. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
8 through 101 of this Complaint.
9

10 103. The 1905 Transfer Act, 16 U.S.C. § 472, transferring jurisdiction of forest
11 reserves from the Department of Interior to the Department of Agriculture prohibits the Secretary
12 of Agriculture from regulating or affecting, “the surveying, prospecting, locating, appropriating,
13 entering, relinquishing, reconveying, certifying, or patenting of such lands.”
14

15 104. 16 U.S.C.A § 472 states in full:

16 “The Secretary of the Department of Agriculture shall execute or cause to be
17 executed all laws affecting public lands reserved under the provisions of § 471 of
18 this title, or sections supplemental to and amendatory thereof, after such lands
19 have been so reversed, excepting such laws as affect the surveying, prospecting,
20 locating, appropriating, entering, relinquishing, reconveying, certifying, or
21 patenting of any such lands”.

22 105. The authority to manage the mineral estate on all federal land is vested in the
23 Secretary of Interior, 16 U.S.C. § 472. The closure by the FS directly affects the management of
24 the mineral estate in the ENF and is therefore beyond the FS’s authority and contrary to law.

25 106. The aforesaid closure is directly in opposition to the 1872 Mining Law, 30 U.S.C.
26 § 21-54, and frustrates the longstanding mandate of Congress, and over 137 years of miners’,
27 prospectors’, and the public’s rights-of-way across Federal Land.
28

1 107. The actions of the ENF as set forth above in closing and prohibiting motorized
2 access or prospecting and developing of mining claims in the ENF violates the purpose of the
3 aforesaid Act.

4
5 108. Defendants' actions in violating 16 U.S.C. § 472 (Transfer Act) were arbitrary
6 and capricious and an abuse of discretion. These actions have caused and will continue to cause
7 immediate, direct, adverse and irreversible harm to Plaintiffs, other miners and prospectors, the
8 United States, and the state of California.

9
10 **COUNT III Violation of the National Forest Management Act**

11 109. Plaintiffs repeat and incorporate by reference all the allegations of Paragraphs 1
12 through 108 of this Complaint.

13 110. In 1976, Congress passed the National Forest Management Act, 16 U.S.C. § 1600
14 et seq. ("NFMA"), requiring the Forest Service to conduct strategic planning for the management
15 of the National Forests. NFMA directs the Forest Service to develop Land and Resource
16 Management Plans ("LRMP") for each National Forest or group of National Forests, with public
17 participation in the "development, review, and revision" of each Plan. 16 U.S.C. § 1604.
18 NFMA's planning provisions incorporate the multiple-use mandate of the MUSYA and provide
19 that:
20

21 In developing, maintaining, and revising plans for units of the National Forest System
22 pursuant to this section, the Secretary shall assure that such plans—
23

- 24
25 (1) "provide for multiple use and sustained yield of the products and services
26 obtained therefrom in accordance with the Multiple Use Sustained-Yield
27 Act of 1960 [16 U.S.C.A. §§ 528-531], and in particular, include
28 coordination of outdoor recreation, range, timber, watershed, wildlife and
fish, and wilderness; and

1 (2) determine forest management systems, harvesting levels, and procedures
2 in the light of all of the uses set forth in subsection (c)(1) of this section,
3 the definition of the terms ‘multiple use’ and ‘sustained yield’ as provided
4 in the Multiple Use Sustained-Yield Act of 1960, and the availability of
5 lands and their suitability for resource management.” 16 U.S.C. § 1604(e).

6 111. 16 U.S.C. § 1607 mandates that “The Secretary of Agriculture shall take
7 such action as will assure that the development and administration of the renewable
8 resources of the National Forest System are in full accord with the concepts of multiple
9 use in sustained yield of products and services as set forth in the Multiple Use Sustained-
10 Yield Act of 1960 [16 U.S.C.A. §§ 528 – 531]”

11 112. The MUSYA 16 U.S.C. § 528 states:

12 “Nothing herein shall be construed so as to affect the use or
13 administration of the mineral resources of national forest lands or
14 to affect the use or administration of Federal lands not within
15 national forests.”

16 113. 16 U.S.C. § 532 mandates the construction and maintenance of an adequate system of
17 roads and trails within the National Forest for resource development and recreational use. This is
18 further mandated by 16 U.S.C. § 1608.

19 114. NFMA also requires the FS to adopt regulations that “set out the process and
20 development and revisions” of LRMPs to ensure consistency with NEPA (42 U.S.C. § 4321,
21 *et seq.*), and to “specify guidelines for land management plans.” 16 U.S.C. §§ 1604(g)(1) and (3).
22 These regulations are set forth at 36 C.F.R. § 219.

23 115. Under NFMA, the Forest Plan is the focal point for managing each National
24 Forest. A Forest Plan allocates lands to a specific set of multiple uses and essentially provides
25 the zoning regulations for each management area. All “[r]esource plans and permits, contracts,
26 and other instruments for the use and occupancy of National Forest System lands shall be
27 consistent” with the Forest Plan. 16 U.S.C. § 1604(i). If a proposed resource plan or use would
28 be inconsistent with the governing Forest Plan, NFMA requires analysis of a proposed plan

1 amendment and the opportunity for public comment before the amendment could be adopted and
2 before the resource plan could be implemented. 16 U.S.C. §§ 1604(d) and (f)(4). “The Secretary
3 *shall* provide for public participation in the development, review, and revision of land
4 management plans...” 16 U.S.C. § 1604(d) (emphasis added).
5

6 115. NFMA provides that a Forest Plan shall be “one integrated plan” that incorporates
7 in “one document...all of the features required” on multiple use direction, and contain “maps and
8 descriptive documents” on the activities allowed in each Forest management area. 16 U.S.C. §
9 1604(f)(1). These features include the “multiple use” coordination between outdoor recreation,
10 range, timber, watershed, wildlife and fish, and wilderness. 16 U.S.C. § 1604(e)(1). The ENF
11 violated this mandate in that there is not one integrated plan resulting from the closure of roads
12 to motorized vehicles for adjoining National Forests, monuments, and management areas
13 adjacent to the ENF, as well as for the National Forests in the Western United States. This is in
14 violation of 16 U.S.C. § 1609 declaring “The National Forest System” to be “one integral
15 system.”
16
17

18 116. In furtherance of Congress’ intent that a Forest Plan be the governing document
19 for management of each National Forest, NFMA only allows the implementation of resource
20 plans and activities that are consistent with the governing Forest Management Plan. 16 U.S.C.
21 § 1604(i).
22

23 117. The proposed closure violated NFMA by circumventing the requirement that each
24 individual National Forest make land management decisions in coordination with State and local
25 governments and an informed public.
26

27 118. NFMA restricts the implementation of resource plans and actions to those that
28 have been determined to be “consistent” with the governing Forest Plan. 16 U.S.C. § 1604(i).

1 119. The proposed closure and accompanying regulations and policies adopted to
2 implement that closure violate 16 U.S.C. § 1604(i) because they are inconsistent with the
3 governing Forest Plans for the respective National Forests within California.
4

5 120. NFMA provides that “a significant change” in a Forest Plan is subject to the
6 provisions of 16 U.S.C. § 1604(e) and (f) governing the development of Forest Plans, and is also
7 subject to “public involvement comparable to that required” by 16 U.S.C. § 1604(d) for Plan
8 development.
9

10 121. The proposed closure constitutes a “significant” change to existing Forest
11 Management Plans. The proposed closure, in changing or limiting existing active management in
12 the National Forests in California, drastically alters the status quo, prevents the implementation
13 of the current Land and Resource Management Plans, and dramatically impacts the National
14 Forest lands. In developing and adopting the proposed closure in the ENF, without reference to
15 similar closures in the National Forests throughout the Western United States, defendants did not
16 allow “public involvement comparable to that required” by 16 U.S.C. § 1604(d), especially those
17 of miners and prospectors in the ENF and other National Forests in the Western United States.
18

19 122. Defendants unlawfully adopted the proposed closure without complying with the
20 procedures for significant Forest Plan amendment as required by 16 U.S.C. §§ 1604(e) and
21 (f)(4), and the Forest Service’s implementing regulations and directives.
22

23 123 The closure reduces drastically and/or eliminates entirely the production of
24 valuable minerals from the ENF, and in National Forests throughout the Western United States,
25 in violation of NFMA’s requirements that such information be set forth in the Forest Plan for
26 each National Forest. In addition, the closure drastically reduces the recreational activities in the
27 ENF as set forth in its Forest Plan.
28

1 124. The closure of roads in the ENF to motorized vehicles is part of a national
2 prescription for all National Forests, and especially those National Forests in the Western United
3 States. This results in a cumulative impact on all National Forests, especially National Forests in
4 the Western United States, resulting from closure of roads to motorized vehicles. However, no
5 ENF EIS or ROD, ever discusses such closure as part of a national prescription with a
6 cumulative impact. The ENF discusses only its piece-meal part of the national prescription,
7 without discussing the cumulative impact of such a national prescription. Consequently, no
8 member of the public could ever comment on a national prescription, and its cumulative impact,
9 of road closures to motorized vehicles in the National Forests of the Western United States.
10

11
12 125. National prescriptions for the National Forests are prohibited. Congress
13 concluded in the NFMA that it was “unwise to legislate national prescriptions” for all National
14 Forests because of the “wide range of climatic conditions, topography, geologic and soil types,”
15 and different perspectives on appropriate land uses in a particular National Forest. S. Rep.
16 No. 893, 94th Cong., 26 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6685. The Forest Service itself
17 acknowledged and repeated Congress’ conclusions by stating that “we do not believe it is
18 desirable or practical to legislate national prescriptions” due to the “wide range of climatic
19 conditions, topography, geologic and soil types, vegetative covers, and wildlife.” S. Rep. No.
20 893, 94th Cong., 46 (1976) *reprinted in* 1976 U.S.C.C.A.N. 6705. Defendants have “legislated”
21 a national prescription, by adoption and imposition of the proposed closures, and they have
22 definitely “regulated” such an outcome, not only in the ENF but in all National Forests in the
23 Western United States. Contrary to NFMA’s design, and the Forest’s Service’s stated policy, the
24 proposed closure imposes a “one-size-fits-all” mandate or a “national prescription.” This is
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28

1 especially harmful to prospecting for and mining valuable minerals in the National Forests in the
2 Western United States, and for recreational activities in such forests.

3
4 126. The closure of roads and rights of way to motorized vehicles in the overwhelming
5 majority of the ENF violates the requirement that the Forest Service carry forward in time “the
6 installation of a proper system of transportation to service the National Forest System...to meet
7 anticipated needs on an economical and environmentally sound basis...” 16 U.S.C. § 1608(a).
8 This also violates 16 U.S.C. §§ 532-538, including without limitation § 535 relating to the
9 building and maintenance of roads and trails in the National Forests.
10

11 127. The Defendants’ actions in preparing, adopting and implementing the proposed
12 closure and other rules and policies was arbitrary and capricious, an abuse of discretion, and in
13 direct violation of NFMA. As a result, the FS is attempting to implement unlawful Forest
14 Management Plans. Such actions have caused and will continue to cause immediate, direct,
15 adverse and irreversible harm to the Plaintiffs, and other miners, prospectors, off-roaders, and
16 other recreational users of the National Forests.
17

18 **COUNT IV: Violation of the Wilderness Act (16 U.S.C. § 1131, et al.); California**
19 **Wilderness Act of 1984 (Public Law 980-425 – September 28, 1984; 98 STAT. 1619);**
20 **State of California Wilderness Act (Cal. Public Resources Code § 5093.30)**
21

22 128 Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
23 through 127.

24 129. The Wilderness Act, 16 U.S.C. § 1131, *et seq.*, is designed to preserve in
25 perpetuity those unroaded Federal lands that are “untrammeled by man” that Congress has
26 chosen to designate as components of the National Wilderness Preservation System. The
27 Wilderness Act requires the Forest Service to adopt a process for reviewing administratively-
28

1 designated “wild” areas for possible recommendation to Congress for designation as Wilderness
2 Areas, and for providing interim protection to such lands until Congress makes the decision as to
3 whether a particular area should be designated as “wilderness” pursuant to the Wilderness Act.
4

5 *See* 16 U.S.C. § 1132.

6 130. The Wilderness Act reserves to Congress the *exclusive* authority to create and
7 designate “wilderness” areas. While the Executive Branch recommends to Congress areas to be
8 considered for the “wilderness” designation, such lands are designated as “wilderness” “only if
9 so provided by an Act of Congress.” 16 U.S.C. § 1132(b). According to 16 U.S.C. § 1131(a),
10 “no Federal lands shall be designated as “wilderness areas” except as provided for in this chapter
11 or by a subsequent Act.”
12

13 131. The Act defines wilderness areas as:

14 “...underdeveloped Federal land retaining its primeval character and
15 influence, without permanent improvements or human habitation, which is
16 protected and managed so as to preserve its natural conditions and which
17 (1) generally appears to have been affected primarily by the forces of
18 nature, with the imprint of man’s work substantially unnoticeable; (2) has
19 outstanding opportunities for solitude or primitive and unconfined type of
20 recreation; (3) has at least five thousand acres of land or is of sufficient
21 size as to make practicable its preservation and use in an unimpaired
22 condition; and (4) may also contain ecological, geological, or other
23 features of scientific, educational, scenic, or historical value.” 16 U.S.C.
24 § 1131(c).
25

26 132. Once land is designated as “Wilderness”, commercial enterprise and permanent or
27 temporary roads generally are prohibited. “A wilderness, in contrast to those areas where man
28 and his own works dominate the landscape, is hereby recognized as an area where the earth and
its community of life are untrammelled by man, where man himself is a visitor who does not
remain.” 16 U.S.C. § 1131(c).

1 133. After Congress designates in a particular Statewide Wilderness Act the specific
2 roadless areas that will become part of the Wilderness System, it includes language “releasing”
3 all other National Forest lands in that State for the multiple-use management provided for in the
4 Forest Plans and as mandated by MUSYA.
5

6 134. The California Wilderness Act of 1984 (“CWA 1984”), designated over
7 3,000,000 acres of Wilderness areas in California. The remaining National Forest lands in
8 California are for multiple use management in accordance with each specific Forest Management
9 Plan, and other National Forest management laws including, without limitation, the Forest and
10 Rangeland Renewable Planning Act of 1974, as amended by the National Forest Management
11 Act of 1974. CWA 1984, Sec. 111(b)(4). [98 Stat. at 1628]
12

13 135. Proposed closures within the National Forest System were legally eliminated in
14 California with few exceptions when Congress enacted the CWA 1984. The USDA is prohibited
15 from evaluating other National Forest lands within California’s borders without the express
16 permission of Congress: “unless expressly authorized by Congress, the Department of
17 Agriculture shall not conduct any further statewide roadless area review and evaluation of
18 National Forest System lands in the State of California for the purpose of determining their
19 suitability for inclusion in the National Wilderness Preservation System.” CWA 1984 § PL 98-
20 425, Sec. 111(b)(6) [98 Stat. at 1629].
21
22

23 136. The CWA 1984 also did not authorize the creation of buffer zones adjacent to
24 wilderness areas: Congress did not intend that the designation of wilderness areas in the State of
25 California lead to the creation of protective perimeters or buffer zones around each wilderness
26 area. The fact that nonwilderness activities or uses can be seen or heard from within any
27
28

1 wilderness area does not, of itself, preclude such activities or uses up to the boundary of the
2 wilderness area.

3
4 137. Defendants' actions violate the CWA 1984's prohibitions against buffer zones by
5 creating both year around and seasonally, road closures as a buffer zone consisting of newly
6 created and unauthorized *de facto* wilderness areas as boundaries to congressionally authorized
7 and established wilderness areas.

8
9 138. No component of the proposed closures recognizes the limitations mandated by
10 the Wilderness Act and the CWA 1984. Defendants have attempted to circumvent the
11 Wilderness Act and the CWA 1984. The ENF Travel Management Plan and the closures of
12 roads to motorized vehicles in the ENF, constitutes the creation of a *de facto* wilderness in
13 violation of both the Wilderness Act and the CWA 1984.

14
15 139. The ENF Travel Management Plan mandates management of inventoried roadless
16 areas as *de facto* wilderness areas, without an act of Congress, in violation of the Wilderness Act,
17 and the CWA 1984.

18
19 140. The State of California establishes wilderness and roadless areas pursuant to the
20 State California Wilderness Act, California Public Resources Code § 5093.30, et al. The State of
21 California has not created pursuant to the aforesaid State statute, or designated as wilderness or
22 roadless areas, any lands which are the subject of the closures by the FS as set forth in this
23 Complaint. The State of California has not released any federal lands to the FS for designation
24 by the FS as wilderness or roadless areas, which are the subject of the closures by the FS as set
25 forth in this Complaint.

26
27 141. Defendants' conduct in adopting and implementing the proposed closures were
28 arbitrary and capricious, an abuse of discretion and not in accordance with the Wilderness Act or

1 the CWA 1984. These actions have caused and will continue to cause immediate, direct, adverse
2 and irreversible harm to the Plaintiffs, and other miners, prospectors, off-roaders, and other
3 recreational users of the National Forests.
4

5
6 **COUNT V: Violation of Multiple Use Sustained Yield Act**

7 142. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
8 through 141 of this Complaint.
9

10 143. Congress has directed that the National Forest System be actively managed under
11 sustained yield principles for the purpose of achieving a wide variety of multiple uses. The
12 Multiple-Use Sustained-Yield Act of 1960 (“MUSYA”) provides that National Forests “shall be
13 administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes---
14 [and not] to affect the use or administration of the mineral resources of the national forest lands
15 or to affect the use or administration of Federal lands not within national forests.” 16 U.S.C. §
16 528. The allowed multiple uses were restated in the NFMA to be “outdoor recreation, range,
17 timber, watershed, wildlife and fish, and wilderness.” 16 U.S.C. § 1604(e). Outdoor recreation
18 and mineral resources are specifically protected by MUSYA.
19

20 144. MUSYA and NFMA envision and prescribe active management of National
21 Forest resources. MUSYA directs management of “national forests for multiple use and
22 sustained yield of the several products and services obtained therefrom.” 16 U.S.C. § 529. For
23 these purposes it is necessary to construct and maintain an adequate system of roads and trails
24 within the National Forests. 16 U.S.C. § 532.
25

26 145. The “multiple use” standard requires the Forest Service to manage the various
27 National Forest resources to maximize their combined utility, without impairment of the land’s
28

1 productivity. “Multiple use” entails the “harmonious and coordinated management of the various
2 resources,” and requires that the Secretary manage forest resources “in the combination that will
3 best meet the needs of the American people; making the most judicious use of the land for some
4 or all of these resources or related services over areas large enough to provide sufficient latitude
5 for periodic adjustments in use to conform to changing needs and conditions...” 16 U.S.C. §
6 531(a). The “sustained yield” standard requires the Forest Service to maintain at least a regular
7 periodic output from the renewable Forest resources without impairment of the land’s
8 productivity. “Sustained yield” refers to “achievement and maintenance in perpetuity of a high-
9 level annual or regular periodic output of the various renewable resources of the national forests
10 without impairment of the productivity of the land.” 16 U.S.C. § 531(b). Newly discovered
11 metals and minerals, which can only be sustained and renewed through prospecting, constitute a
12 renewable resource in the National Forests, as well as matters within the scope, responsibility,
13 and authority of the FS. 16 U.S.C. §§ 1607 and 1610.

14
15
16
17 146. The fulfillment of MUSYA’s harmonious and coordinated management
18 imperatives, which require balanced application of multiple-use and sustained-yield mandates, is
19 compromised in our National Forests because of limitation, restriction, and/or prohibition of
20 mining and prospecting due to the closure of roads, rights of way, and haul roads to motorized
21 vehicles. This directly impacts the economic and strategic well-being of the United States in that
22 precious and strategic metals and minerals cannot be adequately accessed or discovered.

23
24 147. Adoption of the aforesaid closure to miners, prospectors, off-roaders, and other
25 recreational users in the ENF conflicts with active management contemplated and mandated by
26 the MUSYA and the NFMA and will exacerbate, rather than ameliorate, any concerns which are
27 allegedly the reasons for the road closures in the ENF. Miners and prospectors’ use of the roads
28

1 and rights of way in the ENF is minimal, having little or no environmental impact that could
2 possibly justify a closure, but does impact substantially the economic, physical, and mental well-
3 being of Plaintiffs, and other miners and prospectors, and the economic and strategic well-being
4 of the United States with the loss of crucial metals' and minerals' production and discovery.
5

6 148. MUSYA provides that “[i]n the administration of the national forests due
7 consideration shall be given to the relative values of the various resources in particular areas.”
8 16 U.S.C. § 529. MUSYA’s legislative history shows that “[o]ne of the basic concepts of
9 multiple use is that all of the resources in general are entitled to equal consideration,” and that
10 “[i]n practice, the priority of the resource use will vary by locality and case by case.” H.R. Rep.
11 No. 1551 (1960) *reprinted in* 1960 U.S.C.C.A.N. 2377. The aforesaid closure violates these
12 principles by taking the overwhelming majority of ENF lands out of use for mineral and metal
13 production and discovery. This has withdrawn lands from use that Congress has not authorized
14 to be withdrawn.
15

16
17 149. The aforesaid closures violate the MUSYA directives that locally-desired uses,
18 and the relative values of allowing other uses in various areas, be considered. Defendants have
19 violated MUSYA by failing to provide an area-by-area analysis of resource values and by failing
20 to consider local economic and environmental conditions, as well as the economic, physical, and
21 mental well-being of miners and prospectors. These local and human economic and
22 environmental conditions would in no way justify the closure of roads and rights of way to
23 miners and prospectors in any area of the ENF. Since the aforesaid closures are part of a scheme
24 of closing the National Forests in the Western United States, these local affects create a national
25 cumulative impact. No analysis of the national cumulative impact has been made or considered
26 by the FS.
27
28

1 150. Defendants’ actions in adopting and implementing the aforesaid closures are
2 arbitrary and capricious, an abuse of discretion and not in accordance with MUSYA. These
3 actions have caused, and will continue to cause, immediate, direct, adverse, and irreversible harm
4 to Plaintiffs, other miners and prospectors, and the economic and strategic interest of the United
5 States and the state of California.
6

7 **COUNT VI: Violation of 30 U.S.C. §§ 612-615 (Multiple Surface Use Act)**

8 151. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
9 through 150 of this Complaint.
10

11 152. 30 U.S.C. § 612(b) clearly states:

12 “Rights under any mining claim hereafter located under the mining laws of the
13 United States shall be subject, prior to issuance of patent therefore, to the right of
14 the United States to manage and dispose of the vegetative surface resources
15 thereof and to manage other surface resources thereof (except mineral deposits
16 subject to location under the mining laws of the United States). Any such mining
17 claim shall also be subject, prior to issuance of patent therefore, to the right of the
18 United States, its permittees, and licensees, to use so much of the surface thereof
19 as may be necessary for such purposes or for access to adjacent land: Provided,
20 however, that any use of the surface of any such mining claim by the United
21 States, its permittees or licensees, shall be such as not to endanger or materially
22 interfere with prospecting, mining or processing operations or uses reasonably
23 incident thereto:”
24

25 153. 30 U.S.C. § 615, Limitation of existing rights states:

26 “Nothing in this subchapter and §§ 601 and 603 of this title shall be construed in
27 any manner to limit or restrict or to authorize the limitation or restriction of any
28 existing rights of any claimant under any valid mining claim heretofore located,
except as such rights may be limited or restricted as a relinquishment pursuant to
§ 613 of this title, or as a result of a waiver and relinquishment pursuant to § 614
of this title; and nothing in this subchapter and §§ 601 and 603 of this title shall be
construed in any manner to authorize inclusion in any patent hereafter located, of
any reservation, limitation, or restriction not otherwise authorized by law, or to
limit or repeal any existing authority to include any reservation, limitation, or
restriction in any such patent, or to limit or restrict use of the lands covered by
any patented or unpatented mining claim by the United States, its lessees,
permittees, and licenses which is otherwise authorized by law.”

1
2 154. The aforesaid closure and its associate temporary and permanent forest orders will
3 materially interfere with claimants', and prospectors' existing rights and means to access as
4 provided by 16 U.S.C. § 478 which states in part: "...Nor shall anything in such sections prohibit
5 any person from entering upon such national forests for all proper and lawful purposes, including
6 that of prospecting, locating, and developing the mineral resources thereof". The closure and its
7 associate temporary and permanent forest orders have a prohibitive, not merely a regulatory,
8 role. The closures are therefore unlawful.
9

10
11 155. The actions of the ENF as set forth above in closing and prohibiting motorized
12 access or prospecting and developing of mining claims in the ENF violates the purpose of the
13 aforesaid Act.

14 156. Defendants' actions in violating 30 U.S.C. §§ 612-615 (Multiple Surface Use Act)
15 were arbitrary and capricious and an abuse of discretion. These actions have caused and will
16 continue to cause immediate, direct, adverse and irreversible harm to Plaintiffs, other miners and
17 prospectors, the United States, and the State of California.
18

19 **COUNT VII: Violation of the Federal Land Policy and Management Act,**
20 **43 U.S.C. §§ 1701; 1769**

21 157. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
22 through 156 of this Complaint.
23

24 158. FLPMA is intended to accommodate "valid pre-existing rights" of access to , -
25 prospectors, miners, and other citizens in the ENF. 43 U.S.C. § 1732(b) states that: "--- no
26 provision of this section or any other section of this Act shall in any way amend the Mining Law
27
28

1 of 1872 or impair the rights of any locators or claims under that Act, including, but not limited
2 to, rights of ingress and egress.”

3
4 159. The FEIS and the ROD prohibits such access, and does so without any notice or
5 opportunity for a hearing. As a matter of fundamental Constitutional due process pursuant to the
6 5th and 14th Amendments of the Constitution of the United States, and Article 1 § 7(a) of the
7 California Constitution, the FS must give personal individual notice (not just notice in the
8 Federal Register), and the opportunity for a hearing to each individual holder of a mining claim
9 and mineral estate in the ENF, before it can terminate a valid pre-existing right, especially valid
10 pre-existing property rights, such as mining claims and mineral estates. This has not been done.
11 § 701 of Public Law 94-579 states: “(h) All actions by the Secretary concerned under this Act
12 (FLPMA) shall be subject to valid existing rights.” 43 U.S.C. § 1766 states: “Prior to
13 commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned
14 shall give written notice to the holder of the grounds for such action...” This mandate the FS has
15 unlawfully ignored.
16
17

18 160. The Federal Land Policy and Management Act of 1976 reiterates that the 1970
19 Minerals Policy Act shall be implemented and directs that public lands be managed in a manner
20 which recognizes the Nation’s need for domestic sources of minerals and other resources. 30
21 U.S.C. § 615 states that there shall be no “limitation or restriction of any existing rights of any
22 claimant under any valid mining claim heretofore located...”
23

24 161. Public Law No. 104-208, 110 Stat. 3009 § 108 (“Omnibus Consolidated
25 Appropriations Act of 1997”) clearly states: “No final rule or regulation of any agency of the
26 Federal Government pertaining to the recognition, management, or validity of a right of way
27 pursuant to Revised Statute 2477 shall take effect unless expressly authorized by an Act of
28

1 Congress subsequent to the date of enactment of this Act [Sept. 30, 1996]”. 43 U.S.C. § 1769(a)
2 states: “Nothing in this subchapter shall have the effect of terminating any right-of-way or right-
3 of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof,
4 the Secretary concerned may cancel such a right-of-way and in its stead issue a right-of-way
5 pursuant to the provisions of this subchapter.” Neither Congress nor any holder of a right of
6 way has consented to the FS’s closure of any roads, trails, or rights of way to motorized vehicles
7 pursuant to the ENF Travel Management Plan.
8

9
10 162. Members of the public at large, PLP members, as well as Plaintiffs, have been and
11 desire to continue to exercise their RS 2477 grants, as well as the use of all other rights of way
12 which they possess in the ENF. No Act of Congress has been passed authorizing any closure of
13 roads and rights of way in the ENF to motorized vehicles. Plaintiffs, PLP and its members, and
14 members of the public who are miners and prospectors, other mineral estate grantees, and
15 recreational users have been and will continue to be unlawfully cited and prosecuted for
16 exercising their RS 2477 rights of way, as well as utilizing rights of way which they previously
17 possessed.
18

19 163. Defendants’ actions in violating the Federal Land Policy and Management Act, 43
20 U.S.C. §§ 1701, et al., were arbitrary and capricious and an abuse of discretion. These actions
21 have caused and will continue to cause immediate, direct, adverse and irreversible harm to
22 Plaintiffs, other miners and prospectors, recreational users, and other citizens of the United
23 States, and the State of California.
24

25 **COUNT VIII: Violation of Pre-existing RS2477 Rights of Way**

26
27 164. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
28 through 163 of this Complaint.

1 165. Neither the FEIS or the ROD deal with the issue of what roads or rights of way are
2 to be closed to miners, prospectors, and other citizens subject to the Act of Congress RS 2477.
3 “The right of way for the construction of highways over public lands, not reserved for public
4 uses, is hereby granted.” 43 U.S.C. § 932 (1866), repealed prospectively. These RS 2477 roads
5 and rights of way constitute valid pre-existing rights and their use cannot be taken from miners,
6 prospectors, or other citizens in the ENF by the FS, whether by the FEIS, ROD, or any other
7 administrative action of the FS not specifically authorized by Congress. To the extent the FS
8 close any RS 2477 roads and rights of way to miners, prospectors, and other citizens for their use
9 in conducting any mining, prospecting, exploration, or any other incidental and associated
10 mining operations, such closure is invalid and unlawful.
11

12 166. The Plaintiffs, as members of the public and as citizens of the United States, as
13 well as the general public, have for years accepted the use and routine maintenance of all roads,
14 rights of way, and trails within the ENF, whether they are actively maintained by the FS, State,
15 or County. This use was, has been, and constitutes public acceptance of the ongoing and
16 continual use and an easement of the aforesaid roads, rights of way, and trails. This public
17 acceptance does not depend upon any action or approval by the FS, nor is this acceptance
18 required to be recorded. Title to an RS 2477 right of way exists without any procedural
19 formalities and without agency involvement.
20
21

22 167. Congress must expressly authorize any changes to a citizen’s right to use RS 2477
23 roads, highways, and trails. Public Law No. 104-208, 110 Stat. 3009 § 108. “No final rule or
24 regulation of any agency of the Federal Government pertaining to the recognition, management,
25 or validity of a right of way pursuant to Revised Statute4 2477 shall take effect unless expressly
26 authorized by an Act of Congress subsequent to the date of enactment of this Act [Sept. 30,
27
28

1 1996].” This Congress has not done. The ENF Travel Management Plan, and the closures
2 resulting therefrom affecting RS 2477 roads and rights of way are in violation of Public Law No.
3 104-208, 110 Stat 3009 § 108.
4

5 168. Congress repealed RS 2477 in 1976. However Congress specified that any valid
6 rights of way “existing on the date of approval of this Act” (October 21, 1976) would continue in
7 effect. This had the effect of freezing RS 2477 rights of way as they existed on October 21, 1976,
8 as determined by the established and historical usage of the right of way as of that date.
9

10 169. The FS cannot use its authority to hinder, obstruct, take, or otherwise materially
11 interfere with the routine maintenance of these roads and trails performed by the public who are
12 the vested property holders of the RS 2477 rights of way. The FS has no authority to classify any
13 road or right of way, authorized or unauthorized, as not being an RS 2477 road or right of way.
14 Any acts on the part of the FS to obstruct or take these routes is a public nuisance and are
15 actionable pursuant to California Civil Code § 3479 and California Code of Civil Procedure §
16 731, the Fifth Amendment of the Constitution of the United States, and Article 1 § 7(a) of the
17 Constitution of California .
18

19 170. RS 2477 roads and rights of way are preserved by the Federal Land Policy and
20 Management Act, 43 U.S.C. § 1701; 1769 (“FLPMA”). The FEIS and ROD are in violation of
21 RS 2477 and FLPMA, including without limitation, 43 U.S.C. §§ 1701, 1702, 1707(12), 1712,
22 1761, 1762, 1763, 1766, 1769 and 1770.
23

24 **COUNT IX: Violation of Public Law No. 104-208, 110 Stat. 3009 (Omnibus**
25 **Consolidated Appropriations Act of 1997)**

26 171. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
27 through 170 of this Complaint.
28

1 172. The Omnibus Consolidated Appropriations Act of 1997 (P.L. No. 104-208, 110
2 Stat. 3009 § 108) prohibits the FS from the “recognition, management, of validity of a right-of-
3 way pursuant to Revised Statute 2477 --- unless expressly authorized by an act of Congress ---”
4 Among other matters, the FS by considering and closing so-called “unauthorized roads”, the
5 overwhelming majority of which have for years been used by prospectors and miners, and other
6 citizens, pursuant to RS 2477, has violated the aforesaid Omnibus Consolidated
7 Appropriations Act of 1997.
8

9
10 173. The actions of the ENF as set forth above in closing and prohibiting motorized
11 access or prospecting and developing of mining claims in the ENF violates the purpose of the
12 aforesaid Act.

13 174, Defendants’ actions in violating the Public Law No. 104-208, 110 Stat. 3009 §
14 108 were arbitrary and capricious and an abuse of discretion. These actions have caused and will
15 continue to cause immediate, direct, adverse and irreversible harm to Plaintiffs, other miners and
16 prospectors, the United States, and the State of California.
17

18 **COUNT X: Violation of the Administrative Procedures Act**

19 175. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
20 through 174 of this Complaint.
21

22 176. Under the Administrative Procedures Act, an agency action must be held unlawful
23 and set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
24 with law,” or “in excess of statutory jurisdiction [or] authority.” 5 U.S.C. §§ 706(2)(A) and (C).
25

26 178. The aforesaid closure is “arbitrary, capricious, an abuse of discretion [and]
27 otherwise not in accordance with law” and is “in excess of statutory jurisdiction [and] authority”
28 for the reasons described above, including, without limitation, refusal to give personal notice to

1 holders of mining claims and mineral estates in the ENF, and refusal to consider the national
2 economic impact of the closure to motorized vehicles of the National Forests in the Western
3 United States, and must be set aside.

4
5 178. The APA requires that the Federal Register “notice of proposed rule
6 making...shall include...either the terms or substance of the proposed rule or a description of the
7 subjects and issues involved.” 5 U.S.C. § 553(b)(3). Two relevant aspects of the aforesaid
8 closures were not adequately noticed in the proposed rules.

9
10 (a) The severe limitation, restriction, and prohibition on mining and
11 prospecting of minerals and metals in the ENF, and in the National Forest throughout the
12 Western United States, were not adequately noticed in the proposed rules. The ENF FEIS and
13 ROD recognize that prospecting and mining in the ENF would be affected by the closures of
14 roads to motorized vehicles. However, nowhere is any attempt made to quantify what that affect
15 would be.

16
17 (b) The economic and strategic harm done by such limitation, restriction, and
18 prohibition were not adequately noticed in the proposed rules.

19
20 179. The challenged actions are arbitrary agency actions, and could not have been
21 informed decisions, 5 U.S.C. § 706, because the decisions were not “based on a consideration of
22 relevant factors” and because there is no “rational connection between the facts found and the
23 choice made.” *Motor Vehicle Manufacturers Association v. State Farm Mutual*, 463 U.S. 29, 43
24 (1983). For example:

25 (a) The proposed closures of roads and rights of way to motorized vehicles
26 arbitrarily fail to address the minimal environmental impact miners and prospectors have on such
27 roads and rights of way. Without any inventory of the actual roads to be closed to mining and
28

1 prospecting, whether authorized, or supposedly unauthorized, no such impact analysis can be
2 made.

3 (b) The aforesaid proposed closures arbitrarily failed to address the economic
4 and strategic impact of such closures to the Plaintiffs, other miners, prospectors, off-roaders, and
5 other recreational users, the United States, and the state of California.
6

7 (c) The aforesaid closures arbitrarily impose significant economic costs on the
8 government as well as on other miners, prospectors, off-roaders, and other recreational users,
9 including lost employment and lost income, without providing clearly overriding benefits. For
10 example: (1) a reduction in jobs and income; (2) job and income losses in the mineral industry,
11 and losses from reduced access to energy sources and strategic minerals; (3) costs of the
12 aforesaid closures; (4) the affect on the local economy; and (5) the very limited cost savings
13 resulting from the aforesaid closures. For the cost and reduced income effects of millions of
14 dollars annually, the aforesaid closures achieve a minimal cost savings to the FS.
15
16

17 180. The aforesaid closures will unquestionably make it more difficult, if not
18 prohibitory, and costly to maintain or obtain access to private mining claims and mineral estates.
19

20 181. Defendants' actions in violating the APA were arbitrary and capricious and an
21 abuse of discretion. These actions have caused and will continue to cause immediate, direct,
22 adverse and irreversible harm to Plaintiffs, other miners, prospectors, off-roaders, and other
23 recreational users, the United States, and the State of California.
24
25
26
27
28

1 open to exploration and purchase, and the lands in which they are found to occupation and
2 purchase, by citizens of the United States and those who have declared their intention to become
3 such, under regulations prescribed by law, and according to the local customs or rules of miners
4 in the several mining districts, so far as the same are applicable and not inconsistent with the
5 laws of the United States”. 30 U.S.C. § 615 prohibits the limitation or restriction of any existing
6 rights of any mining claimant holding a valid mining claim in the ENF and other national forests.
7

8 188. The ENF cannot be free and open to exploration if the historical means of access
9 by prospectors and miners can be prohibited by FS obstructions and closures. The FEIS and
10 ROD are prohibitive and not merely regulatory.
11

12 189. The actions of the ENF as set forth above in closing and prohibiting motorized
13 access to prospecting and developing of mining claims in the ENF violates the purpose of the
14 aforesaid Act.
15

16 190. Defendants’ actions in violating 30 U.S.C. § 21-54 (Mining Act) were arbitrary
17 and capricious and an abuse of discretion. These actions have caused and will continue to cause
18 immediate, direct, adverse and irreversible harm to Plaintiffs, other miners and prospectors,
19 recreational users, citizens of the United States who wish to become prospectors and miners, the
20 United States, and the State of California.
21

22 **Count XIII: Violation of 42 U.S.C. § 12132 (Americans with Disabilities Act)**

23 191. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
24 through 190 of this Complaint.
25

26 192. 42 U.S.C.A. 12132 states:

27 “Subject to the provisions of this subchapter, no qualified individual with a
28 disability shall, by reason of such disability, be excluded from participation in or

1 be denied the benefits of the services, programs, or activities of a public entity, or
2 be subjected to discrimination by any such entity”.

3
4 193. Plaintiff Steve Wandt, a PLP member, is a 100% disabled American Veteran and
5 Plaintiff Gene Bailey is a 40% disabled American Veteran; which by their actual disabilities
6 requires them full vehicular access to their mining claims and their prospecting endeavors in the
7 ENF. To deny vehicular access to Mr. Wandt and also to Mr. Bailey in the ENF, is to prohibit
8 their ability to mine and to prospect in the ENF. Mr. Wandt and Mr. Bailey are representatives of
9 all prospectors, miners, recreational users, and other citizens with disabilities that necessitate
10 vehicular access in order for them to exercise their rights to mine, prospect, recreate, or
11 otherwise use the ENF.
12

13 194. Many of PLP’s membership are made up of individuals with disabilities. These
14 individuals have and wish to continue using these public rights-of-ways without discrimination.
15 The aforesaid closures discriminate against these individuals by exclusion and classification,
16 barring them from the customary usage of the Public rights-of-way in the ENF by disabled
17 miners, prospectors, and other recreational users.
18

19 195. The actions of the ENF as set forth above in closing and prohibiting motorized
20 access or prospecting and developing of mining claims in the ENF violates the purpose of the
21 aforesaid Act.
22

23 196. Defendants’ actions in violating 42 U.S.C. § 12132 (Americans with Disabilities
24 Act) were arbitrary and capricious and an abuse of discretion. These actions have caused and will
25 continue to cause immediate, direct, adverse and irreversible harm to Plaintiffs, other miners,
26 prospectors, and other recreational users the United States, and the state of California.
27
28

1 **COUNT XIV: Violation of the Regulatory Flexibility Act (5 U.S.C. § 603(b)As Amended By**
2 **The Small Business Regulatory Enforcement Fairness Act Of 1996) 5 U.S.C. §§ 801-808**

3 197. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
4 through 196 of this Complaint.

5 198. Pursuant to 5 U.S.C. § 603(b), the ENF and FS service are required to prepare an
6 “initial regulatory flexibility analysis” which contains:
7

- 8 a. a description of the reasons why action by the agency is being considered;
- 9 b. a succinct statement of the objectives of, and legal basis for, the proposed
10 rule;
- 11 c. a description of and, where feasible, an estimate of the number of small
12 entities to which the proposed rule will apply;
- 13 d. a description of the projected reporting, recordkeeping and other
14 compliance requirements of the proposed rule, including an estimate of the
15 classes of small entities which will be subject to the requirement and the
16 type of professional skills necessary for preparation of the report or
17 record;
- 18 e. an identification, to the extent practicable, of all relevant Federal rules
19 which may duplicate, overlap or conflict with the proposed rule.
20
21

22 199. Pursuant to 5 U.S.C. § 603(c):
23

24 “Each initial regulatory flexibility analysis shall also contain a description of any
25 significant alternatives to the proposed rule which accomplish the stated
26 objectives of applicable statutes and which minimize any significant economic
27 impact of the proposed rule on small entities. Consistent with the state objectives
28 of applicable statutes, the analysis shall discuss significant alternatives such as:

- 1
- 2 1) the establishment of differing compliance or reporting requirements or
- 3 timetables that take into account the resources available to small
- 4 entities;
- 5 2) the clarification, consolidation, or simplification of compliance and
- 6 reporting requirements under the rule for such small entities;
- 7 3) the use of performance rather than design standards; and
- 8
- 9 4) an exemption from coverage of the rule, or any part thereof, for such
- 10 small entities.”

11 200. Defendants have failed to comply with 5 U.S.C. § 603(b) and (c). Defendants
12 have further failed to comply with FLPMA, 43 U.S.C. § 1732(b) which mandates “the
13 development of small trade or manufacturing concerns.”

14 201. The actions of the ENF as set forth above in closing and prohibiting motorized
15 access or prospecting and developing of mining claims in the ENF violates the purpose of the
16 aforesaid Act.

17 202. Defendants’ actions in violating 5 U.S.C. § 603(b) and (c) were arbitrary and
18 capricious and an abuse of discretion. These actions have caused and will continue to cause
19 immediate, direct, adverse and irreversible harm to Plaintiffs, other miners and prospectors, the
20 United States, and the state of California.

21
22 **COUNT XV: Violation of 18 U.S.C. § 666 (Misappropriation of Federal Funds)**

23 203. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
24 through 202 of this Complaint.

25 204. Congress has specifically appropriated funds for the maintenance of roads and
26 rights-of-way in the National Forests. Congress has not appropriated funds for the closure of
27
28

1 specific roads and rights-of-way in the ENF, or any other National Forest. No further action
2 regarding closure of roads and rights-of-way in the ENF can take place until said monies are in
3 fact so specifically appropriated by Congress. To take funds appropriated by Congress for a
4 specific purpose, and use them for another purpose, is a misappropriation of federal monies in
5 violation of 18 U.S.C. § 666.
6

7 205. Plaintiffs are informed and believe, and thereon allege, that the FS is
8 misappropriating funds out of its maintenance budget, and thus drying up available funds that
9 were to be used for line item maintenance of National Forest roads and trails. Funds specified by
10 Congress for maintenance of rights-of-way in the ENF are now being used by the ENF for
11 closures of rights-of-way. These closures are contrary to law and unauthorized by Congress. The
12 FS cannot arbitrarily use funds appropriated for a purpose of which it may not approve, and
13 apply those funds for a purpose it unilaterally decides to implement.
14
15

16 206. The closure of roads and rights of way to motorized vehicles in a large proportion
17 of the ENF violates the requirement that the Forest Service carry forward in time “the installation
18 of a proper system of transportation to service the National Forest System...to meet anticipated
19 needs on an economical and environmentally sound basis...” 16 U.S.C. § 1608(a). This also
20 violates 16 U.S.C. §§ 532-538, including without limitation § 535 relating to the building and
21 maintenance of roads and trails in the National Forests.
22

23 207. The actions of the ENF as set forth above in closing and prohibiting motorized
24 access or prospecting and developing of mining claims in the ENF violates the purpose of the
25 aforesaid Act.
26

27 208. Defendants’ actions in violating 18 U.S.C. § 666 (Misappropriation of Federal
28 Funds) were arbitrary and capricious and an abuse of discretion. These actions have caused and

1 will continue to cause immediate, direct, adverse and irreversible harm to Plaintiffs, other miners
2 and prospectors, the United States, and the state of California.

3
4 **COUNT XVI Violation of Plaintiffs' Easement Rights**

5 209. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
6 through 208 of this Complaint.

7 210. Plaintiffs have an implied easement by necessity over the roads, trails, and rights
8 of way in the ENF, and in the National Forests of the Western United States to pursue
9 prospecting, mining, and mineral development. Their mining claims and mineral estates give
10 them such easements. Closure to motorized vehicles of the roads, trails, and rights of way in the
11 ENF, and in the National Forests of the Western United States, adversely and unlawfully
12 interfere with their implied easements, causing them harm and damages.

13 211. The actions of the ENF as set forth above in closing and prohibiting motorized
14 access or prospecting and developing of mining claims in the ENF violates the aforesaid
15 easement rights of Plaintiffs.

16 212. The Defendants' actions in preparing, adopting and implementing the proposed
17 closure and other rules and policies that interfere with the Plaintiffs' easements were arbitrary
18 and capricious, and an abuse of discretion. Such actions have caused and will continue to cause
19 immediate, direct, adverse and irreversible harm to Plaintiffs and other miners and prospectors.
20
21

22
23 **COUNT XVII: Violation of Plaintiffs' Implied Right to Use Public Lands**

24 213. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
25 through 212 of this Complaint.

26 214. The mining laws, and other statutes enacted by Congress, granting the right to
27 prospect on the public lands, including the ENF, and other National Forests throughout the
28

1 Western United States, as well as the granting of mining claims and mineral estates to Plaintiffs,
2 and other miners and prospectors implies a right of access accompanying the grant, arising out of
3 custom of prospectors and miners, to use such public roads as are available for prospecting and
4 mining, and to access their mining claims and mineral estates in an unimpeded manner. Closure
5 to motorized vehicles of the roads, trails, and rights of way in the ENF, and in the National
6 Forests of the Western United States, adversely and unlawfully interfere with their implied right,
7 causing them harm and damages.
8

9
10 215. The actions of the ENF as set forth above in closing and prohibiting motorized
11 access or prospecting and developing of mining claims in the ENF violates the aforesaid implied
12 right of Plaintiffs.

13
14 216. The Defendants' actions in preparing, adopting and implementing the proposed
15 closure and other rules and policies that interfere with the Plaintiffs' implied right were arbitrary
16 and capricious, and an abuse of discretion. Such actions have caused and will continue to cause
17 immediate, direct, adverse and irreversible harm to Plaintiffs and other miners and prospectors.
18

19 **COUNT XVIII: Violation of the Fifth Amendment to the United States Constitution and**
20 **Article 1 § 7.(a) of the Constitution of California**

21
22 217. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
23 through 216 of this Complaint.

24
25 218. Defendants' decision to implement the Travel Management Plan banning
26 motorized vehicles in the ENF has the effect of denying Plaintiffs their right to prospect and to
27 access their mining claims and mineral estates in the ENF. As such, the decision constitutes a
28 taking of their property without due cause and without just compensation, all in violation of the

1 Fifth Amendment to the United States Constitution and Article 1 § 7.(a) of the Constitution of
2 California.

3 219. The actions of the ENF as set forth above in closing and prohibiting motorized
4 access or prospecting and developing of mining claims in the ENF violates the aforesaid Federal
5 and State Constitutional Rights of Plaintiffs, all as set forth above.
6

7 220. The Defendants' actions in preparing, adopting and implementing the proposed
8 closure and other rules and policies that interfere with the Plaintiffs' rights to prospect, and to
9 access their mining claims and mineral estates in the ENF, were arbitrary and capricious, and an
10 abuse of discretion. Such actions have caused and will continue to cause immediate, direct,
11 adverse and irreversible harm to Plaintiffs and other miners and prospectors.
12

13 **COUNT XIX: Injunctive Relief**

14 221. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
15 through 220 of this Complaint.
16

17 222. Plaintiffs request injunctive relief, since the harm to them from the actions of the
18 Defendants in implementing the Travel Management Plan in the ENF, which prohibits them
19 from prospecting and accessing their mining claims and mineral estates, recreational use of the
20 National Forests, and causes damage to them which is immediate and irreparable, since they
21 must be able to use motorized vehicles in order to prospect and mine in the ENF, and for their
22 lawful recreational use.
23

24 223. The actions of the ENF as set forth above in closing and prohibiting motorized
25 access or prospecting and developing of mining claims in the ENF causes Plaintiffs irreparable
26 harm and entitles them to immediate injunctive relief.
27
28

1 issue a temporary, preliminary, and/or permanent injunction against Defendants pursuant to Rule
2 65, Federal Rules of Civil Procedure;

3 3. Declare unlawful and set aside the ROD and ENF Travel Management Plan;

4 4. Grant relief under the APA and hold unlawful and set aside the ENF Travel
5 Management Plan, and all closures of roads, trails, and rights of way of any nature whatsoever.

6 5. Grant such damages as are proven at trial, with interest on the damages at the
7 maximum annual rate as allowed by law, from such earliest date as allowed by law.

8 6. Remand the matters addressed in the ROD and ENF Travel Management Plan for
9 further analysis and action in accordance with applicable law;

10 7. Award the Plaintiffs their reasonable attorney's fees, costs, and expenses of
11 litigation as allowed by law, including without limitation the Equal Access to Justice Act, 28
12 U.S.C. § 241 *et seq.* and other applicable laws or rules of Court; and

13 8. Grant such other and further relief as the Court deems just and proper, including
14 an award of attorney's fees, costs, and expenses.

15 Dated this 24th day of June, 2009

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