

1 Anthony J. Ellrod (State Bar No. 136574)  
 2 [aje@manningllp.com](mailto:aje@manningllp.com)  
 3 Natalya Vasyuk (State Bar No. 307419)  
 4 [ndv@manningllp.com](mailto:ndv@manningllp.com)  
 5 **MANNING & KASS**  
 6 **ELLROD, RAMIREZ, TRESTER LLP**  
 7 801 S. Figueroa St, 15<sup>th</sup> Floor  
 8 Los Angeles, California 90017-3012  
 9 Telephone: (213) 624-6900  
 10 Facsimile: (213) 624-6999  
 11 Attorneys for Plaintiff WILLIAM JAMES MITCHELL

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 13 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

**MANNING & KASS**  
**ELLROD, RAMIREZ, TRESTER LLP**  
ATTORNEYS AT LAW

12 WILLIAM JAMES MITCHELL,  
 13 Plaintiff,

14 v.

15 TWIN GALAXIES, LLC,  
 16 Defendant.

Case No. 19STCV12592  
 [The Hon. WENDY CHANG DEPT. 36]

**REPLY IN SUPPORT OF PLAINTIFF'S  
 NOTICE OF MOTION AND MOTION  
 FOR COSTS AND ATTORNEY FEES  
 JOINTLY AND SEVERALLY AGAINST  
 DEFENDANT AND THEIR COUNSEL;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

**DATE: April 5, 2022**  
**TIME: 8:30 a.m.**  
**PLACE: Dept. 36**

**Reservation Number: 930998964344**

Action Filed: 4/11/2019  
 Trial: Not set yet

**MEMORANDUM OF POINTS AND AUTHORITIES**

1  
2 This is a very straightforward case involving claims of defamation and false light, which  
3 should be decided by a trier of fact. Plaintiff William Mitchell is a renowned gamer, who held  
4 several video game records on the Twin Galaxies website and the Guinness Book of World Records.  
5 An allegation was posted to Twin Galaxies forum that William did not achieve his scores on  
6 machines with proper hardware; in other words, the allegation was that William cheated. This is not  
7 a case wherein Twin Galaxies performed a shoddy investigation into that allegation. It is a case  
8 where Twin Galaxies specifically ignored and/or rejected all evidence provided that was contrary to  
9 that allegation and instead relied exclusively on biased evidence. Twin Galaxies then published their  
10 conclusion on their website that William Mitchell had cheated. Twin Galaxies proceeded to remove  
11 William’s records, and banned him from the site. This ultimately led to the Guinness Book also  
12 removing William’s records and causing a substantial downturn in William’s other business which  
13 has depended in large part on his name recognition as a record holder. In spite of defendant’s efforts  
14 to argue otherwise, this is the extent of the complexity of this case. This case is, and has been from  
15 its inception, a dispute of facts to be presented to a fact-finder to render a decision.

16 Defendant’s attempts to bypass the fact-finder with its frivolous special motion to strike  
17 (anti-SLAPP), and subsequent requests for review of the denial of their anti-SLAPP have been in  
18 bad faith. The substantive lack of merit of the motion, in addition to the tactics of the timing of their  
19 filings, show bad faith and sanctions in the form of attorneys’ fees are warranted. William Mitchell  
20 is deserving of the attorney fees requested.

21 **I. No Reasonable Attorney Would Find Defendant’s Anti-SLAPP Motion to Have Merit**

22 There is no dispute by defendant regarding the standard for a frivolous motion: no reasonable  
23 attorney would find that the motion has any merit. (Defendant’s Opposition p. 4:20-23). No  
24 reasonable attorney would take the position that this lawsuit could be defeated with an anti-SLAPP  
25 motion. This is because of the clear dispute of facts. “Here there is ample evidence that Twin  
26 Galaxies was alerted to potential contradictory facts.” (*Mitchell v. Twin Galaxies, LLC* (2021) 70  
27 Cal.App.5th 207, 224.)

28 Defendant’s arguments in opposition to the motion for attorney fees can be summarized as:

1 they filed the anti-SLAPP motion and subsequent appeal and petition because the law and court  
2 allowed them to, they provided factual evidence to support their arguments, and therefore it was not  
3 lacking in merit and could not be in bad faith. However, this argument does not take into account  
4 whether a reasonable attorney would find the substantive motion itself was lacking in merit. Simply  
5 filing a motion because one is allowed by law, is not the standard for whether a motion is frivolous.

6 Defendant argues in their opposition that asserting the truth of their statements with their  
7 supporting evidence, was sufficient as a matter of law, and therefore their anti-SLAPP was not  
8 frivolous. (Defendant’s Opposition, hereafter “Opp.,” p. 6:7-6:15). Defendant makes this same type  
9 of argument as to their alleged lack of malice. (*Id.* p.6:16-7:1). However, defendant again omits (and  
10 ignores) the evidence the court would be required to consider from plaintiff, causing the dispute of  
11 fact. “*Again*, Twin Galaxies relies on competing evidence to argue a lack of actual malice. *Again*,  
12 we conclude we may not weigh the credibility or comparative probative strength of competing  
13 strength.” (*Mitchell v. Twin Galaxies, LLC, supra*, 70 Cal.App.5th at 223 [emphasis added].)  
14 Defendant has been aware of these disputed facts since long before this lawsuit was filed, and has  
15 simply decided to ignore them.

16 The law is well established. A court considers everything submitted by *both* parties but does  
17 not weigh the evidence, and accepts as true the evidence submitted by plaintiff to establish whether  
18 plaintiff has *minimal* merit to defeat the anti-SLAPP motion. (*Soukup v. Law Offices of Herbert*  
19 *Hafif* (2006) 39 Cal.4th 260, 291.) This point is emphasized in the trial court’s ruling (Tr. Ct. Ruling  
20 6:24-7:2) and repeatedly by the court of appeal in its published opinion.<sup>1</sup> A plaintiff’s claims with  
21 minimal merit, will proceed. It is clear that defendant has continued to seek judgment solely on their  
22 own facts.

23

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24 <sup>1</sup> Additional excerpts from the Court of Appeal opinion indicating that defendant keeps attempting  
25 to push the court to ignore any contrary evidence: “We exclude the remainder of the evidence relied  
26 on by the parties because it only serves to underscore our observation that there exist many factual  
27 disputes in this case which may not be resolved on review of an anti-SLAPP ruling.” (*Mitchell v.*  
28 *Twin Galaxies, supra*, at 216 [fn]. 2). Twin Galaxies “essentially seeks to have us judge the  
probative value of competing evidence. We decline to do so because we do not weigh the credibility  
or comparative probative strength of competing evidence at this stage of the proceedings.” (*Id.* at  
220.)

1 Defendant's own Motion for Undertaking included a declaration by Jason Hall in Support  
2 of the Motion for Undertaking in this case, in which the exhibits attached included a letter from  
3 Manning & Kass, dated September 9, 2019 (Decl. of Jason Hall in Support of Motion for  
4 Undertaking, Exh. B) which was sent to both the Guinness Book of World Records, as well as to  
5 Jason Hall at Twin Galaxies. The letter outlined the facts supporting the legitimacy of William  
6 Mitchell's scores, as well as the actual evidence in support. (*Id.*, Exh. C). As indicated in Mr. Hall's  
7 declaration, the evidence package consisted of 166 pages. (Decl. of Jason Hall, Motion for  
8 Undertaking, p. 3:22; para. 8.) This evidence in support of the letter included affidavits from Walter  
9 Day and a Twin Galaxies referee that they contacted to verify William's records in the first place.  
10 (*Id.* Exh. C, p. 59, 97 [page numbers are references to the internal page numbers of the original  
11 documents].) That the Guinness World Records had the same exact information as Twin Galaxies,  
12 and then reinstated William's records on June 18, 2020, further shows that Twin Galaxies is refusing  
13 to consider William's evidence at all, despite the fact that Williams has already convinced a different  
14 organization of fact finders of its veracity.

15 The facts here indicate that plaintiff would always have met the 'minimal merit' required to  
16 succeed on this defamation lawsuit, and that defendant knew that. Yet defendant is intentionally  
17 choosing to ignore any facts against them, and filing motions simply because they can; not because  
18 of merit. No reasonable attorney would believe that simply ignoring facts against them forms a  
19 basis upon which an anti-SLAPP motion could be granted.

20 Defendant additionally argues that William Mitchell must put forward additional evidence  
21 of specific facts to show defendant's bad faith. Defendant cites to *In re Marriage of Shafzadeh-Taeb*  
22 & *Taeb* (2019) 39 Cal.App.5th 124, 135-141 to state that a finding of subjective bad faith is a  
23 required finding for sanctions under section 128.5. (Opp. p. 4:23-27). The 'compiled cases' pointed  
24 to by defendant in the *Shafzadeh* case, indicate that the action itself can be so blatant as to indicate  
25 bad faith.

26 A review of precedent indicates that the bad faith requirement of  
27 section 128.5 does not impose a determination of evil motive. The  
28 concept of 'harassment' includes vexatious tactics which, *although*  
*literally authorized by statute or rule*, go beyond that which is by any  
standard appropriate under the circumstances. We appear to be

1 approaching a consensus on the morality of litigation tactics which  
2 requires that counsel, even if on technically correct legal ground, not  
3 take action which unreasonably or unnecessarily injures the opposing  
4 counsel or party.” (*West Coast Development v. Reed* (1992) 2  
5 Cal.App.4th 693, 701 [emphasis added] cited by *Shafzadeh*.)

6 This is precisely the situation here. It is not necessary to provide any additional facts beyond  
7 the motion and actions that defendant has taken, in order to show bad faith of defendant.

8 Defendant's arguments that their statement was non-actionable opinion, highlights the  
9 defendant's attempt to twist the facts in this case to satisfy a legal standard, which is simply not  
10 supported by the facts of this case. Defendant concedes that it is the adjudicator of the dispute (Opp.  
11 p. 2:14-17), but somehow argues its findings are mere opinion. Also, defendant seems to imply that  
12 because there is precedent out there that a statement merely happening on the internet eliminates  
13 their obligation to not publish defamatory statements. (Opp. p. 7:14-17.) The existence of law in the  
14 abstract does not mean it applies to this case. “Internet posts, where the ‘tone and content is serious,’  
15 where the poster represents himself as ‘unbiased’ and ‘having specialized knowledge,’ or where the  
16 poster claims his posts are ‘Research Reports’ or ‘bulletins’ or ‘alerts,’ may indeed be reasonably  
17 perceived as containing actionable assertions of fact.” (*Bently Reserve LP v. Papaliolios* (2013) 218  
18 Cal.App.4th 418, 431.)

19 As established, and agreed to by defendant, Twin Galaxies is in the position of being the  
20 holder of records set in the gaming world; they are an authority on this subject. Plaintiff was a record  
21 holder on their site. Defendant's decisions on whether someone gets to maintain a record on their  
22 site after an allegation of cheating, is not going to be considered as merely an opinion. As stated in  
23 the Court of Appeal, their decisions will be interpreted as fact by any reasonable individual that  
24 reads them, as found by the Court of Appeal. “We interpret Twin Galaxies’ statement as the media  
25 and Mitchell did: it accused Mitchel of cheating to achieve his world record scores.” (*Mitchell v.*  
26 *Twin Galaxies, LLC* (2021) 70 Cal.App.5th at 220.) Defendant's arguments that they merely were  
27 expressing nonactionable opinion are completely without merit and illustrative of defendant's bad  
28 faith.

In regards to defendant's statements that they were allowed to file an appeal, while the

1 standard of review in the court of appeal is *de novo*, (Opp. p. 7:22-26,) this does not mean that filing  
2 an appeal would not be frivolous. As the filing of the initial motion was frivolous in itself, filing for  
3 additional review would be even more so as the trial court has already indicated that this is a factual  
4 dispute that cannot be decided as a matter of law. Defendant stating that it sought review for the  
5 purpose of the reviewing court to review those facts again, is an indication that defendant was indeed  
6 solely using tactics for delay (Opp. p. 7:25-27; *see also* Section II.)

7 Last, the defendant argues that its petition for review was not frivolous because it wanted to  
8 challenge the notion that a court is not allowed to rely on circumstantial evidence to establish a  
9 subjective state of mind, so long as it does not relate to truth of the defamatory statement itself.  
10 (Opp. p. 8:8-13). Defendant essentially arguing that their statement was based on their own video  
11 tapes only, and therefore, there was no actual malice in the resulting statement. Again, defendant is  
12 attempting to avoid that their statement resulted in accusing William of being a cheater, and that  
13 they were refusing to look at anything contrary to their videotapes. In fact, the purposeful avoidance  
14 of truth has been established as a valid way to find actual malice. (*See Harte-Hanks Communications*  
15 *v. Connaughton* (1989) 491 U.S. 657, 692.) The Court of Appeal rejected this argument, again  
16 telling defendant that this was a factual issue and would not take such a narrow view of defendant's  
17 statements. (*Mitchell v. Twin Galaxies, supra*, 70 Cal.App.5th at 223.) The importance of the court  
18 of appeal publishing this case, cannot be overstated.

19 Again, the petition for review was an attempt by defendant to ask the Supreme Court to  
20 solely review their own evidence to determine their own state of mind about what they were stating  
21 about their own investigation. Respectfully, no reasonable attorney would argue that a subjective  
22 state of mind can only be shown by direct evidence, nor would anyone argue that the literal strict or  
23 technical construction of the statement itself is the sole consideration. The attempt to parse and  
24 restrict what circumstantial evidence a court can consider which reflects on a state of mind, to solely  
25 the statement itself in a defamation context, on behalf of the alleged defamer, was only unestablished  
26 because no reasonable attorney would raise such a position.

27 Defendant's claim that no case has discussed the interplay between circumstantial evidence  
28 and actual malice since *Annette F. v. Sharon S.*, is also not exactly an accurate statement of the state

1 of the law. “Actual malice may be proved by circumstantial or direct evidence.” (*Ampex v. Cargle*  
2 (2005) 128 Cal.App.4th 1569, 1579 citing *Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146,  
3 1167; see also *Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84 [“A defamation  
4 plaintiff may rely on inferences drawn from circumstantial evidence to show actual malice.”) While  
5 these cases found the evidence insufficient, they both discussed use of circumstantial evidence and  
6 how it would be relevant. Defendant has simply manufactured an issue in an effort to try to justify  
7 a frivolous petition for review. Defendant's attempt to limit the issue on use of circumstantial  
8 evidence in the way that they have argued, was not meritorious.

9 **II. Defendant Has Used Tactics to Delay this Case on the Merits for Improper Purposes**

10 It is evident that defendant’s strategy has been to take actions that exert financial pressure  
11 on plaintiff and then delay the action so as to increase that burden on William Mitchell, so that  
12 William will be dissuaded from pursuing his claims against defendant. Many of defendant’s  
13 arguments that they did not delay, again rely on the assertion that because they could, and the court  
14 approved it, that it could not be considered improper. That the court allowed the filing of new  
15 evidence and sur-reply is not a finding that the defendant’s purpose was not for delay. Same with  
16 the timing of the motion for undertaking, filing of appeal, and seeking review. Being permitted to  
17 file a motion within the time period as a matter of law, does not mean that the purpose of filing the  
18 motion was not in bad faith. That these were bad faith tactics can be seen under the totality of the  
19 circumstances and in defendant’s own arguments.

20 Defendant states that it was efficient to file the undertaking while the anti-SLAPP was  
21 pending because it would rely on largely the same evidence. (Opp. p.9:7-12). This assertion is not  
22 supported by the timing of the filing. The anti-SLAPP was filed on March 30, 2020. The Motion for  
23 Undertaking was filed On September 22, 2020. The anti-SLAPP motion was denied on October 26,  
24 2020. If the same evidence were being used, it should not have taken an additional six months to  
25 file the Motion for Undertaking. In addition, defendant had all of this evidence since 2019. (See  
26 above, Sect. I, p. 3:1-7.) Defendant is taking actions here which are calculated to exert improper  
27 pressure on plaintiff to give up his claims.

28 Defendant also admits they submitted the same arguments and facts on appeal because they

1 were entitled to *de novo* review. Defendant seems to argue that they were solely seeking *de novo*  
2 review of their facts when they are arguing this was not a frivolous motion (Opp. p. 7:25-27), but  
3 then argues that they filed the appeal for the purpose to “further advance[] jurisprudence.” (Opp. p.  
4 9:21-25). Even setting aside that defendant has argued two different specific reasons for seeking  
5 appeal, defendant does not indicate why they would have needed three extensions to file an appellate  
6 brief that relied on the same arguments in the trial court, in order to develop precedent in this area  
7 of law. The only logical explanation would be for purposes of delay as a tactic.

8 While defendant is correct that they only requested an additional 7 days on their third request  
9 for extension to file their opening brief until April 8, which they were granted, counsel fails to note  
10 to this court that defendant’s opening brief **was not actually filed** until May 4, 2021. No doubt  
11 knowing that defendant would receive a notice from the court of appeal on threatening dismissal of  
12 the appeal and providing an additional extension, defendant waited until after the April 19, 2021  
13 notice of their failure to file a timely opening brief, further demonstrating not only their delay tactics,  
14 but their attempt now to downplay their delay in proceeding on appeal. Again, defendant obtaining  
15 orders for extension, does not mean that they were not done with improper purpose and counsel’s  
16 willful omission is further evidence of attempting to hide their improper strategy.

17 Defendant’s further arguments that they were challenging the sufficiency of the court’s use  
18 of circumstantial evidence to establish a state of mind is addressed above. This was a frivolous  
19 argument and also solely to offer some seemingly legitimate purpose for delay. That the California  
20 Supreme Court granted more time to review their petition is not an indication of anything other than  
21 the California Supreme Court needing time to review. Defendant’s arguments highlight that their  
22 tactics here have been improper, solely for purposes of delay, and frivolous.

23 **III. Plaintiff’s Billed Hours**

24 Defendant’s argument that plaintiff’s hours billed are without foundation for failing to  
25 submit detailed billing records, ignores the established precedent that this type of evidence is  
26 unnecessary. This precedent was provided in plaintiff’s motion for fees. Defendant makes the same  
27 argument that has been considered and rejected by *Raining Data Corp. v. Barrenchea* (2009) 175  
28 Cal.App.4th 1363, 1375: “The law is clear, however that an award of attorney fees may be based on



1 counsel’s declarations, without production of detailed time records.” The court has the discretion to  
2 set a fee solely based on the pleadings before it, as demonstrating the work that counsel has done on  
3 a matter. (*California Interstate Tel.Co. v. Prescott* (1964) 228 Cal.App.2d 408, 411; *see also G.R.*  
4 *v. Intelligator* (2010) 185 Cal.App.4th 606, 620 [attorney declaration alone sufficient and no abuse  
5 of discretion to require attorney to supply time records in support of declaration]; *Sweetwater Union*  
6 *High School Dist. V. Julian Union Elementary School Dist.* (2019) 36 Cal.App.5th 970, 995.)

7 An award of fees is completely within the trial court’s discretion. (*Barrenchea, supra*, 175  
8 Cal.App. at 1376) As shown above and in the initial motion, plaintiff has demonstrated that  
9 sanctions are warranted. Sufficient evidence has been provided on which the court may decide to  
10 award fees and the amount this court finds to be reasonable. If any further evidence to support the  
11 amount of fees requested is necessary plaintiff is happy to provide same for in camera review.

12 **IV. Defendant’s Request for Sanctions**

13 Defendant prematurely states that they should be awarded fees for opposing this motion.  
14 Again, defendant argues that the reason they are entitled to fees, is that they were allowed by law to  
15 take the actions they have and the importance of their right to free speech to defame William  
16 Mitchell. (Opp. p. 14:6-8). Defendant’s meaning here is clear: defendant wants to be able to say  
17 whatever it wants, regardless of the truth or position it occupies, and not face any consequences for  
18 it. Defendant’s mere assertion of the merit of their anti-SLAPP motion does not make it so, nor does  
19 it negate the obvious timing of their tactics. Plaintiff has provided this court with ample evidence of  
20 how defendant has proceeded with this case, including the timing of their tactics, and the frivolity  
21 of their arguments, such that no reasonable attorney would find merit. Defendant’s request for  
22 sanctions should be denied.

23 **V. Conclusion**

24 Denying the anti-SLAPP motion and awarding plaintiff the full market value of his  
25 attorney’s fees is the only way to prevent injustice, to relieve plaintiff of a crushing financial burden,  
26 and to protect plaintiff against unfair tactics meant to make litigation too burdensome to continue.

27 Therefore, Plaintiff asks that the trial court award attorney’s fees in the lodestar amount of  
28 \$203,945 in attorney’s fees, plus a .50 multiplier of \$21,480, plus \$598.96 in costs, for a total award

1 and judgment of \$226,014.96, and order Defendant and his counsel, jointly and severally, to pay  
2 this amount to Plaintiff's counsel within 30 days after the motion is granted.

3 DATED: March 28, 2022

**MANNING & KASS**  
**ELLROD, RAMIREZ, TRESTER LLP**



By: \_\_\_\_\_

ANTHONY J. ELLROD  
Attorneys for Plaintiff  
William J. Mitchell

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On March 28, 2022, I served true copies of the following document(s) described as **REPLY IN SUPPORT OF PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR COSTS AND ATTORNEY FEES JOINTLY AND SEVERALLY AGAINST DEFENDANT AND THEIR COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

David Tashroudian, Esq. Mona Tashroudian, Esq. TASHROUDIAN LAW GROUP, APC 12400 Ventura Blvd. Suite 300 Studio City, CA 91604 Telephone: (818) 561-7381 Facsimile: (818) 561-7381 Email: <a href="mailto:david@tashlawgroup.com">david@tashlawgroup.com</a> Email: <a href="mailto:mona@tashlawgroup.com">mona@tashlawgroup.com</a>	Attorney for Defendants Twin Galaxies
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**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Manning & Kass, Ellrod, Ramirez, Trester LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address alt@manningllp.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on March 28, 2022, at Los Angeles, California.



Angela Thompson