

CAUSE NO. 417-04885-2016

CALCO LAND DEVELOPMENT, L.L.C.,	§	IN THE DISTRICT COURT
	§	
	§	
Plaintiff,	§	
V.	§	417th JUDICIAL DISTRICT
UNITY RESOURCES, L.L.C.,	§	
MARK THOMAS MERSMAN,	§	
MARK JOSEPH SOLOMON, JR.,	§	
TRADE RARE, L.L.C.,	§	
BYRON CURTIS COOK,	§	
JOEL HOCHBERG, and	§	
SHINER ENERGY &	§	
CONSULTING CORP.	§	
	§	COLLIN COUNTY, TEXAS
Defendants.	§	

**PLAINTIFF CALCO LAND DEVELOPMENT, L.L.C. AND
W. KENNETH PAXTON, JR.’S MOTION FOR PROTECTIVE ORDER
AND TO QUASH SUBPOENA**

Plaintiff Calco Land Development, L.L.C. (“Calco”) and non-party W. Kenneth Paxton, Jr. (“Paxton”) files this Motion for Protective Order and to Quash Subpoena (the “Motion”), and, in support thereof, shows the Court as follows.

I.
INTRODUCTION

1. On Friday, June 10, 2022, counsel for Defendants Trade Rare, L.L.C., Byron Curtis Cook, and Joel Hochberg served non-party Paxton with a subpoena ordering him to appear and testify at the trial of this matter on July 12, 2022 and to

remain available to testify until released. (the “Subpoena”). The Subpoena was served through Paxton’s counsel, J. Mitchell Little.

2. Paxton is scheduled to be in Europe the week of July 12, 2022 and to require him to change his plans at this late date would cause Paxton to incur an undue burden and expense. For these reasons, the Court should grant this Motion and quash the Subpoena.

II. **ARGUMENT & AUTHORITIES**

3. A subpoena can be challenged by the person subpoenaed, by a party to the suit, or by any person affected by the subpoena. TEX. R. CIV. P. 176.6(d)-(f); 192.6. A person subpoenaed to give testimony at trial “may object or move for protective order before the court at the time and place specified for compliance.” TEX. R. CIV. P. 176.6(f). The Court may quash a subpoena to protect the person served from any undue burden or expense compliance with the subpoena might cause. TEX. R. CIV. P. 176.7.

4. Calco and Paxton object to and seek protection from the Subpoena requesting that Paxton appear to testify at trial. Ex. A. Paxton is unavailable to testify due to a previously scheduled trip to China with other Attorneys General. To make Paxton change his previously scheduled plans would place an undue burden and expense on Paxton. TEX. R. CIV. P. 176.7. The Court, therefore, should grant this Motion and quash the Subpoena seeking Paxton’s trial testimony.

5. A person need not comply with the part of a subpoena from which protection is sought. TEX. R. CIV. P. 176.6(e). Thus, by virtue of this Motion, Paxton is not required to comply with the Subpoena until the matter is determined by the Court.

III.
PRAYER

6. For these reasons, Plaintiff Calco Land Development, L.L.C. and non-party W. Kenneth Paxton, Jr. respectfully request that the Court grant this Motion, enter a protective order as requested, and award Plaintiff Calco Land Development, L.L.C. and non-party W. Kenneth Paxton, Jr. such other relief as is just and proper.

Respectfully submitted,

SCHEEF & STONE, L.L.P.

By: /s/ J. Mitchell Little

C. John Scheef III

State Bar No. 17735585

J. Mitchell Little

State Bar No. 24043788

2600 Network Blvd., Suite 400

Frisco, Texas 75034

(214) 472-2100 Telephone

(214) 472-2150 Telecopier

john.scheef@solidcounsel.com

mitch.little@solidcounsel.com

ATTORNEYS FOR PLAINTIFF
CALCO LAND DEVELOPMENT, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded to counsel in accordance with Texas Rules of Civil Procedure 21a on June 15, 2022.

/s/ J. Mitchell Little _____

J. Mitchell Little

CERTIFICATE OF CONFERENCE

I certify that on June 12, 2022, counsel for Plaintiff attempted to conduct a conference regarding the merits of the foregoing Motion with counsel for Defendants. Being unable to resolve the dispute, Plaintiff submits this Motion for determination by the Court.

/s/ J. Mitchell Little _____

J. Mitchell Little

EXHIBIT A

CAUSE NO. 417-04885-2016

CALCO LAND DEVELOPMENT, L.L.C.,

Plaintiff,

vs.

UNITY RESOURCES, L.L.C.;
MARK THOMAS MERSMAN;
MARK JOSEPH SOLOMON, JR.;
TRADE RARE, L.L.C.;
BYRON CURTIS COOK;
and JOEL HOCHBERG,

Defendants.

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IN THE DISTRICT COURT

COLLIN COUNTY, TEXAS

417th JUDICIAL DISTRICT

NOTICE OF SUBPOENA

TO: Warren Kenneth Paxton, Jr., Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701, or 209 W. 14th Street, Austin, Texas 78701.

Please take notice that Defendants Trade Rare, L.L.C., Byron Curtis Cook, and Joel Hochberg (“Defendants”) intend to serve the attached Subpoena on Warren Kenneth Paxton, Jr. The Subpoena commands Paxton to appear for a deposition at **9:00 a.m. on July 12, 2022** at the offices of Carrington, Coleman, Sloman & Blumenthal, LLP, 901 Main Street, Suite 5500, Dallas, Texas 75202.

Respectfully submitted,

/s/ Alex More

Neil R. Burger

Texas State Bar No. 24036289

E-mail: nburger@ccsb.com

Alex More

Texas State Bar No. 24065789

E-mail: amore@ccsb.com

Brent M. Rubin

Texas State Bar No. 24086834

Email: brubin@ccsb.com

Monica Gaudio

Texas State Bar No. 24084570

Email: mgaudio@ccsb.com

**CARRINGTON, COLEMAN,
SLOMAN & BLUMENTHAL, L.L.P.**

901 Main Street, Suite 5500

Dallas, Texas 75202

214-855-3000 (telephone)

214-855-1333 (fax)

and

Terry Jacobson

Texas State Bar No. 10528000

Email: tjacobson@sbcglobal.net

JACOBSON LAW FIRM, P.C.

733 West Second Avenue

Corsicana, Texas 75110

903-874-7117 (telephone)

903-874-7321 (fax)

*Attorneys for Defendants
Trade Rare, L.L.C., Byron Curtis Cook,
and Joel Hochberg*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record in the above cause in accordance with the Texas Rules of Civil Procedure via electronic service on June 10, 2022.

/s/ Alex More

Alex More

THE STATE OF TEXAS

SUBPOENA

This subpoena is issued in the name of the State of Texas by the undersigned attorney on June 10, 2022, in the case of *Calco Land Development, L.L.C. v. Unity Resources, L.L.C., et al.*, Cause No. 417-04885-2016, pending in the 417th District Court, Collins County, Texas. The attorneys for Defendants Trade Rare, L.L.C., Byron Curtis Cook, and Joel Hochberg, at whose instance this subpoena is issued, are Neil R. Burger, Alex More, Brent Rubin, and Monica Gaudioso of Carrington, Coleman, Sloman & Blumenthal, L.L.P., 901 Main Street, Suite 5500, Dallas, Texas 75202, (214) 855-3000.

Warren Kenneth Paxton, Jr., located at the Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701, or at 209 W. 14th Street, Austin, Texas 78701, or wherever he may be found, is hereby commanded to appear and give deposition testimony at **9:00 a.m. on July 12, 2022** at the offices of Carrington Coleman Sloman & Blumenthal, LLP, 901 Main Street, Suite 5500, Dallas, Texas 75202. The deposition, which may be videotaped, will be stenographically recorded by a certified court reporter.

Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

Respectfully submitted,

/s/ Alex More

Neil R. Burger

Texas State Bar No. 24036289

E-mail: nburger@ccsb.com

Alex More

Texas State Bar No. 24065789

E-mail: amore@ccsb.com

Brent M. Rubin

Texas State Bar No. 24086834

Email: brubin@ccsb.com

Monica Gaudio

Texas State Bar No. 24084570

Email: mgaudio@ccsb.com

**CARRINGTON, COLEMAN,
SLOMAN & BLUMENTHAL, L.L.P.**

901 Main Street, Suite 5500

Dallas, Texas 75202

214-855-3000 (telephone)

214-855-1333 (fax)

and

Terry Jacobson

Texas State Bar No. 10528000

Email: tljacobson@sbcglobal.net

JACOBSON LAW FIRM, P.C.

733 West Second Avenue

Corsicana, Texas 75110

903-874-7117 (telephone)

903-874-7321 (fax)

*Attorneys for Defendants
Trade Rare, L.L.C., Byron Curtis Cook,
and Joel Hochberg*

Certificate of Service

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record in the above cause in accordance with the Texas Rules of Civil Procedure via electronic service on June 10, 2022.

/s/ Alex More

Alex More

ACCEPTANCE OF SERVICE

The undersigned accepts service of the foregoing subpoena.

Name: _____

Signature: _____

PROOF OF SERVICE

Service of the foregoing subpoena was made by personally delivering a true copy of the same and a witness fee of ten dollars to _____, at the time of _____ o'clock __.m. on the date of June _____, 2022.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeri Hamman on behalf of Mitch Little
Bar No. 24043788
jeri.hamman@solidcounsel.com
Envelope ID: 65482577
Status as of 6/15/2022 4:32 PM CST

Associated Case Party: Calco Land Development, L.L.C.

Name	BarNumber	Email	TimestampSubmitted	Status
John Scheef		john.scheef@solidcounsel.com	6/15/2022 4:17:18 PM	SENT
Kelly Crawford		kelly.crawford@solidcounsel.com	6/15/2022 4:17:18 PM	SENT
Brenda R. Steindler		brenda.steindler@solidcounsel.com	6/15/2022 4:17:18 PM	SENT

Associated Case Party: Unity Resources, L.L.C.

Name	BarNumber	Email	TimestampSubmitted	Status
W. Todd Albin		talbin@albinroach.com	6/15/2022 4:17:18 PM	SENT

Associated Case Party: MarkThomasMersman

Name	BarNumber	Email	TimestampSubmitted	Status
W. Todd Albin		talbin@albinroach.com	6/15/2022 4:17:18 PM	SENT

Associated Case Party: MarkJosephSolomon

Name	BarNumber	Email	TimestampSubmitted	Status
W. Todd Albin		talbin@albinroach.com	6/15/2022 4:17:18 PM	SENT

Associated Case Party: Trade Rare, L.L.C.

Name
Alex More
Terry Jacobson
Rene O.Oliveira

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Jeri Hamman on behalf of Mitch Little
Bar No. 24043788
jeri.hamman@solidcounsel.com
Envelope ID: 65482577
Status as of 6/15/2022 4:32 PM CST

Associated Case Party: Trade Rare, L.L.C.

Neil R.Burger		nburger@ccsb.com	6/15/2022 4:17:18 PM	SENT
John Mongogna		jmongogna@albinroach.com	6/15/2022 4:17:18 PM	SENT
Baleigh Walker		bwalker@albinroach.com	6/15/2022 4:17:18 PM	SENT

Associated Case Party: ByronK.Cook

Name	BarNumber	Email	TimestampSubmitted	Status
Rene O.Oliveira		roliveira@rofllp.com	6/15/2022 4:17:18 PM	SENT
Terry Jacobson		tljacobson@sbcglobal.net	6/15/2022 4:17:18 PM	SENT
Alex More		amore@ccsb.com	6/15/2022 4:17:18 PM	SENT
Neil R.Burger		nburger@ccsb.com	6/15/2022 4:17:18 PM	SENT
Terry L.Jacobson		terry@terryjacobsonlaw.com	6/15/2022 4:17:18 PM	SENT
Jennifer L.Cofer		office@terryjacobsonlaw.com	6/15/2022 4:17:18 PM	SENT

Associated Case Party: Joel Hochberg

Name	BarNumber	Email	TimestampSubmitted	Status
Alex More		amore@ccsb.com	6/15/2022 4:17:18 PM	SENT
Terry Jacobson		tljacobson@sbcglobal.net	6/15/2022 4:17:18 PM	SENT
Neil R.Burger		nburger@ccsb.com	6/15/2022 4:17:18 PM	SENT
Rene O.Oliveira		roliveira@rofllp.com	6/15/2022 4:17:18 PM	SENT

Case Contacts

Name
Daniel D.Tostrud

Automated Certificate of eService

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Jeri Hamman on behalf of Mitch Little
Bar No. 24043788
jeri.hamman@solidcounsel.com
Envelope ID: 65482577
Status as of 6/15/2022 4:32 PM CST

Case Contacts

W. Todd Albin		talbin@aybriaw.com	6/15/2022 4:17:18 PM	SENT
Jeri Hamman		jeri.hamman@solidcounsel.com	6/15/2022 4:17:18 PM	SENT
Lindsey K. Wyrick		lwyrick@cobbmartinez.com	6/15/2022 4:17:18 PM	SENT
Molly D. O'Sullivan		mosullivan@albinroach.com	6/15/2022 4:17:18 PM	SENT
Jesse R. Castillo	3986600	jcastillo@casnlaw.com	6/15/2022 4:17:18 PM	SENT
Edward C. Snyder	791699	esnyder@casnlaw.com	6/15/2022 4:17:18 PM	SENT
Mitch Little		mitch.little@solidcounsel.com	6/15/2022 4:17:18 PM	SENT
Sheri Hopkins		shopkins@padfieldstout.com	6/15/2022 4:17:18 PM	SENT
Brent Rubin		brubin@ccsb.com	6/15/2022 4:17:18 PM	SENT
Christopher S. Ayres		csayres@ayreslawoffice.com	6/15/2022 4:17:18 PM	SENT
R. Jack Ayres, Jr.		rjayres@ayreslawoffice.com	6/15/2022 4:17:18 PM	SENT
Judy Martinez		jmartinez@ccsb.com	6/15/2022 4:17:18 PM	SENT
Monica E. Gaudio		mgaudio@ccsb.com	6/15/2022 4:17:18 PM	SENT
Walker Young		walker.young@solidcounsel.com	6/15/2022 4:17:18 PM	SENT
Carolyn Taylor		ctaylor@ccsb.com	6/15/2022 4:17:18 PM	SENT

Associated Case Party: Shiner Energy & Consulting Corp.

Name	BarNumber	Email	TimestampSubmitted	Status
Debbie Whatley		dwhatley@ayreslawoffice.com	6/15/2022 4:17:18 PM	SENT
Christopher V. Arisco		carisco@padfieldstout.com	6/15/2022 4:17:18 PM	SENT
Christopher Ayres		csayres@ayreslawoffice.com	6/15/2022 4:17:18 PM	SENT