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2020 NOV -6 PM 12:04

1 CASE NO. CV 21 509

2 DEPT. NO. II

IDAIAE SPERO
DIST COURT CLERK

Electronically Filed
Nov 19 2020 12:01 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

3
4 IN THE SIXTH JUDICIAL DISTRICT COURT OF NEVADA
5 IN AND FOR THE COUNTY OF HUMBOLDT
6

7 KIMBLE WILKINSON

8 Plaintiff,

9 vs.

NOTICE OF APPEAL

10 TY ALBISU, JOHN ALBISU,
11 ROSIE ALBISU, and ANCHOR
12 S-RANCH AND RENTALS, LLC.


13 Defendants.

14 COMES NOW, TY ALBISU, JOHN ALBISU, ROSIE ALBISU, and ANCHOR S-
15 RANCH AND RENTALS, LLC (collectively the "Albibus"), by and through their attorney of record
16 CAROLYN "LINA" TANNER, ESQ., and hereby appeals to the Nevada Supreme Court from the Bench
17 Trial, Findings of Fact and Conclusions of Law and Judgment entered by this Court entered October 9,
18 2020. Notice of Entry of Order was issued on October 14, 2020.

19 **AFFIRMATION PURSUANT TO NRS 239B.030**

20 The undersigned does hereby affirm that the preceding document does not contain the Social
21 Security Number of any person.

22 DATED this 2nd day of November, 2020.

23
24 By: 
25 CAROLYN "LINA" TANNER, ESQ.
26 Nevada Bar No. 5520
27 TANNER LAW & STRATEGY GROUP, LTD.
28 P.O. Box 18351
Reno, NV 89511
Tel. 775.323.4657
E-mail: lina@tanner1nv.com

Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Tanner Law & Strategy Group, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy via U.S. Post of the foregoing document addressed to:

Rendel B. Miller, Esq.
115 West 5th Street, Box 7
Winnemucca, NV 89445

DATED this 2nd day of November, 2020.

By: 

Sixth Judicial District Court - Humboldt County

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9:42:49

Case Summary

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Case #: CV0021509

Judge: MONTERO, MICHAEL R.

Date Filed: 06/06/2018 Department:

Case Type: OTHR REAL PROPTY

Plaintiff(s)	Attorney(s)
WILKINSON, KIMBLE	MILLER, RENDAL
Defendant(s)	Attorney(s)
ALBISU, TY	TANNER, CAROLYN "LINA"
Defendant(s)	Attorney(s)
ALBISU, JOHN	No *Attorney 1* Listed
Defendant(s)	Attorney(s)
ALBISU, ROSIE	No *Attorney 1* Listed
Defendant(s)	Attorney(s)
ANCHOR S-RANCH AND RENTALS	No *Attorney 1* Listed

Fees:

Date Assessed:	Fee	Total	Paid	Waived	Outstanding
06/06/2018	CLERKFE	\$56.00	\$56.00	\$0.00	\$0.00
08/09/2018	LAWLIB	\$15.00	\$15.00	\$0.00	\$0.00
10/19/2018	CTTECH	\$8.00	\$8.00	\$0.00	\$0.00

Hearings:

Date	Time	Hearing
10/10/2018	3:00PM	HEARING
01/31/2019	1:30PM	HEARING
03/26/2019	4:00PM	HEARING
02/26/2020	9:00AM	HEARING
08/18/2020	1:30PM	PRE-TRIAL CONFERENCE
09/09/2020	9:00AM	BENCH TRIAL

Filings:

Date	Filing
06/06/2018	EX PARTE EMERGENCY MOTION FOR PRELIMINARY INJUNCTION & TEMP
06/06/2018	VERIFIED COMPLAINT
06/06/2018	Legacy Images
06/06/2018	Legacy Images
06/14/2018	SUMMONS
06/14/2018	SUMMONS
06/15/2018	Legacy Images
06/15/2018	Legacy Images
06/28/2018	SUMMONS FILED X2
06/29/2018	Legacy Images
06/29/2018	Legacy Images
07/09/2018	EXPARTE EMERGENCY ORDER FOR PRELIM INJUNCTION AND TPO

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06/15/2018	Legacy Images
06/15/2018	Legacy Images
06/28/2018	SUMMONS FILED X2
06/29/2018	Legacy Images
06/29/2018	Legacy Images
07/09/2018	EXPARTE EMERGENCY ORDER FOR PRELIM INJUNCTION AND TPO
07/10/2018	Legacy Images
07/12/2018	NOTICE OF ENTRY OF ORDER
07/13/2018	Legacy Images
07/19/2018	REQUEST FOR SUBMISSION
07/19/2018	AFFIDAVIT IN SUPPORT OF DEFAULT
07/19/2018	DEFAULT
07/20/2018	Legacy Images
07/20/2018	Legacy Images
07/20/2018	Legacy Images
07/24/2018	REQUEST FOR SUBMISSION
07/24/2018	NOTICE OF APPEARANCE (PLIMPTON, TODD)
07/24/2018	ORDER CONTINUING HEARING
07/24/2018	MOTION TO CONTINUE HEARING
07/24/2018	Legacy Images
07/24/2018	Legacy Images
07/24/2018	Legacy Images
07/24/2018	Legacy Images
07/25/2018	MOTION TO SET ASIDE DEFAULT
07/25/2018	Legacy Images
08/01/2018	NOTICE OF ENTRY OF ORDER (ORDER CONT. HEARING)
08/02/2018	Legacy Images
08/15/2018	STIPULATION TO VACATE HEARING & REMOVE DEFAULT & ORDER
08/16/2018	Legacy Images
10/10/2018	MINUTES - STATUS HEARING
10/17/2018	ANSWER AND COUNTERCLAIM
10/18/2018	Legacy Images
10/18/2018	Legacy Images
11/05/2018	SUBPOENA DUCES TECUM (HCSO) FILED
11/06/2018	Legacy Images
11/09/2018	REPLY TO COUNTERCLAIM
11/09/2018	NOTICE OF 16.1 CASE CONFERENCE MEETING
11/14/2018	Legacy Images
11/14/2018	Legacy Images
12/28/2018	EXPARTE EMERGENCY MOTION FOR CONTEMPT & ORDER TO SHOW CAUSE
12/28/2018	Legacy Images
01/11/2019	SUBSTITUTION OF COUNSEL (TP TO JFS)
01/14/2019	NOTICE OF APPEARANCE OF COUNSEL
01/14/2019	RESPONSE TO EXPARTE MOTION FOR CONTEMPT & ORDER TO SHOW CAUS
01/14/2019	Legacy Images
01/15/2019	Legacy Images
01/15/2019	Legacy Images
01/31/2019	MINUTES - SETTLEMENT CONFERENCE
02/06/2019	Legacy Images

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02/28/2019	SECOND EXPARTE EMERGENCY MOTION FOR CONTEMPT AND ORDER TO S
02/28/2019	REQUEST FOR SUBMISSION
02/28/2019	Legacy Images
02/28/2019	Legacy Images
03/04/2019	EXPARTE ORDER TO SHOW CAUSE RE: CONTEMPT
03/04/2019	Legacy Images
03/07/2019	ORDER AFTER HEARING ON JANUARY 31, 2019
03/07/2019	CERTIFICATE OF MAILING
03/08/2019	Legacy Images
03/12/2019	Legacy Images
03/26/2019	COURT MINUTES - SHOW CAUSE HEARING RE: CONTEMPT
03/27/2019	ORDER AFTER HEARING ON OCTOBER 10, 2018 (NUNC PRO TUNC)
03/28/2019	ORDER (RE: GATES)
03/28/2019	Legacy Images
04/02/2019	Legacy Images
04/17/2019	STIPULATION TO AMEND PLEADINGS AND ORDER
04/17/2019	Legacy Images
04/18/2019	MEMORANDUM OF TEMP ASSIGNMENT (SETTLEMENT ONLY - ROGERS)
04/19/2019	NOTICE OF ENTRY OF ORDER
04/19/2019	Legacy Images
04/22/2019	Legacy Images
04/26/2019	EX PARTE EMERGENCY MOTION FOR PRELIMINARY INJUNCTION & TEMP
04/26/2019	AMENDED VERIFIED COMPLAINT
04/26/2019	Legacy Images
04/26/2019	Legacy Images
05/09/2019	REQUEST FOR SUBMISSION
05/09/2019	Legacy Images
05/10/2019	SCHEDULING ORDER
05/10/2019	DEF'S RESPONSE TO EXPARTE EMERGENCY MOTION FOR PRELIMINARY I
05/13/2019	Legacy Images
05/13/2019	Legacy Images
05/16/2019	NOTICE OF FILING OF AFF IN SUPP OF DEFS RESP TO EMERGENCY MO
05/17/2019	Legacy Images
05/20/2019	DEFENDANT'S OBJECTION TO THE RFS OF THE EXPARTE MOTION
05/21/2019	Legacy Images
05/22/2019	MOTION FOR CONTEMPT AND ORDER TO SHOW CAUSE
05/23/2019	Legacy Images
05/28/2019	ANSWER & COUNTERCLAIM OF DEFENDANTS
05/29/2019	Legacy Images
06/03/2019	REQUEST FOR SUBMISSION
06/04/2019	Legacy Images
06/11/2019	DEF'S RESPONSE TO MOTION FOR CONTEMPT/ORDER TO SHOW CAUSE
06/12/2019	Legacy Images
06/14/2019	ANSWER TO COUNTERCLAIM
06/14/2019	Legacy Images
06/21/2019	DELIVERY OF ORIGINAL SIGNATURE
06/24/2019	NOTICE OF FILING OF AFF IN SUPPORT OF DEFS MOTION FOR CONTEM

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06/24/2019	Legacy Images
06/25/2019	Legacy Images
06/28/2019	NOTICE OF HEARING
07/01/2019	Legacy Images
07/15/2019	NOTICE OF DEATH
07/16/2019	Legacy Images
08/12/2019	AMENDED SCHEDULING ORDER
08/13/2019	Legacy Images
10/23/2019	EMERGENCY EXPARTE MOTION FOR CONTEMPT/ORDER TO SHOW CAUSE, DIRECTIONS FROM CT
11/07/2019	DEFENDANT'S RESPONSE TO EMERGENCY EX PARTE MOTION FOR CONTEMPT & ORDER TO SHOW CAUSE, DIRECTIONS FROM THE COURT
11/20/2019	SUBPOENA DUCES TECUM (HCSO)
11/20/2019	NOTICE OF TRESSPASS
11/20/2019	ACCEPTANCE OF SERVICE
11/22/2019	TEMPORARY RESTRAINING ORDER SET FOR 11/27/2019 AT 10:00 AM IN C1/ , JDG: MONTERO, MICHAEL R.
11/22/2019	NOTICE OF HEARING
11/25/2019	SUBPOENA DUCES TECUM (HCSO)
11/25/2019	ACCEPTANCE OF SERVICE (RACHELLE PIQUET)
12/03/2019	MEMORANDUM OF TEMPORARY ASSIGNMENT (SETTLEMENT CONFERENCE ONLY)
12/12/2019	SETTLEMENT CONFERENCE SET FOR 12/12/2019 AT 1:30 PM IN C1/ , JDG: ROGERS, WILLIAM G.
12/12/2019	SETTLEMENT CONFERENCE SET FOR 01/10/2020 AT 1:30 PM IN C1/ , JDG: ROGERS, WILLIAM G.
12/18/2019	NOTICE OF ENTRY OF ORDER
12/30/2019	DEFENDANT'S PRETRIAL DISCLOSURES
01/10/2020	DEFENDANT'S CONFIDENTIAL SETTLEMENT STATEMENT
01/17/2020	SUBPOENA FILED (STEVE DEL SOLDATO)
01/17/2020	SUBPOENA ISSUED (SEAN WILKEN)
01/22/2020	SUBPOENA FILED (SEAN WILKEN)
01/22/2020	MOTION FOR DISMISSAL OF ACTION AGAINST JOHN ALBISU (DECEASED)
01/22/2020	DEFENDANT'S OBJECTION TO ADMISSIBILITY OF PLAINTIFF'S EVIDENCE BASED UPON NRCP 16.1(A) (3) (B)
01/22/2020	DEFENDANT'S TRIAL STATEMENT
01/22/2020	PLAINTIFF'S TRIAL STATEMENT
01/24/2020	BENCH TRIAL SET FOR 06/24/2020 AT 9:00 AM IN C1/ , JDG: MONTERO, MICHAEL R.
01/24/2020	3 DAYS
01/24/2020	STIPULATION AND ORDER TO CONTINUE TRIAL
01/29/2020	PRE-TRIAL CONFERENCE SET FOR 05/12/2020 AT 1:30 PM IN C1/ , JDG: MONTERO, MICHAEL R.
02/04/2020	NOTICE OF HEARING
02/21/2020	SHERIFF'S RETURN
02/25/2020	EMAIL SENT TO REGARDING SERVICE OF COURT DOCUMENT - CV0021509, IN THE MATTER OF : WILKINSON, KIMBLE WITH 13 ATTACHMENTS FROM DOCKETS LEGIM-6/6/2018, LEGIM-7/10/2018, LEGIM-10/18/2018, LEGIM-11/14/2018, F REETYPE-12/28/2018, LEGIM-12/28/2018, LEGIM-1/15/2019, LEGIM-2/6/2019 , LEGIM-2/28/2019, LEGIM-3/4/2019, LEGIM-3/12/2019

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02/25/2020 EMAIL SENT TO REGARDING SERVICE OF COURT DOCUMENT - CV0021509, IN THE MATTER OF : WILKINSON, KIMBLE WITH 13 ATTACHMENTS FROM DOCKETS LEGIM-3/28/2019, LEGIM-4/2/2019, LEGIM-4/17/2019, LEGIM-5/13/2019, LEGIM-5/17/2019, LEGIM-5/23/2019, LEGIM-5/29/2019, LEGIM-6/12/2019, LEGIM-6/14/2019, LEGIM-8/13/2019, LEGIM-4/26/2019

02/25/2020 EMAIL SENT TO REGARDING SERVICE OF COURT DOCUMENT - CV0021509, IN THE MATTER OF : WILKINSON, KIMBLE WITH 4 ATTACHMENTS FROM DOCKETS FREETYPE-10/23/2019, FREETYPE-11/7/2019, FREETYPE-11/20/2019, FREETYP E-1/24/2020

02/25/2020 REQUEST FOR HEARING

02/26/2020 NEVADA SHERIFF'S RETURN

02/26/2020 AMENDED STIPULATION/ORDER TO CONT TRIAL/TO EXT TPO IN CASE CV0022045

02/26/2020 MINUTES-HEARING

03/09/2020 CERTIFICATE OF MAILING (REQUEST FOR HEARING)

04/23/2020 MOTION FOR SUMMARY JUDGMENT IN PART

05/14/2020 PRE-TRIAL CONFERENCE SET FOR 08/18/2020 AT 1:30 PM IN C1/ , JDG: MONTERO, MICHAEL R.

05/14/2020 BENCH TRIAL SET FOR 09/09/2020 AT 9:00 AM IN C1/ , JDG: MONTERO, MICHAEL R.

05/14/2020 3 DAYS

05/15/2020 DEF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT IN PART

05/20/2020 NOTICE OF FILING OF DECLARATION IN SUPPORT OF DEFENDANTS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT IN PART

05/20/2020 STIPULATION TO MOVE TRIAL, REOPEN DISCOVERY, AND AMEND PLEADINGS

05/29/2020 NOTICE OF ENTRY OF ORDER

06/10/2020 AMENDED ANSWER/COUNTERCLAIM OF DEFENDANTS,

06/11/2020 AMENDED ANSWER/COUNTERCLAIM OF DEFENDANTS

06/25/2020 ANSWER TO AMENDED ANSWER AND COUNTERCLAIM

08/10/2020 PLAINTIFF'S PRETRIAL DISCLOSURES

08/18/2020 MOTION OF DEFENDANTS FOR EXTENSION OF TIME TO FILE DEFENDANT'S SUPPLEMENTAL PRE-TRIAL DISCLOSURES AND DISCOVERY

08/19/2020 MINUTES-PRE-TRIAL CONFERENCE

08/24/2020 PLAINTIFF'S PRETRIAL DISCLOSURES FIRST SUPPLEMENT

08/24/2020 DEFENDANT'S FIRST SUPPLEMENTAL PRETRIAL DISCLOSURES

08/27/2020 SUBPOENA (SEAN WILKEN)

09/01/2020 SUBPOENA FILED (BARRY WILKINSON)

09/01/2020 SUBPOENA FILED (NICK WILKINSON)

09/01/2020 SUBPOENA FILED (HIGHLAND WILKINSON)

09/01/2020 SUBPOENA FILED (TERRI TOM)

09/01/2020 SUBPOENA FILED (MARY LOU MINOR)

09/01/2020 SUBPOENA FILED (BRUCE EASTERDAY)

09/01/2020 SUPBOENA FILED (S. DEL SOLDATO)

09/10/2020 MINUTES-BENCH TRIAL (9/9/20-9/10/20)

09/25/2020 PLAINTIFF'S CLOSING ARGUMENT

09/25/2020 DEFENDANT'S POST TRIAL BRIEF

10/12/2020 BENCH TRIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

10/14/2020 NOTICE OF ENTRY OF ORDER

10/27/2020 EMAIL SENT TO REGARDING SERVICE OF COURT DOCUMENT - CV0021509, WILKINSON, KIMBLE VS. ALBISU, TY WITH 1 ATTACHMENTS FROM DOCKETS FREETYPE-10/14/2020

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11/06/2020 SUBSTITUTION OF COUNSEL (SLOAN TO TANNER)
11/06/2020 NOTICE OF APPEAL

CASE NO. CV 0021509

DEPT. NO. II

FILED

2020 OCT -9 PM 12:23

CLERK OF DISTRICT COURT
J. C. CUB

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA
IN AND FOR THE COUNTY HUMBOLDT
-o0o-

KIMBLE WILKINSON,

Plaintiff,

vs

**BENCH TRIAL FINDINGS OF
FACT AND CONCLUSIONS
OF LAW AND JUDGMENT**

TY ALBISU, JOHN ALBISU,
ROSIE ALBISU, and ANCHOR
S-RANCH AND RENTALS, LLC,

Defendants.

_____ /

The above-entitled case came before this Court for a bench trial beginning on September 9, 2020 and ending on September 10, 2020; the Honorable Michael R. Montero presiding. This Court, having reviewed the papers, pleadings, and briefs on file, hearing testimony of witnesses and oral and written arguments from the parties, and in reviewing the exhibits presented at trial, now makes the following Findings of Fact and Conclusions of Law and Judgment pursuant to NRCP 52(a)(1), and reaching a Decision as stated below.

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1 13. Plaintiff's family has been driving cattle across Defendants' land for
2 approximately one hundred forty (140) years.

3 14. Frank Albisu, Defendant Ty Albisu's father, originally owned Defendants' land.

4 15. Frank Albisu was aware of Plaintiff's ancestors driving cattle across Defendants'
5 land.

6 16. On or about April 1, 1985, Frank Albisu split his land into smaller parcels and
7 signed a parcel map. On this parcel map, Frank Albisu stated that he owned the
8 parcels, and "[did] hereby grant the easements as indicated hereon."

9 17. The parcel map dedicated sixty-foot (60') easements for existing roads.

10 18. The parcel map dedicated thirty-foot (30') easements along the boundaries of each
11 parcel for roadways and utilities.

12 19. Defendants John Albisu and Rosie Albisu purchased the land between Plaintiff's
13 land with a Quit Claim Deed executed June 5, 1997.

14 20. Defendants John Albisu and Rosie Albisu never consented to Plaintiff driving
15 cattle across their land.

16 21. Defendants Ty Albisu, John Albisu, and Rosie Albisu were on notice of Plaintiff's
17 cattle driving across their land.

18 22. Defendant Ty Albisu, both verbally and in writing, continuously told Plaintiff to
19 stay off his land.

20 23. Defendants have chained and padlocked gates that Plaintiff uses to access
21 Defendants' land.

22 24. Defendants have parked vehicles and placed boulders in front of gates so that
23
24

1 Plaintiff may not access the land.

2 25. Plaintiff has cut fences and chain links, and placed his own locks on gates to
3 circumvent Defendants' security mechanisms and access the land.

4 26. A cattleguard once existed on the fence line between Plaintiff and Defendants'
5 properties; APN 03-0741-02 and APN 03-0741-07.

6 27. This cattleguard was located at Gate 1. *Court's Exhibit 1.*

7 28. The cattleguard was gifted to Plaintiff by Humboldt County.

8 29. On or about February 2018, Defendant Ty Albisu, unhappy with the installation
9 of the cattleguard, used a skid steer to forcefully remove the cattleguard from the
10 ground.

11 30. The cattleguard sustained damage, but actual causation is unknown.

12 31. It is unknown whether the cattleguard was damaged prior to the removal.

13 32. The cattleguard is old.

14 33. Plaintiff's estimation of cost to repair the cattleguard is approximately \$1,216.00.

15 34. Plaintiff's estimation of cost to replace the cattleguard is approximately \$5,746.00.

16 35. Defendant Ty Albisu set a prescribed burn that accidentally spread onto Plaintiff's
17 land.

18 36. The uncontrolled fire burned approximately fifty (50) acres of Plaintiff's native
19 grass.

20 37. The fifty (50) acres of native grass is valued at \$20.00/acre, and Plaintiff thus lost
21 \$1000.00 in grass.

22 38. The accidental burn was arguably beneficial to Plaintiff, and the native grass
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1 eventually grew back.

2 39. The loss in value of the native grass is incalculable after a winter kill.

3 40. Plaintiff has traversed Defendants' property with hundreds of cattle (four hundred
4 (400) head in the Spring and eight hundred (800) head in the Fall) on a seasonal
5 basis since 1994.

6 41. A seasonal basis is three (3) times per year—once in the Spring, and twice in the
7 Fall.

8 42. Plaintiffs route in the Fall is as follows: Starting from Plaintiff's property APN
9 03-0741-02, Plaintiff drives cattle and farm equipment through Gate 1 and
10 continues East along the Southern boundary line of APN 03-0741-07, APN 03-
11 0741-06, and APN 03-0741-05 toward Gate 2. Plaintiff then drives South along
12 the fence line of APN 03-0741-09 and APN 03-0741-01 to Gate 3, and cuts
13 diagonally Southwest through APN 03-0741-17. Plaintiff then traverses East
14 along the Southern boundary line of APN 03-0741-16 through Gates 4 and 5, and
15 then along the Southern boundary line of APN 03-0171-03. Plaintiff finally cuts
16 diagonally Southwest across the Northern half of APN 03-0171-06, passes
17 through Gates 6 and 7, and continues across U.S. Highway 95 through Gate 8 to
18 Minor Ranch. *Court's Exhibit 1* (hereinafter "Fall Route").

19 43. Plaintiff's route in the Spring is as follows: Plaintiff starts at Minor Ranch at Gate
20 8, crosses U.S. Highway 95, through Gates 6 and 7, and diagonally Northeast
21 across the Northern half of APN 03-0171-06. Plaintiff continues East along the
22 Southern boundary of APN 03-0171-03 and turns North through Gates 4 and 5.

1 Plaintiff continues North along the Eastern boundary of APN 03-0171-03 through
2 Gate 9 and along the Western boundary of APN 03-0741-03 and across Nouque
3 Road. *Court's Exhibit 1* (hereinafter "Spring Route").

4 44. Frank Albisu was aware of Plaintiff's use of Defendants' land prior to 1997.

5 45. Defendants have been on actual notice of Plaintiff's use of Defendants' land since
6 2018.

7 46. Witnesses Barry Wilkinson, Nick Wilkinson, and Chris Bengoa have been aware
8 of Plaintiff using Defendants' land since 1994.

9 47. Plaintiff did not engage in violent behavior to assert his right to use Defendants'
10 land.

11 48. Plaintiff's use of Defendants' land has been historically peaceable.

12 49. Defendants presented no evidence that Plaintiff harassed and threatened them.

13 50. There is no corroborating evidence outside of Defendant Rosie Albisu's testimony
14 that Plaintiff got into a fistfight with John Albisu.

15 51. Plaintiff testified at trial that he has never been in a fistfight in his life.

16 52. Defendant Rosie Albisu felt threatened and bullied by Plaintiff.

17 53. Defendant Rosie Albisu did not experience severe emotional distress as a result of
18 Plaintiff's threats and/or harassment.

19 54. John Albisu died in August 2018.

20 55. There is no evidence that John Albisu died as a result of Plaintiff's actions.

21 56. Minor Ranch has an adjudicated water right from the Quinn River Point of
22 Diversion 6395-1 (hereinafter "POD 1") and the Quinn River Point of Diversion
23

6395-5 (hereinafter "POD 5").

57. POD 1 is situated just inside the Southern boundary of Defendants' parcel and directs water in a Southeastern direction across Plaintiff's land.

58. POD 5 is situated on Tribal lands to the Northwest of the Northwest corner of Plaintiff's land, and flows through the Southwest corner of Defendants' land, whereupon it continues into Plaintiff's land.

59. Plaintiff has a water right in the water flow from POD 1.

60. Plaintiff has a water right in the water flow from POD 5.

61. Plaintiff utilizes the PODs as irrigation for hay cultivation.

62. Defendants are diverting the POD water onto their own land.

63. One POD is being restricted by an undersized twelve-inch (12") culvert.

64. The other POD is being restricted by an artificial dirt dam, or what is otherwise known as a berm.

65. This blockage remains unresolved.

66. Plaintiff has been unable to irrigate his fields properly in 2019-2020 without access to the POD water.

67. Plaintiff's acres yield between 1.75-2 tons of hay per year, worth \$100.00/ton.

68. Plaintiff speculates that he has suffered a total loss of \$35,000.00-\$40,000.00 from inadequate irrigation.

69. Defendant Ty Albisu believes that Plaintiff misappropriated t-posts, wire, and other fencing materials worth \$6,000.00 total.

70. Defendant Ty Albisu believes that Plaintiff's cattle driving has resulted in \$879.30

worth of damage to his land.

71. Defendant Ty Albisu believes he has lost twenty (20) head of livestock as a result of Plaintiff's cattle driving across Defendants' land.

II. CONCLUSIONS OF LAW

A. Trespass to Land or Chattels – Cattleguard

The Supreme Court of Nevada has held that a civil trespass occurs when a person substantially interferes with another person's property rights. *See Lied v. Clark County*, 94 Nev. 275, 278-79 (1978); *see also Rivers v. Burbank*, 13 Nev. 398, 408 (1878). Here, Plaintiff has a valid property right in the cattleguard gifted to him by Humboldt County, and Defendants clearly interfered with such a right upon forcefully removing the cattleguard from the ground.

However, this Court is unconvinced by Plaintiff's causation argument. It is unknown whether the cattleguard was damaged prior to its removal. Thus, Plaintiff cannot show that Defendants' interference with the cattleguard was the cause-in-fact of such damage. The cattleguard is also secondhand and old, and could have been damaged in its ordinary use. Although Defendant interfered with Plaintiff's property right in the cattleguard, it was not a substantial interference, and the damage was minimal and actual causation unknown. Therefore, this Court finds that Defendants' interference with the cattleguard does not constitute a trespass to chattels.

B. Trespass to Land or Chattels – Burnt Field

Here, Plaintiff has a valid property right in his field and native grass.

Defendant clearly interfered with such a right when Defendant Ty Albisu lost

1 controlled of his prescribed burn and it spread to Plaintiff's land. However, Plaintiff
2 has not suffered any real damage from the burn. The grass eventually grew back and
3 was arguably beneficial to the land itself. Although Plaintiff claims that he lost
4 \$1,000.00 in native grass, this Court finds the interference with Plaintiff's land
5 insubstantial with minimal damage. Absent any real loss, this Court finds that
6 Defendants' accidental burn does not constitute trespass to chattels.

7 **C. Prescriptive Easement – Cattle and Equipment**

8 The Supreme Court of Nevada has held that the "elements of an easement of
9 prescription are five years' adverse, continuous, open and peaceable use. The
10 standard of proof in establishing a prescriptive easement is clear and convincing
11 evidence." *Wilfon v. Cyril Hampel 1985 Trust*, 105 Nev. 608, 608 (1989).

12 i. **Adverse**—To establish one's claim to interest in another's land, the
13 claimant's use must "be hostile to the title of the owner of the servient estate."
14 *Howard v. Wright*, 38 Nev 25, 29 (1914). Basically, the claimant must assert a right
15 to the land. *Jordan v. Bailey*, 113 Nev. 1038, 1044 (1997). This means that the
16 claimant must use the land without the landowner's permission. Here, it is clear that
17 Plaintiff has crossed Defendants' land for decades without Defendants' permission.
18 Defendants have repeatedly told Plaintiff to stay off their land, have put padlocks
19 and chains on gates to prevent Plaintiff's entry, and have used their vehicles to
20 obstruct Plaintiff's access to the land. Thus, Plaintiff's use of Defendants' land is
21 adverse.

22 ii. **Continuous**—Nevada law does not provide a clear standard for continuous
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24

1 use. However, the Third Restatement of Property: Servitudes clarifies this
2 requirement: “the adverse possessor must (mentally) remain in an adverse posture to
3 the holder of the servient estate throughout the prescriptive period, [but] does not
4 require that actual physical use be made constantly, or even frequently.”

5 Restatement (Third) of Property: Servitudes § 2.17(i) (2000). Here, Plaintiff has
6 been driving cattle across Defendants’ land for over two decades. This meets the
7 statutory requirement of five (5) years.

8 In addition,

9 If the use continues to be open or notorious ... the fact that no
10 physical use of the inchoate servitude is made for some period of
11 time does not stop the prescriptive period from running. Seasonal
uses, intermittent uses, and changing uses all may meet the
continuity requirement so long as they are open and notorious. *Id.*

12 Thus, although Plaintiff only crosses Defendants’ land seasonally—three (3) times
13 per year— this use still constitutes continuous use. Plaintiff’s mentality has also
14 remained adverse to Defendants’ interest in the land, because Plaintiff uses the land
15 as though it were his own. Therefore, Plaintiff’s use is continuous.

16 **iii. Open**—The Supreme Court of Nevada has held that a person’s use is open if
17 it is not clandestine. *Howard, supra*. Therefore, a landowner need not have actual
18 notice of the use, only constructive notice. *See id.* Nevada law requires only that the
19 use is not secret. *Id.* Here, Plaintiff drove hundreds of cattle across Defendants’ land
20 three (3) times per year. This use is sufficiently open and notorious. Plaintiff did not
21 drive his cattle under the cover of night, or attempt to do so in secret. Defendants
22 have been well aware of Plaintiff’s use since 2018, and have even tried to limit and
23

1 prevent access to Defendants' land.

2 Although Defendants' did not have actual notice of Plaintiff's use for the five
3 (5) year statutory period, Defendants were still put on constructive notice of such
4 use. This means that notice could have been derived from the facts and
5 circumstances. *See Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250-51 (1993).
6 Here, Defendants' notice could have been derived from the fact that Plaintiff's use
7 was not in secret and there was also sufficient evidence of Plaintiff's use—
8 trampling of grass and movement of hundreds of cattle in plain sight on a seasonal
9 basis. Defendant Ty Albisu also testified that Frank Albisu was aware of Plaintiff's
10 use, which further implies Defendants' notice. Thus, Plaintiff's use was open and
11 notorious.

12 **iv. Peaceable**—Nevada law does not provide a working definition for the
13 peaceable requirement. However, peaceable is generally defined as “free from strife
14 or disorder.”¹ Strife is defined as “bitter sometimes violent conflict or dissension.”²
15 Here, Defendants present no evidence that Plaintiff exhibited violence in using
16 Defendants' land. Although Defendant Rosie Albisu claims that Plaintiff and
17 Defendant John Albisu got into a fistfight, Defendants present no corroborating
18 evidence of this allegation and Plaintiff testified that he had never been in a fistfight
19 in his life. Absent any such corroboration, this Court cannot find that Plaintiff has
20 been violent towards Defendants while using the land.

22 ¹ *Merriam-Webster*, Peaceable (Sept. 29, 2020) <https://www.merriam-webster.com/dictionary/peaceable>

23 ² *Merriam-Webster*, Strife (Sept. 29, 2020) <https://www.merriam-webster.com/dictionary/strife>

1 Instead, Defendants claim that Plaintiff's cutting of locks and fences and
2 putting new padlocks on gates constitutes violent entry and therefore cannot be
3 peaceable. However, the Supreme Court of Nevada has held that an appropriator of
4 land "is not a trespasser in going upon the lands of another ... for the purpose of
5 removing dams, etc., by which the flow of water so previously appropriated was
6 obstructed and diverted." *Ennor v. Raine*, 27 Nev. 178 (1903). In that case, the
7 appropriator tore out the dams that were blocking the water flow to his property, and
8 the Court still found this entry peaceable. *See id.* Similarly, this Court finds that the
9 Plaintiff's cutting of locks and fences, etc. is peaceable insofar that Plaintiff was
10 asserting his right to use Defendants' land.

11 Ultimately, Plaintiff and his family have been driving cattle across
12 Defendants' land for generations, and have done so historically without violence.
13 Defendants also present no evidence beyond accusations of Plaintiff's violent
14 behavior. Thus, this Court finds no evidence that Plaintiff's use has not been
15 peaceable.

16 Therefore, this Court finds that Plaintiff has shown, by clear and convincing
17 evidence, that Plaintiff's use of Defendants' land has been adverse, continuous,
18 open, and peaceable for well over the statutory period. Plaintiff is therefore entitled
19 to drive cattle across Defendants' land along the designated Fall and Spring Routes.
20 This is the only prescriptive easement granted by this order and its scope is limited
21 to Plaintiff's movement of cattle. However, Plaintiff may also move farming
22 equipment for purposes of haying, irrigation, and feeding cattle from Nouque Road
23

1 along the Southern and Eastern boundary lines of APN 03-0741-07, to and from
2 Gate 1.

3 **D. Declaratory Judgment**

4 NRS 30.030 provides that

5 Courts of record within their respective jurisdictions shall have
6 power to declare rights, status and other legal relations whether or
7 not further relief is or could be claimed ... The declaration may be
8 either affirmative or negative in form and effect; and such
9 declarations shall have the force and effect of a final judgment or
10 decree.

11 NRS 278.372(9)(d) – (e) further provides that, in the creation of a parcel map, all
12 public easements for utilities must be clearly designated.

13 In 1985, Frank Albisu designated easements for the following: a sixty-foot
14 (60') easement along existing roads, and a thirty-foot (30') easement along the
15 perimeter of each parcel. These easements were restricted to uses for utilities and
16 roadways. This Court need not look any further than the parcel map to determine
17 that these easements remain valid. Ultimately, this Court declines to render
18 declaratory judgment on this issue.

19 **E. Water Rights**

20 The Supreme Court of Nevada has held that a water right grants the holder an
21 easement for the purpose of maintaining such water rights. *Ennor v. Raine*, 27 Nev.
22 178 (1903). Nevada law also provides that “one who holds a right to water prior to
23 that of another is permitted to peaceably enter and maintain the waterways.” *Estate*
24 *of Hage v. U.S.*, 82 Fed. Cl. 202, 211 (2008). Thus, Plaintiff is entitled to an

1 easement to enter Defendants' land to maintain his water rights at POD 1 and POD
2 5. Such an easement implies that Defendants may not interfere with Plaintiff's entry
3 to maintain the ditches. Defendant must therefore remove the twelve-inch (12")
4 culvert and berm obstructing the flow of water to Plaintiff's land.

5 In addition, Plaintiff claims he lost \$35,000.00-\$40,000.00 worth of native
6 hay due to Defendants' obstruction of irrigation water to Minor Ranch. However,
7 Plaintiff provides almost no evidence as to causation for the loss of hay, or actual
8 loss. This Court therefore declines to grant any sort of monetary relief.

9 **F. Preliminary or Permanent Injunctive Relief**

10 NRS 33.010 provides that

11 An injunction may be granted in the following cases:

- 12 1. When it shall appear by the complaint that the plaintiff is entitled
13 to the relief demanded, and such relief or any part thereof
14 consists in restraining the commission or continuance of the act
15 complained of, either for a limited period or perpetually.
- 16 2. When it shall appear by the complaint or affidavit that the
17 commission or continuance of some act, during the litigation,
18 would produce great or irreparable injury to the plaintiff.
- 19 3. When it shall appear, during the litigation, that the defendant is
20 doing or threatens, or is about to do, or is procuring or suffering
21 to be done, some act in violation of the plaintiff's rights
22 respecting the subject of the action, and tending to render the
23 judgment ineffectual.

24 The Plaintiff here requests this Court to permanently enjoin Defendants from
interfering with Plaintiff's right to drive cattle across Defendants' land. However,
this Court finds a permanent injunction superfluous in conjunction with a
prescriptive easement. An easement is a right of way, meaning that a servient estate

1 must not interfere with the easement holder's right to use the land for its designated
2 purpose. *City of Las Vegas v. Cliff Shadows Prof'l Plaza*, 129 Nev. 1, 7 (2013).

3 Thus, this Court denies injunctive relief to Plaintiff. This Court also need not
4 address Plaintiff's request for a preliminary injunction, because it is now moot.

5 **G. Easement by Necessity**

6 The Supreme Court of Nevada has held that "An easement by necessity will
7 generally be found to exist if two requirements are met: (1) prior common
8 ownership, and (2) necessity at the time of severance." *Jackson v. Nash*, 109 Nev.
9 1202, 1208 (1993). "Easements by necessity are most often created where a
10 possessor of land has no access to any public roadway except by way of passage
11 through the servient estate." *Brooks v. Bonnet*, 124 Nev. 372 (2008).

12 Here, there is no evidence that Defendants' and Plaintiff's land were once
13 under common ownership. Both parties only presented evidence at trial that Frank
14 Albisu was the original owner of Defendants' land, and that Plaintiff's land has been
15 in Plaintiff's family for generations. Thus, Plaintiff fails to meet the common
16 ownership requirement, and this Court's inquiry must end. In addition, this Court
17 finds an easement by necessity superfluous in conjunction with a finding for a
18 prescriptive easement. Thus, an easement by necessity is unwarranted.

19 **H. Unauthorized Use of Water**

20 NRS 533.460 provides that

21 The unauthorized use of water to which another person is entitled, or
22 the willful waste of water to the detriment of another, shall be a
23 misdemeanor, and the possession or use of such water without legal

1 right shall be prima facie evidence of the guilt of the person using or
2 diverting it.

3 **NRS 207.225** also provides that

4 Any person who knowingly diverts or causes to be diverted to his or
5 her own or some other person's use any irrigation water to which
6 another person has a vested right, without such rightful user's
7 permission, is guilty of a misdemeanor.

8 Here, Defendants have illegally obstructed the water ditches from POD 1 and
9 POD 5 that lead to Minor Ranch. Plaintiff has an adjudicated water right in these
10 PODs, and such interference with Plaintiff's rights is inappropriate. However, this
11 Court finds that such an interference constitutes a criminal matter, and should be
12 reserved for the Humboldt County District Attorney. Absent a civil statute for the
13 unauthorized use of water, Plaintiff is not entitled to relief.

14 **II. DEFENDANTS' COUNTERCLAIMS**

15 **A. Damage to Real Property, Forage and Fences, and Loss of Livestock**

16 The Supreme Court of Nevada has held that a civil trespass occurs when a
17 person substantially interferes with another person's property rights. *See Lied v.*
18 *Clark County*, 94 Nev. 275, 278-79 (1978); *see also Rivers v. Burbank*, 13 Nev. 398,
19 408 (1878). Defendant Ty Albisu claims that Plaintiff trespassed onto Defendants'
20 land and misappropriated fencing and other equipment belonging to Defendants.
21 Such a claim would normally constitute a trespass, because misappropriation would
22 constitute an interference with Defendants' property rights.

23 However, Defendants fail to show causation—that Plaintiff was the cause-in-
24

1 fact of Defendants' missing equipment—or damages, or that the equipment ever
2 existed at all. Thus, such claims are merely speculative. Defendants also claim that
3 Plaintiff is responsible for twenty (20) missing livestock, but again provided no
4 evidence of causation or damages. Furthermore, Defendants claim that Plaintiff's
5 cattle driving has caused damage to their grass. However, this Court finds such
6 damage minimal and merely a byproduct of the ranching business. Defendant is
7 therefore not entitled to relief.

8 **B. Intentional Infliction of Emotional Distress**

9 “A prima facie case of intentional infliction of emotional distress (IIED)
10 requires, among other elements, that the defendant's conduct was extreme and
11 outrageous with either reckless disregard or intent to cause the emotional distress.”
12 *Maduiké v. Agency Rent-A-Car*, 114 Nev. 1, 4 (1998). “[E]xtreme and outrageous
13 conduct is that which is ‘outside all possible bounds of decency’ and is regarded as
14 ‘utterly intolerable in a civilized community.’” *Id.* Furthermore, “persons must
15 necessarily be expected and required to be hardened ... to occasional acts that are
16 definitely inconsiderate and unkind.” *Id.* The second element of IIED is the victim
17 must have suffered severe or extreme emotional distress. *Star v. Rabello*, 97 Nev.
18 124, 125 (1981).

19 Here, Defendant Rosie Albisu claims that she felt threatened and harassed by
20 Plaintiff. At trial, Defendant Rosie Albisu claimed that Plaintiff backed her into a
21 corner and yelled and cussed at her. However, this does not amount to outrageous
22 conduct that is outside all possible bounds of decency, and is not utterly intolerable.

1 Instead, Nevada law requires Defendant Rosie Albisu to be hardened to hurtful
2 speech and intimidation tactics.

3 Moreover, Defendant Rosie Albisu fails to show that she suffered severe
4 emotional distress from her encounters with Plaintiff, and also fails to provide
5 sufficient evidence outside of her testimony that such encounters even occurred.

6 This Court finds that Defendant Rosie Albisu was not severely traumatized by
7 Plaintiff's actions. Defendant therefore fails to establish the outrageous conduct and
8 severe distress requirements of IIED.

9 **III. Judgment**

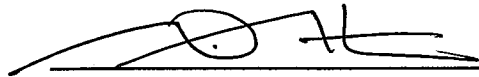
10 Based on these findings, this Court grants the following:

- 11
- 12 (1) A prescriptive easement so that Plaintiff may seasonally drive cattle across
13 Defendants' land along the designated Spring and Fall Routes outlined in Court's
14 *Findings of Fact* 42-43—the scope of this easement does not extend to the
15 movement of farming equipment, except for the route designated by this Court
16 from Nouque Road along the Southern and Eastern boundary lines of APN 03-
17 0741-07 to and from Gate 1.
- 18 (2) Plaintiff has a water right to POD 1 and POD 5 located on Defendants' land.
19 Plaintiff is therefore granted a right-of-way to enter Defendants' land for the
20 limited purpose of maintaining those PODs.
- 21 (3) Defendant shall not interfere with Plaintiff's water rights in the PODs. Defendant
22 must remove the twelve-inch (12") culvert and berm blocking POD 1 or POD 5

1 within thirty (30) days of this Order. If Defendant fails to remove the culvert and
2 berm within the allotted time, Plaintiff may enter Defendants' land and remove
3 the obstructions himself.

4 **IT IS SO ORDERED.**

5 DATED: October 9, 2020.

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8 HONORABLE MICHAEL R. MONTERO
9 DISTRICT JUDGE
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James F. Sloan, Esq.
977 West Williams Avenue
Fallon, Nevada 89406
Via US Mail

Taylor Stokes
TAYLOR M. STOKES
LAW CLERK
SIXTH JUDICIAL DISTRICT COURT,
DEPT. II

CV0021509

Kimble Wilkinson VS. Ty Albisu et al

Judge: Michael R. Montero

Clerk: Mikayla Mecham

September 9-10, 2020

BENCH TRIAL

PRESENT: Kimble Wilkinson, Plaintiff, present with Counsel, Rendal Miller. Ty Albisu and Rosie Albisu, Defendants, present with Counsel, James Sloan. The parties were present via Zoom audio/video conference system, with prior permission from the Court due to the COVID-19 pandemic.

Wednesday September 9, 2020

The record reflected that the Court was in receipt of two binders, one with the Plaintiff's Trial Exhibits, and one with the Defendant's Trial Exhibits. The Court explained the process of this Zoom bench trial to the parties. The Court asked the parties to make their opening statements.

Miller stated that he would prefer to move straight to witnesses, and motioned the Court to invoke the rule of exclusion and excuse Linda Albisu from the hearing until she is called as a witness.

Sloan responded stating that Linda Albisu would not be called as a witness and therefore should not be excluded.

The Court granted the motion to invoke the rule of exclusion. A discussion ensued regarding Trial Exhibits. Sloan informed the Court that Plaintiff's Exhibits 1 through 21 and Defendant's Exhibits A through GGG were stipulated to between himself and Miller. The Court would consider these Exhibits admitted in to evidence. Sloan informed the Court that he had a binder of Defendant's Exhibits HHH through XXX that were not stipulated to, that would be provided and offered later during this trial. (See attached for Exhibit Lists)

Kimble Wilkinson, duly sworn, testified under the direct examination of Miller.

Cross examination by Sloan.

Barry Wilkinson, duly sworn, testified under the direct examination of Miller.

Cross examination by Sloan.

Nick Wilkinson, duly sworn, testified under the direct examination of Miller.

Cross examination by Sloan.

Steve Del Soldato, duly sworn, testified under the direct examination of Miller.

The Court asked Del Soldato to explain to the parties his working relationship with this Court.

Miller continued with direct examination of Del Soldato.

The Court relieved Del Soldato from the terms of his subpoena.

Chris Bengoa, duly sworn, testified under the direct examination of Miller.

Ty Albisu, duly sworn, testified under the direct examination of Miller.

The Court took an evening recess and would resume tomorrow, September 10, 2020 at 9:30 a.m.

Thursday September 10, 2020

All parties returned for day two of the bench trial. The Court placed Ty Albisu under oath so that Miller could continue his direct examination.

Ty Albisu, duly sworn, testified under the direct examination of Miller.

Cross examination by Sloan.

Re-direct by Miller.

The Plaintiff rested.

Rosemary Albisu, duly sworn, testified under the direct examination of Sloan.

Defendant's Exhibit OOO-HCSO Statement by Rosie Albisu dated 11/13/19, offered.

Miller objected to its admission as prejudicial.

The Court overruled the objection and admitted Defendant's Exhibit OOO into evidence.

Sloan continued his direct examination of Rosie Albisu.

Cross examination by Miller.

Ty Albisu, duly sworn, testified under the direct examination of Sloan.

Cross examination by Miller.

Re-direct by Sloan.

The Defense rested.

Miller called Wilkinson as a rebuttal witness.

Cross examination by Sloan.

Sloan called Ty Albisu as a rebuttal witness.

A discussion ensued as to whether to hear oral closing argument tomorrow, or to prepare written closing arguments. The parties stated their preference to prepare written closing arguments. The Court would prefer only one written closing brief. The Court would like a simultaneous submission of both closing briefs. The Court ordered that the written briefs be filed simultaneously on September 25, 2020. The Court informed the parties if they finish their briefs before September 25, 2020 and agree to file them early and simultaneously, that would be fine with the Court. The Court stated that there were a few issues that the parties should not spend a lot of time on in their briefs. The Court ordered that the ditches on the Quinn River slough be re-opened and if there was a request for a culvert to be put in, the Court would air on the side of excess. The Court stated that there had been a lot of testimony regarding

the locks on the gates, and that if the locks are being placed incorrectly, that issue would be a violation of a Court order, and should be handled separately from this action as a motion for order to show cause, and is not relevant to this trial unless there is an issue of damages, but that has not been presented to the Court. The Court stated that there was no claim for relief regarding the water rights of St. Martin Creek, and that the Court did not want the parties to spend a lot of time on this issue in their briefs. The Court informed the parties that the time for discovery and presentation of evidence has passed and not to submit any additional evidence with their briefs. The Court encouraged the parties to try to prepare their briefs and get them filed as soon as possible to allow time for the Court to review the briefs and issue a ruling. The Court stated he may schedule a time to give an oral judgment, or he may just issue a written judgment. The Court would inform the parties which route he decided to take.

CV0021509

Kimble Wilkinson,
Plaintiff,

vs.

Ty Albisu, John Albisu,
Rosie Albisu and Anchor
S-Ranch and Rentals LLC,
Defendants.

JUDGE: MICHAEL R. MONTERO

CLERK: TAMI RAE SPERO (via Zoom)

AUGUST 18, 2020 1:30 p.m. PRE-TRIAL CONFERENCE

PRESENT: Plaintiff Kimble Wilkinson present via Zoom represented by counsel, Rendal Miller present in Court Room. Defendant Ty Albisu present with counsel James F. Sloan

The Court noted for the record that he was in possession of the Plaintiff's Pretrial Disclosure and a Motion of Defendants for Extension of Time to File Defendant's Supplemental Pre-Trial Disclosures and Discovery.

The Court inquired of Mr. Miller if the Plaintiff was prepared to proceed to Trial. Miller indicated there was an issue related to a possible indispensable party that is still being worked out and explained. The Court asked for clarification as to whether they have or are working on a resolution. Sloan offered comment on the indispensable party issue and stated his belief that the parties could deal with it by stipulation and resolve the matter. The Court asked if the issue is dealt with by stipulation would it affect the trial date. Miller responded that if a stipulation is reached it would not affect the trial date but that has not yet occurred. Sloan indicated that he had received a proposed stipulation from Miller while on his way to Winnemucca so he had not yet had time for review.

The Court asked if there were any other issues that need to be resolved prior to trial.

Miller commented on the Defendant's Motion for Extension of Time and language within the Motion for Summary Judgment. Discussion ensued regarding the Summary Judgment and that it had not been submitted to the Court for consideration. The Court asked Miller if he would be opposing the Motion for Extension of Time; Miller responded that if the extension goes for both sides he would have no objection. Sloan agreed. The Court stated that he had no significant concern on extending the time for Pre-Trial Disclosures but he wanted to be on the same page so it was not occurring right up to trial date; following discussion the Court extended the time for Pre-Trial Disclosures and Discovery stating that it would be mutual and would be due on August 24, 2020.

Sloan addressed the Court regarding health concerns related to Defendant Rosie Albisu and noted a previously filed motion to dismiss John Albisu as a Defendant as he was deceased. The Court reviewed the need to file a Request for Submission so the Court is aware that a matter is ripe for review; he instructed Sloan to file said Request if he wants the matter resolved.

Sloan commented on communication which had occurred with Miller on a couple of occasions regarding a possible resolution for the water/fence issues. The Court inquired if the parties had participated in a formal settlement conference. Sloan confirmed that they had.

The Court asked about the status of the trial exhibits. Miller and Sloan responded. The Court directed counsel to meet and confer on the trial exhibits and arrange for a meeting with the Court Clerk as he wants the exhibits to be pre-marked and a stipulation on admission on any exhibits that will be agreed on; further that copies of all exhibits be provided to the Court, the Clerk and exchanged between the parties. The Court continued explaining that the Trial would take place via Zoom due to the Covid-19 situation which means the attorneys must be better prepared with the exhibits; he explained some options available in Zoom for displaying exhibits. He asked if counsel had any questions.

Sloan noted that he is basically computer illiterate and feels this will put him at a disadvantage. The Court responded that the process is not difficult and explained how well it had worked for another recent Bench Trial; he noted that his Office would be available to assist in advance of Trial with the mechanics of Zoom. The Court continued stating that he did not know how else to proceed at this time given the current situation and commented on the difficulty in determining credibility of someone when they are wearing a mask; he discussed how the process would work related to witnesses and a Court Reporter if either of the parties chose to retain one.

Plaintiff Wilkinson offered comment on issues with today's hearing and his concern on his ability to participate. The Court suggested that was an issue related to where he was joining from and again explained the reasons for the use of Zoom. He asked if Miller had heard and understood what had occurred today and could he relay that to his client. Miller confirmed that he could.

The Court disclosed for the record that he had performed a wedding ceremony for a prior employee, April Wilson, who had married a Wilkinson noting that when he agreed to perform this ceremony his expectation was that this trial would be over, that he had not spoken to Mr. Wilkinson and had simply performed the ceremony and left; he stated that he does not feel the need to recuse himself but felt that he should disclose as he had observed that a witness list included this individual, that if a Motion to Disqualify is filed it will be dealt with through the normal procedure. The Court asked if counsel had any questions. Sloan responded not at this time but that he has not yet conferred with his client about this issue. Miller stated that he had no questions at this time. The Court indicated that if additional discussion needs to occur this matter could be reconvened for the purpose of that discussion.

Discussion ensued regarding the length and starting date and time for the Bench Trial. The Court directed that the Bench Trial would begin on September 9, 2020 at 9:00 a.m. and is scheduled for three days. The Court indicated that if counsel needed to adjust those times to let him know. The Court asked for further questions. Miller indicated none at this time. Sloan again noted his concern that the Zoom method will put him at a disadvantage but stated that he would try. The Court responded that the use of the term disadvantage concerned him and he took some umbrage to its use as it makes it appear that Mr. Sloan is indicating that he is being discriminated against. The Court continued noting that there is a legitimate health concern currently and commenting on his responsibilities as a public servant to his staff, to the participants in this matter, to the other employees in the building and to the public; he noted that conducting hearings in this matter is a recognized court practice and that he had used it effectively for many court matters. Discussion ensued regarding locations and methods to participate via Zoom.

Court recessed at 2:08 p.m.

CV0021509/CV22045

Kimble Wilkinson VS. Ty Albisu et al.

Judge: Michael R. Montero

Clerk: Mikayla Mecham

February 26, 2020

HEARING

PRESENT: Rendal Miller, Counsel for Kimble Wilkinson, and James Sloan (telephonically), Counsel for Ty Albisu, Rosie Albisu, and Linda Walker.

The record reflected that the Court had requested this hearing pursuant to an earlier conference call with the attorneys, and in order to put some terms on the record.

The Court stated that a Stipulation to Continue Trial was filed on January 24, 2020 in case CV21509, but also made reference to the TPO filed in case CV22045. The Court further stated that there had been confusion regarding that stipulation and the wording contained therein, so the Court offered the resolution of an amendment or an errata to the TPO, to avoid any further confusion as to which TPO was being referenced. The Court asked the parties if they had any questions or concerns.

Sloan stated his understanding of the situation and expressed his concerns regarding abuse of the TPO. Sloan stated that he was informed by one of the Negus deputies that they had been communicating with the Court regarding the stipulation.

The Court stated that he had not had any communication with either of the Negus Sheriff Deputies regarding the stipulation, but rather, Sergeant Dave Milton had brought the Stipulation and Order to the Court staff's window earlier with questions regarding which was the TPO referenced in the Stipulation.

Sloan stated that his clients would be seeking relief in reference to the TPO, by requesting that it be dissolved or other action be taken. He stated that the issue stems from the application being filed by Wilkinson in proper person, not represented by an attorney.

The Court stated that the parties had stipulated to continue the TPO until the date of the trial, and have that be the controlling order. The Court stated that this hearing is not to deny anyone the opportunity to seek relief from the protection order, only to clarify the stipulation that was mistakenly only entered in one case.

Miller clarified that he does represent Wilkinson in both cases.

The Court asked Miller if he agreed that the TPO being referenced in the Stipulation and Order to Continue Trial was indeed the TPO in case CV0022045.

Miller concurred.

Sloan reiterated that his clients would seek to dissolve or modify the current TPO due to change of circumstance, and to allow his clients to seek a protective order as well.

The Court stated he was simply clarifying today, and this would not bar any party from a subsequent request.

A discussion ensued between the Court and the parties regarding the caption and language for the amended Stipulation and Order to Continue Trial. The Court would attach the TPO as an exhibit to the amended stipulation.

The Court directed the attorneys to work with their clients in an effort to keep the parties safe. The Court further stated that the Stipulation and Order to Continue Trial previously filed in CV21509 would be amended to reflect its original intent, finalized and filed in both cases today.

CV 21,509

Kimble Wilkinson vs. Ty Albisu, et al.

Judge: Michael Montero

Clerk: Elisha Formby

MARCH 26, 2019

SHOW CAUSE HEARING RE: CONTEMPT

PRESENT: Kimble Wilkinson, present with counsel Rendal Miller. Ty Albisu, present with counsel James Sloan

The record reflected that this matter is set for a show cause hearing re; contempt.

The Court stated the procedural history of said case. The Court directs Miller to give the Court an overview of the issues that occurred to cause the filing of a show cause.

Miller stated that the main issue is that Mr. Albisu was to provide keys to Mr. Wilkinson for the locks on the gates. The locks on the gates have now been changed by Mr. Albisu. The other issue is the semi-truck trailer that was parked near the gate area that has been fenced off. The access continues to be tampered with by Mr. Albisu. Mr. Wilkinson wants to be able to tend to his cattle when he needs to.

The Court has an order in place regarding those issues already. The Court asked Miller if he is seeking an additional order from the Court, or that the Court order Mr. Albisu to comply with previous order.

Sloan informs the Court of his concern about the Ex parte Motion. Discussion ensued.

The Court wants to inform the parties that he has been receiving calls from other entities to include the Water Master and Sheriff's Office regarding this issue. The Court wants a resolution today, to keep other safe and that will respect the law. Law Enforcements needs an enforceable order. The Court still does not have proposed order from the hearing held on October 10, 2018.

Sloan does have a proposed order with him and asked if he could submit that to the Court for consideration.

The Court asked Miller if he had any objection to the Court reviewing said order.

No objections from Miller.

The Court canvassed the parties about their understanding of the Court's order from October 10, 2018 hearing. The Court recalls that keys were to be provided to Wilkinson by Albisu, that there were to be no interference with the gates or obstructions and there was to be a twenty-four (24) hour notice given when accessing the gates.

Wilkinson and Albisu concur with the Court's articulation of the proposed order from the October hearing.

Albisu informed the Court that the 24 hour notice has not been being given to him.

The Court asked Sloan to explain to him about the issue with the belly-dump truck that is claimed to be parked in the access of said gates.

The Court wants a clear enough order so that when the Sheriff's goes out there, they can determine if there is a violation of the Court's order. The Court signed the Order After Hearing on October 10, 2018, in open court.

The Court asked counsel if the gates need to be identified. Discussion ensued. The Court is going to take a break. The Court directed the parties along with counsel to review the maps that are attached as exhibits in the file and together identify the gates by a numbering system.

Court resumed after a short break. The Court took a break to allow the parties' time to work out a numbering system for the gates. The Court took a copy of the map that was used to identify and number the gates, which will become an exhibit "A" to the Court's order. Before the Court enters his final order the Court wants to know when Mr. Wilkinson accesses the gates and for what purpose.

Wilkinson responded.

Sloan asked the Court to address the issue of Wilkinson's cattle grazing on Albusu's property.

Miller responded.

The Court responded.

The Court made the following order; that both shall have access to pass through gates 1-9 as identified in Exhibit "A" attached to this Order; that no one shall cut any fence located within Exhibit "A". That all 9 gates shall be maintained and in useable conditions. If any of the gates become unusable, the Defendant is to make the gate useable again; That no one shall block, obstruct, remove, damage or in any way inhibit either Party from passing through gate 1-9; That gates 1-9 shall be secured by a single chain, each party shall provide a single lock for each gate, the parties lock will be linked together, the parties will not exchange keys to their locks, each party shall provide a single lock for each 9 gates; that the Plaintiff shall have access to gates 1-8 in the fall to move his cattle. The plaintiff shall be allowed a 50-foot easement to follow; That the Plaintiff shall have access to gates 4-9 in the spring. The Plaintiff shall be allowed a 50-foot easement to follow; That the Plaintiff shall have access to gate 1 during the winter months to feed cattle; That the Plaintiff shall have access to gate 1 to move haying equipment, during the haying season; Plaintiffs shall have access to gate 1 to irrigate portions of land only when Plaintiff is unable to reach land from public land and only with a 24 hour notice to the Defendant; Should cattle of either party stray, the owner of the cattle shall provide notice to the other party prior to retrieving cattle; That a 24 hour notice be given by both parties prior to either party entering the opposing parties property, that this be done through their counsel; That all previous orders not in conflict with this Order, shall remain in full force and effect and that the parties shall submit a proposed scheduling order to this Court by April 5, 2019.

Off the record the Court directed the Clerk of the Court to include in these minutes, that the two unidentified persons sitting in the galley of this hearing, not be granted permission to by this Court to attend any further proceedings pertaining to this matter.

CV 21,509

Kimble Wilkinson vs. Ty Albisu, et al

Judge: Michael R. Montero

Clerk: Jody Clark

JANUARY 31, 2019

SETTLEMENT CONFERENCE

PRESENT: Plaintiff, Kimble Wilkinson, present with counsel, Rendal Miller. Ty Albisu and Rosie Albisu, present with counsel, James F. Sloan.

The Court stated he has come on the record due to the need for a better understanding of where the matter is at today. The Court further stated that this matter was last in Court on October 10, 2018, for a Status Hearing. At that time the Court met with Miller and Defendant's former counsel Todd Plimpton in chambers to discuss a possible temporary resolution. The temporary resolution was then put on the record and the all went their separate ways for about five (5) days. Then on October 15, 2018, the Court's staff received a call from Miller and Plimpton offices asking to set the matter for a settlement conference. The matter was then set to be heard today. Further, on December 28, 2018, an Exparte Emergency Motion for Contempt and Order to Show Cause was filed by the Plaintiff followed by a Substitution of Counsel being filed on January 11, 2019 by the Defendant. Followed by the Defendant's Response to Exparte Motion for Contempt and Order to Show Cause filed on January 14, 2019, and finally a Notice of Appearance of Counsel was filed by Sloan on January 14, 2019.

The Court stated that the Emergency Motion and Response where never submitted to the Court as there needs to be a request for submission filed. The Court also stated that no settlement conference statements have been filed. The Court explained to counsel that this is something that is typically received to help the parties during settlement. The Court would now like to know where the matter is going today. Further, the Court informed counsel he does not want to be their settlement judge as there will be Exparte communication during the settlement portion of this matter. Should the parties decide to move forward with settlement the Court will have a senior judge assigned to the matter but the matter will still remain with this Court.

Sloan stated that there has not been adequate discovery in the matter. He further stated that on January 25, 2019, the parties met on the respective property and looked at the easement. Also, depositions have not been completed. This matter is not right for settlement at this time.

Miller concurred with Sloan and further stated that there is a high level of conflict and as such, does not believe the matter would be settled today.

The Court stated his concerns regarding the level of conflict. The Court does not want the parties to waste their time and money with settlement today if the matter is not going to be settled. The Court shall take a recess and see counsel in chambers.

After a brief recess, the Court stated a written order was not filed from the October 10, 2018, hearing. Miller shall prepare an order from that hearing, submit it to Sloan for review and then submit to the Court for signature. The Court further ordered the following; 1. Counsel is to coordinate with the Court's staff in setting a trial date. The Court wants counsel to think about their discovery needs, the time it

takes to conduct discovery and to take that into consideration when setting a trial date. 2. Once the trial date has been set counsel is to confer regarding the setting of a scheduling order which means another order that sets out all the deadlines a clear road map as to what needs to be done by certain dates. Counsel is to consider specifically a date for completion of discovery & a date where by any amendments to the pleadings must occur. The Court will not include in this order but believes to be a good practice as to when expert witnesses need to be disclosed as well as rebuttal witnesses. The Court would prefer a stipulated scheduling order as to trial date, discovery, cut offs, last day to amend the pleadings and whatever other dates counsel deems appropriate in this type of litigation. 3. The parties are to participate in mediation or settlement conference prior to trial. The parties can hire a mediator or go to settlement conference with a Judge. This Court will not be the settlement judge. Should this matter go to trial this Court will make the decisions if a bench trial.

CV 21,509

Kimble Wilkinson vs. Ty Albisu, John Albisu, Rosie Albisu & Anchor S-Ranch & Rentals, LLC

Judge: Michael R. Montero

Clerk: Jody Clark

OCTOBER 10, 2018

STATUS HEARING

PRESENT: Plaintiff, Kimble Wilkinson, present with counsel, Rendal Miller. Defendant, Ty Albisu, present with counsel, Todd Plimpton.

The Court stated that he has met with counsel in chambers prior to coming on the record. The Court further stated that a Stipulation to Vacate Hearing and Remove Default and Order had been filed on August 15, 2018. There is no answer on file to the underlying Complaint. The Court further stated that he believe there to be resolution to the use of an easement as follows;

1. Should a lock be placed on the gates that give access to the easement, then there shall be two (2) keys. Each party shall have one (1) key until a resolution has been reached through further litigation.
2. Parties shall communicate through their counsel as to who will have use of the easement at certain times. Counsel shall reduce the communication to writing.

Miller concurred with the resolution and further informed the Court the Plaintiff will need access to the easement on Friday, October 12, 2018.

The Court stated that all parties have been put on notice regarding Friday.

Plimpton concurred with the resolution.

Kimble Wilkinson

vs

Ty Albisu et al

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO. CV 0021,509

Bench Trial September 9-10, 2020

	I.D.	OFFD.	ADMTD.
1. Price of damaged cattle guard	1	9-9-20	9-9-20
2. Letter from Ty Albisu to Kimble Wilkinson	2	9-9-20	9-9-20
3. Nevada Quit Claim Deed	3	9-9-20	9-9-20
4. Map Decreed Acres	4	9-9-20	9-9-20
5. Maps	5	9-9-20	9-9-20
6. Letter from Chairman of McDermitt Tribe	6	9-9-20	9-9-20
7. Letter from Dept of Conservation & Natural Resources	7	9-9-20	9-9-20
8. Abstract of Claims	8	9-9-20	9-9-20
9. Letter re: Investigation NO. 1097	9	9-9-20	9-9-20
10. Frank Albisu 1985 Parcel Map	10	9-9-20	9-9-20
11. Gate map	11	9-9-20	9-9-20
12. Photographs 4-5-18, 8-8-19	12	9-9-20	9-9-20
13. Photograph BLM Fence	13	9-9-20	9-9-20
14. Photographs of spikes	14	9-9-20	9-9-20
15. Photographs of path	15	9-9-20	9-9-20
16. Photographs of ditch 8-18-18	16	9-9-20	9-9-20
17. Photograph of person	17	9-9-20	9-9-20
18. Photographs of burned area	18	9-9-20	9-9-20
19. Photograph 11-13-19	19	9-9-20	9-9-20
20. Photograph 3-24-19	20	9-9-20	9-9-20
21. Photographs of cattle guard 4-6-18	21	9-9-20	9-9-20
22.			
23.			
24.			
25.			
26.			

All Exhibits A-GGG Admitted on
Defendants' Trial Exhibits 9-9-20
Case No. CV 21509
Wilkinson v. Albisu, et al.

Exh#	Description	
A	Cattle Guard	A
B	220' Damage to Albisu ground	A
C	Brush in front of gate North of Neugue, County Road, County Cattle Guard	A
D	Gate West side of 95 to Minor Ranch	A
E	Destruction of New Seeding - September 30, 2018 - Gates 4 & 5 Broad Cast -Crested Wheat	A
F	Gates 1, 3, 4, 5 - September 30, 2018 - left open	A
G	Humboldt Sheriff assisting Wilkinson Cutting locks - September 30, 2018	A
H	Damage to new seeding - Crested Wheat Grass	A
I	Movement of Wilkinson Cattle	A
J	Nuegue Road Gate 1 on Albisu land	A
K	Albisu side looking East - NE	A
L	Gate 2 - wire gate - left open	A
M	Gate on US Highway 95	A
N	Gates 4 & 5 left open	A
O	Wilkinson on ATV on Albisu land	A
P	Wilkinson Truck & Trailer on Albisu land	A
Q	Wilkinson Tracks - Winter - Gate 1	A
R	Corner Gate 1 - Wilkinson/Albisu division fence	A
S	Wilkinson cattle on Albisu land	A
T	Gate 9 fence cut	A
U	Damage from livestock movement	A
V	Gate 8 lock	A
W	ATV tracks in Albisu holding pen east of US 95	A
X	ATV tracks on Albisu land	A
Y	Wilkinson moving cattle on US 95	A

Z	Water Rights - Albisu	A
AA	Letter from Ty Albisu to Wilkinson dated March 13, 2018	A
BB	Letter from Rendal Miller, Esq., to Ty Albisu dated April 17, 2018	A
CC	Letter from Ty Albisu to Rendal Miller, Esq., dated April 23, 2018	A
DD	Letter from Ty Albisu to Rendal Miller, Esq., dated April 30, 2018	A
EE	Fence cut by Nuegue Road 2019	A
FF	Gate - no lock	A
GG	Wilkinson cutting fence	A
HH	Wilkinson cattle off road going to Minor Ranch	A
II	Wilkinson moving cattle	A
JJ	Wilkinson at cattle guard going into Minor Ranch	A
KK	Gate locks	A
LL	Minor Road access - Humboldt Sheriff deputies with Wilkinson	A
MM	Fence cut - no lock on gate held by twine	A
NN	Ty Albisu fixing fence dividing properties	A
OO	Damage done by livestock movement on or about March 2, 2019	A
PP	Gate condition without lock	A
QQ	ATV tracks on Albisu land	A
RR	Fence cut on Albisu land	A
SS	Wilkinson cattle on Albisu land	A
TT	Wilkinson cattle on Albisu land near Minor Ranch	A
UU	Humboldt County Sheriff Deputies assisting Wilkinson - October 16, 2019	A
VV	Status of gate on Albisu land	A
WW	Facebook message to Linda Albisu from Misty Wilkinson	A
XX	Remaining fencing supplies	A
YY	Pipe installed by Wilkinson on Albisu land	A
ZZ	Wilkinson cattle on Albisu land	A
AAA	Lock cut or missing on Albisu gate next to Reservation	A

BBB	Quinn River Field Investigation - June 4, 2008	A
CCC	St. Martins Creek - Division of Water Resources - July 16, 2008	A
DDD	Albisu Parcels East of US 95	A
EEE	Map of proposed Wilkinson livestock movement - lanes of travel for Spring & Fall	A
FFF	Parcel Map for Albisu Parcels East of US 95	A
GGG	Record of Survey between Albisu & Wilkinson land	A

Non-Stipulated Exhibits

Defendants' Trial Exhibits

Case No. CV 21509

Wilkinson v. Albisu, et al.

Exh#	Description
HHH	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - December 26, 2018
III	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - March 2, 2019
JJJ	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - March 16, 2019
KKK	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - April 10, 2019
LLL	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - November 14, 2019
MMM	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - November 23, 2019
NNN	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - November 23, 2019
OOO	Humboldt Co. Sheriff's Office - Statement - Rosie Albisu - November 13, 2019
PPP	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - April 16, 2019
QQQ	Photographs of survey markers on Albisu land
RRR	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - February 26, 2020
SSS	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - March 21, 2020
TTT	Humboldt Co. Sheriff's Office - Statement - Linda Walker Albisu - November 14, 2019
UUU	Humboldt Co. Sheriff's Office - Statement - Ty Albisu - February 18, 2020
VVV	Humboldt Co. Sheriff's Office - Statement - Steven Cross - May 20, 2019 & Tiffany Cross - May 14, 2019 - Pertaining to May 12, 2019 hit & run
WWW	May 12, 2019 hit & run - Photographs of the scene & injuries sustained by Ty Albisu
XXX	Lease - Fred Wilkinson, Nicklos Wilkinson & GJ Livestock LLC, as tenants - 2014 through 2018.

A 9-10-20

1 **CERTIFICATION OF COPY**

2

3 **STATE OF NEVADA,**

4 **COUNTY OF HUMBOLDT,**

5

6 I, TAMI RAE SPERO, the duly elected, qualifying and acting Clerk of Humboldt County, in the State of
7 Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and
8 correct copy of the original: **Notice of Appeal; District Court Docket Entries; Bench Trial Findings of**
9 **Fact and Conclusions of Law and Judgment; District Court Minutes; Exhibit List;**

10

11 **Kimble Wilkinson,**

12 **Plaintiff,**

13 **vs.**

14 **Ty Albisu, John Albisu,**
15 **Rosie Albisue and**
16 **S-Ranch and Rentals, LLC**

Defendant.

CASE NO. CV 0021509

17

18 now on file and of record in this office.

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IN WITNESS THEREOF, I have hereunto
set my hand and affixed
the seal of the Court at my office,
Winnemucca, Nevada, this 13th
Day of November, 2020.

TAMI RAE SPERO, CLERK

By: *Jody Clark*
DEPUTY CLERK