

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       157TH JUDICIAL DISTRICT
v.		
CRAIG TAYLOR and ATLAS COMMODITIES, L.L.C., Defendants		

CAUSE NO. 2015-49014

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

**DEFENDANTS'/COUNTER-PLAINTIFFS' RESPONSE TO  
ADAM SINN'S MOTION TO QUASH DEPOSITION NOTICE FOR ADAM SINN,  
MOTION FOR PROTECTION, AND MOTION FOR COSTS**

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 Deposition Notice for Adam Sinn, Motion for Protection, and Motion for Costs as follows:

A movant for sanctions bears the burden to prove that improper conduct has occurred, that he has been injured, and the connection between the improper conduct and his injury. This Court's procedures require that a party have evidence that a prior order has been violated before moving for sanctions. Sinn not only fails to identify a single act of sanctionable conduct, he draws no logical connection between the conduct he does not approve of and the award requested, and asks

the Court to award sanctions on no evidence whatsoever.

This is not a surprise. Since filing this case, Sinn – *the plaintiff* – has repeatedly demonstrated his contempt for and disregard of his obligations as a litigant. He filed this case in Harris County, but lives in Puerto Rico; for months he has refused to be deposed unless he happened to be in Houston anyway. He has refused to produce critical, discoverable documents. He has filed motion after motion demanding a quick and favorable end to this litigation, his liability and the opposing parties’ discovery rights notwithstanding. Sinn and his counsel have repeatedly made clear that Mr. Sinn is just too busy to be bothered to make any changes in his schedule simply because the Rules require his participation.

Atlas tried for six months to schedule Sinn’s deposition. During those six months, Sinn has refused to be bothered to make time for it. When he finally agreed to be deposed on a date he happened to be in town, he advised that if the deposition did not end at noon, he would walk out.

For the Court’s convenience and for the sake of brevity, below is a summary of the number of times counsel has attempted to schedule Sinn’s deposition:<sup>1</sup>

<b>DATE</b>	<b>PARTY/ AUTHOR</b>	<b>TYPE</b>	<b>SUMMARY</b>
02/04/16	Atlas/Nelson	Email	In light of the content of Sinn’s post-deposition production of documents, need to take his deposition again. Will you agree to produce him?
02/12/16	Atlas/Nelson	Email	Haven’t heard back from you regarding deposition date for Sinn.
02/12/16	Sinn/Buschi	Email	I will have longer response to you by the end of the day.
02/12/16	Atlas/Nelson	Telephone Conference	Regarding deposition scheduling
02/12/16	Atlas/Nelson	Email	Follow up to phone call. We have time left to take Sinn depo.
02/29/16	Sinn/Krock	Email	Added sentence about scheduling Sinn deposition in Rule 11. We talked about preserving the schedule.

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<sup>1</sup> This is a summary of Exhibit A.

<b>DATE</b>	<b>PARTY/ AUTHOR</b>	<b>TYPE</b>	<b>SUMMARY</b>
02/29/16	Sinn/Krock	Email- Rule 11	Rescheduling deposition of Taylor. Agree that deposition of Torres and Sinn will occur after.
03/29/16	Atlas/Nelson	Email	Have you had the opportunity to get dates for Hammond, Sinn, Torres depositions?
03/30/16	Sinn/Buschi	Email	Will need to reach back out to them to see availability.
04/12/16	Sinn/Buschi	Email	Working on getting availability for Sinn.
05/02/16	Sinn/Buschi	Email	Adam Sinn is willing to be deposed for three hours either Saturday or Sunday this weekend.
05/02/16	Atlas/Nelson	Email	We are unavailable this weekend. Please give us dates during the week for his deposition.
05/05/16	Atlas/Nelson	Email	Checking in. Haven't heard back. Do you have any weekday dates for Sinn's deposition?
05/05/16	Sinn/Buschi	Email	No additional dates for Sinn other than this weekend.
05/18/16	Atlas/Nelson	Email	Please provide dates during the work week for Sinn's deposition. Otherwise we will move to compel and note your opposition.
05/18/16	Sinn/Buschi	Email	Can offer Sinn for deposition on June 1 or June 2 in Puerto Rico. Agree for them to be taken outside of discovery period. If not in Puerto Rico then will try to get additional dates.
05/19/16	Atlas/Nelson	Email	Deposition in Puerto Rico is not doable. Please provide dates, during business hours, in Harris County Texas where Sinn filed this lawsuit.
05/19/16	Sinn/Buschi	Email	Will check with him to get some dates for weekdays in Houston.
05/24/16	Atlas/Nelson	Email	Do you have dates for Sinn's deposition? Please let us know as soon as possible when Mr. Sinn is available for deposition in Harris County.
05/24/16	Sinn/Buschi	Email	No date for Sinn yet. Will reach out again to him today.
05/25/16	Sinn/Buschi	Email	Sinn will be in Houston in June. Do not know exact date, likely will not know until week before. Will offer date during the week once we know when that week is. Otherwise I can offer his deposition in Puerto Rico from June 6-9, or June 14-15.
05/27/16	Atlas	Motion	Defendants'/Counterplaintiffs' Motion to Compel Sinn Deposition

<b>DATE</b>	<b>PARTY/ AUTHOR</b>	<b>TYPE</b>	<b>SUMMARY</b>
06/21/16	Sinn/Buschi	Email	Can offer Sinn for deposition this Friday in Houston, the 24 <sup>th</sup> .
06/21/16	Atlas/Nelson	Email	We have a hearing in another case and other commitments this Friday. We are available the 27 <sup>th</sup> , 28 <sup>th</sup> , 29 <sup>th</sup> or 30 <sup>th</sup> .
06/22/16	Sinn/Buschi	Email	Sinn not available to be in Houston on those dates, but he can be available in Puerto Rico for deposition next week.
06/22/16	Atlas/Nelson	Email	Not available to travel to Puerto Rico next week. Pursuant to Rule 199.2(b)(2)(B) and (C), please provide dates during the workweek in Harris County.
06/29/16	Sinn/Buschi	Email	Can offer some additional dates in July in Puerto Rico. No dates willing to do deposition in Puerto Rico?
06/30/16	Atlas/Nelson	Email	I take it from your last email and from the many that preceded it that your client does not intend to make himself available in Harris County during normal working hours.
06/30/16	Sinn/Buschi	Email	Can plan ahead for deposition in Puerto Rico, but it is extremely hard to plan ahead for dates in Houston. More Houston dates may become available, but may also be on a couple days notice.
07/01/16	Atlas/Nelson	Email	We have been more than accommodating of Sinn's schedule. It is his obligation to present himself for deposition in the county in which he filed suit. We are not going to agree to be on standby for a deposition on short notice when he feels like showing up. Proceeding with motion to compel.
07/20/16	Sinn/Buschi	Email	Can offer Sinn for deposition in Houston on the afternoon of August 5 or August 1-4 in Puerto Rico.
07/20/16	Atlas/Berg	Email	Will be in mediation all day on August 5 <sup>th</sup> . Attached is notice for August 10 <sup>th</sup> . If you need to change the date to a time within seven days of that date on a weekday between 9-5 in Houston, we will try to accommodate you.
07/20/16	Atlas	Notice	Sinn Deposition Notice for August 10, 2016
07/20/16	Sinn/Buschi	Email	Sinn not available on August 10 <sup>th</sup> . Can do afternoon beginning around 1 pm on Saturday, August 6.
07/21/16	Sinn/Buschi	Email	Can also offer Friday September 2 starting at 2 pm in Houston as Mr. Sinn will be in Houston that day.

<b>DATE</b>	<b>PARTY/ AUTHOR</b>	<b>TYPE</b>	<b>SUMMARY</b>
07/22/16	-	-	Court Order granting Atlas' Motion to Compel
07/22/16	Sinn/Buschi	Email	In light of Court's ruling, are you pulling down deposition notice for August 10 voluntarily or do I need to file motion to quash it?
07/22/16	Atlas/Nelson	Email	Of course we will reschedule. Available August 14 or 21?
07/22/16	Sinn/Buschi	Email	Will reach out to see.
07/25/16	Sinn/Buschi	Email	Filed motion to quash for own comfort. Included dates previously offered (Aug 5, 6, and Sept 2) as alternatives. The 14 <sup>th</sup> and 21 <sup>st</sup> don't look good because flights are scant on Sundays. Will continue to try to get more dates.
07/25/16	Atlas/Nelson	Email	Sinn's deposition is going to have to be on a Sunday and not a Saturday. The 14 <sup>th</sup> and 21 <sup>st</sup> are still the best dates available. Please let us know whether Sinn refuses to travel to Houston for either.
07/25/16	Sinn/Buschi	Email	Why insist on Sunday? Have offered Saturdays before for other witnesses.
07/28/16	Sinn/Buschi	Emails	Can offer Sinn in Houston on Sunday, August 7. Due to travel earliest could start would be 9 am and could not go later than 12 noon. Please let me know tomorrow.
07/28/16	Atlas/Nelson	Email	Will reissue deposition notice for August 7 at 9 am. Deposition will continue until completed.
07/28/16	Atlas	Notice	Sinn Deposition Notice for August 7, 2016
07/29/16	Sinn/Buschi	Email	If won't agree to wrap deposition up by noon on August 7, will have to reschedule. In no way is the deposition going past noon on August 7.
07/29/16	Atlas/Nelson	Email	Will not agree to adjourn the deposition until it is completed. Also available on August 14. Let me know which is better.
08/01/16	Sinn/Buschi	Emails	August 14 not available. Either agree to end deposition at 12 on August 7 or can depose him Saturday before or September 2. Let me know ASAP because my client has to make travel arrangements.
08/01/16	Atlas/Nelson	Email	Geoff and I have as many as three trial settings during week of September 2. Date does not work. What is conflict with August 14? If August 7 then

<b>DATE</b>	<b>PARTY/ AUTHOR</b>	<b>TYPE</b>	<b>SUMMARY</b>
			can only do our best in good faith to complete the deposition by noon.
08/01/16	Sinn/Buschi	Email	Sinn not available on the 14 <sup>th</sup> . Willing to start depo at 8:30 am on Sunday? Should help meet time constraints.
08/01/16	Atlas/Nelson	Email	Scheduled court report and videographer for 9 am-time you requested. Will ask whether available. Please advise what the conflict is on August 14.
08/04/16	Atlas/Nelson	Email	Never received answer. Assume will receive supplemental discovery responses tomorrow. Not enough time to adequately prepare for deposition. Consistently accommodated Sinn's scheduling issues. Willing to reschedule for August 9, 10, 11, or 14.
08/04/16	Atlas	Notice	Sinn Deposition Notice for August 14, 2016
08/04/16	Sinn/Buschi	Email	None of the proposed dates are acceptable. Have had to rearrange schedules for Sunday deposition and Sinn made costly travel arrangements. If you are going to cancel will have to revisit the issue with the Court.
08/05/16	Sinn/Buschi	Email	Responses to 3 <sup>rd</sup> Set of Discovery. Failed to attach documents.
08/08/16	Atlas/Nelson	Email	Document Bates-numbered SINN 000266 was not attached to email.
08/08/16	Sinn/Buschi	Email	Sorry thought it was attached.
08/11/16	Atlas	Notice	Sinn Deposition Notice for September 2, 2016

Now Sinn complains that once he finally agreed to be deposed, Atlas rescheduled it. There were a number of reasons for that rescheduling – some protected by the attorney-client/work product privilege, but Sinn's essential complaint is that he happened to have plans to be in Houston and counsel for Atlas' best efforts notwithstanding, it just could not occur at his convenience. This, Sinn says, forced him to buy an airplane ticket to return to Puerto Rico – where, presumably, he planned to return anyway since he lives there. In support, Sinn provides no evidence whatsoever.

On the Friday before his scheduled Sunday deposition, Sinn was – pursuant to this Court's

order – to produce discoverable material he should have produced years ago. Well before his deposition, Atlas determined that zero business days before Sinn’s deposition was simply not enough time to receive and analyze the material Sinn was to produce. The notice was withdrawn and alternative dates requested.

It is worth noting that among the material Sinn was to produce is the assignment evidencing his breach of contract – a document he previously testified under oath did not exist. When the deadline to produce it arrived, counsel for Sinn sent supplemental discovery responses and did not even attach the document this Court compelled be produced on that day. So even if the deposition had taken place as scheduled, Sinn would have been in violation of this Court’s order and Atlas would have been obligated to move that he be compelled to be deposed again.

The party moving for sanctions has the burden of establishing its right to relief. *GTE Communications Sys. Corp. v. Tanner*, 856 S.W.2d 725, 729 (Tex. 1993). Sinn has not only made no effort to meet his burden, he objected when Atlas served him with a subpoena in furtherance of its defense of this baseless motion.

Though it is its right, Atlas does not move for sanctions in response to this pointless exercise. Instead, it requests that the Court admonish Mr. Sinn to comply with his discovery obligations and his counsel to be cooperative and professional in routine matters such as scheduling, regardless of how unreasonable Mr. Sinn may be.

A proposed order is attached.

Respectfully submitted,  
BERG FELDMAN JOHNSON, LLP

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ATTORNEYS FOR CRAIG TAYLOR, ATLAS  
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MARSHALL

**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 September 2, 2016 as follows:

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