

CAUSE NO. 2014-40964

ERIC TORRES, ADAM SINN,  
XS CAPITAL INVESTMENTS, L.P.,  
AND ASPIRE COMMODITIES, L.P.,

*Plaintiffs,*

v.

CRAIG TAYLOR AND  
ATLAS COMMODITIES, L.L.C.,

*Defendants.*

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157<sup>TH</sup> JUDICIAL DISTRICT

Consolidated with  
CAUSE NO. 2015-49014

ERIC TORRES,

*Plaintiff,*

v.

S. JAMES MARSHALL,

*Defendant.*

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157<sup>TH</sup> JUDICIAL DISTRICT

**PLAINTIFFS' MOTION TO SEAL COURT RECORDS**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs/Counter-Defendants Eric Torres, Adam Sinn, XS Capital Investments, L.P., and Aspire Commodities, L.P (“Plaintiffs/Counter-Defendants” or “Plaintiffs”) file this Motion to Seal Court Records and would show the Court the following:

**I. INTRODUCTION**

Plaintiffs/Counter-Defendants are Eric Torres, Adam Sinn, XS Capital Investments, L.P., and Aspire Commodities, L.P. Defendants/Counter-Plaintiffs, are Craig Taylor, S. James Marshall, and Atlas Commodities, LLC. On July 17, 2014, Plaintiffs sued Defendants for breach

of the settlement agreement of a previous case between these parties, *Cause No.* 2012-46745. *Cause No.* 2012-46745's court records were sealed immediately following resolution of the case. Defendants filed a counter claim on August 18, 2014 alleging breaches of the settlement agreement and other causes of action. The parties filed numerous amendments to the claims and counterclaims over the course of the case. On August 21, 2015, Plaintiff Eric Torres filed his Original Petition against Defendant S. James Marshall in a separate matter: Cause No.2015-49014. On November 13, 2015, Cause No. 2015-49014 was consolidated with this action. The Plaintiffs ask the Court to seal the following Court Records from Cause No. 2014-40964 both before and after consolidation:

- a. Plaintiffs' Original Petition to Enforce Settlement Agreement (filed 7/17/2014);
- b. Defendants Original Answer and Counterclaim (filed 8/18/2014);
- c. Plaintiffs' Motion to Quash and For Protective Order (filed 9/8/2014);
- d. Plaintiffs' First Amended Petition to Enforce Settlement Agreement (filed 9/15/2014);
- e. Plaintiffs' Original Answer and Affirmative Defenses to Defendants' Counterclaim (filed 9/15/2014);
- f. Plaintiffs' Motion to Quash and for Protective Order Against Discovery Served on Non-Party Paul Sarver (filed 9/17/2014);
- g. Plaintiffs' Motion to Quash and for Protective Order Against Defendants' Abusive and Harassing Discovery (filed 9/22/2014);
- h. Eric Torres' Special Exceptions to Defendants' Counterclaim (filed 9/24/2014);
- i. Adam Sinn, XS Capital and Aspire's Special Exceptions to Defendants' Plea in Abatement and Counterclaim (filed 9/24/2014);
- j. Defendants' Motion to Compel and Response to Plaintiffs' Motion to Quash (filed 9/29/2014);
- k. Defendants' Response to Special Exceptions (filed 10/21/2014);

- l. Plaintiffs' Response in Opposition to Defendants' Motion to Compel (filed 10/27/2014);
- m. Defendants' First Amended Answer, Affirmative Defenses, and Counterclaim with all Exhibits (filed 10/28/2014);
- n. Joint Motion to Enter Agreed Protective Order (filed 11/18/2014);
- o. Defendants' Motion for Letter Rogatory for Foreign Deposition of and Production of Documents From Joonsup Park (filed 12/29/2014);
- p. Plaintiffs Sinn, XS Capital, and Aspire's Motion for Traditional Summary Judgment (filed 1/2/2015);
- q. Plaintiff Eric Torres' Motion for Traditional Summary Judgment (filed 1/2/2015);
- r. Plaintiffs Motion to Quash and for Protective Order Against Discovery Served on Non-Parties Paul Sarver, David Schmidli, and Evan Caron (filed 1/5/2015);
- s. Defendants Motion for Continuance of Plaintiffs Motions for Summary Judgment (filed 1/6/2015);
- t. Defendants Request for Hearing on Their Second Motion to Compel (dated 1/6/2015);
- u. Defendants (1) Response to Plaintiffs Motion to Quash and for Protective Order and (2) Motion to Compel (filed 1/6/2015);
- v. Defendants' Supplemental Motion to Compel (filed 1/8/2015);
- w. Plaintiffs' Response in Opposition to Defendants' Motion for Continuance of Plaintiffs' Motions for Summary Judgment (filed 1/15/2015);
- x. Subpoena Duces Tecum (filed 2/23/2015);
- y. Defendants' Second Amended Answer, Affirmative Defenses, and Counterclaim (filed 5/6/2015);
- z. Plaintiffs' Designation of Expert Witnesses (6/22/2015);
- aa. Defendants Taylor and Atlas' Designation of Expert Witnesses (6/22/2015);
- bb. Defendants' Response to Plaintiffs' Response to Plaintiff Eric Torres' Motion for Traditional Summary Judgment (7/17/2015);
- cc. Defendants' Response to Plaintiffs' Response to Plaintiffs Sinn, XS Capital and

- Aspire's Motion for Traditional Summary Judgment (7/17/2015);
- dd. Eric Torres' Reply to Taylor Parties' Response to Torres' Motion for Traditional Summary Judgment (7/23/2015);
  - ee. Sinn Party Plaintiffs' Response to Defendants' Challenge to Plaintiffs' Claims of Privilege (8/28/2015);
  - ff. Plaintiffs' Motion to Compel (filed 9/18/2015);
  - gg. Defendants' Response to Plaintiffs' Motion to Compel (filed 10/1/2015);
  - hh. Third Party Deponent Joonsup Park's Motion to Quash Deposition Subpoena (filed 10/21/2015);
  - ii. Plaintiffs' Motion for Discovery Sanctions Under Rule 215.2, Motion to Exclude Under 193.6, and Objection to Designation of Document Under Agreed Protective Order (filed 1/25/2016);
  - jj. Defendants' Response Plaintiffs' Motion for Discovery Sanctions Under Rule 215.2, Motion to Exclude Under 193.6, and Objection to Designation of Document Under Agreed Protective Order and Cross-Motion for Sanctions (2/3/2016);
  - kk. Defendants' Response to Third Party Motions to Quash and Motion to Compel (filed 2/3/2016);
  - ll. Plaintiffs' First Supplemental Designation of Expert Witnesses (filed 2/8/2016);
  - mm. Plaintiffs Statements on ADR (2/19/2016);
  - nn. Plaintiffs' Answer to Defendants' Second Amended Answer, Affirmative Defenses, and Counterclaim (filed 2/19/2016);
  - oo. Plaintiffs' Answer to Defendant S. James Marshall's First Amended Original Answer, Affirmative Defenses, and Counterclaim (filed 2/19/2016);
  - pp. All Parties' joint Motion for Continuance of Trial (filed 2/23/2016);
  - qq. Rule 11 Agreement (filed 3/18/2016);
  - rr. Defendants' Motion to Compel Deposition of Adam Sinn (filed 5/27/2016);
  - ss. Plaintiffs' Motion to Strike Expert Testimony (filed 5/27/2016);
  - tt. Defendants' Supplemental Motion to Compel Third Party Discovery (filed 7/12/2016);

- uu. Defendants' Motion to Compel Deposition of Plaintiffs' Expert (filed 7/12/2016);
- vv. Defendants' Motion to Compel Discovery Responses from Plaintiff Adam Sinn (filed 7/12/2016);
- ww. Defendants' Response to Plaintiffs' Motion to Strike Expert Testimony (filed 7/19/2016);
- xx. Plaintiffs' Response to Defendants' Motion to Compel Deposition of Adam Sinn (filed 7/20/2016);
- yy. Plaintiffs' Response to Defendants' Motion to Compel Discovery Responses from Plaintiff Adam Sinn (filed 7/20/2016);
- zz. Plaintiffs' Response to Defendants' Motion to Compel Deposition of Plaintiffs' Rebuttal Expert (filed 7/20/2016);
- aaa. Plaintiffs' Response to Defendants' Motion to Compel Third Party Discovery (filed 7/20/2016);
- bbb. Plaintiffs' Reply to Defendants' Response to Plaintiffs' Motion to Strike Expert Testimony (filed 7/21/2016);
- ccc. Defendants' Response to Plaintiffs' Motion to Quash (filed 7/25/2016);
- ddd. Motion to Quash Deposition Notice of Adam Sinn (filed 7/25/2016);
- eee. Defendants' Second Amended Notice to Take the Deposition of Adam Sinn (filed 7/28/2016);
- fff. Defendants' Motion for Continuance of Trial (8/2/2016);
- ggg. Defendants' Third Amended Notice to Take the Deposition of Adam Sinn (filed 8/4/2016);
- hhh. Adam Sinn's motion to Quash Deposition Notice for Adam Sinn, Motion for Protection and Motion for Costs (filed 8/9/2016);
- iii. Plaintiffs' Response to Defendants' Motion for Continuance of Trial (filed 8/10/2016);
- jjj. Non-Party's Response to Defendants' Motion to Compel Non Party Discovery (filed 8/11/2016);
- kkk. Plaintiffs' Motion to Quash and for Protective Order Against Hearing Subpoena

- Served on Adam Sinn (filed 8/23/2016);
- III. Defendants' Response to Motion to Quash and for Protective Order against Hearing Subpoena Served on Adam Sinn (filed 8/30/2016);
- mmm. Defendants' Response to Adam Sinn's Motion to Quash Deposition Notice for Adam Sinn, Motion for Protection and Motion for Costs (filed 9/2/2016);
- nnn. Notice of Withdrawal of Adam Sinn's Motion to Quash Deposition Notice for Adam Sinn, Motion for Protection and Motion for Costs (filed 9/2/2016);
- ooo. Torres and Sinn Parties' Motion for Traditional and No Evidence Summary Judgment (filed 9/16/2016);
- ppp. Defendants' Traditional Motion for Partial Summary Judgment (filed 9/16/2016);
- qqq. Defendants' Third Amended Answer, Affirmative Defenses, and Counterclaim (filed 9/16/2016);
- rrr. Plaintiffs' Answer to Defendants' Third Amended Answer, Affirmative Defenses, and Counterclaim (filed 9/16/2016);
- sss. Subpoena (filed 9/20/2016);
- ttt. Torres and Sinn Parties' Response to defendants' Traditional Motion for Partial Summary Judgment (filed 10/3/2016);
- uuu. Defendants' Response to Torres and Sinn Parties' Motion for Traditional and No Evidence Summary Judgment (filed 10/3/2016);
- vvv. Torres and Sinn Parties' Objections to Summary Judgment Evidence (filed 10/7/2016);
- www. Letter to Judge Wilson (filed 10/10/2016);
- xxx. Defendants' Reply to Plaintiffs' Response to Their Traditional Motion for Partial Summary Judgment (filed 10/10/2016);
- yyy. Letter to Judge Wilson filed (10/11/2016);
- zzz. Defendants' Response to Plaintiffs Emergency Motion to Strike Jury Demand/Fee and Alternatively Unopposed Motion for Continuance (filed 10/11/2016);
- aaaa. Letter to Judge Wilson filed (10/11/2016);
- bbbb. Plaintiffs Emergency Motion to Strike Jury Demand/Fee and Alternatively

- Unopposed Motion for Continuance (filed 10/11/2016);
- cccc. Notice Letter to Judge Wilson dated 10/12/2016 (filed 10/12/2016);
- dddd. Letter to Judge (filed 10/12/2016);
- eeee. Torres and Sinn parties' Reply to Defendants' Response to Plaintiffs' Emergency Motion to Strike Jury Demand/Fee and Alternatively Unopposed Motion for Continuance (filed 10/13/2016);
- ffff. Letter to Judge (filed 10/13/2016);
- gggg. Plaintiffs Second Motion to Strike Expert Testimony (filed 10/13/2016);
- hhhh. Torres and Sinn Parties' Motion to Strike Defendants' Fourth Amended Answer, Affirmative Defenses, and Counterclaims (filed 10/17/2016);
- iiii. Defendants' Fourth Amended Answer, Affirmative Defenses, and Counterclaims (filed 10/17/2016);
- jjjj. Defendants' Motion to Remove Designation of Confidentiality and for Expedited Ruling (filed 10/17/2016);
- kkkk. Defendants' Response to Plaintiffs' Second Motion to Strike Expert Testimony (filed 10/19/2016);
- llll. Defendants' Supplement to Their Motion to Remove Designation of Confidentiality and for Expedited Ruling (filed 10/19/2016);
- mmmm. Defendants' Motion for Death Penalty Sanctions (filed 10/20/2016);
- nnnn. Torres and Sinn Parties' Motion to Un-Designate Certain Discovery Materials as "Confidential" or "Highly Confidential" for Use at Trial (filed 10/21/2016);
- oooo. Defendants' Response to Plaintiffs' Motion to Strike Defendants' Fourth Amended Answer, Affirmative Defenses, and Counterclaim (filed 10/26/2016);
- pppp. Torres and Sinn Parties Response to Defendants' First and Supplemental Motion to Remove Designation of Confidentiality and for Expedited Ruling (filed 10/27/2016);
- qqqq. Defendants' Response to Torres and Sinn Parties' Motion to Un-Designate Certain Discovery Materials as "Confidential" or "Highly Confidential" for Use at Trial (filed 10/27/2016);
- rrrr. Plaintiff Eric Torres' Response to Defendants' Motion for Death Penalty

- Sanctions (filed 10/27/2016);
- ssss. Email Correspondence (filed 11/1/2016);
- tttt. All exhibits filed with the above-listed pleadings;
- uuuu. All unfiled discovery documents;

The Parties also request the Court seal the following records from Cause No. 2015-49014:

- a. Plaintiff's Original Petition to Enforce Settlement Agreement (filed 8/21/2015);
- b. Defendant's Original Answer (filed 10/5/2015);
- c. Plaintiff Eric Torres' Motion for Traditional Summary Judgment (filed 10/29/2015);
- d. Defendant's Motion for Continuance of Plaintiff's Motion for Summary Judgment (filed 10/30/2015);
- e. Defendant's Motion to Consolidate (filed 10/30/2015);
- f. Defendant S. James Marshall's Special Exceptions (filed 10/30/2015);
- g. Plaintiff's Response in Opposition to Defendant's Motion for Continuance of Plaintiff's Motion for Summary Judgment (filed 11/4/2015);
- h. Plaintiff's Response to Defendant's Motion to Consolidate (filed 11/12/2015);
- i. Defendant's (1) First Amended Original Answer and Affirmative Defenses and (2) Original Counterclaim (filed 11/13/2015);
- j. Transmittal Letter to Chris Daniel Regarding Missing Exhibits (filed 11/20/2015);
- k. Subpoena (filed 9/20/2016);
- l. All exhibits filed with the above-listed pleadings; and
- m. All unfiled discovery documents.

## **II. FACTS**

This lawsuit arose following the settlement of a lawsuit resulting from the termination of a business relationship in the energy trading business. The Parties have settled their dispute on terms satisfactory to all Parties. The Parties dispute the allegations in the varying Petitions and



Counterclaims, but recognize that the allegations therein include highly sensitive, confidential, and personal information relating to the parties' prior business relationship, social relationships, and relating to their respective businesses in general. Plaintiffs believe that these allegations, if they remain of public record, would damage the Parties' reputations and impair the Parties' ability to move on with their respective businesses and put this settled dispute behind them.

### **III. ARGUMENT & AUTHORITIES**

Court may seal court records if there is a serious, specific, and substantial interest in sealing the records that clearly outweighs (1) the presumption of openness and (2) any probable adverse effect on the general public health or safety. Tex. R. Civ. P. 76a(1)(a).

The Court should seal the above-listed court records because these documents contain highly sensitive and personal information and allege facts that could severely damage the reputation and business relationships among Plaintiffs, Defendants, and their respective clients. The Parties desire to remove these details and facts from the public domain to avoid ongoing and future disclosure of this sensitive and private information.

The interest in sealing these documents from public disclosure greatly outweighs any presumption of openness because the facts and allegations contained in the documents are not a matter of public interest. The facts and issues in the case are not relevant to any public debate, but there is a specific, serious, and substantial interest in protecting from further disclosure the sensitive information contained in the documents sought to be sealed. Because there is no public interest in this sensitive and private information, the presumption of openness is outweighed by the Parties' substantial interests. There will be no adverse effect on public health or safety because none of the matters sought to be sealed concern any issue of public health or safety.

The Court should seal each of the above-listed records because there are no less restrictive

means other than sealing that will adequately and effectively protect the Parties' interests in maintaining their privacy and moving on from this settled dispute. *See* Tex. R. Civ. P. 76(a)(1)(b). This is because the documents sought to be sealed contain many allegations of a highly sensitive nature.

Plaintiffs posted a notice of this motion as required by Rule 76a(3) and have attached a copy of the notice to this motion. Exh. A. Plaintiffs also filed a verified copy of the notice with the clerk of the Court and with the clerk of the Texas Supreme Court. Tex. R. Civ. P. 76a(3). *See* Exh. A.

#### **IV. CONCLUSION**

Plaintiffs request that the Court seal the above-listed records because their interest in preventing continued public disclosure of private and sensitive factual allegations outweighs the presumption of openness, and sealing these records will not harm public health or safety interests. Defendants are unopposed to this Motion.

#### **V. PRAYER**

WHEREFORE, Plaintiffs and Defendants ask the Court to set this motion for a hearing and after the hearing, grant the motion and seal the documents requested above.

Respectfully submitted,

**RAPP & KROCK, PC**



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**CERTIFICATE OF CONFERENCE**

I hereby certify that on March 15, 2017 I sent a copy of this motion to counsel for Defendants, Kathryn Nelson and Geoff Berg via email. On March 28, 2017, Kathryn Nelson responded to me via email that Defendants are unopposed to this Motion.



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Matthew M. Buschi

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 7th day of April, 2017, a true and correct copy of this document was served on counsel of record in accordance with the Texas Rules of Civil Procedure.

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*Via Eserve*



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Matthew M. Buschi