

CAUSE NO. 2014-40964

ERIC TORRES, ADAM SINN,
XS CAPITAL MANAGEMENT, 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

157TH 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

157TH JUDICIAL DISTRICT

**PLAINTIFFS' MOTION TO QUASH AND FOR PROTECTIVE ORDER AGAINST
HEARING SUBPONEA SERVED ON ADAM SINN**

Plaintiffs/Counter-Defendants Eric Torres, Aspire Commodities, L.P., XS Capital Investments, L.P., and Adam Sinn (“Plaintiffs”) file this Motion to Quash and for Protective Order Against Hearing Subpoena Served on Adam Sinn and would respectfully show this Court:

I. INTRODUCTION

Plaintiff Adam Sinn (“Sinn”) seeks protection from a hearing subpoena (Exh. A) (“Subpoena”) Defendants served on Sinn’s counsel commanding Sinn to appear at an “evidentiary hearing” that Defendants set on September 6, 2016 on Plaintiff’s motion for \$1,867.55 in costs

(“Motion”) as a result of Defendants canceling his deposition after mandating it occur on a Sunday in violation of this Court’s order. Defendants’ subpoena is another attempt at harassing Sinn because they know he loses substantial trading profits when he has to travel during the week. Because this Subpoena is for purposes of harassment and unnecessary to a resolution of the Motion, the Court should issue an order quashing the Subpoena and protecting Sinn.

II. BACKGROUND

After many months of back and forth between Counsel for Plaintiffs and Counsel for Defendants in trying to schedule the second deposition of Adam Sinn, the Court entered an order mandating that Sinn travel to Houston from his home in Puerto Rico but allowed the deposition to occur on a Saturday to minimize the days Sinn had to travel while the commodities market was open.

Then, despite the Court Order allowing for Saturday deposition, Defendants mandated that the deposition occur on a Sunday.

Rather than bothering this Court again, Sinn agreed to do the deposition on Sunday August 7, 2016. Defendants agreed to the date, and noticed the deposition for same. In reliance on the acceptance of that date by Defendants, Sinn purchased airfare. Because the deposition was scheduled for a Sunday, Sinn had to book more expensive travel for his return flight to Puerto Rico that Sunday following the deposition. In reliance on the deposition going forward on August 7, 2016, Sinn made various plans for that weekend in Houston in order to optimize his time in Houston.¹

On Thursday, August 4, 2016, Defendants cancelled the deposition because they allegedly would not have time to review the discovery responses that were going to be served to them on Friday, August 5, 2016 by agreement of the parties. This excuse is not credible, given that the only

¹ Sinn originally was planning to be in Houston this weekend for a personal matter, but learned that he did not need to handle that matter in person. Nonetheless, because he had agreed with Defendants to the deposition on Sunday he kept his word and made plans to maximize his stay in Houston.

discovery being responded to on August 5, 2016 are four interrogatories that simply match up names with telephone numbers (almost all of which have already been identified for over a year), and two requests for production which requests one specific document only, and communications regarding that document. *Further, Defendants knew at the time they selected August 7th as the deposition date that these discovery responses would be due the Friday before.* Worse yet, in response to Plaintiff's counsel informing Defendants' counsel about the relatively small nature of the discovery responses to come, Defendants simply noticed Mr. Sinn's deposition for a day that Plaintiffs had told them repeatedly was not available, forcing counsel for Sinn to file a motion to quash.

Because Defendants cancelled the deposition so close to the deposition date, Plaintiff Sinn was forced to incur unnecessary travel costs to Houston, as he ultimately did not need to come to Houston for a closing on a property which he was able to conduct virtually, nor for this deposition. As such, Plaintiff Sinn requested his airfare costs be reimbursed (he did not request reimbursement of all of his weekend charges and was able to attend those events). Instead of recognizing their error, Defendants added insult to injury, set the Motion for an "evidentiary hearing" on September 6, 2016 and served Sinn's counsel with a Subpoena for Sinn to appear at the deposition and which included ten requests for production in violation of Texas Rule of Civil Procedure 196.

III. OBJECTIONS TO REQUESTS FOR PRODUCTION

Plaintiffs object as follows to the Requests for Production included in the Subpoena:

- **General objection to all requests** – Plaintiffs object to all requests as not providing adequate time to respond. Pursuant to Texas Rule of Civil Procedure 176.3 a party may be required to appear and produce documents or other things at any location permitted under Rules 199.2(b)(2). Tex. R. Civ. P. 176.3. However, Rule 199.2 (b)(5) states that with regards to a request for production, when the witness is a party, document requests are governed by

Rules 193 and 196. Tex. R. Civ. P. 199.2. Rule 196 requires 30 days notice to produce documents. Tex. R. Civ. P. 196.2. As such, Defendants' document requests within the subpoena do not provide the required time for production.

- **General objection to all requests** – Plaintiffs object to all requests as designed for purposes of harassment. Further Plaintiffs object to the requests as beyond the scope of discovery in this case Tex. R. Civ. P. 192.3 (“a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”) The requests have nothing to do with a claim or defense before this Court.

- **Request No. 1** – Plaintiffs object to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this request as harassing. Plaintiff also objects on the basis that this requests invades his privacy.

- **Request No. 2** – Plaintiffs object to this request as ambiguous, overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this request as harassing. Plaintiff also objects on the basis that this requests invades his privacy.

- **Request No. 3** – Plaintiffs object to this request as ambiguous, overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this request as harassing. Plaintiffs object to this request as repetitive in that Plaintiff has provided these documents as exhibits to his motion for costs.

- **Request No. 4** – Plaintiffs object to this request as ambiguous, overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to

this request as harassing. Plaintiff also objects on the basis that this requests invades his privacy.

- **Request No. 5** – Plaintiffs object to this request as not reasonably calculated to lead to the discovery of admissible evidence as Plaintiff does not seek attorney’s fees in his motion for costs related to the August 7, 2016 deposition cancellation. Plaintiff also objects to this request as harassing.

- **Request No. 6** – Plaintiffs object to this request as vague, ambiguous, confusing, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this request as harassing.

- **Request No. 7** – Plaintiffs object to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this request as harassing. Plaintiff also objects on the basis that this requests invades his privacy.

- **Request No. 8** – Plaintiffs object to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this request as harassing. Plaintiff also objects on the basis that this requests invades his privacy.

- **Request No. 9** – Plaintiffs object to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this request as harassing. Plaintiff also objects on the basis that this requests invades his privacy.

- **Request No. 10** – Plaintiffs object to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this request as harassing. Plaintiff also objects on the basis that this requests invades his privacy.

IV. ARGUMENT

Rule 176.6 provides that “a person commanded to appear at a deposition, hearing, or trial, or

to produce and permit inspection and copying of designated documents and things... may move for a protective order under Rule 192.6(b).” Tex. R. Civ. P. 176.6. Rule 192.6(a) provides that “[a] person from whom discovery is sought, and any other person affected by the discovery request, may move within the time permitted for response to the discovery request for an order protecting that person from the discovery sought.” Tex. R. Civ. P. 192.6(b) provides that this Court “may make any order in the interest of justice” to “protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights.”

As shown above, the nature of these requests is to pry into the personal business of Plaintiff Sinn for the purposes of harassment, embarrassment and annoyance. Rather than defend Sinn’s Motion on its merits, Defendants’ tactic here appears to be to make Mr. Sinn’s justifiable Motion for costs be cost prohibitive for him given that he does not live in Houston and would be forced to travel during the weekday,. Sinn made himself available to come to Houston for a deposition on Sunday, August 7, 2016. He purchased those tickets, and purchased the return ticket specifically to provide enough time for the Sunday deposition. The ticket, attached as Exhibit D to Sinn’s Motion for Costs which is on file and which is incorporated herein by reference, clearly shows it was purchased August 4, 2016, just hours before Defendants cancelled the deposition at 2:00 p.m. that same day. (See Exhibit B to Sinn’s Motion for Costs). He agreed to the deposition and kept his word. Defendants cancelled the deposition a few days before the deposition with no excuse, and when Mr. Sinn asks for costs based on that cancellation, Defendants’ response is to harass him with a subpoena in an attempt to rummage through his personal life and compel him to remain in Houston over the Labor Day weekend through at least Tuesday, September 9, 2016 in order to disrupt his work

schedule and expose him to further unnecessary risks and cost.² Sinn also requested in his Motion that the Court find Defendants had their chance to depose him again when they canceled the August 7, 2016 deposition and have lost that opportunity but have offered the payment of costs as an alternative. Defendants attempted to moot the request to cancel the deposition by noticing the deposition on September 2, 2016 and setting the hearing on the Motion for September 6th. That is the game Defendants have chosen to play and they should face the airfare costs. In fact, Sinn incurred at least another \$2,000 in fees for this motion for protection which should be assessed against Defendants as well.

V. Conclusion

Because Defendants' Subpoena is brought for the sake of harassment and annoyance, and because Defendants' request for production violates the Texas Rules of Civil Procedure and includes objectionable, unnecessarily prying and irrelevant requests, Plaintiff Sinn respectfully requests that the Court issue an order quashing the Subpoena and protecting Mr. Sinn protecting him from the Hearing/Trial Subpoena issued to him and served on his counsel on August 11, 2016.

² Sinn is planning to come to Houston on September 2, 2016 because he offered this as an alternative deposition date in his motion to quash the previous deposition notice and Defendants selected it—although given Defendants' track record they may cancel a few days before this deposition as well).

Respectfully submitted,
RAPP & KROCK, PC

/s/Kenneth Krock

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CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of August, 2016, 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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