

CAUSE NO. 2014-40964

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| ERIC TORRES, ADAM SINN, XS CAPITAL MANAGEMENT, L.P., and ASPIRE COMMODITIES, L.P., Plaintiffs | § § § § § § § § § § | IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS |
| v. | | |
| CRAIG TAYLOR and ATLAS COMMODITIES, L.L.C., Defendants | § § § § § § § § § § | 157TH JUDICIAL DISTRICT |

CAUSE NO. 2015-49014

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| ERIC TORRES, Plaintiff, | § § § § § § § § § § | IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS |
| v. | | |
| S. JAMES MARSHALL, Defendant. | | 157TH JUDICIAL DISTRICT |

**DEFENDANTS'/COUNTER-PLAINTIFFS'
MOTION FOR CONTINUANCE OF TRIAL**

Defendants/Counter-Plaintiffs Craig Taylor and Atlas Commodities, LLC (“Atlas”) and Defendant S. James Marshall move to continue trial as follows:

Trial is set for the Court’s two-week docket beginning on October 24, 2016. The discovery period ended on May 27, 2016. The Defendants move to continue trial for a period of ninety (90) days and to vacate the original docket control order and issue a new docket order based on the new setting. This is the second motion for continuance.

Beginning with their refusal to even consider answering the very first set of discovery served on them with the Defendants’ answer and counterclaim on August 18, 2014, the Plaintiffs have since that time obstructed discovery, at times stalled this case and on other occasions demanded an immediate end to it in their favor without the inconvenience of participating in

discovery, even when ordered by this Court to do so. Plaintiffs have wasted the Court's time and prevented the Defendants from determining the full extent of their damages by, among other things, refusing to respond to discovery, refusing to produce parties and their own expert for deposition, destroying evidence, and twice moving without basis to exclude the Defendants' expert.¹ A continuance of ninety (90) days is necessary so that the Defendants may review outstanding discovery responses and allow for the depositions of Plaintiffs Adam Sinn and Eric Torres, Defendants' expert Rob Hancock, Plaintiffs' expert Max Lummis, and third parties Evan Caron and Joonsup Park (the "Third Parties"). The evidence and testimony sought cannot be obtained from any other source and resolution of various discovery disputes is ongoing.

On July 22, 2016, the Court heard Defendants' Motion to Compel Discovery from Plaintiff Adam Sinn, Motion to Compel Deposition of Adam Sinn, Motion to Compel Deposition of Max Lummis, and Plaintiffs' Motion to Strike Testimony of Rob Hancock. The Court denied Plaintiffs' Motion to Strike Testimony of Rob Hancock as premature and granted Defendant's Motion to Compel the Deposition of Adam Sinn. Plaintiffs agreed on record to: provide responses to Defendants' outstanding discovery requests to Sinn; take the deposition of Defendants' expert Rob Hancock, and produce Plaintiffs' expert for deposition after Hancock's deposition.

For nearly two years, Sinn has refused to answer or has failed to provide complete answers to virtually all discovery served on him. Defendants served Sinn with formal discovery requests, conducted email and phone conferences with Plaintiffs' counsel, and filed a Motion to Compel on July 12, 2016. Plaintiffs' agreed to provide complete responses to Defendants' outstanding discovery requests at the July 22, 2016 hearing. To date, Defendants have not received the

¹ Defendants go in to greater detail in their following motions, which are adopted as fully set forth below: May 27, 2016 Motion to Compel the Deposition of Adam Sinn; July 12, 2016 Motion to Compel Discovery Responses from Adam Sinn, Motion to Compel Third Party Discovery, Motion to Compel Deposition of Plaintiffs' Expert; July 19, 2016 Response to Plaintiffs' Motion to Exclude the Testimony of Rob Hancock.

requested information or documents and will need adequate time to review them upon receipt.

After Sinn's first deposition on April 8, 2015, he produced 265 pages of documents containing evidence of his guilt. Defendants have been trying to depose him since that time. Through multiple conferences with Plaintiffs' counsel and a Motion to Compel on May 27, 2016, Sinn has simply not taken his obligation seriously. Sinn continues to believe that he only needs to participate in discovery when it is convenient for him, regardless of the Rules and this Court's orders. Plaintiffs' motion to quash and Defendants' response are pending before the Court.

Plaintiffs moved twice to strike Hancock's preliminary expert report without taking his deposition. The Court denied Plaintiffs' second motion to strike Hancock as premature at the July 22, 2016 hearing. At that same hearing, Plaintiffs agreed to produce Lummis after they depose Hancock. After Hancock and Lummis have been deposed, the Parties will need time to review their testimony in order to adequately prepare for trial on damages, if necessary.

The Third Parties, apparently acting in concert with Plaintiffs, continue to stall and delay the discovery of vital information that cannot be obtained from Plaintiffs. Plaintiff Eric Torres identified the Third Parties as recipients of some of the disparaging statements complained about in this suit. Torres admitted to destroying his phone while discovery was pending. Because of Torres' destruction of evidence, the Defendants were forced to serve the Third Parties with subpoenas duces tecum in October 2015. In response, the Third Parties moved to quash, then agreed to appear at deposition, and now, in an effort apparently coordinated with the Plaintiffs, refuse to make themselves available. Defendants' Motion and Supplemental Motion to Compel Depositions of Third Parties are before the Court. If the Court grants the Defendants' motion, they will need adequate time to review the discovery upon receipt and determine what additional discovery and witnesses are implicated.

If granted, the Defendants'/Counter-Plaintiffs' motion for summary judgment (currently set to be heard on September 9, 2016) will dispose of almost all issues before the Court. Out of an abundance of caution, however, a continuance is necessary to preserve the Defendants' ability to complete the discovery in which the Plaintiffs have refused to cooperate.

This continuance is not sought for delay only, but so that justice may be done.

Defendants/Counter-Plaintiffs request that this Court grant their Motion for Continuance of trial for 90 days, vacate its previous Docket Control Order and issue a new Docket Control Order based on the new setting. A proposed order is attached.

Respectfully submitted,
BERG FELDMAN JOHNSON, LLP

By: /s/ Geoffrey Berg
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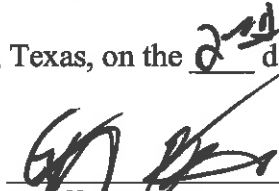
VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

My name is Geoffrey Berg. I am over eighteen years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in it. I am lead counsel for Defendants. The facts stated in the foregoing Defendants'/Counter-Plaintiffs' Motion for Continuance of Trial are within my personal knowledge and are true and correct.

My date of birth is July 24, 1969 and my address is 4203 Montrose Blvd., Suite 150, Houston, Texas 77006. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Houston, Harris County, Texas, on the 2nd day of August 2016.



Geoffrey Berg

CERTIFICATE OF CONFERENCE

On August 2, 2016 I left a voicemail for Matt Buschi, counsel for Plaintiffs, advising that this motion was being filed and asking that he advise if Plaintiffs were not opposed. I had not heard back by the time this motion was filed.

/s/Kathryn Nelson _____
Kathryn Nelson

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served by electronic filing, certified mail return receipt requested, email, or facsimile on August 2, 2016 as follows:

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_____/s/ Geoffrey Berg
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