

|                                    |   |                                     |
|------------------------------------|---|-------------------------------------|
| CALCO LAND DEVELOPMENT,<br>L.L.C., | § | IN THE DISTRICT COURT               |
|                                    | § |                                     |
|                                    | § |                                     |
| Plaintiff,                         | § |                                     |
|                                    | § |                                     |
| V.                                 | § | 417 <sup>TH</sup> 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.                   | § |                                     |
|                                    | § |                                     |
| Defendants.                        | § | COLLIN COUNTY, TEXAS                |

**PLAINTIFF’S CALCO LAND DEVELOPMENT, L.L.C.’S  
PLEA TO THE JURISDICTION AND RESPONSE TO  
TALARICO FOR TEXAS’S PLEA IN INTERVENTION**

Plaintiff CALCO LAND DEVELOPMENT, L.L.C. (“Plaintiff”) now files this Plea to the Jurisdiction and Response to Talarico for Texas’s Plea in Intervention. In support, Plaintiff shows the Court the following:

**I.  
SUMMARY OF MOTION**

Talarico for Texas has no legal standing to intervene in this lawsuit, and the Court has no jurisdiction to hear its plea. Talarico for Texas filed a Plea in Intervention on August 28, 2026 to obtain two deposition transcripts filed by Defendants in support of their summary judgment motion. Each deposition was protected by a Protective Order first entered on May 16, 2019 and later modified on September 8, 2023. The later modification provided for materials to be file-marked as

“Contains Sensitive Information” to be considered for in camera inspection “as necessary preceding trial.” There never was a trial, and the matter was settled informally as among the parties. As judicially admitted by Talarico for Texas in their Plea in Intervention, there was never a sealing order in this case under Rule 76a.

## II.

### ARGUMENT AND AUTHORITIES

1. The above-captioned case has been closed since 2024, and the Court has lost plenary power to decide any matters concerning it. As cited by Talarico for Texas, “A court **that issues a sealing order** retains continuing jurisdiction to enforce, alter, or vacate that order.” [emphasis added] Tex. R. Civ. P. 76a (West 2026). Based on the plain language of Rule 76a, the existence of a sealing order is an essential prerequisite to this Court’s jurisdiction. None exists, as even a cursory review of the Court’s file demonstrates. Talarico for Texas cites not a single authority in support of its contention that this Court retains jurisdiction in the absence of a Rule 76a sealing order. The Court lacks jurisdiction over Intervenor’s intervention and request because (1) no sealing order has been entered pursuant to Texas Rule of Civil Procedure 76a, and therefore no continuing jurisdiction exists under Rule 76a(7) to extend this Court’s plenary power; and (2) the documents at issue were expressly determined by this Court to have been submitted in camera, which categorically excludes them from Rule 76a’s definition of “court records.” Consequently, the Court lacks jurisdiction and has no authority to act on Intervenor's request.

***Trial court plenary power has expired and Rule 76a(7) requires a sealing order to invoke jurisdiction.***

2. A “trial court’s inherent power to control public access to its records does not extend beyond the period of its plenary power.” *Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex. App.—

Houston [1st Dist.] 1989, no writ). Absent a plenary-power extending motion or exception, a trial court loses plenary power to act in a case thirty days after a judgment is signed. *In re Gillespie*, 124 S.W.3d 699, 702 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding) (holding that plenary power refers to period of time in which trial court may vacate, modify, or correct its judgment and that plenary power generally expires thirty days after final judgment is signed). Here, the final order disposing of the parties and claims was signed on January 9, 2024. Thus, this Court’s plenary power expired on February 8, 2024. As a result, this Court has no authority to act after that date. *See State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995) (holding that judicial action taken after plenary power expires is void); *Custom Corps., Inc. v. Sec. Storage, Inc.*, 207 S.W.3d 835, 839 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (stating that, generally, trial court lacks power to act in case after plenary power expires).

3. Rule 76a provides a narrow exception to the general rule. It allows a party to intervene in cases in which documents have been sealed pursuant to Rule 76a. TEX. R. CIV. P. 76a(7). The continuing jurisdiction allowed by Rule 76a(7) is controlled by a sealing order: “A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order.” Thus, absent a sealing order to enforce, alter, or vacate, there is no continuing jurisdiction and the Court has no authority to act.

***There is no order to seal to enforce, alter, or vacate.***

4. Intervenor does not contend, nor can it, that an order to seal any documents under Rule 76a was entered in this matter. To the contrary, Intervenor’s own plea concedes that this Court denied the requested motion to seal. (Mot. at 9.) Continuing jurisdiction, therefore, does not exist. TEX. R. CIV. P. 76a(7). Because no sealing order was ever entered, there is no order to enforce, alter,

or vacate, and continuing jurisdiction under Rule 76a(7) does not exist. Any action taken by this Court on Intervenor’s plea would therefore be void for lack of jurisdiction. *See State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995) (holding that judicial action taken after plenary power expires is void). But even if the Court had jurisdiction to act, it could not grant the relief requested under Rule 76a because there is no sealing order to vacate, alter, or amend.

***The documents at issue are not court records, or have not been determined to be court records, for purposes of Rule 76a.***

5. Even setting aside the jurisdictional defect, the documents at issue are not “court records” and Intervenor cannot establish otherwise. Rule 76a(2) defines court records broadly, but it expressly *excludes* “documents filed with a court in camera, solely for the purposes of obtaining a ruling on the discoverability of such documents.” TEX. R. CIV. P. 76a(2)(a)(1). On July 28, 2023, this Court expressly held as follows:

The Court will modify the existing Protective Order to include the documents filed as “Contains Sensitive Information” are to be considered filed for in camera inspection and will hold a hearing as to admissibility and discoverability as necessary preceding trial. These findings and rulings are considered the least restrictive alternative to sealing while maintaining the Court’s previous Protective Order.

This holding has not been challenged, appealed, or otherwise disturbed. Accordingly, this Court’s order unambiguously designated the documents at issue as submitted for in camera inspection to determine admissibility and discoverability. *See In re Coastal Bend Coll.*, 276 S.W.3d 83, 87 (Tex. App.—San Antonio 2008, no pet.) (holding that documents tendered for in camera inspection did not convert the records into court records). This forecloses any argument that the documents are court records under 76a(2), or that they are subject to “unsealing” pursuant to 76a(7). *See Biederman v. Brown*, 563 S.W.3d 291 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (trial court lacked

jurisdiction over matter where discovery filed for in camera inspection was not sealed court record).

6. Even assuming continuing jurisdiction exists absent a Rule 76a sealing order, which Plaintiff does not concede, the Court would first be required to make a threshold determination of whether the documents at issue are “court records” as defined by Rule 76a(2). *See Gen. Tire, Inc. v. Kepple*, 970 S.W.2d 520, 524 (Tex. 1998). Because such determination has not been made, the Court cannot grant relief even if jurisdiction exists. *Biederman*, 563 S.W.3d at 305. Nor can Intervenor get around this threshold requirement by alleging the public should have access to unfiled documents based on vague public reporting. *See Gen. Tire, Inc.*, 970 S.W.2d at 524-25. ([A] trial court may not apply the special procedures of Rule 76a (except for intervention) until it determines that the documents are court records.”).

### III.

#### **CONCLUSION AND PRAYER**

7. The Court lacks jurisdiction over Intervenor’s intervention or to grant its requested relief because there is no Rule 76a sealing order to enforce, alter, or vacate. Additionally, the documents at issue are not court records as they were held to be submitted in camera to determine discoverability and admissibility. For these reasons, Plaintiff respectfully requests the Court dismiss Intervenor’s intervention and requested relief for lack of jurisdiction and grant Third-Party all other relief to which he is entitled.

Respectfully submitted,

**SCHEEF & STONE, L.L.P.**

By: /s/ J. Mitchell Little

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](mailto:john.scheef@solidcounsel.com)

ATTORNEYS FOR PLAINTIFF  
CALCO LAND DEVELOPMENT,  
L.L.C.

**CERTIFICATE OF SERVICE**

I certify that on September 21, 2026, a true and correct copy of the foregoing document has been served upon all counsel and/or parties of record in accordance with TRCP 21 and 21a.

/s/ J. Mitchell Little

J. Mitchell Little