CAUSE NO. 8292

SOUTHWESTERN HOLDINGS, INC., dba CIBOLO CREEK RANCH, *Plaintiff*,	§	**IN THE DISTRICT COURT**
VS.	§	**394TH JUDICIAL DISTRICT**
HUNTER JRW HOLDINGS, LLC, *Defendant.*	§	**PRESIDIO COUNTY, TEXAS**

DEFENDANT'S BRIEF IN SUPPORT OF ORIGINAL ANSWER, AND IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant *Hunter JRW Holdings, LLC* and files this Brief in Support of Defendant's Original Answer and in Opposition to Plaintiff's Application for Temporary and Permanent Injunction and would respectfully show the Court as follows:

I. STATEMENT OF FACTS

1. Plaintiff *Southwestern Holdings, Inc., DBA Cibolo Creek Ranch* ("SHI") has brought this suit against Defendant *Hunter JRW Holdings, LLC* ("HJRW) in an attempt to assert a right to access and travel across the Hunter JRW Holdings LLC "Flying W Ranch- Presidio" ("Defendant's Property"). In Plaintiff's Original Petition, Plaintiff's claim this right via alleged prescriptive easement on three miles of road located on Defendant's Property. Plaintiff requests this Court to issue a Temporary Injunction order. However, as detailed in Defendant's Answer and Plea in Abatement, the "Morita Road" access to public road connection in Shafter that Plaintiff's seek in their suit does not solely cross Defendant's Property. At least four other distinct property owners hold land along this road that Plaintiff's claims prescriptive easement. This "other owner" issue is well addressed in Defendant's Plea in Abatement; however, it is an important procedural

hurdle to Plaintiff obtaining Temporary Injunctive relief. All parties along the easement road alleged must be before the Court.

2. Beyond the significant "other owner" issue, Plaintiff has provided no evidence for its prescriptive easement claims, which is insufficient to allow this Court to issue a Temporary Injunction or Permanent Injunction denying Defendant its property rights.

3. Defendant hereby incorporates its factual statements from Defendant's Original Answer, Affirmative Defenses, Counterclaims, and Response to Plaintiff's Application for Temporary and Permanent Injunction, Subject to Defendant's Plea in Abatement, as though fully set forth herein.

II. ARGUMENT AND AUTHORITY

i. PLAINTIFF HAS NOT MET BURDEN TO SHOW ENTITLEMENT TO A TEMPORARY INJUNCTION OR PERMANENT INJUNCTION.

4. A temporary injunction is an extraordinary remedy and does not issue as a matter of right. To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the Defendant; (2) **a probable right to the relief sought**; and (3**) a probable, imminent, and irreparable injury in the interim**. A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex.2002). (emphasis added).

5. Plaintiff has not presented viable evidence to establish all the necessary elements of its causes of action or the probable right to relief. Nor has the Plaintiff presented viable evidence of irreparable injury. Furthermore, the status quo, which a temporary injunction's purpose is to preserve, is that Plaintiff has no right, legally or equitably, to use the road. Plaintiff's access to the road has been blocked for decades by previous owners of Defendant's Property; if used, Plaintiff's

use was only with explicit permission. As such, granting Temporary Injunction would upend the status quo, providing Plaintiff with a never-before-had legal use of the Road. Plaintiff's application for Temporary injunction should be denied.

ii. PLAINTIFF HAS NOT PRESENTED EVIDENCE FOR EASEMENT BY PRESCRIPTION.

6. An easement by prescription is established by the actual, open, notorious, hostile, adverse, uninterrupted, exclusive, and continuous use of the servient estate for a period of more than ten years, and the absence of any of these elements is fatal to the prescriptive claim. *Davis v. Carriker*, 536 S.W.2d 246, 250 (Tex. Civ. App.-Amarillo, 1976, writ ref'dn.r.e.). Further, burdening another's property with a prescriptive easement is not well-regarded in the law. *McClung v. Ayers,* 352 S.W.3d 723, 727 (Tex. App.—Texarkana 2011, no pet.). As such, the burden rests on the party claiming an easement by prescription to prove **all** the requisite elements, and **failure to make proof of any one element will defeat the claim**. *Wiegand v. Riojas*, 547 S.W.2d 287, 289 (Tex. App.—Austin 1977, no writ). The five elements that SHI must prove independently, as dictated by *McClung*, 352 S.W.3d at 727, are that Plaintiff's use of the road has been:

(1) open and notorious ("to include actual use");
(2) adverse to the owner's claim of right;
(3) exclusive;
(4) uninterrupted; and
(5) continuous for a period of ten years.

PLAINTIFF USE NOT OPEN AND NOTORIOUS

7. A claimant seeking prescriptive easement must be able to show actual use of the claimed easement that is visible or readily apparent in a manner sufficient to put the owner on notice or to allow the law to imply that the owner would have had knowledge (or even

acquiescence) of the easement use. The standard is one of **plain visibility to the average person** (with no engineering, surveying, or other special knowledge) to allow a presumption that the servient estate owner had knowledge/acquiescence of the claimant's use. *Rust v. Engledow*, 368 S.W.2d 635 (Tex. Civ. App.—Waco 1963, writ ref'd n.r.e.); *Villa Nova Resort, Inc. v. State*, 711 S.W.2d 120, 127 (Tex. App.—Corpus Christi 1986, no writ).

8. As multiple Defendant affidavits filed with Defendant Original Answer lay bare, the road in question on HJRW land was a very roughshod, abandoned-seeming road throughout the last couple decades. By the time Defendant purchased, the road was nearly impassable in places. As such, no average person would have had knowledge that Plaintiff supposedly relies on this road as an artery to support cattle at its Harper Ranch holding. In fact, Plaintiff did not use the road at Defendant's Property, and instead relied on access through Boerschig-owned land that was specifically forbidden by the *Boerschig v. Sw. Holdings*, Inc., 322 S.W.3d 752 (Tex. App.—El Paso 2010, no pet.) decision. Only when Boerschig enforced the prohibition against SHI on accessing the Harper via original easement, and Defendant would not grant easement to Plaintiff across the Property, did the Plaintiff file suit under the instant flawed prescriptive theory claim.

9. Plaintiff has therefore not presented evidence to establish a probable right to relief for prescriptive easement given the lack of open and notorious use. Plaintiff's entire ability to claim prescriptive easement is therefore without merit.

PLAINTIFF USE NOT ADVERSE/HOSTILE

10. A claimant seeking prescriptive easement must show hostile and adverse character of the use by the easement claimant to the same degree as that which is necessary to establish title by adverse possession. *Othen v. Rosen*, 148 Tex. 485, 226 S.W.2d, 622, 626 (1950). An adverse claim is a claim that the adverse possessor intends to appropriate the easement area to his or her

own use, **exclusive of the servient estate owner.** *Davis*, 536 S.W.2d 246; *McClung*, 352 S.W.3d 723. This exclusive and hostile use can **never exist in situations where use is permissive**. "Use of property with the owner's express or implied permission or license will never ripen into a prescriptive easement no matter how long the use continues" (*Allen v. Allen*, 280 S.W.3d 366, 377 (Tex. App.—Amarillo 2008, pet. denied), citing *Vrazel v. Skrabanek,* 725 S.W.2d 709, 711 (Tex.1987); *Othen,* 148 Tex. 485, 226 S.W.2d, at 626–27.

11. Defendant affidavits point to permissive use not only on Defendant's Property, but all along the road where it crosses onto other owners property, to include at Rinehart land and at Fuentes (where a locked gate implies permissive use under *Allen*, 280 S.W.3d, at 379).

12. Further, the Rineharts' own use of the same road for ingress/egress to access public roads in Shafter is the same use of the road that SHI claims in its Original Petition. Such shared use bars SHI claims for prescriptive easement. "When a landowner and a claimant of an easement 'both use the same way,' the claimant's use is not exclusive and is thus insufficient to establish a prescriptive easement" (*Albert v. Fort Worth & W. R.R. Co.*, 690 S.W.3d 92, 98 (Tex. 2024), reh'g denied (June 21, 2024) quoting *Brooks v. Jones*, 578 S.W.2d 669, 673 (Tex. 1979)). Defendant and their predecessors in interest also used the road for access to/from public roads in Shafter before the Fuentes owners began locking out Defendants (while nonetheless supporting SHI's shared use of the road and relying on Rineharts' shared use of the road).

PLAINTIFF USE NOT EXCLUSIVE

13. The exclusivity test for prescriptive easement is frequently lumped together with the hostile/adverse elements above, as exclusivity requires the same hostile/adverse character as to prescriptive easement claims. This again is most obvious in the shared-use prohibition to establishing prescriptive easement. Where Plaintiff again uses the same road in the same manner

as other users of the road (to reach Shafter's public roads), there can be no exclusivity by definition. *Albert*, 690 S.W.3d, at 98. Since Lely, Fuentes, and Rinehart also used the road, Plaintiff can show no exclusive use.

PLAINTIFF USE NOT CONTINUOUS

14. A claimant for prescriptive easement must show that it has maintained the actual, open, notorious, adverse/hostile and exclusive use continuously. In Plaintiff's case, given the failure to meet the preceding requirements of prescriptive easement at any point, it goes without saying that the continuous requirement fails. *Davis*, 536 S.W.2d 246.

PLAINTIFF USE NOT FOR REQUIRED 10-YEAR DURATION

15. The continuous period must extend for 10 years to ripen into prescriptive easement. *Barstow v. State*, 742 S.W.2d 495 (Tex. App.—Austin 1987, no writ). Similar again to Plaintiff failure to meet any continuity duration requirement for perspective easement claimant to succeed, Plaintiff has at no point established a 10-year duration of actual, open, notorious, adverse/hostile, exclusive and continuous use of the road. In fact, only one of the affiants included in Plaintiff's Original Petition has the ability to speak to any potential 10-year claim—through Affidavit of John Poindexter. The remaining affidavits (but one) Plaintiff has offered for evidence are from individuals whose specific time of employ or on-the-ground observation at Cibolo Creek Ranch is for less than 10 years (notwithstanding fact that each of the affiants Plaintiff has put forward are far from disinterested, being either employees of SHI or principals of SHI, such as John Poindexter).

16. In comparison, Defendant's affidavits come from a wide variety of sources who not only hold potentially more neutral points of view but also have firsthand knowledge of the road's use for at least the last 10 years, if not for decades preceding. For instance, the Rinehart Ranch

family members—whose homes sit within view of the road immediately before it reaches the public road in Shafter that Plaintiff alleges is the easement's destination—have provided five affidavits (Ex. 6, George Brooks Affidavit; Ex. 7 Deanna Brooks Affidavit; Ex. 11 Glenn Rinehart Affidavit; Ex. 12 Sam Rinehart Affidavit; Ex. 13 Troy Rinehart Affidavit; and Ex. 16 Jeffery Rinehart Affidavit). The family has lived at this property in Shafter for over 100 years. The Rineharts have been actively providing permission for use of the road to Plaintiff, Defendant, and other stakeholders that have legitimate business using the road, like the Fuentes owners, for several decades. As such, the Rineharts' offer one of the best views into any 10-year duration of the road's use. Resoundingly, their affidavits affirm Defendant's position: The road's use by any person has *always* been permissive, barring prescriptive easement (*Allen*, 280 S.W.3d, at 377; *Vrazel*, 725 S.W.2d, at 711; *Othen*, 148 Tex, 226 S.W.2d, at 626–27; *Albert*, 690 S.W.3d, at 98). The Rineharts' use of the road has *always* been a similarly shared use conferred to those with permission to be on the road, namely for going to and from public roads in Shafter that link to Highway 67, barring prescriptive easement *Id.*, 690 S.W.3d, at 98.

PLAINTIFF BARRED FROM PRESCRIPTIVE EASEMENT CLAIM ON STATE-OWNED LAND

17. Finally, as discussed in Defendant's Original Answer, the road on which Plaintiff claims prescriptive easement passes through two separate parcels of land held by governmental entities. The first is at the E/2 Sec. 2, owned by the Texas General Land Office. Defendant leases this land from the GLO. The road also enters into Big Bend State Park after reaching Cibolo Creek property. Texas Parks and Wildlife, a state entity, owns this property.

18. Prescriptive easements cannot be obtained over state-owned land due to the doctrine of sovereign immunity, which protects public lands from adverse possession or

prescriptive easement claims. Sovereign immunity applies to state-owned land, and no statutory exceptions allow for prescriptive easements against the State of Texas or its subdivisions.

19. It is well established in case law that a person may not adversely possess against the state or its subdivisions. As a prescriptive easement claim is a court-derived application of adverse possession statutes, courts have maintained that this prohibition extends to claims of prescriptive easement on state land. *State v. Beeson*, 232 S.W.3d 265, 270 (Tex. App.—Eastland 2007, pet. dism'd); *State v. Lain,* 162 Tex. 549, 349 S.W.2d 579, 582 (1961); *Jackson v. Nacogdoches Cnty.*, 188 S.W.2d 237, 238 (Tex. App.—Dallas 1945, no writ)

III. CONCLUSION

20. Plaintiff's claims for prescriptive easement fail to pass basic scrutiny. They are simply groundless and without merit. However, given the much higher standards that claims of prescriptive easements are judged against under the law, where the claimant has the burden of fully meeting each of the five elements required to establish prescriptive easement, the Plaintiff is far away from showing the probable right to recovery required in order to receive temporary injunction. Granting of temporary injunction would constitute a significant harm to Defendant's private property. Such would upend a status quo over land where Plaintiff has never held legal or equitable right to access Defendant property. Plaintiff claims do not meet the threshold for injunctive relief sought and should be denied.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant, *Hunter JRW Holdings, LLC*, prays that Plaintiff *Southwestern Holdings, Inc., DBA Cibolo Creek Ranch* take nothing by reason of its suit, and that the Plaintiff's Application for Temporary and Permanent Injunction be denied,

that Defendant recover all costs of court, that the court grant the counterclaims of *Hunter JRW Holdings, LLC* such that it recover its damages in an amount in excess of the jurisdictional minimums of this Court, that the Court declare that no Prescriptive easement exists on the Morita Road and on the HJRW Ranch, that Defendant recover its attorneys fees under declaratory relief sought, and for such other and further relief to which *Hunter JRW Holdings, LLC* may be justly entitled at law or in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July 2025, a true and correct copy of the foregoing document was served on counsel of record for all parties entitled to service in this matter in accordance with the Texas Rules of Civil Procedure via EFile services.

/s/ Rod Ponton
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Attorney for Hunter
JRW Holdings, LLC

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Filing Code Description: No Fee Documents
Filing Description: Defendant Brief ISO of Answer and in Opposition to App. for Injunctive Relief
Status as of 7/15/2025 10:48 AM CST

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