

CAUSE NO. 2014-40964

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

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

**DEFENDANTS’/COUNTER-PLAINTIFFS’ RESPONSE TO  
MOTION TO QUASH AND FOR PROTECTIVE ORDER AGAINST  
HEARING SUBPOENA SERVED ON ADAM SINN**

Defendants/Counter-Plaintiffs Craig Taylor and Atlas Commodities, LLC, and Defendant S. James Marshall (collectively “Atlas”) file this Response to Plaintiffs’/Counter-Defendants’ Motion to Quash and for Protective Order against Hearing Subpoena served on Adam Sinn as follows:

**I. SUMMARY OF THE ARGUMENT**

As Adam Sinn admits in his motion to quash, Atlas has been trying to schedule his deposition for “many months.” Despite repeated requests, Adam Sinn – *who is the Plaintiff in this litigation* – refused to be deposed. Counsel for Atlas called and emailed Sinn’s lawyers repeatedly asking that they provide dates. Dates were sometimes provided, usually at the last minute and only when Sinn, who lives in Puerto Rico for tax reasons, happened to be in Houston anyway. He

refused to make a trip here simply to comply with his discovery obligations in the litigation he filed. Atlas was therefore left with no choice but to move to compel.

On July 22, 2016, this Court ordered that he appear. The parties agreed to set his deposition for August 7, 2016 – a date Atlas believes Sinn happened to be in Houston anyway. **The Rules notwithstanding, Sinn insisted that the deposition end by noon because he had to make a flight back to Puerto Rico, lest he put his tax evasion scheme at risk.**

August 7, 2016 was zero business days before Sinn was to produce additional discovery to Atlas – material he has withheld for years, despite repeated requests that he produce it. Given Sinn’s history of evasion and Atlas’ inability to know what would be in that production, Atlas provided notice that the deposition would need to be rescheduled so that Atlas could receive and analyze the material before Sinn’s deposition.

On August 4, 2016, Atlas served Sinn with a Third Amended Notice of Deposition. On August 9, 2016, Sinn moved to quash the notice and for sanctions against Atlas, alleging in the face of overwhelming evidence to the contrary that Atlas used the notice to harass Sinn. Because this allegation is both offensive and patently untrue, Atlas set Sinn’s motion for a September 6, 2016 hearing and served Sinn with a subpoena duces tecum to secure evidence of Sinn’s allegations. Exhibit A to Plaintiff’s Motion to Quash. Those allegations include that he was forced to change his airline reservations at great cost and that he believes Atlas acted in bad faith. On August 23, 2016, Sinn moved to quash the subpoena, again alleging harassment and inconvenience.

## **II. SINN’S MOTION TO QUASH AND FOR PROTECTIVE ORDER SHOULD BE DENIED**

**Despite the fact that this Court has repeatedly compelled Sinn to participate in the litigation he filed, Sinn continues to refuse to be bothered to prove the allegations he makes.** Due process,

the Civil Practice and Remedies Code, and the Texas Rules of Civil Procedure require the court to hold a hearing before imposing sanctions. §9.012(c), §10.003 Civ. Prac. & Rem.; §13, §21b, §215.2(b), §215.3 Tex. R. Civ. P.; *R.M. Dudley Constr. Co. v. Dawson*, 258 S.W.3d 694, 709-710 (Tex.App.—Waco 2008, pet. denied). At that hearing, the trial court *must* permit Atlas to introduce evidence. *Davila v. World Car Five Star*, 75 S.W.3d 537, 544 (Tex. App.—San Antonio 2002, no pet.). In his motion to quash and for sanctions, Sinn claims – among other things – that he purchased airfare “in reliance on” a date “accept[ed]” by Atlas. Motion to Quash at p. 2. This is a factual assertion for which Sinn bears the burden of proof. It is a fundamental principle of American law – one which Atlas assumes Sinn does not disagree – that it is entitled to cross examine him on this and other claims made by him.

Sinn’s strategy since filing this litigation has been to demand its quick end in his favor, without all of the inconvenience of having to comply with discovery obligations or prove the allegations he makes. Assuming that Sinn is aware that allegations of bad faith and a request for sanctions require a presentation of evidence, his demand that he be awarded sanctions without having to prove the allegations he makes can be described in only one way: Consistent.

Atlas served Sinn with the Subpoena to meet its burden and to ensure that the court could hear the evidence Sinn presumably intends to present. The Court advised that it was available on September 6 to hear Sinn’s motion. Atlas did not pick the date. It could not have intended to “harass” Mr. Sinn by requiring him to appear for a hearing at a date and time it did not choose. For reasons he does not explain, Sinn nevertheless describes the setting of a hearing on a motion *he filed* as adding “insult to injury” rather than Mr. Sinn’s opportunity to prove the very grave allegations he has made against Atlas and counsel.

In order to defend itself, Atlas is entitled to present evidence of its own. That evidence is

Sinn's testimony and documents in his possession. Unless Sinn claims that he is entitled to sanctions without evidence, there is no basis to quash the subpoena served on him.

### III. SINN'S OBJECTIONS SHOULD BE OVERRULED

All of Sinn's objections to Atlas' trial subpoena should be overruled because they improperly assert the legal standards for a discovery subpoena rather than the trial subpoena he received, and because they are not valid or specific.

Sinn objected that Atlas did not provide an adequate time to respond, and that his requests were beyond the scope of discovery, vague, ambiguous, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence. These objections are inapplicable because they assert the standards for a discovery subpoena. The subpoena served on him was not a discovery subpoena. Instead, it was a trial subpoena governed by Rule 176.2(a) and 176.6(a). The Rules do not state how much advance notice should be given to a party for a trial subpoena. Instead, the party issuing the subpoena should only be "diligent" in procuring the witness's testimony. *Hatteberg v. Hatteberg*, 933 S.W.2d 522, 526 (Tex.App.—Houston [1st Dist.] 1994, no writ). Sinn moved for sanctions on August 9. Atlas served Sinn with the subpoena he now moves to quash on August 11 – less than two days later and nearly a month before the hearing. How this could reasonably be described as anything other than "diligent" Sinn does not explain.

Notwithstanding Sinn's improper application of discovery objections to the trial subpoena, each of Atlas' requests specifically sought evidence that is directly at issue in Sinn's Motion for Sanctions.

Sinn's objected to every request as having been "designed for purposes of harassment." This is baseless boilerplate. Atlas was and is entitled to an evidentiary hearing on Sinn's Motion for Sanctions.

Sinn objects that the requests invade his privacy, but he fails to provide an explanation or a single example of how or why his privacy could conceivably have been invaded. These boilerplate, baseless objections should also be overruled. Atlas' requests are specifically tailored in response to Sinn's allegations.

Sinn's assertion that Request 3 is repetitive because he provided these documents as exhibits to his motion for sanctions is false. Request 3 instructs Sinn only to produce responsive documents "to the extent not otherwise produced." This boilerplate, baseless objection should be overruled.

Sinn objects to Request 5 because "Plaintiff does not seek attorneys' fees in his motion for costs related to the August 7, 2016 deposition cancellation." Motion to Quash at p. 5. One page later, Sinn complains that he "incurred at least \$2,000 in fees for this motion for protection which should be assessed against Defendants as well." Either Sinn is or is not seeking attorneys' fees in his motion for sanctions – either way, Sinn continues to seek fees for prosecution of this suit in the first place. He is therefore obligated to provide the fee records sought. This baseless boilerplate objection should also be overruled.

Atlas' requests were specific to Sinn's allegations in his motion for sanctions. Sinn's objections should be overruled.

#### IV. CONCLUSION

Adam Sinn's motion to quash and for protection should be denied. A proposed order is attached.

Respectfully submitted,  
BERG FELDMAN JOHNSON, LLP

By:     /s/ Geoffrey Berg

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**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 30, 2016 as follows:

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\_\_\_\_\_/s/ Geoffrey Berg  
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