

1 Robert W. Cohen (SBN 150310)
Mariko Taenaka (SBN 273895)
2 LAW OFFICES OF ROBERT W. COHEN
A Professional Corporation
3 1901 Avenue of the Stars, Suite 1910
Los Angeles, California 90067
4 Telephone: (310) 282-7586
Facsimile: (310) 282-7589
5 rwc@robertwcohenlaw.com
mt@robertwcohenlaw.com

7 Attorneys Specially Appearing
for Cross-Defendant WALTER DAY

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 WILLIAM JAMES MITCHELL,

12 Plaintiff,

13 v.

14 TWIN GALAXIES, LLC; and DOES 1-10,

15 Defendants.

Case No. 19STCV12592

Assigned to Hon. Wendy Chang

**NOTICE OF MOTION AND MOTION TO
QUASH SERVICE OF SUMMONS;
DECLARATIONS OF WALTER DAY AND
ROBERT W. COHEN IN SUPPORT**

Date: May 26, 2022

Time: 8:30 a.m.

Dept.: 36

CRS 183820690447

16
17 AND RELATED CROSS ACTION

20 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

21 **PLEASE TAKE NOTICE THAT** on May 26, 2022 at 8:30 a.m. or as soon thereafter as
22 the matter may be heard in Department 36 of the above-entitled Court located at 111 North Hill
23 Street, Los Angeles, California, cross-defendant Walter Day will, and hereby does, specially
24 appear and move that the Court quash service of the summons and complaint served upon him in
25 this action. The motion is made upon the ground that the Court does not have personal jurisdiction
26 over the cross-defendant with respect to the allegations of the cross-complaint. The motion is
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1 based upon this notice, the accompanying memorandum of authorities and supporting evidence,
2 and upon the complete records on file with the Court in this action.

3 DATED: March 4, 2022

LAW OFFICES OF ROBERT W. COHEN
A Professional Law Corporation

6 By Robert W. Cohen
7 Robert W. Cohen
8 Mariko Taenaka
9 Attorneys for Cross-Defendant
10 WALTER DAY

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1 **I. INTRODUCTION**

2 By its cross-complaint in this lawsuit, the defendant, Twin Galaxies, LLC, a Florida
3 limited liability company, purports to sue Walter Day, a citizen and long-time resident of Iowa,
4 claiming that Mr. Day made misrepresentations to it (or to its purported predecessor-in-interest) in
5 connection with an asset sale contract in 2014, and engaged in a variety of purportedly deceptive
6 practices for many years before that, which Twin Galaxies says artificially inflated the value of the
7 assets it purchased. The cross-complaint finally alleges that Mr. Day repeated the same supposed
8 misrepresentations in 2019 to Guinness World Records, with the result that Guinness terminated
9 its business relations with the cross-complainant.

10 But the allegations against Mr. Day, even if they amounted to cognizable legal claims,
11 have no substantial connection with California, as they must do to permit this Court’s exercise of
12 personal jurisdiction over him. To the contrary, Mr. Day lacks even the minimum contacts with
13 California requisite to sustain the Court’s jurisdiction. Accordingly, since Twin Galaxies has no
14 business suing Mr. Day in this state, Mr. Day now moves that the service of process upon him be
15 quashed and that the claims against him be dismissed, as more fully explained below.

16 **II. PROCEDURAL BACKGROUND**

17 This suit was filed in April 2019 by the plaintiff Billy Mitchell against Twin Galaxies. As
18 the parties acknowledge, Mr. Mitchell is a celebrated figure in arcade video gaming, holding
19 several world records for high scoring achievements. In 1999, Mr. Mitchell achieved the first
20 perfect score in PAC-MAN and was recognized as the “Video Game Player of the Century” by
21 NAMCO, the maker of PAC-MAN. (See *Mitchell v. Twin Galaxies, LLC* (2021) 70 Cal.App.5th
22 207, 210.) Twin Galaxies operates a website, well known in the video game industry, which
23 maintains a database tracking scores and achievements in video gaming, and provides a forum for
24 its members to discuss and evaluate matters of interest to the video gaming community. (*Ibid.*)

25 By his operative first amended complaint, filed March 12, 2020, Mr. Mitchell sues Twin
26 Galaxies for defamation and false light, seeking recovery for harm to his professional reputation
27 arising from public statements by Twin Galaxies in 2018 to the effect that Mr. Mitchell cheated in
28 achieving his record scores. In response, Twin Galaxies filed a special motion to strike pursuant to

1 Code of Civil Procedure section 435.16 (“anti-SLAPP”) which this Court denied on November 13,
2 2020, finding, among other things, that by his extensive evidentiary submissions, Mr. Mitchell
3 made a prima facie showing of both falsity and malice, and that Mr. Mitchell is likely to prevail on
4 the merits. Twin Galaxies filed an appeal of that order on November 13, 2020, effecting a stay on
5 the litigation pending the appeal, and the Court of Appeal affirmed the order in a published
6 decision entered October 12, 2021. Twin Galaxies then filed a petition for review with the
7 California Supreme Court, which was denied on January 26, 2022.

8 In the interim, on January 25, 2021, this Court granted Twin Galaxies’ motion for leave to
9 file its cross-complaint, but ordered that proceedings on the cross-complaint likewise be stayed
10 during the pendency of the appeal. Twin Galaxies filed its cross-complaint on February 4, 2021.
11 The remittitur was filed with this Court on January 31, 2022, and Mr. Day now brings this motion
12 to quash.

13 **III. SUMMARY OF THE CROSS-COMPLAINT**

14 Much like the defamatory publications giving rise to the complaint against it by Billy
15 Mitchell in this lawsuit, Twin Galaxies’ cross-complaint repeats the allegations that Mr. Mitchell
16 cheated in achieving his record-breaking video game scores, and it now expands upon these
17 allegations, pleading a lengthy narrative of fraud and chicanery, now said to encompass a far-
18 reaching conspiracy between Mr. Mitchell and Walter Day—Twin Galaxies’ founder and former
19 owner—beginning at least as early as 1997. In the cross-complaint’s telling, with the aim of
20 “restor[ing] Old Twin Galaxies¹ to prominence and increase the value of the business assets for
21 potential suitors,” the two men embarked on a fraudulent and byzantine scheme from that time
22 onward to falsely propagate Mr. Mitchell’s prestige by cheating and deceptive attestations of high
23 scores and achievements, while simultaneously suppressing and covering up the achievements of
24 numerous, better qualified contenders. (Cross-compl., ¶¶ 15-29.) With their “decades-long fraud
25 to manufacture value for Old Twin Galaxies and the Twin Galaxies Score Database” (and likewise
26 after wresting control of the company’s assets through a series of unsavory means and sharp

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28 ¹ By “Old Twin Galaxies,” the cross complaint refers to Twin Galaxies, Inc., the Iowa
corporation Mr. Day founded in 1981. (Cross-compl., ¶¶ 2, 9.)

1 practices), the principal gist of the cross-complaint is that, in 2014, the cross-defendants finally
2 achieved their nefarious goals by selling the inflated assets, including the fraudulent database, to
3 the cross-complainant without informing it of their lies and schemes, and pocketing the ill-gotten
4 proceeds.

5 Based upon these remarkable contentions, the cross-complaint purports to state a variety of
6 legal claims, including breach of the 2014 contract for the purchase of the Old Twin Galaxies
7 assets (Count 1), and misrepresentation and concealment in connection with the negotiations
8 leading up to the contract. (Counts 2 and 3.) It additionally pleads civil RICO violations for the
9 long-running fraudulent scheme (Count 7), and claims of inducement to breach of contract and
10 intentional interference with prospective economic relationship for “submitting false and
11 misleading evidence to Guinness World Record regarding Billy Mitchell’s video game score
12 performances and related records,” with the result, as the cross-defendants allegedly intended, that
13 Twin Galaxies’ credibility was undermined and its business relations with Guinness were
14 disrupted. (Counts 4 and 5.)

15 But despite its lengthy narrative—and conspicuous by its absence—is any indication in the
16 cross-complaint as to why *California* is an appropriate forum for adjudication of Twin Galaxies’
17 claims against Mr. Day. Mr. Day, as the cross-complaint acknowledges, is domiciled in Iowa and
18 Twin Galaxies is a Florida LLC. From all that appears in the pleadings, all of the alleged conduct
19 at issue, including the decades-long fraudulent scheme and the execution and performance of the
20 contract took place in the state of Iowa (or, in any event, outside of California) and there is no
21 suggestion of any facts showing why this Court (or any other venue in this state) should spend its
22 resources ferreting out the many claims.

23 Apart from the *single* reference in the pleading’s first paragraph, averring that Twin
24 Galaxy’s principal place of business is located in Beverly Hills, nothing related to California is
25 even mentioned in the cross-complaint—and even that passing reference is *contradicted* by Twin
26 Galaxies’ own corporate filings. Twin Galaxies’ Articles of Organization on file with the Florida
27 Secretary of State show the company was established in 2016 with its principal office and mailing
28 address in Miami Beach, Florida. (Cohen Decl., Ex. A.) In August 2018, Twin Galaxies merged

1 with another Florida limited liability company, HD Films, LLC (Cohen Decl., Ex. B), and in
2 November 2019 it filed Articles of Amendment to its Articles of Organization, changing its name
3 to EF Esport, LLC, identifying two managing members, both in Miami Beach. (Cohen Decl., Ex.
4 C.) Finally, on April 17, 2021, under its new name, it filed a Certificate of Reinstatement, listing
5 both its principal place of business and its single manager in Miami Beach, Florida. (Cohen Decl.,
6 Ex. D.)

7 Nor is there evidence of a California connection with respect to Twin Galaxies’ purported
8 “predecessor-in-interest,” through which the cross-complaint claims its right to sue—or, for that
9 matter, any evidence that Twin Galaxies actually *is* a successor to any relevant entity at all.
10 Though the cross-complaint, as mentioned, avers in its narrative that Twin Galaxies purchased the
11 assets at issue from Old Twin Galaxies (cross-compl., ¶ 28), the breach of contract cause of action
12 “clarifies” at paragraph 31 that the actual purchaser was “HD Films, Inc., the predecessor-in-
13 interest to Cross-Complainant”—and nothing further is stated anywhere about how, when, or why
14 its supposed successor status was established. The cross-complaint incorporates a copy of the
15 2014 purchase and sale agreement, which identifies the buyer as “HDFILMS, Inc. (sic) (Hall
16 Digital Films, Inc.), a Nevada corporation, having its principal place of business at 4000 Davana
17 Rd. in the City of Sherman Oaks and State of California.” But the Nevada Secretary of State
18 records list no business with the name “HD Films, Inc.” (or HDFILMS, Inc”). And though there is
19 (or was) a Nevada corporation by the name “Hall Digital Films, Inc.,” which did list officer
20 information at the same Sherman Oaks address (See Cohen Decl., Ex. E.),² it does not appear that
21 that entity is the predecessor to Twin Galaxies, as the cross-complaint alleges. Instead, from the
22 merger documents filed with the Florida Secretary of State in 2018 (Cohen Decl., Ex. B), it
23 appears that Twin Galaxies’ *actual* predecessor-in-interest was “HD Films, LLC, a *Florida Limited*
24 *Liability Company*”—which, of course, was not a party to the 2014 agreement. Let alone lacking
25 a California connection for purposes of this cross-action, Twin Galaxies does not appear to have a
26 connection even to the contract it sues upon.

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28 ² The contract moreover specifies that it “shall be governed by, construed and interpreted in
accordance with the laws of the state of Nevada.” (Cross-Compl., Ex. A, ¶ 11.9.)

1 **IV. BECAUSE THIS COURT LACKS PERSONAL JURISDICTION OVER WALTER**
2 **DAY, THE SUMMONS ISSUED AGAINST HIM SHOULD BE QUASHED.**

3 California’s long arm statute permits courts to exercise jurisdiction “on any basis not
4 inconsistent with the Constitution of this state or of the United States.” (Code Civ. Proc., §
5 410.10; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444.) Thus, the
6 exercise of personal jurisdiction by California courts is limited by the Due Process Clause of the
7 United States Constitution. (See *Ford Motor Co. v. Mont. Eight Judicial Dist. Court* (2021) 141
8 S.Ct. 1017, 1024; *Bristol-Myers Squibb Co. v. Superior Court* (2017) 137 S.Ct. 1773, 1779 [“It
9 has long ben established that the Fourteenth Amendment limits the personal jurisdiction of state
10 courts.”].)

11 “The Due Process Clause protects an individual’s liberty interest in not being subject to the
12 binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or
13 relations.’ [Citation.] By requiring that individuals have ‘fair warning that a particular activity
14 may subject [them] to the jurisdiction of a foreign sovereign,’ [citation], the Due Process Clause
15 ‘gives a degree of predictability to the legal system that allows potential defendants to structure
16 their primary conduct with some minimum assurance as to where that conduct will and will not
17 render them liable to suit.’” (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 471-472.)
18 “Although a nonresident’s physical presence within the territorial jurisdiction of the court is not
19 required, the nonresident generally must have ‘certain minimum contacts . . . such that the
20 maintenance of the suit does not offend “traditional notions of fair play and substantial justice.”’
21 (*Walden v. Fiore* (2014) 571 U.S. 277, 283-284; accord *Vons, supra*, 14 Cal.4th at p. 444.)
22 Constitutional due process permits a state to exercise personal jurisdiction over a nonresident only
23 where he or she has “minimum contacts” with the forum state. (*International Shoe Co. v.*
24 *Washington* (1945) 326 U.S. 310, 316.) “Jurisdiction is proper . . . where the contacts proximately
25 result from actions by the defendant *himself* that create a ‘substantial connection’ with the forum
26 state.” (*Burger King Corp. v. Rudzewicz, supra*, 471 U.S. at p. 475 (original emphasis).)

27 As the United States Supreme Court recently explained, there are “two kinds of personal
28 jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called

1 case-linked) jurisdiction.” (*Ford Motor v. Mont. Eight Judicial Dist. Court*, *supra*, 141 S.Ct. at p.
2 1024.) General, or all-purpose jurisdiction—allowing suits against the nonresident on conduct
3 occurring anywhere in the world *unrelated* to in-state activities—may be asserted only where the
4 contacts are so systematic and pervasive that the defendant may be fairly regarded as “at home” in
5 the forum state. (*Ibid.*; *Vons Cos. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 446.) “For an
6 *individual*, the paradigm forum for the exercise of general jurisdiction is the *individual’s*
7 *domicile*[.]” (*Goodyear Dunlap Tires Operations, S.A. v. Brown* (2011) 564 U.S. 915, 924.)
8 Domicile is the place where an individual intends to remain indefinitely and to which she intends
9 to return whenever she is absent—which obviously excludes Mr. Day. (*In re Marriage of*
10 *Amezquita & Archuleta* (2002) 101 Cal.App.4th 1415, 1419.)

11 “A nonresident defendant lacking sufficient contacts for general jurisdiction ‘still may be
12 subject to the *specific* jurisdiction of the forum’ [citation].” “The contacts needed for this kind of
13 jurisdiction often go by the name ‘purposeful availment.’ [Citation.] The contacts must be the
14 defendant’s own choice and not ‘random, isolated, or fortuitous.’ [Citation.] They must show that
15 the defendant deliberately ‘reached out beyond’ its home—by, for example, ‘exploit[ing] a
16 market’ in the forum State or entering a contractual relationship centered there. [Citation.] Yet
17 even then—because the Defendant is not ‘at home’—the forum State may exercise jurisdiction in
18 only certain cases. The plaintiff’s claims . . . ‘must arise out of or relate to the defendant’s
19 contacts’ with the forum. [Citations.] Or put just a bit differently, ‘there must be “an affiliation
20 between the forum and the underlying controversy, principally, [an] activity or an occurrence that
21 takes place in the forum State and is therefore subject to the States regulation.”’” (*Ford Motor*,
22 *supra*, 141 S.Ct. at pp. 1024-1025; see *Pavolich v. Superior Court* (2002) 29 Cal.4th 262, 269
23 [explaining that purposeful availment focuses on the defendant’s intentionality—“This [inquiry] is
24 only satisfied when the defendant voluntarily directs his activities toward the forum so that he
25 should expect, by virtue of the benefit he receives, to be subject to the court’s jurisdiction based on
26 his contacts with the forum.”].)

27 “Finally, in analyzing the exercise of specific jurisdiction, ‘[o]nce it has been decided that a
28 defendant purposefully established minimum contacts within the forum State, [those] contacts may

1 be considered in light of other factors to determine whether the assertion of personal jurisdiction
2 would comport with “fair play and substantial justice.” [Citations.] Courts may evaluate the
3 burden on the defendant of appearing in the forum, the forum state’s interest in adjudicating the
4 claim, the plaintiff’s interest in convenient and effective relief within the forum, judicial economy,
5 and ‘the “shared interest of the several states in furthering fundamental substantive social
6 policies.”’” (*Vons, supra*, 14 Cal.4th at pp. 447-448, citing *Burger King, supra*, 471 U.S. at pp.
7 476-477.) Thus, “even if the defendant has purposefully engaged in forum activities,” the
8 “minimum requirements inherent in the concept of ‘fair play and substantial justice’ may defeat
9 the reasonableness of jurisdiction.” (*Burger King*, at pp. 477-478; *Pavlovich v. Superior Court*,
10 *supra*, 29 Cal.4th 262, 269 [“Only if the plaintiff makes the initial showing on the first two
11 requirements does the burden shift to the defendant to show that exercising jurisdiction would be
12 unreasonable.”].)

13 Twin Galaxies’ allegations against Mr. Day here plainly fail to meet these jurisdictional
14 requisites by a wide margin. Not only does Mr. Day himself lack minimum contacts with this
15 state, it is evident, moreover, that neither the subject matter of the pleadings nor even the cross-
16 complainant itself has a sufficient connection with California to allow the claims against him to go
17 forward.

18 **V. CONCLUSION**

19 For these reasons, cross-defendant Walter Day submit that the summons issued to him
20 should be quashed and the claims against him dismissed.

21 Respectfully submitted.

22 DATED: March 4, 2022

LAW OFFICES OF ROBERT W. COHEN
A Professional Law Corporation

25 By Robert W. Cohen
26 Robert W. Cohen
27 Mariko Taenaka
Attorneys for Cross-Defendant
28 WALTER DAY

DECLARATION OF WALTER DAY

I, Walter Day, declare:


1. I am a party in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called as a witness, I could so testify.

2. I reside in the State of Iowa.

3. I was born in Oakland, California, on May 14, 1949. I left California in 1963. I have resided in either Massachusetts or Iowa since then.

4. I was the founder and president of Twin Galaxies, Inc., an Iowa corporation, and in that capacity I executed the Purchase and Sale Agreement dated February 13, 2014 conveying assets of Twin Galaxies, Inc. to the buyer identified in the agreement as "HDFILMS, Inc. (Hall Digital Films Inc.)." A copy of the agreement is attached as Exhibit A to the cross-complaint by Twin Galaxies, LLC. in this action. All of my communications and negotiations related to the agreement and the sale transaction were conducted in the state of Iowa

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 4, 2022 in Ottumwa, Iowa.



Walter Day

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PROOF OF SERVICE

State of California)
County of Los Angeles)

I am a resident of the State of California, over the age of eighteen years and not a party to the within action. My business address is 1901 Avenue of the Stars, Suite 1910, Los Angeles, California 90067. On **March 7, 2022** I served the within described document:

**NOTICE OF MOTION AND MOTION TO QUASH SERVICE OF SUMMONS,
DECLARATION OF ROBERT W. COHEN AND WLATER DAY**

by transmitting it to:

David A. Tashroudian, Esq.
TASHROUDIAN LAW GROUP, APC
12400 Ventura Blvd., Suite 300
Studio City, California 91604
Email: david@tashlawgroup.com

 BY MAIL: I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice a true copy would be deposited with the US Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 BY PERSONAL SERVICE: I caused personal delivery of said document(s) to the offices of the addressee(s) as set forth in the attached mailing list.

 X BY ELECTRONIC MAIL: I caused said document(s) to be electronically served at the electronic service address (e-mail address) listed above.

Pursuant to the laws of the State of California I declare under penalty of perjury that the foregoing is true and correct.

Executed on **March 7, 2022** at Los Angeles, California.

/s/ Mariko Taenaka
Mariko Taenaka



Court Reservation Receipt

Reservation	
Reservation ID: 183820690447	Status: RESERVED
Reservation Type: Motion to Quash Service of Summons	Number of Motions: 1
Case Number: 19STCV12592	Case Title: WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC
Filing Party: Walter Day (Cross-Defendant)	Location: Stanley Mosk Courthouse - Department 36
Date/Time: May 26th 2022, 8:30AM	Confirmation Code: CR-HVY3EJGEPQRELPA

Fees			
Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			\$446.96

Payment	
Amount: \$446.96	Type: Visa
Account Number: XXXX3425	Authorization: 08075G

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