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**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

**WESTERN LAND EXCHANGE PROJECT,)
SUSAN WOZNY, JENNIFER SORENSEN,)
KEVIN HOLDSWORTH, and WILLIAM)
YOUNG)**

Plaintiffs,)

v.)

**GALE NORTON, in her official capacity)
as Secretary of the Interior; and KATHLEEN)
CLARKE, in her official capacity as)
Director of the Bureau of Land Management)**

Defendants)

Case No. _____

COMPLAINT

I.

INTRODUCTION

1. The Martin's Cove Historic Site ("Martin's Cove") is a sheltered location in the Sweetwater Rocks just north of the Sweetwater River, approximately 55 miles southwest of Casper, Wyoming. The site is located entirely on public lands administered by the Bureau of Land Management (BLM), and is enrolled as a National Historic Place on the National Register of Historic Places (NRHP). The Cove is contiguous to the confluence of the four major western migratory trails, including the Oregon Trail. The trails were traveled by a half million settlers between 1841 and 1869. These trails are administered by the National Park Service (NPS), in cooperation with the BLM, under the provisions of the National Trails System Act. Martin's Cove also lies in direct proximity to other historical landmarks, including the Tom Sun Ranch, Devil's Gate and Independence Rock. The entire area is known as Independence Pass and has significant historic interest to the BLM, the NPS, and the public. Access to Martin's Cove and to Devil's Gate is gained exclusively through the Tom Sun Ranch, private property also enrolled on the NRHP.

2. For many years, the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints (LDS or Church) sought to gain control of Martin's Cove and the surrounding land and convert the property into a religious site for LDS pilgrims. Martin's Cove is considered significant to the LDS Church because Mormon pioneers traveling west in the Martin Handcart Company took refuge there during an early winter storm in 1856 and many perished.

3. In 1996, the LDS Church purchased the Tom Sun Ranch and converted it into a Mormon visitors' center. The following year LDS officials entered into a collaborative agreement with the BLM that placed Martin's Cove under the stewardship of the Church, subject to certain conditions,

including a public access easement. When that agreement expired in 2002, its terms continued to be given effect while the Church sought to purchase the property from the United States government. When these negotiations failed, Congress intervened and directed the Secretary of the Interior to lease the property to the LDS Church, Pub. L. No. 108-137 § 314, 117 Stat. 1827, 1863-64 (2003).

4. Under the terms of the Act, LDS officials are more than just stewards of the property; the Church has been given complete and unfettered control over both an important federally owned historic site and the message that visitors to the site receive. The Church has been given the go-ahead to create on federal property a Mormon shrine that incorporates the Church's own historical and religious interpretation of the events that occurred in Martin's Cove. The influence of the LDS Church on this federal property is both pervasive and unavoidable.

5. By placing this property under the stewardship of the LDS Church, Congress abdicated an important governmental function statutorily vested in the BLM. The United States government administers thousands of historic and prehistoric sites that lie on federal land, and it is the government's duty and policy is to retain ownership of those sites in order to preserve their historic, educational, and archaeological value. The story of Martin's Cove and the Martin Handcart Company is part of a much larger history of American westward migration that is not limited to the religious significance that the site has for the LDS Church. The stewardship of historic public land can not constitutionally be vested in the Church. To the Church, the property has religious significance as a story of deliverance and evidence of the hand of God. Visitors to the property cannot avoid this overtly religious message. Plaintiffs maintain that the Church can not constitutionally act as gatekeeper or storyteller for property that everyone agrees has historic value beyond its significance to the LDS Church. Just as Ellis Island and other historical eastern ports of entry served as gateways for millions of arriving immigrants on their way to a better life, the trails

that pass through the Sweetwater Valley had the same significance for settlers traveling west. Delegating control over this unique historical property to the LDS Church subordinates the broader historical significance of the events that occurred there to Church doctrine. Congress cannot constitutionally enter into an agreement that allows the LDS Church to appropriate public land for the dissemination of a particularized religious message for a religious purpose.

6. Plaintiffs are individuals with a common historical interest in the story of westward expansion through Independence Pass, including the events at Martin's Cove. Each of the plaintiffs has visited Martin's Cove since control over the property was vested in the LDS Church. Each of the individual plaintiffs objects to the unwelcome proselytizing they were subjected to, and to the pervasive LDS presence that now dominates the site. Each of the individual plaintiffs would like to return to Martin's Cove but is reluctant to do so while it remains in the control of the LDS Church.

7. Plaintiffs seek a declaration that Pub. L. No. 108-137 § 314 violates the Establishment Clause and the Free Speech Clause of the First Amendment. Plaintiffs additionally seek a declaration that the pre-existing cooperative agreement governing the property violates these constitutional provisions. Plaintiffs seek an injunction enjoining the Department of Interior or the BLM from implementing the terms of the lease or otherwise giving effect to the terms of the lease. Plaintiffs additionally seek an injunction preventing Interior or BLM officials from reverting to or entering into a new cooperative agreement that yields control over this historic federal land to the LDS Church.

II.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Plaintiffs' claim pursuant to 28 U.S.C. §§ 1331, 1343(3), and 1361, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiffs seek

to redress the violation by Defendants of Plaintiffs' rights, privileges, and immunities secured by the First Amendment to the United States Constitution.

9. Venue lies in the District of Wyoming under 28 U.S.C. § 1391(e), because a substantial part of the events or omissions giving rise to the claim occurred in the District of Wyoming.

III.

PARTIES

A. Plaintiffs

10. Plaintiff WESTERN LAND EXCHANGE PROJECT (WLXP) is a 501(c)(3) non-profit membership organization based in Seattle and organized under the laws of the state of Washington. WLXP has more than 900 members across 41 states, including 17 members residing in Wyoming. WLXP has a strong, long-standing aesthetic interest in federal lands. The organization is a forceful advocate for the retention of federal lands. WLXP members believe that federal lands have been and will continue to be vital to the culture and health of all American citizens. Therefore, WLXP frequently opposes government efforts to sell, give away, or relinquish control of federal lands. WLXP has a specific interest in Martin's Cove and the additional federal land surrounding it because of its unique historic significance. WLXP members have visited the Cove to hike, take photographs, and learn the history of this area of Wyoming, where the four westward migratory trails converged. WLXP members object to the exploitation of these public lands by a religious organization and to the pervasive LDS presence that now exists.

11. WLXP first became involved with the issues surrounding Martin's Cove in 2002 when it learned that the LDS Church was seeking to obtain the federal land surrounding and including the Cove by way of a land exchange with the United States government. WLXP opposed the proposed land exchange and later submitted testimony opposing H.R. 4103, the bill to sell 1640 acres of

federal land, including the Cove, to the LDS Church. The organization also took part in later public discussions concerning the lease prescribed in Pub. L. No. 108-137, § 314. In October 2002, WLXP member and director Janine Blaeloch visited Martin's Cove. Ms. Blaeloch entered Martin's Cove through the Mormon Handcart Ranch. Inside the Ranch's Visitor Center, Ms. Blaeloch experienced numerous exhibits referencing the LDS faith. Ms. Blaeloch also walked the trail from the Visitor Center onto the Church-managed federal land up to Martin's Cove. Along the trail Ms. Blaeloch read interpretive markers that displayed both BLM and LDS Church logos. Entering Martin's Cove via the Mormon Handcart Ranch and reading the dual-logo interpretive markers made Ms. Blaeloch feel that the BLM had entered into a partnership with the LDS Church in a way that endorsed the Church's views by placing its imprimatur on the Mormon version of history and subordinating the broader history of American westward migration. This made Ms. Blaeloch, who is not a member of the LDS Church, uncomfortable during her visit to the Cove.

12. Although the Visitor's Center and Martin's Cove were not busy at the time of her visit, Ms. Blaeloch is reluctant to return to Martin's Cove during the high season when the LDS presence is more pervasive. She believes that other members of her organization feel this way as well. Ms. Blaeloch is aware that during the warm weather months, thousands of young LDS members visit Martin's Cove each week, dressed in pioneer clothing and pulling handcarts. She is wary that dozens of volunteer missionaries will also be present at that time and attempt to engage in faith-based interpretations along the trail. Ms. Blaeloch believes that members of WLXP would feel uncomfortable and unwelcome in this environment.

13. Based on Ms. Blaeloch's visit to the site and her understanding of the lease terms, visitors to these historic public lands are prohibited from engaging in activities and speech that the Church disapproves of, including making statements critical of the Church or of this use of federal

lands, or even wearing clothing containing statements that the Church views as controversial or inappropriate given the historical nature of the property. These restrictions directly interfere with WLXP's role as an advocacy organization opposed to the challenged action in this case.

14. Plaintiff SUSAN M. WOZNY is a resident of Laramie, Wyoming. Ms. Wozny is a native of Wyoming and has a long-held interest in the history of the state and the American West in general. Ms. Wozny has a nine year old son. She and her son regularly visit local historical sites as part of their on-going family-centered educational activities, which also include reading books and playing games about Western migration.

15. In or around August 2004, Ms. Wozny visited Martin's Cove and could not avoid the pervasive religious presence of the LDS Church at the site. Several groups of LDS pilgrims were visiting the site at the same time. During her visit to Martin's Cove, Ms. Wozny was repeatedly asked by LDS guides which church she belonged to even after explaining that she was not attending the Cove as part of a church group. The LDS guides at the Cove repeatedly called Ms. Wozny "Sister," a term used to address women in the Mormon faith.

16. On the trail to Martin's Cove and surrounding land, Ms. Wozny observed signs decorated with the logos of both the LDS Church and the Bureau of Land Management. Ms. Wozny attempted to step into an area off the main trail and was stopped by an LDS guide. The LDS Guide told Ms. Wozny that she could not walk on that particular piece of land because Mormons had died on the spot and it was, therefore, "sacred" and "hallowed ground." Throughout her visit to Martin's Cove, LDS guides followed directly behind Ms. Wozny and interjected spiritual interpretations of the area's historical significance. She observed many people at both the Visitor's Center and on the trail leading to Martin's Cove wearing pioneer clothing and many others pulling handcarts. The presence of numerous interpretative signs and guides sponsored by

the LDS Church created a pervasive LDS presence that was unavoidable and made Ms. Wozny feel uncomfortable and like an outsider in a state sponsored sectarian religious enclave.

17. Ms. Wozny's visit left her with distinct impression and belief that under the guise of historical interpretation, the LDS Church uses Martin's Cove as a pilgrimage site and a center for proselytizing, and does so with the sanction of the United States government. She objects to federal land being used for these purposes when those lands are supposed to be preserved by the federal government for their historical and educational use. Ms. Wozny wants to take her son to the Cove but is reluctant to do so while it remains under the control of the LDS Church. Ms. Wozny believes that her own aesthetic enjoyment of Martin's Cove has and will continue to be severely and negatively compromised by the pervasive presence of governmentally-endorsed religious messages on the property. Ms. Wozny further believes that the federal government has singled out the LDS Church for special treatment at Martin's Cove, and that non-Mormons like her are being deprived of an aesthetic experience at this historic place while being made to feel like outsiders on public lands set aside for public use. Based on her visit to the site and her understanding of the lease terms, she, like all visitors to these historic public lands, is prohibited from engaging in activities and speech that the Church disapproves of, including making statements critical of the Church or of this use of federal lands, or even wearing clothing containing statements that the Church views as controversial or inappropriate given the historic nature of the property. As an opponent of the land transfer, these restrictions on Ms. Wozny's speech directly interfere with her right to speak out on the issues raised in this case.

18. Plaintiffs JENNIFER SORENSEN and KEVIN HOLDSWORTH are residents of Green River, Wyoming. They are on the faculty of Western Wyoming Community College. Professor Sorensen's work focuses on Western American history including the literature of the

Western migration. Professor Sorensen and Professor Holdsworth are direct descendants of Mormon handcart pioneers. They have a historical and personal interest in the events that occurred at Martin's Cove and the history of Western migration in general. Professor Holdsworth's great great grandparents died with the Willie Company along the trail in 1865, the same year as the Martin Company tragedy. The Willie Handcart Company is one of the Mormon companies that traveled to Salt Lake City along the same trail that was used by the Martin Handcart Company. Professor Sorensen's ancestors were part of another handcart company and she went to Martin's Cove in the hopes of walking on the same land her ancestors walked upon.

19. In July, 1998, Professors Sorensen and Holdsworth visited Martin's Cove. They arrived at Martin's Cove and were immediately greeted in the parking lot by an LDS volunteer who said hello and announced "I am your guide." The LDS guide then followed Professors Sorensen and Holdsworth to the Visitor's Center. After they viewed the exhibits at the Visitor's Center and the presentation made by the guide, the LDS guide asked plaintiffs whether they were members of the LDS Church and, if not, if they would like to learn more about the Church. Having grown up in the Mormon faith, Professor Holdsworth recognized these overtures as the "Golden Questions" asked by members of the LDS Church when they are trying to identify fellow LDS members and to reach out to non-members. Plaintiffs allege that even though they repeatedly told the LDS guide that they did not wish to talk about the LDS Church, the guide persisted in asking them about the Church and about their religious beliefs. Both plaintiffs feel that they were proselytized to from the moment they first encountered the guide until they left the Martin's Cove site. The plaintiffs prematurely cut their visit short because of the unavoidable pervasive LDS environment. Plaintiffs asked if they could follow the trail to Martin's Cove and were told they could not for reasons that were never fully explained to them.

20. These plaintiffs believe that the story of Martin's Cove and its surrounding areas is one of both Mormon and national significance. They feel that the official LDS explanation of the Martin Handcart tragedy does not tell the whole story. Plaintiffs Sorensen and Holdsworth maintain that the story presently being told by the LDS Church about Martin's Cove excludes any narratives or interpretations that are not consistent with or supportive of the Church-approved message about the site. They also maintain that the history presented at Martin's Cove is designed to sell a particular perspective on the Mormon religion and is framed in such a way as to be "faith-enhancing." Plaintiffs Sorensen and Holdsworth believe that their knowledge and understanding of the history of Martin's Cove and the surrounding areas, including their knowledge of their own ancestors' histories, was subordinated to the religious indoctrination they encountered at the site.

21. Plaintiffs Sorensen and Holdsworth maintain that the LDS Church is using Martin's Cove and its surrounding areas to spread a religious message and to gain more adherents to the LDS Church. They were deeply offended by the proselytizing to which they were subjected at the site and are reluctant to return to Martin's Cove while it remains under the control of the LDS Church. Plaintiffs felt unwelcome and like outsiders in an environment permeated by LDS religious teachings and interpretations. Plaintiffs feel that they may have been prohibited from entering Martin's Cove because they did not identify themselves as LDS members. Moreover, based on their visit to the site and their understanding of the lease terms, Plaintiffs Sorensen and Holdsworth, like all visitors to these historic public lands, are prohibited from engaging in activities and speech that the Church disapproves of, including making statements critical of the Church or of this use of federal lands, or even wearing clothing containing statements that the Church views as controversial or inappropriate given the historic nature of the property. As opponents of the land

transfer, these restrictions on Plaintiff Sorensen and Holdsworth's speech directly interfere with their right to speak out on the issues raised in this case.

22. Plaintiff WILLIAM YOUNG is a resident of Medicine Bow, Wyoming. Mr. Young has lived in Wyoming for forty-seven years. Mr. Young is a former Chair of the Board of Directors of the Wyoming Chapter of the American Civil Liberties Union. Mr. Young has a long history of social and political activism. Mr. Young first learned about the issues surrounding Martin's Cove when the LDS Church bought the Sun Ranch. Mr. Young had a colleague who lived at the Sun Ranch prior to its sale and was familiar with the property's historical significance. After the sale of the Sun Ranch, Mr. Young began collecting articles on the relationship between the LDS Church and Martin's Cove. In 2002, Mr. Young wrote a Letter to the Editor of the Casper Star-Tribune satirizing the proposed conveyance of Martin's Cove to the LDS Church. In his letter, Mr. Young compares the LDS Church's acquisition of Martin's Cove with a hypothetical situation in which Congress adopts a bill requiring the Park Service to turn Independence Hall over to the Quakers who rename it "Chestnut Street Meeting House" and use it as a religious platform.

23. In the late fall of 2004, Mr. Young visited Martin's Cove and could not avoid the pervasive LDS presence. Mr. Young entered Martin's Cove through the Visitor's Center on the Sun Ranch. Because Mr. Young visited Martin's Cove late in the season, the site was virtually empty with the exception of an LDS missionary. He viewed the exhibit at the Visitor's Center including an audio and visual presentation. The exhibit described the hardship faced by the handcart companies and contained numerous references to the LDS faith.

24. After leaving the Visitor's Center, Mr. Young walked the two-mile trail onto LDS Church-managed federal land, up through Martin's Cove itself. Mr. Young observed interpretative signs decorated with the logos of both the LDS Church and the Bureau of Land Management.

Although the Visitor's Center and Martin's Cove were not busy at the time of his visit, Mr. Young is reluctant to return to Martin's Cove during the high season when the LDS presence is more pervasive. Mr. Young is aware that during the warm weather months, thousands of young LDS members visit Martin's Cove each week, dressed in pioneer clothing and pulling handcarts. He is wary that dozens of volunteer missionaries will also be present at that time and attempt to engage in faith-based interpretations along the trail. Mr. Young would feel both uncomfortable and unwelcome in this environment.

25. Like the other plaintiffs in this case, Mr. Young believes that the story of Martin's Cove and its surrounding areas is one of broad historical significance to all the people of Wyoming and the United States. Mr. Young feels that the story presently being told by the LDS Church in these areas is one that elevates the Mormon experience and faith above all others. Mr. Young believes that Martin's Cove and its surrounding areas are being used by the LDS Church as a place to reinforce and spread its faith to all visitors. Mr. Young alleges that public lands should not be used as platforms for religious indoctrination. Mr. Young alleges that the federal government has singled out the LDS Church for special treatment in this land use, and that non-Mormons like him are both disenfranchised and made to feel like outsiders on public land. Based on Mr. Young's visit to the site and his understanding of the lease terms, he, like all visitors to these historic public lands, is prohibited from engaging in activities and speech that the Church disapproves of, including making statements critical of the Church or of this use of federal lands, or even wearing clothing containing statements that the Church views as controversial or inappropriate given the historical nature of the property. As an opponent of the land transfer, these restrictions on Mr. Young's speech directly interfere with his right to speak out on the issues raised in this case.

B. Defendants

26. Defendant GALE NORTON is the Secretary of the Interior, an agency of the United States government. Pub. L. 108-137 directs the Department of Interior, through the Bureau of Land Management, to enter into an agreement with the LDS Church to lease approximately 933 acres of federal land including the historic site known as Martin's Cove for a term of 25 years. Secretary Norton is the official responsible for supervising the actions of the Bureau of Land Management with respect to the lease entered into between the United States government and the LDS Church. She is sued in her official capacity as the Secretary of the Interior.

27. Defendant KATHLEEN CLARKE is the Director of the Bureau of Land Management (BLM), an agency within the U.S. Department of the Interior. She is responsible for the administration of 261 million surface acres of America's public lands, located primarily in 12 Western States, including the public land at issue in this case. She is the official responsible for managing these lands in a manner that is consistent with the public interest. Under the terms of the lease challenged in this case, she is the official charged with the responsibility for implementing its provisions and for ensuring that the historic and educational value of Martin's Cove is preserved. She is sued in her official capacity as Director of the BLM.

IV.

FACTS

A. Historical Significance of Martin's Cove

28. Martin's Cove lies in Wyoming's Sweetwater Valley, an area that is central to the history of western migration in the United States. The valley and surrounding area is also known as Independence Pass, and is considered historically significant by both the BLM and the NPS. Martin's Cove is located at the confluence of the four major western migratory trails, the Oregon,

California, Mormon Pioneer and Pony Express trails. The Cove itself is BLM property that is part of almost 100,000 acres of undeveloped public lands.

29. Between 1841 and 1869, 500,000 settlers in search of farmland, gold, religious freedom, and better lives for their families migrated west along the North Platte River en route to California, Oregon, Utah, and points in between. Due to the unique geography of the region and the trails, all westward-heading migrants had to travel through this area. The trails themselves are administered by the National Park Service, in cooperation with the BLM, under the provisions of the National Historic Trail System Act.

30. The history of the western migration during this period is preserved at the BLM's National Historic Trails Interpretive Center in Casper, Wyoming. There, visitors learn about the hardships faced by settlers traveling in covered wagons and, in the case of the Mormon settlers, pulling handcarts. The history is replete with death caused by accidents, disease and exposure. The events that occurred at Martin's Cove are recounted at the center as part of the broader story of western migration.

31. Martin's Cove provided both forage and shelter for the early settlers. The site is mainly significant because it is located at the convergence of the four historic trails. Pioneers of all kinds struggled and died in the vicinity, and the area includes unmarked emigrant graves, as well as historic emigrant camp locations and some archaeological remains of Native American prehistoric sites. It is also significant to historians, and to the LDS Church, because in 1856, Mormon pioneers traveling west pushing handcarts were trapped by a severe early winter storm, and it is estimated by LDS officials that between 135 and 150 of the pioneers perished. In 1977, Martin's Cove was listed on the National Register of Historic Places. The Register lists the property's significance as "Transportation, Exploration/ Settlement, Religion." The owner is listed as federal.

32. Martin's Cove lies in direct or close proximity to other historic sites on public lands including Independence Rock and Devil's Gate. Both of these landmarks are on the National Register of Historic Places. Their significance lies in the fact that if settler parties reached these sites by July 4, they would be able to pass safely through the area before winter storms.

33. Martin's Cove is also contiguous with the privately owned Tom Sun Ranch National Historic Landmark. The ranch was the first cattle ranch in the state of Wyoming, and it figures prominently in any history of the area and the state. To many historians, the Tom Sun Ranch is synonymous with Wyoming's settlement. The Sun family owned the ranch continuously for more than 100 years, until it was sold to the LDS Church in 1996. Access to Martin's Cove and Devil's Gate is gained exclusively through the ranch.

34. Following the sale of the Tom Sun Ranch to the LDS Church, it was immediately renamed the Mormon Handcart Ranch and converted into a religious site for LDS pilgrims. The primary historical significance of the property as Wyoming's first cattle ranch was obliterated and replaced by the story of Mormon pioneers. Simultaneously, LDS officials began negotiations with BLM officials to allow pilgrims to hike into the Cove. In 1997, during its first year of operation, 70,000 pilgrims reportedly visited the Mormon Handcart Ranch.

B. The 1997-2002 cooperative agreement between the LDS Church and the BLM to control access to and operation of Martin's Cove

35. As a result of the increased number of visitors to Martin's Cove following the LDS purchase of the Sun Ranch, in 1997 the BLM and the LDS Church entered into a cooperative agreement allowing visitors to hike into the Cove and to Devil's Gate. As part of the cooperative agreement, a two-mile-loop path through the federal land was developed cooperatively by the Church and BLM. BLM contributed approximately \$250,000 in labor and materials. The trail was constructed to mitigate the environmental harms due to the increased number of visitors to the site.

The Church agreed to provide access to visitors through the Sun Ranch by conveying a non-exclusive road easement to the United States.

36. Under the terms of the cooperative agreement, stewardship of the federal land encompassing Martin's Cove was transferred from BLM and placed in the hands of the LDS Church. In addition to physical control, the Church gained control of interpreting the site to the public.

37. The agreement contained no guidelines or limits on how the public land was to be managed from a historical or educational point of view, and no guidelines prohibiting the Church from proselytizing or creating a pervasively LDS environment.

38. Visitors to the ranch are invited inside an interpretive center where a presentation is made by LDS missionaries describing the hardships faced by the different Mormon Handcart companies that traveled through the valley. The presentation includes exhibits and concludes with a video featuring LDS President Gordon Hinckley, who explains the religious significance of Martin's Cove.

39. Interpretive signs designed and maintained by the LDS Church are placed along the trail. The signs contain the logos of the LDS Church and the Department of Interior alongside one another. The interpretive signs contain passages from the journals of Mormon settlers describing the hardships they endured and, in some cases, contain direct references to the Mormon faith. The official LDS website for the Mormon Handcart Visitors' Center contains numerous and explicit references to the Mormon faith (<http://www.handcart.com>).

40. Today, more than 100,000 people visit Martin's Cove annually. It is estimated that 85% to 90% of the visitors are LDS pilgrims. Mormon youth groups dress in pioneer costume and relive the settler experience for a three to four day reenactment, pulling handcarts loaded with

personal possessions and camping nearby. There may be as many as 1000-2000 young pioneers present on any given day. The LDS presence is pervasive, unavoidable, and unremitting.

41. The cooperative agreement remained in effect from 1997 to 2002. When the agreement expired, both parties continued to give effect to the terms of the agreement while the Church pursued negotiations to purchase the property from the United States government.

C. Pub. L. No. 108-137 § 314, 117 Stat. 1827, 1863-64 (2003)

42. When the BLM refused to sell the land, the Church turned to Congress. The BLM also refused to act on a proposed land transfer because the lands proposed by the Church were not considered historically comparable. In 2002, Rep. James Hansen of Utah and six other members of Congress, who are all members of the LDS Church, cosponsored H.R. 4103, a bill that would have forced the BLM to sell 1,640 acres of land around Martin's Cove to the LDS Church.

43. There were two legislative hearings on H.R. 4103, which provided members of Congress, Church officials, residents of Wyoming, conservation groups, and BLM officials the opportunity to comment on the proposed land sale and voice their concerns. The sponsors of the legislation, and those LDS officials who testified in support of it, argued that Martin's Cove is considered hallowed ground to the LDS Church and that the conveyance would allow the Church to develop the land in a way that comports with the religious significance the property holds for the Church.

44. Opponents testified that they were concerned about the commercialization of the site, ecological damage, ensuring continued public access, and the appropriation of a historical tract of federal land by the LDS Church.

45. Interior Department officials reiterated these concerns and raised the additional concern that the sale of Martin's Cove would set a precedent for transferring historic public sites to

particular interest groups. Interior Department officials also objected to the size of the proposed land transfer. Although the proposed sale covered an area of 1,640 acres, Martin's Cove itself covers an area of 250 acres. Rep. Barbara Cubin of Wyoming testified that she opposed the bill because it was not in the best interests of her constituents. Sen. Craig Thomas of Wyoming also opposed the bill on the grounds that it would set a dangerous precedent. H.R. 4103 was not passed.

46. The Church then proposed a 99-year lease to the BLM. When that proposal was rejected, Rep. Hansen introduced a second bill that would require the BLM to lease 933 acres of public lands, including the Martin's Cove site, to the Church for a 25-year term. The legislation provides that the Secretary of the Interior may offer to renew the lease on terms that are mutually acceptable to the parties. Without further study or debate, the bill was attached while in committee to the Energy and Water Development Appropriations Act of 2004, and was signed into law on December 1, 2003 as Pub. L. No. 108-137 § 314, 117 Stat. 1827, 1863-64 (2003).

47. The Act contains the essential terms of the lease in their entirety. The Act mandates that the property be leased to the LDS Church for the term period, subject only to certain specified limits on the exploitation and use of the property that would interfere with the public's right of access to the property or which would compromise its historical and ecological value. None of the essential lease terms were left to the discretion of BLM officials to negotiate.

48. To ensure that public access to the Martin's Cove and Devil's Gate historic sites is preserved, the Act requires the LDS Church to provide for public access across the LDS-owned Mormon Handcart Ranch.

49. The lease also provides for public educational and ecological preservation of the Martin's Cove historical site; permits the Church, in consultation with the BLM, to regulate entry as may be required to protect the environmental and historic values of the resources at the Martin's

Cove historic site, or at such times as necessitated by weather conditions, matters of public safety, and nighttime hours; provides for the Church, with approval, to improve the leasehold as may become necessary from time to time to accommodate visitors to the leasehold; provides that the Church be obligated to protect and maintain any historical or archaeological artifacts discovered or otherwise identified at the Martin's Cove historical site; and provides that the Church may establish, in consultation with the BLM, visitation guidelines with respect to such issues as firearms, alcoholic beverages, controlled substances, conduct consistent with the historic nature of the resource, and protection of public health and safety.

50. Although the BLM has the responsibility to ensure that the provisions of Pub. L. 108-137, as well as the spirit and intent for which it was enacted, are carried forward in the lease terms and conditions, nothing in the legislation or the lease itself limits the discretion of LDS officials to create a religious environment that closely follows its own unique historic and religious interpretation of the events that occurred at Martin's Cove. That interpretation is approved at the highest levels of the LDS Church. BLM allows this message to be propagated even though it may not represent a completely accurate, or the only interpretation of those events.

51. The lease does not require that the church provide access to those individuals or groups presenting a competing, nonsectarian, more balanced, or even non-religious version of the historic events at Martin's Cove. Nor do the lease terms prevent the LDS Church from excluding visitors whom they believe are engaging in conduct incompatible with their version of the historic nature of the resource.

52. The lease confers upon the LDS Church the rights of owners of private property (or lessees) to exclude visitors based on the Church's own subjective criteria. Individuals wearing T-

shirts critical of the LDS Church or containing statements that are at odds with Church values (e.g. “I am Pro-Choice”) could, under the lease terms, be denied access to the site.

53. The Act provides that the Church will make lease payments that reflect fair market rental value of the public lands to be leased, provided however, that such lease payments shall be offset by the value of the public easements granted by the Church for access to Martin’s Cove and Devil’s Gate. Fair market values were established by classifying the property as undeveloped grazing lands and offered minimal compensation to the BLM. The fair market appraisal of Martin’s Cove does not include the historical and scenic tourism value of the site. The unique historical value of the land was a major consideration in the BLM’s earlier decision to reject land exchanges for this property proposed by the LDS Church.

54. The lease was due to be executed on April 1, 2004, but the execution date was delayed until October 2004 because, under the lease terms mandated by the enabling legislation, the parties had not complied with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4347 (2003). NEPA requires that federal agencies engaged in actions that significantly affect the quality of the environment present a detailed assessment of the environmental impact of those actions.

55. Issuance of the lease was not conditioned upon a particular outcome of the environmental assessment. Pub. L. 108-137 mandates that the lease be executed, without regard to the findings made in the environmental assessment. Under usual BLM procedures, issuance of the lease would depend on the outcome of the environmental assessment. The BLM nevertheless conducted the environmental assessment and issued a Decision Record, finding no significant impact.

56. The lease itself departs from the terms of the Act in one critical respect. Whereas the Act provided that the Secretary of the Interior may offer to renew the lease on terms that are mutually acceptable to the parties, the lease gives the Church a right of first refusal on the property in the event that the BLM decides to sell the land or to renew the lease. The Secretary's actions exceed the authority of the Department of Interior and the BLM under the Act. The conveyance of this valuable property right was not supported by any additional financial consideration.

57. Congress's decision to intervene in the negotiations between the LDS Church and the BLM over the disposition of historic federal lands is without precedent. The legislation singles out the LDS Church for special treatment. The BLM and the NPS have made accommodations for religious sites of other groups, including Native Americans, but they have not conveyed public land that is designated as a historic site (or other federal land) to a religious entity that claims that the property is sacred or hallowed to its followers.

58. By mandating that the land be leased and by dictating the essential terms of the lease, Pub. L. No. 108-137 effectively bypasses the BLM and supercedes the discretion vested in that agency for the disposition of federal lands.

59. Pub. L. No. 108-137 effectively bypasses a number of federal statutes designed to ensure that federal land is managed properly by BLM or NPS officials, including the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (2003); the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470x-6 (2003); and the National Trail System Act (NTSA), 16 U.S.C. §§ 1241-1251 (2003). The historical, cultural, and educational interests those acts seek to protect are not served by the transfer of Martin's Cove to a religious organization whose interest in the property is to create a pilgrimage site that incorporates its own sectarian views and historical interpretations.

60. Congress's decision to lease Martin's Cove to the LDS Church has the predominant purpose and the unavoidable effect of advancing the sectarian interests of the LDS Church. Congress's actions exceed the bounds of permissible accommodation and send a pervasive sectarian message of endorsement by singling out the LDS Church for special treatment. The conveyance of federal property pursuant to the lease terms unavoidably entangles the government and the LDS Church in a joint partnership in managing public lands and historical sites; a role that is properly reserved to the government itself. In addition, the government has inextricably entangled itself in the communication of a particular religious message by entering into an agreement that forces all visitors to these historic federal lands to enter by way of the Mormon Visitor's Center (located on Tom Sun Ranch). The government has the authority to either establish a different point of access that is not pervasively sectarian or to mandate that the present point of access be maintained and operated in a secular way.

61. The BLM's actions in entering into the lease and enforcing its terms, as well as its prior actions in entering into the cooperative agreement, have the predominant purpose and effect of advancing the sectarian interests of the LDS Church. Just as the lease singles out the LDS Church for special treatment, the BLM's actions exceed the bounds of permissible accommodation and send a pervasive and unavoidable message of endorsement. The use of federal property under both the lease terms and the cooperative agreement unavoidably entangles the government and the LDS Church in a joint partnership in managing public lands and historical sites; a role that is properly reserved to the government itself. In addition, the government has inextricably entangled itself in the communication of a particular religious message by entering into an agreement that forces all visitors to these historic federal lands to enter by way of the Mormon Visitor's Center (located on Tom Sun Ranch). The government has the authority to either establish a different point of access

that is not pervasively sectarian or to mandate that the present point of access be maintained and operated in a secular way.

62. By making the LDS Church the steward of Martin's Cove, Congress and the BLM have created a situation where only the views of the LDS Church can be expressed. Prior to the cooperative agreement, visitors to Martin's Cove were free to express dissenting views about the events and responsibility for the events that occurred there. Dissenting or alternative points of view are no longer welcome. Similarly, since the operation of first the cooperative agreement and then the lease, the Church, acting as an agent of the United States, can proscribe speech or conduct that the LDS Church does not consider consistent with their view of the historic or sacred nature of the property. Because of the historical significance of Martin's Cove and because of the BLM's ultimate responsibility for protecting the land in the public interest, the land at issue is not the type of governmental property that can be leased out to an ideological entity that, in turn, can freely engage in content and viewpoint discrimination. The situation created by Congress and the BLM, as required by the cooperative agreement and the lease, violates the Free Speech Clause of the First Amendment by discriminating among speakers based on content and viewpoint.

V.

CLAIMS FOR RELIEF

COUNT I

(Improper Establishment of Religion under the First Amendment to the United States Constitution)

a. Plaintiffs re-allege and incorporate, as though fully set forth herein, each and every allegation contained in the above paragraphs.

b. Defendants, through their actions as described above, have violated the requirement that church and state remain separate under the Establishment Clause of the First Amendment to the United States Constitution.

COUNT II

(Viewpoint and Content-Based Discrimination under the First Amendment
to the United States Constitution)

a. Plaintiffs re-allege and incorporate, as though fully set forth herein, each and every allegation contained in the above paragraphs.

b. Defendants, through their actions as described above, have violated the requirement that government action be viewpoint and content-neutral.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. Declaratory relief that Pub. L. No. 108-137 § 314, and the prior cooperative agreement entered into by the BLM and the LDS Church violate the Establishment Clause and the Free Speech Clause of the First Amendment.
2. Injunctive relief enjoining the defendants from implementing the terms of the lease, or reverting to the cooperative agreement that was in effect from 1997 to 2002.
3. Injunctive relief requiring the defendants to establish a point of access to these historic federal lands that does not require visitors to be funneled through the Tom Sun Ranch and subjected to LDS teachings and proselytizing.
4. Award plaintiffs' attorneys' fees and expenses.
5. Grant such other relief as this Court deems just and proper to ensure that these historical federal lands are preserved as a historical site and not as a religious enclave.

Dated: March 8, 2005

Respectfully Submitted,

By: _____

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