

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

**PLAINTIFF/COUNTER-DEFENDANTS ADAM SINN,
XS CAPITAL INVESTMENTS, L.P. AND ASPIRE COMMODITIES, L.P.’S
MOTION FOR TRADITIONAL SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff/Counter-Defendants Adam Sinn (“Sinn”), XS Capital Investments, L.P. (“XS Capital”), and Aspire Commodities, L.P. (“Aspire”) (collectively, the “Sinn Parties”) in the above-styled and numbered cause of action files this Motion for Traditional Summary Judgment (“Motion”), and requests that the Court enter summary judgment in favor of the Sinn Parties on all of the counterclaims asserted by Defendants Craig Taylor (“Taylor”) and Atlas Commodities, LLC (“Atlas”), collectively “Defendants.” In support thereof, the Sinn Parties would respectfully show the Court the following:

I. SUMMARY OF MOTION

The Sinn Parties seek traditional summary judgment on Defendants’ counterclaims against the Sinn Parties. Defendants have asserted counterclaims for declaratory judgment and breach of a settlement agreement claiming that that Sinn sent to Taylor early in the morning on December 22, 2013, after a Christmas party, a picture of several individuals around a Christmas tree holding up their middle fingers at the camera. It is undisputed, and Taylor admits that the picture message had

no text or tag line. Despite the fact that nothing about this communication is disparaging to Defendants or discusses any confidential information, Taylor and Atlas have used this incident to try to avoid their legal obligation to pay Torres the settlement funds, have asserted a claim for declaratory judgment that they have no further liability to Torres or the Sinn Parties, and have asserted that the Sinn Parties breached the settlement agreement. Summary judgment is proper on all of Defendants' counterclaims against the Sinn Parties.

II. SUMMARY JUDGMENT EVIDENCE

In support of this Motion, the Sinn Parties offer the competent summary judgment evidence included in the Appendix hereto, which is incorporated fully herein by reference:

Exhibit A	Declaration of Adam Sinn
A.1	Settlement Agreement dated August 15, 2013

III. STATEMENT OF FACTS

The following facts are supported by the record in this case as well as the Declaration of Adam Sinn attached hereto as Exhibit A.

The Underlying Suit¹

On August 15, 2012, Torres filed a lawsuit in the 157th Judicial District Court of Harris County, Texas, Cause No. 2012-46745, against Taylor and Atlas alleging causes of action for shareholder oppression, violation of the right of inspection, breach of contract, breach of fiduciary duty, fraud in the inducement, negligent misrepresentation, intentional misrepresentation, conversion, statutory theft, and declaratory relief.

On September 19, 2012, Taylor and Atlas filed a counterclaim against Torres alleging causes of action for fraud, fraudulent inducement, negligent misrepresentation, and conspiracy to commit

¹ Many of these facts are supported by the Court's recording that cause of which this Court can take judicial notice.

fraud.

On February 25, 2013, Taylor and Atlas filed a third-party petition against the Sinn Parties alleging causes of action for conspiracy to commit fraud and aiding and abetting fraud.

On March 7, 2013, the Sinn Parties filed a third-party counterclaim against Taylor and Atlas alleging causes of action for groundless pleading.

On July 11, 2013, the Parties attended mediation before Paul D. Clote.

The Settlement Agreement

On August 15, 2013, without admitting or allocating fault or liability, the Parties entered an agreement to permanently resolve and settle any and all claims, issues, matters, or disputes that they had or may have had among them (the “Settlement Agreement”). (Exh. A.1)²

Pursuant to the Settlement Agreement, Torres agreed to assign, transfer, and convey all right, title, and interest in Torres’ ownership interest in Atlas. In exchange, Taylor and Atlas agreed to pay Torres \$500,000 in settlement of all claims.

On August 15, 2013, Atlas paid \$250,000 of the \$500,000 settlement amount according to the terms of the Settlement Agreement.

According to the terms of the Settlement Agreement, Taylor and Atlas agreed that “[t]he remainder of the Settlement Amount shall be paid at a rate of Ten Thousand Dollars (\$10,000) per month for 25 months beginning 30 days after the Effective Date.”

On August 19, 2013, pursuant to the mutual promises, covenants and releases contained in the Settlement Agreement, the parties filed a joint motion to dismiss with prejudice and reported to

²The Confidentiality provision of the Settlement Agreement provides in pertinent part that “[t]he Parties agree that this Agreement, the negotiations preceding this Agreement, and the amount of consideration paid pursuant to this Agreement are confidential and will not be disclosed by any Party to any other person or entity, *except* ... in the event that a Party must bring or defend a lawsuit filed by or against a Party to protect rights under this Agreement.” Accordingly, this petition to protect Plaintiffs’ rights under the Settlement Agreement has not been filed under seal.

this Court that “The Parties have settled” and “move for dismissal of all claims with prejudice.”

On September 9, 2013, this Court granted the joint motion to dismiss and “Ordered, Adjudged, and Decreed that all claims of each party are dismissed in their entirety with prejudice to all parties’ right to re-file any part or aspect of the same, and with each Party to bear his/its own court costs and legal fees.”

Taylor and Atlas only made four (4) of the required monthly payments of \$10,000. Taylor and Atlas failed to pay Torres the payment due January 15, 2014 and have failed to pay and continue to owe twenty-one (21) monthly payments of \$10,000 (i.e., \$210,000).

The Picture Message

On December 21, 2013, Sinn hosted a holiday party at his home. Several of Sinn’s friends, employees, and acquaintances attended the holiday party. During the party, Sinn and several friends took a photograph holding up their middle finger to the camera (the “Picture”). (*See Exhibit A to Defendants’ Counterclaim filed August 18, 2014*). Later that evening, Sinn sent the Picture via picture message to Craig Taylor. It is undisputed that the Picture Message that Sinn sent Craig Taylor did not contain any text. On December 22, 2013, Sinn sent the Picture via group text message to the persons pictured in the Picture, Joonsup Park and David Schmidli. Sinn did not send the Picture to any customers or affiliates of Atlas, nor did he make any negative remarks about Taylor or Atlas.

It is undisputed that Torres never sent the Picture to anyone, and indeed Defendants acknowledge that fact in their pleadings.

Nonetheless, Taylor and Atlas have refused to pay Torres asserting that Sinn violated the following provision in the Settlement Agreement:

Non-Disparagement. The Parties agree that in exchange for the consideration provided under this agreement, the Parties shall not directly or indirectly, disparage,

make or publish any false, derogatory, slanderous or libelous comments about any other Party regarding any matter likely to be harmful to the Party's business, business reputation or personal reputation. Further, the Parties agree that they shall not solicit from any third party any comments, statements, or the like that may be considered negative, false, derogatory or detrimental to the business reputation of any other Party. Further, the Parties agree that they will not restrict, limit, or prohibit any third party or employee from socializing, fraternizing, or doing business with any other Party.

(Exh. A.1) As discussed below, nothing Torres or the Sinn Parties did violated this provision.

IV. ARGUMENTS AND AUTHORITIES

A. Standard of Review

Summary judgment procedure allows a trial court to dispose of unmeritorious claims or untenable defenses. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 876 n.5 (Tex. 1979). A motion for summary judgment and its supporting evidence must show that: a) there is no genuine issue as to any material fact; and b) the movant is entitled to judgment as a matter of law. *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991). A party may move for summary judgment against another party's claims alleged against the movant. Tex. R. Civ. P. 166(a). The movant is entitled to summary judgment if "ordinary minds cannot differ as to the conclusion to be drawn from the evidence." *Zep Mfg. Co. v. Hancock*, 824 S.W.2d 654, 657 (Tex. App.—Dallas 1992, no writ).

There are no genuine issues of material fact in this case and summary judgment is appropriate in favor of the Sinn Parties and against Defendants based on the summary judgment evidence included in the appendix to this Motion.

B. Summary Judgment is Proper on Defendants' Claims

Defendants have asserted counterclaims for (1) declaratory judgment; and (2) breach of contract.

Defendants' claim for declaratory judgment reads:

43. An actual, existing, and bona fide controversy exists among the parties to the Agreement that should be determined by declaratory judgment. Therefore, pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, Taylor and Atlas seek a declaration that (i) Atlas and Taylor have performed, tendered performance, or attempted to tender performance of all of their obligations under the Agreement; (ii) Sinn and Torres breached the Agreement when they sent the obscene text message described herein to persons associated with Atlas under Atlas's name and/or participated in its creation; and (iii) Atlas and Taylor are excused from further performance of their obligations under the Agreement.

(Counterclaim ¶43). This claim is in essence an alleged defense to Torres's claim for breach of contract. Similarly, Defendants' breach of contract claim asserts that the Sinn Parties breached the Settlement Agreement because of the Picture and Picture message sent by Sinn.

To recover on a claim for breach of contract the plaintiff must prove (1) the existence of a contract; (2) performance tendered by the plaintiff; (3) breach of the contract by the defendant; and (4) damages to the plaintiff as a result of the defendant's breach. *Wright v. Christian & Smith*, 950 S.W.2d 411, 412 (Tex. App.—Houston [1st Dist.] 1977, no writ). The interpretation of a contract is a matter of law for the Court. *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983) (“If the written instrument is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and the court will construe the contract as a matter of law.”).

Furthermore, “[t]o support a claim for business disparagement, the published statements must be, at a minimum, defamatory.” *MKC Energy Investments, Inc. v. Sheldon*, 182 S.W.3d 372, 377 (Tex. App.—Beaumont 2005, no pet.); *see also Musser v. Smith Protective Servs., Inc.*, 723 S.W.2d 653, 654–55 (Tex. 1987) (“In trying a libel action, the initial question for determination is a question of law to be decided by the trial court: were the words used reasonably capable of a defamatory meaning.”). “The court construes the statement as a whole in light of surrounding circumstances based upon how a person of ordinary intelligence would perceive the entire statement.” *Id.*

The evidence shows that, at best, Sinn sent the Picture and the Picture Message, not Torres.

Accordingly, Defendants have no claim against Plaintiff Eric Torres.

Moreover, the Picture that Sinn sent Taylor does not contain any “false, derogatory, slanderous or libelous comments” about Taylor or Atlas “regarding any matter likely to be harmful” to Taylor’s or Atlas’s “business, business reputation or personal reputation.” Nor does the Picture that Sinn sent Taylor “solicit from any third party any comments, statements, or the like that may be considered negative, false, derogatory or detrimental to the business reputation” of Taylor or Atlas.

The Picture and Picture Message that Sinn sent to the persons pictured in the Picture similarly contains no “false, derogatory, slanderous or libelous comments” about Taylor or Atlas “regarding any matter likely to be harmful” to Taylor’s or Atlas’s “business, business reputation or personal reputation.” Nor does the Picture or Picture Message that Sinn sent the persons pictured in the Picture “solicit from any third party any comments, statements, or the like that may be considered negative, false, derogatory or detrimental to the business reputation” of Taylor or Atlas.

Furthermore, Sinn’s actions did not and could not have harmed Taylor’s or Atlas’s business or personal reputation. *See Better Bus. Bureau of Metro. Houston, Inc. v. John Moore Servs., Inc.*, 441 S.W.3d 345, 358 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (“To prevail on a business disparagement claim, a plaintiff must establish that (1)the defendant published false and disparaging information, (2) with malice, (3) without privilege, (4) that resulted in special damages to the plaintiff.”); *Hurlbut v. Gulf Atl. Life Ins. Co.*, 749 S.W.2d 762, 767 (Tex. 1987) (“Proof of special damages is an essential part of the plaintiffs' cause of action for business disparagement. The requirement goes to the cause of action itself and requires that plaintiff ‘establish pecuniary loss that has been realized or liquidated as in the case of specific lost sales.’”).

Summary judgment is proper on Defendants’ counterclaims as a matter of law.

C. Attorneys’ Fees

The Sinn Parties should be awarded their equitable and just attorneys' fees under Texas Civil Practice & Remedies Code Chapter 37, because Defendants have asserted a counterclaim for declaratory judgment. The Sinn Parties has retained the undersigned counsel to defend the counterclaims and should be awarded their equitable and just attorneys' fees through judgment and on appeal. Given that there are several issues and matters in this lawsuit which are ongoing and thus will likely increase the attorneys' fees after this motion is filed, the Sinn Parties seek here a judgment that they are entitled to their equitable and just attorneys' fees and requests that the Court set a hearing or trial on the issue of the amount of such fees.

Post-judgment interest is calculated at the rate of 5% per annum on all of the above amounts accruing on the date of judgment and continuing until the judgment is fully satisfied.

PRAYER

WHEREFORE, the Sinn Parties respectfully request that the Court grant this Motion and enter summary judgment against Defendants on their counterclaims and for all other relief in law or in equity to which the Sinn Parties are entitled.

Respectfully submitted,

RAPP & KROCK, PC

s/ *Kenneth M. Krock*

Kenneth M. Krock

State Bar No. 00796908

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**ATTORNEYS FOR PLAINTIFFS/
COUNTER-DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of January 2015, 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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Kathryn E. Nelson
knelson@bfjblaw.com
Berg Feldman Johnson Bell, LLP
4203 Montrose Boulevard, Suite 150
Houston, Texas 77006

Via Eserve and Facsimile

s/ *Kenneth M. Krock*

Kenneth M. Krock

CAUSE NO. 2014-40964

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XS CAPITAL MANAGEMENT, L.P.,
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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157TH JUDICIAL DISTRICT

EXHIBIT A

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

Plaintiffs,

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CRAIG TAYLOR AND
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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157TH JUDICIAL DISTRICT

**DECLARATION OF ADAM SINN
PURSUANT TO TEX. CIV. PRAC & REM. CODE § 132.001**

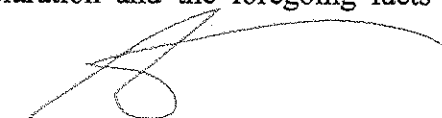
1. My name is Adam Sinn. I am more than twenty-one (21) years of age and qualified to make this Declaration. I have personal knowledge of all facts stated herein and they are true and correct.
2. I am authorized and do make this Affidavit in support of the Motion for Traditional Summary Judgment (“Motion”) filed by Adam Sinn (“Sinn”), XS Capital Investments, L.P. (“XS Capital”), and Aspire Commodities, L.P. (“Aspire”) (collectively, the “Sinn Parties”) against Defendants Craig Taylor (“Taylor”) and Atlas Commodities, LLC (“Atlas”), collectively “Defendants.”
3. The following documents are attached to this affidavit and incorporated by reference herein:

A.1	Settlement Agreement, dated effective August 15, 2013
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4. On or about August 15, 2012, Eric Torres (“Torres”) initiated a lawsuit in the 157th Judicial District Court of Harris County, Texas, Cause No. 2012-46745 (“Original Lawsuit”), against Taylor and Atlas alleging causes of action for shareholder oppression, violation of the right of inspection, breach of contract, breach of fiduciary duty, fraud in the inducement, negligent misrepresentation, intentional misrepresentation, conversion, statutory theft, and declaratory relief.
5. On or about February 25, 2013, Taylor and Atlas filed a third-party petition in the Original Lawsuit against the Sinn Parties alleging causes of action for conspiracy to commit fraud and aiding and abetting fraud.
6. The parties to that lawsuit attended mediation and a settlement was reached.

7. Effective August 15, 2013, without admitting or allocating fault or liability, the Parties entered an agreement to permanently resolve and settle any and all claims, issues, matters, or disputes that they had or may have had among them (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as Exh. A.1
8. Pursuant to the Settlement Agreement, Torres agreed to assign, transfer, and convey all right, title, and interest in his ownership interest in Atlas. In exchange, Taylor and Atlas agreed to pay Torres \$500,000 in settlement of all claims per paragraph 3 of the Settlement Agreement. Torres transferred, and conveyed all of his right, title, and ownership interest to Atlas, in exchange for payment of the full \$500,000 settlement amount.
9. On August 15, 2013, Atlas paid \$250,000 of the \$500,000 settlement amount according to the terms of the Settlement Agreement.
10. According to the terms of the Settlement Agreement, Taylor and Atlas agreed that they would pay Torres "[t]he remainder of the Settlement Amount [which] shall be paid at a rate of Ten Thousand Dollars (\$10,000) per month for 25 months beginning 30 days after the Effective Date."
11. On August 19, 2013, the parties filed their dismissal of the settled lawsuit.
12. On September 9, 2013, this Court granted the joint motion to dismiss and "Ordered, Adjudged, and Decreed that all claims of each party are dismissed in their entirety with prejudice to all parties' right to re-file any part or aspect of the same, and with each Party to bear his/its own court costs and legal fees."
13. Taylor and Atlas only made four (4) of the required monthly payments of \$10,000. Taylor and Atlas failed to pay the payment due January 15, 2014 and have failed to pay and continue to owe twenty-one (21) monthly payments of \$10,000 (i.e., \$210,000).
14. On December 21, 2013, I hosted a holiday party at my home. Several of my friends, employees, and acquaintances attended the holiday party. During the party, several friends and I took a photograph holding up their middle finger to the camera (the "Picture"). (*See Exhibit A to Defendants' Counterclaim filed August 18, 2014*).
15. Later that evening, I sent the Picture via picture message to Craig Taylor. The Picture Message that I sent Craig Taylor did not contain any text. On December 22, 2013, I sent the Picture via group text message to the persons pictured in the Picture, Joonup Park and David Schmidli. I did not send the Picture to any customers or affiliates of Atlas, nor did I make any negative remarks about Taylor or Atlas.

I declare the foregoing and subscribe to this Declaration and the foregoing facts under the penalty of perjury.



ADAM SINN

JURAT

My name is Adam Sinn. My date of birth is February 6, 1978, and my address is 200 Dorado Beach Drive, Dorado, Puerto Rico 00646. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dorado County, Territory of Puerto Rico, on the 31 day of December, 2014.



Declarant, ADAM SINN

CAUSE NO. 2014-40964

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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

EXHIBIT A.1

SETTLEMENT AGREEMENT

Effective as of this 15th day of August, 2013 (the "Effective Date"), this Settlement Agreement (this "Agreement") is entered into by and among ERIC TORRES ("Torres"); CRAIG TAYLOR ("Taylor"); S. JAMES MARSHALL ("Marshall"); ATLAS COMMODITIES L.L.C. ("Atlas"); ADAM SINN ("Sinn"); XS CAPITAL MANAGEMENT, L.P. ("XS"); and ASPIRE COMMODITIES, L.P. ("Aspire") (collectively, the "Parties" and individually for each of the Parties, "Party") as follows:

RECITALS

WHEREAS, effective as of September 21, 2011, Taylor, Torres, and Marshall entered into the Amended Company Agreement of Atlas Commodities, L.L.C. (as amended, modified, and/or restated, the "Company Agreement");

WHEREAS in 2011, Eric Torres paid \$750,000 for 35% of Atlas and the parties agree that such payment should only have been \$250,000 ;

WHEREAS, Pursuant to Exhibit A of the Company Agreement, Torres owns 35% of the outstanding membership interests of Atlas ("Torres' Company Interest");

WHEREAS, Pursuant to Sections 6.11, 10.6, and 10.7 of the Company Agreement, Torres is or may be subject to certain Non-Competition and Non-Solicitation provisions (the "Non-Compete Provisions");

WHEREAS, Pursuant to Article IX of the Company Agreement, Torres, Taylor, and Marshall may have the obligation to prepare and timely file all tax returns and statements which are required to be filed by any taxing authority (the "Tax Return Provisions");

WHEREAS, claims, disputes, and disagreements arose among the Parties relating to the Company Agreement, the Torres' Company Interest, and the operation of Atlas (collectively, the "Disputes");

WHEREAS, on or about August 15, 2012, Torres filed a lawsuit (the "Lawsuit") in the 157th Judicial District Court of Harris County, Texas (the "Court"), Cause No. 2012-46745, against Taylor, Marshall, and Atlas alleging causes of action for shareholder oppression, violation of the right of inspection, breach of contract, breach of fiduciary duty, fraud in the inducement, negligent misrepresentation, intentional misrepresentation, conversion, statutory theft, and declaratory relief (collectively, including all claims and causes of action that could have been asserted in the Lawsuit, the "Plaintiff's Claims");

WHEREAS, on or about September 19, 2012, Taylor and Atlas filed a counterclaim (the "Counterclaim") in the Lawsuit, against Torres alleging causes of action for fraud, fraudulent inducement, negligent misrepresentation, and conspiracy to commit fraud (collectively, including all claims and causes of action that could have been asserted in the Counterclaim, the "Defendants' Counterclaims");

WHEREAS, on or about February 25, 2013, Taylor and Atlas filed a third-party petition (the "Third-Party Petition") in the Lawsuit, against Sinn, XS, and Aspire alleging causes of action for conspiracy to commit fraud and aiding and abetting fraud (collectively, including all claims and causes of action that could have been asserted in the Third-Party Petition, the "Third-Party Petition Claims");

WHEREAS, on or about March 7, 2013, Sinn, XS, and Aspire filed a third-party counterclaim (the "Third-Party Counterclaim") in the Lawsuit, against Taylor and Atlas alleging causes of action for groundless pleading (collectively, including all claims and causes of action that could have been asserted in the Third-Party Counterclaim, the "Third-Party Counterclaims") (the Plaintiff's Claims, Defendants' Counterclaims, Third-Party Petition Claims, and Third-Party Counterclaims are referred to collectively as the "Claims");

WHEREAS, each of the Parties to this Agreement, without admitting or allocating fault or liability, desires to completely and permanently resolve any and all claims, disputes, issues or matters that exist or may exist among them, which relate in any way whatsoever to their past business and personal dealings, including all claims of every kind and character that arise out of or relate, directly or indirectly, to the Disputes, the Claims, or the Lawsuit.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions set forth below, the Parties have settled and agree as follows:

1. **Return of Torres' Company Interests.** Torres and Atlas agree that as of the Effective Date Torres will assign, transfer, and convey all right, title, and interest in the Torres' Company Interest to Atlas or its designee. For the avoidance of doubt, Torres acknowledges and warrants that as of the Effective Date, he shall have no right, title, or interest in Atlas, nor any rights or claims under or related to the Company Agreement.

2. **Removal of Torres.** Torres and Atlas agree that as of the Effective Date, Atlas will remove Torres as a governing person, officer, director, member, and manager from the following entities: Atlas Commodities, L.L.C.; Atlas Ethanol, L.L.C.; Atlas Refined Products, L.L.C.; Atlas Corn, L.L.C.; Atlas Agricultural Commodities, L.L.C.; Atlas Brokers, L.L.C.; Atlas Crude, L.L.C.; Atlas Natural Gas, L.L.C.; Atlas ERCOT, L.L.C.; Atlas Precious Metals, L.L.C.; and Atlas PJM, L.L.C.

3. **Payment to Torres.** Taylor, Marshall, and Atlas, jointly and severally, agree to pay Torres Five-Hundred Thousand Dollars (\$500,000.00) in settlement of all claims (the "Settlement Amount"). Two-Hundred and Fifty Thousand Dollars (\$250,000.00) of the Settlement Amount shall be paid to Torres on the Effective date (the "Initial Settlement Payment"). The Initial Settlement Payment shall be payable to the law firm of Susman Godfrey, L.L.P., and may be wired to Wells Fargo Bank, 420 Montgomery, San Francisco, CA 94104, ABA #121000248, Account #8073429378 or paid to Susman Godfrey, L.L.P. by other means. The remainder of the Settlement Amount shall be paid at a rate of Ten Thousand Dollars (\$10,000.00) per month for 25 months beginning 30 days after the effective date (the "Settlement

Remainder Payments”). The Settlement Remainder Payments shall not bear interest. The Settlement Remainder Payments shall be made payable to the law firm of Susman Godfrey, L.L.P., and may be wired to Wells Fargo Bank, 420 Montgomery, San Francisco, CA 94104, ABA #121000248, Account #8073429378 or paid to Susman Godfrey, L.L.P. by other means.

4. **Dismissal of Lawsuit and EEOC Claim(s).** Within 10 days after the Effective Date, the Parties shall file the attached Agreed Motion and Order with Court in the Lawsuit requesting the Court to dismiss the Lawsuit in its entirety with prejudice to all parties’ right to re-file any part or aspect of the same, and with each Party to bear his/its own court costs and legal fees. Eric Torres shall additionally file the attached notice with the EEOC notifying it that this matter has been fully and finally resolved, and requesting that Torres’ claim be dismissed with prejudice.

5. **Tax Matters.** Notwithstanding the Tax Return Provisions in the Company Agreement, no K-1 or other partnership return shall be issued to Torres by Atlas for the years 2012 or 2013. The Parties agree that Torres shall not incur any Tax liability for any profits attributed to Atlas for the years 2012 or 2013.

6. **Release by Atlas, Taylor, and Marshall.** Atlas, Taylor, and Marshall, on behalf of themselves and their transferees, predecessors, successors, heirs, affiliates, and assigns, and each of his and those persons’ and/or entities’ past and present agents, advisors, consultants, employees, representatives, officers, directors, shareholders, members, managers, partners and attorneys (collectively, the “Atlas Releasers”), do hereby fully, finally, completely and irrevocably release, acquit, forever discharge, and covenant not to sue any of Torres, Sinn, XS, and Aspire and each of their transferees, predecessors, successors, heirs, affiliates, and assigns, and each of their and those persons’ and/or entities’ past and present agents, advisors, consultants, employees, representatives, officers, directors, shareholders, members, managers, partners (including the Limited Partners) and attorneys (collectively, the “Torres/Sinn Releasees”), of and from any and all past and present debts, suits, claims, actions, causes of action, controversies, demands, rights, damages, losses, expenses, costs, attorneys’ fees, compensation, liabilities, and obligations, suspected or unsuspected, known or unknown, foreseen or unforeseen, arising at any time up to the Effective Date, which the Atlas Releasers have asserted, or at any time could have asserted, based on any acts or events occurring on or before the Effective Date, against any of the Torres/Sinn Releasees with respect to all matters of every type, kind or character, including, but not limited to, those matters arising out of or relating to the Parties’ dealings and/or relationships (whether business, personal, or otherwise), any statements (including statements alleged to be false, misleading or defamatory), actions, acts, errors or omissions of any Party, the Company Agreement including the Non-Compete Provisions, Non-Solicitation Provisions, and the Tax Return Provisions, Torres’ Company Interest, the Dispute, the Lawsuit, and the Claims. Notwithstanding anything contained in the foregoing release, the Atlas Releasers do not release any of the Torres/Sinn Releasees from any claim related to their rights under this Agreement or for any claims that arise after the Closing Date.

7. **Specific Release of Non-Compete and Non-Solicitation Provisions.** The Atlas Releasers do hereby fully, finally, completely and irrevocably release, acquit, forever discharge,

and covenant not to sue Torres of and from any and all past and present debts, suits, claims, actions, causes of action, controversies, demands, rights, damages, losses, expenses, costs, attorneys' fees, compensation, liabilities, and obligations, suspected or unsuspected, known or unknown, foreseen or unforeseen, arising at any time under or related to the Non-Compete and Non-Solicitation Provisions contained in the Company Agreement.

8. **Warranty by Atlas, Taylor, and Marshall.** Atlas, Taylor, and Marshall hereby represent and warrant that they have not assigned or otherwise transferred to any other person or entity any interest in any claims (including the Claims), actions, demands and/or causes of action they have, or may have, or may claim to have in connection with the matters released hereby and/or the persons and entities released herein, and hereby agree to indemnify and hold harmless all persons or entities hereby released from any and all injuries, harm, damages, penalties, costs, losses, expenses and/or liability or other detriment, including, without limitation, all reasonable attorneys' fees incurred as a result of any and all claims, actions, demands, and/or causes of action of whatever nature or character which may hereafter be asserted against any such released persons or entities by any person or entity claiming by, through or under Atlas, Taylor or Marshall by virtue of such an assignment or other transfer. Atlas, Taylor and Marshall further represent and warrant that they are not aware of any actual or potential disputes, claims, or causes of action that they do or may have against any of the Torres Releasees that are not waived and released under the terms of this Agreement.

9. **Release by Torres.** Torres does hereby fully, finally, completely and irrevocably release, acquit, forever discharge, and covenant not to sue any of the Atlas Releasors of and from any and all past and present debts, suits, claims, actions, causes of action, controversies, demands, rights, damages, losses, expenses, costs, attorneys' fees, compensation, liabilities, and obligations, suspected or unsuspected, known or unknown, foreseen or unforeseen, arising on or prior to the Effective Date, which Torres has asserted, or at any time could have asserted, based on any acts or events occurring on or before the Effective Date, against any of the Atlas Releasors with respect to all matters of every type, kind or character, including, but not limited to, those matters arising out of or relating to the Parties' dealings or relationships (whether business, personal, or otherwise), any statements (including statements alleged to be false, misleading or defamatory), actions, acts, errors or omissions of any Party, the Company Agreement including the Non-Compete Provisions, Non-Solicitation Provisions, and the Tax Return Provisions, Torres' Company Interest, the Dispute, the Lawsuit, any contemplated claims to be filed with the EEOC and the Claims. Notwithstanding anything contained in the foregoing release, Torres does not release any of the Atlas Releasors from any claim related to his rights under this Agreement or for any claims that arise after the Effective Date.

10. **Exclusions from Release.** Excluded from the Release above are any claims or rights that Torres may have in connection with Tax Return Provisions in the Company Agreement. The Atlas Releasors shall be solely responsible for all Tax liability that may be owed for any profits attributed to Atlas for the years 2012 or 2013. Should said Tax liability be deemed to be attributed to Torres, the Atlas Releasors agree to hold harmless and indemnify Torres from any and all claims, losses, damages, liability, suits, actions, judgments, costs, taxes, interest, penalties, expenses, and attorneys' fees resulting from any liability or claim of liability for amounts assessed or determined to be due to any federal, state, or local government as a

penalty or payment for any federal, state, or local taxes or other taxes incurred in connection with any profits attributed to Atlas for the years 2012 or 2013.

11. **Warranty by Torres.** Torres hereby represents and warrants that he has not assigned or otherwise transferred to any other person or entity any interest in any claims, actions, demands and/or causes of action he has, or may have, or may claim to have in connection with the matters released hereby and/or the persons and entities released herein, and hereby agrees to indemnify and hold harmless all persons or entities hereby released from any and all injuries, harm, damages, penalties, costs, losses, expenses and/or liability or other detriment, including, without limitation, all reasonable attorneys' fees incurred as a result of any and all claims, actions, demands, and/or causes of action of whatever nature or character which may hereafter be asserted against any such released persons or entities by any person or entity claiming by, through or under Torres by virtue of such an assignment or other transfer. Torres further represents and warrants that he is not aware of any actual or potential disputes, claims, or causes of action they do or may have against any of the Atlas Releasers that are not waived and released under the terms of this Agreement.

12. In the event that Torres is sued in his individual capacity in a civil suit in state or federal court for acts or omissions occurring, or alleged in the complaint to have occurred, within the scope of being a manager and/or member of Atlas, the Atlas Releasers will defend and provide for his defense by providing and paying for costs associated with counsel to represent Torres. If a monetary judgment is awarded against Torres in state or federal court, or the matter is settled, Torres will indemnify and pay, any judgment or settlement, resulting from any acts or omissions occurring, or alleged in the complaint to have occurred, within the scope of being a manager and/or member of Atlas. Torres specifically represents that as of the Effective Date he has no actual or constructive notice of the existence of any such claims or potential claims against him. To the extent that any claim is filed against Torres as described in this paragraph and he had or should have had notice of such claims as of the Effective Date, this indemnity shall be considered null and void and of no force or effect. Further, this indemnity does not apply to any claim filed against Torres in his individual capacity in a civil suit in state or federal court by Adam Sinn, XS Capital, Aspire or any entity in which Sinn owns an interest or with which Sinn is associated.

13. In the event of an investigation by any governmental agency, whether civil or criminal, grand jury investigation, or criminal charges are brought against Torres for acts or omissions occurring, or alleged in the complaint to have occurred, within the scope of being a manager and/or member of Atlas, the Atlas Releasers shall defend and provide for his defense by providing and paying for costs associated with counsel to represent Torres. Torres specifically represents that as of the Effective Date he has no actual or constructive notice of the existence of any such investigation or potential investigation. To the extent that any investigation as described in this paragraph is initiated and Torres had or should have had notice of such investigation or potential investigation as of the Effective Date, this indemnity shall be considered null and void and of no force or effect.

14. **Release by Sinn, XS, and Aspire.** Sinn, XS, and Aspire (the "Sinn Releasers") do hereby fully, finally, completely and irrevocably release, acquit, forever discharge, and

covenant not to sue any of the Atlas Releasers of and from any and all past and present debts, suits, claims, actions, causes of action, controversies, demands, rights, damages, losses, expenses, costs, attorneys' fees, compensation, liabilities, and obligations, suspected or unsuspected, known or unknown, foreseen or unforeseen, arising on or prior to the Effective Date, which the Sinn Releasers have asserted, or at any time could have asserted, based on any acts or events occurring on or before the Effective Date, against any of the Atlas Releasers with respect to all matters of every type, kind or character, including, but not limited to, those matters arising out of or relating to the Parties' dealings or relationships (whether business, personal, or otherwise), any statements (including statements alleged to be false, misleading or defamatory), actions, acts, errors or omissions of any Party, the Company Agreement including the Non-Compete Provisions and the Tax Return Provisions, Torres' Company Interest, the Dispute, the Lawsuit, and the Claims. Notwithstanding anything contained in the foregoing release, the Sinn Releasers do not release any of the Atlas Releasers from any claim related to their rights under this Agreement or for any claims that arise after the Effective Date.

15. **Warranty by Sinn, XS, and Aspire.** The Sinn Releasers hereby represent and warrant that they have not assigned or otherwise transferred to any other person or entity any interest in any claims, actions, demands and/or causes of action they have, or may have, or may claim to have in connection with the matters released hereby and/or the persons and entities released herein, and hereby agrees to indemnify and hold harmless all persons or entities hereby released from any and all injuries, harm, damages, penalties, costs, losses, expenses and/or liability or other detriment, including, without limitation, all reasonable attorneys' fees incurred as a result of any and all claims, actions, demands, and/or causes of action of whatever nature or character which may hereafter be asserted against any such released persons or entities by any person or entity claiming by, through or under the Sinn Releasers by virtue of such an assignment or other transfer. The Sinn Releasers further represent and warrant that they are not aware of any actual or potential disputes, claims, or causes of action they do or may have against any of the Atlas Releasers that are not waived and released under the terms of this Agreement.

16. **Releases Between Sinn, XS, and Aspire and Torres.** Sinn, XS, and Aspire on one hand, and Torres on the other hand shall separately document between themselves any agreement relating to the release of any note obligations related to the Disputes, the Lawsuit or the Claims. Such release is not a part of this Agreement.

17. **Confidentiality.** The Parties agree that this Agreement, the negotiations preceding this Agreement, and the amount of consideration paid pursuant to this Agreement are confidential and will not be disclosed by any Party to any other person or entity, except: (a) the Internal Revenue Service in connection with the filing of any tax or informational return, (b) the Parties' attorneys, accountants or other business or tax advisors, (c) unless compelled to do so by subpoena or other compulsory process, or (d) in the event that a Party must bring or defend a lawsuit filed by or against a Party to protect rights under this Agreement. To the extent that a Party receives a subpoena, record request, or order for production of this Agreement, said Party shall immediately provide all Parties a minimum of ten (10) days notice prior to any required production. To the extent that any third parties seek information from the Parties regarding the Lawsuit, the Disputes or the Claims, the Parties shall either refuse to respond or, if they choose to respond, they shall do so only with words to the effect that all disputes among them have been

fully settled and resolved, and they shall not disclose the amount paid or any of the terms of this Agreement.

18. **Acknowledgement of Continuing Obligations Under the Amended Agreed Confidentiality and Protective Order.** The Parties hereby incorporate the Amended Agreed Confidentiality and Protective Order (“the Confidentiality Order”) filed in the Lawsuit on or about July 8, 2013 into this Agreement. The Parties specifically agree to return or destroy all protected information covered by the Confidentiality in line with the terms and deadlines prescribed by the Confidentiality Order.

19. **Non-Disparagement.** The Parties agree that in exchange for the consideration provided under this agreement, the Parties shall not directly or indirectly, disparage, make or publish any false, derogatory, slanderous or libelous comments about any other Party regarding any matter likely to be harmful to the Party’s business, business reputation or personal reputation. Further, the Parties agree that they shall not solicit from any third party any comments, statements, or the like that may be considered negative, false, derogatory or detrimental to the business reputation of any other Party. Further, the Parties agree that they will not restrict, limit, or prohibit any third party or employee from socializing, fraternizing, or doing business with any other Party.

20. **Notices.** Any notice, demand, request, consent, approval, or communication that any Party gives or is required to give to any other Party or Parties shall be sent by certified mail, return receipt requested, and, if available, facsimile transmission at the addresses set forth below. Any party may change its address by notifying the other Parties in writing.

Notices to Atlas, Taylor, and Marshall shall be delivered to:

Geoffrey Berg
Diamond McCarthy L.L.P.
909 Fannin, 15th Floor
Houston, Texas 77010
Phone : 713-333-5100
Fax : 713-333-5199

Notices to Torres shall be delivered to:

Melissa Moore
Moore & Associates
440 Louisiana, Suite 675
Houston, Texas 77002
Phone: 713-222-6775
Fax: 713-222-6739

Notices to Sinn, XS, and Aspire shall be delivered to:

Chanler A. Langham
Susman Godfrey L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas 77002
Phone: 713-651-9366
Fax: 713-654-6666

21. **No Admission of Liability or Fault.** By entering into this Agreement, the Parties do not admit or acknowledge that they committed any wrongdoing, that they have or had any liability to any other Party, or that their factual and/or legal positions lacked merit, and the Parties expressly deny all allegations of fault and wrongdoing made by any other Party.

22. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas applicable to agreements made and to be performed within such State, without giving effect to conflict of laws principles.

23. **Mediation Obligations.** If any dispute arises with regard to the interpretation and / or performance of this Agreement, the Parties agree to resolve that dispute by phone conference with Paul Clote (the "Mediator"). If the Parties cannot resolve their dispute by phone conference, then each agrees to schedule one day of mediation with the Mediator within 30 days of the above phone conference to attempt resolve the dispute before filing any law suit. The costs of the mediation prescribed by this paragraph shall be borne equally by the Parties participating in the mediation.

24. **Venue and Jurisdiction.** Each Party hereby submits to the jurisdiction of any state or federal court in Harris County, Texas for any action, suit or proceeding arising out of or related to this Agreement. The Parties fully intend that venue in Harris County shall be mandatory. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to venue of any such action, suit or proceeding brought in such a court arising out of or related to this Agreement.

25. **No Other Agreements.** This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and thereof. This Agreement supersedes all prior and contemporaneous oral and written agreements and discussions with respect to the subject matter hereof and thereof.

26. **No Waiver of Breach.** No breach of any provision of this Agreement can be waived by any Party except in writing. The waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

27. **Successors and Assigns.** The rights of the Parties hereto, and any of their subsidiaries and affiliates, shall inure to the benefit of any and all of their successors and assigns.

No Party may assign any of its rights or delegate any of its duties hereunder without the written consent of the other Parties.

28. **No Reliance on Undocumented Promises of Any Kind.** The Parties represent and declare that, in executing this Agreement and the Redemption Agreements, they are relying solely on their own judgment, belief and knowledge, and on the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and obligations in this Agreement. The Parties acknowledge that no Party or any of its representatives has made any promise, representation, or warranty whatsoever, written or oral, as any inducement to enter into this Agreement except as expressly set forth in this Agreement. Therefore, in entering into this Agreement, the Parties represent and warrant that they have not relied on or been influenced to any extent by any statements, promises, consideration, representations, or inducements of any kind made by any of the Parties, or by any person representing them, which are not fully set forth in this Agreement.

29. **Agreement Signed Voluntarily and With Authority.** The Parties or their responsible officers or representatives represent and warrant that they have carefully read this Agreement and know and understand its contents, and that they sign the Agreement freely and voluntarily. Each of the representatives executing this Agreement on behalf of his or her respective entities represents and warrants that he or she is empowered to do so and thereby binds his or her respective entities. The Parties acknowledge and agree that this Agreement shall be deemed to have been drafted jointly by all Parties.

30. **Multiple Signed Counterparts of the Agreement are Permitted.** This Agreement may be executed in counterparts and, when each Party has signed and delivered at least one counterpart to the other Party, each counterpart shall be deemed an original, and all counterparts taken together shall constitute one of the same agreement, which shall be binding and effective as to all Parties.

[SIGNATURE PAGES FOLLOW]

Eric Torres

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on this _____ day of _____, 2013, by Eric Torres.

NOTARY PUBLIC

ATLAS COMMODITIES, L.L.C.

By: _____

Its: _____

STATE OF TEXAS §

§

COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____, _____ of Atlas Commodities, L.L.C.

NOTARY PUBLIC

Craig Taylor

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on this _____ day of _____, 2013, by Craig Taylor.

NOTARY PUBLIC

S. James Marshall

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on this _____ day of _____, 2013, by S. James Marshall.

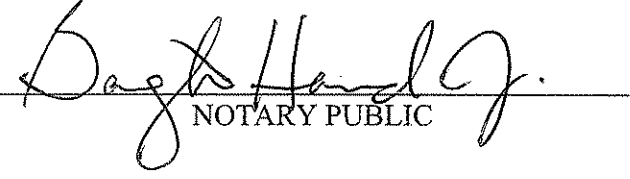
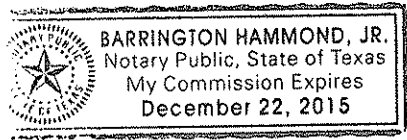
NOTARY PUBLIC



Adam Sinn


STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on this 16th day of August, 2013, by Adam Sinn.



NOTARY PUBLIC

XS CAPITAL MANAGEMENT, L.P.

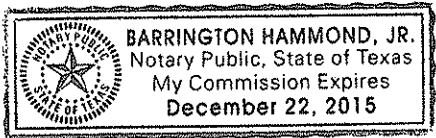
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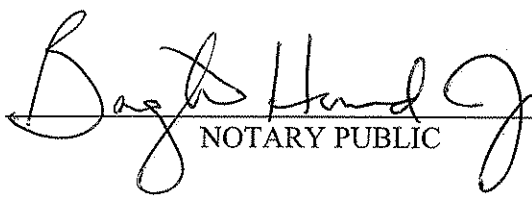
Adam Sinn

Its: President

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

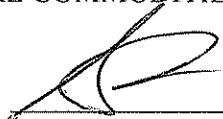
The foregoing instrument was acknowledged before me on this 16th day of August, 2013, by Adam Sinn, President of XS Capital Management, L.P.




NOTARY PUBLIC

ASPIRE COMMODITIES, L.P.

By:



Adam Sinn

Its:

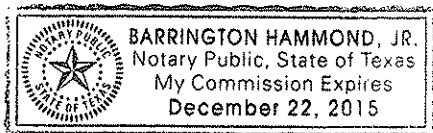
President

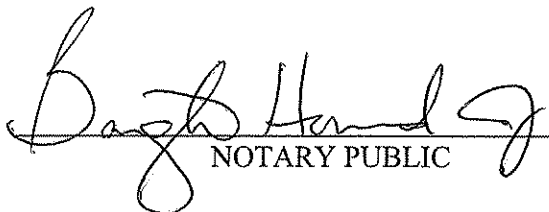
STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me on this 16th day of August, 2013, by Adam Sinn, President of ASPIRE Commodities, L.P.





NOTARY PUBLIC