

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., et al.

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157<sup>TH</sup> JUDICIAL DISTRICT

**PLAINTIFFS/COUNTER-DEFENDANTS ERIC TORRES, ADAM SINN, XS  
CAPITAL MANAGEMENT, L.P., AND ASPIRE COMMODITIES, L.P.’S  
ANSWER TO DEFENDANTS’ SECOND AMENDED ANSWER, AFFIRMATIVE  
DEFENSES, AND COUNTERCLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

Counter-Defendants Eric Torres, Adam Sinn, XS Capital Management, L.P., and Aspire Commodities, L.P. (“Counter-Defendants”) file this Answer to the Second Amended Answer, Affirmative Defenses, and Counterclaim (“Counterclaim”) filed by Craig Taylor and Atlas Commodities, LLC (collectively “Counter-Plaintiffs”) and would respectfully show this Court:

**I. General Denial**

1. Counter-Defendants generally deny each and every, all and singular, the allegations contained in said Counterclaim, and demands strict proof thereof by a preponderance of the evidence. Counter-Defendants reserve the right to further plead exceptions and affirmative defenses as required in order that justice may be had at trial.

**II. Denial**

2. Counter-Defendants deny that all conditions precedent to recovery have occurred.

### **III. Affirmative Defenses**

3. Counter-Plaintiffs' claims are barred, in whole or in part, by the lack of damages.
4. Counter-Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate.
5. Counter-Plaintiffs' claims are barred, in whole or in part, by estoppel.
6. Counter-Plaintiffs' claims are barred, in whole or in part, by waiver.
7. Counter-Plaintiffs' claims are barred, in whole or in part, by excuse.
8. Counter-Plaintiffs' claims are barred, in whole or in part, by anticipatory repudiation on the part of Counter-Plaintiffs.
9. Counter-Plaintiffs' claims are barred, in whole or in part, by unclean hands.
10. Counter-Plaintiffs' claims are barred, in whole or in part, by the Statute of Frauds.
11. Counter-Plaintiffs' claims are barred, in whole or in part, by the doctrine of election of remedies.
12. Counter-Plaintiffs' claims are barred, in whole or in part, by prior material breach.
13. Counter-Plaintiffs' claims are barred, in whole or in part, by Counter-Plaintiffs' breach of the agreement upon which Counter-Plaintiffs' sue.
14. Counter-Plaintiffs' claims are barred by the terms of the contract upon which their claims are based.
15. Counter-Plaintiffs' claims are barred, in whole or in part, by proportional responsibility and Counter-Defendants invokes Chapter 33 of the Texas Civil Practice and Remedies Code.
16. Counter-Plaintiffs' claim for fraudulent inducement are barred, in whole or in part, by their failure to tender back any consideration they were given for any agreement they seek to

rescind.

17. To the extent that any of the foregoing is actually a defense rather than an affirmative defense, it is hereby designated as such. Counter-Defendants reserve the right to plead additional defenses and affirmative defenses.

#### **IV. Limitations on Damages**

18. Any award of exemplary damages is controlled and limited by Chapter 41.008 of the Texas Civil Practice and Remedies Code.

19. Any award of exemplary damages is controlled and limited by the Due Process Clause of the 14<sup>th</sup> Amendment of the United States Constitution, and by the Due Process clause of the Texas Constitution.

#### **V. Attorneys' Fees**

20. Counter-Defendants seek their equitable and just attorney's fees under Texas Civil Practice and Remedies Code Chapter 37 under Counter-Plaintiffs' claims for declaratory judgment.

#### **VI. Rule 193.7 Notice**

21. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Counter-Defendants hereby give actual notice to Counter-Plaintiffs that any and all documents produced by Counter-Plaintiffs may be used against Counter-Plaintiffs at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

#### **VII. Prayer**

WHEREFORE, the Counter-Defendants respectfully request that the Court enter

judgment that Counter-Plaintiffs take nothing on their counterclaims against the Counter-Defendants, that the Counter-Defendants recover their reasonable and necessary, equitable and just attorneys' fees in this cause, that the Counter-Defendants recover costs of court, and that the Counter-Defendants recover all other relief to which they are entitled.

Respectfully submitted,

**RAPP & KROCK, PC**

/s/ Kenneth M. Krock

Kenneth M. Krock  
State Bar No. 00796908  
Megan N. Brown  
State Bar No. 24078269  
Matthew M. Buschi  
State Bar No. 24064982  
3050 Post Oak Blvd., Suite 1425  
Houston, Texas 77056  
(713) 759-9977 telephone  
(713) 759-9967 facsimile  
kkrock@rk-lawfirm.com  
mbrown@rk-lawfirm.com  
mbuschi@rk-lawfirm.com

**ATTORNEYS FOR PLAINTIFFS/  
COUNTER-DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 19th day of February 2016, a true and correct copy of this document was served on counsel of record in accordance with the Texas Rules of Civil Procedure.

Geoffrey A. Berg  
gberg@bfjblaw.com  
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