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VIA ELECTRONIC MAIL ONLY

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Re: **In re: Billy Mitchell**

Dear Ms. Hoover:

This responds to your letter of December 12, 2019. Preliminarily, the six records offered satisfy Mr. Mitchell. Regarding actual malice, Mr. Mitchell refuted your claim that GWR drew its defamatory statement from Twin Galaxies in our letter of October 10, 2019. To the contrary, as shown herein, GWR drafted its own editorial statement, which in no way reflected the statement made by Twin Galaxies.

Firstly, Twin Galaxies never explicitly stated Mr. Mitchell's Pac-man records "NEVER WERE," occurred on MAME, or anything even remotely related. Rather, it falsely attacked Mr. Mitchell's Donkey Kong records. It is quite literally impossible for GWR to rely on Twin Galaxies for information that never existed. GWR drafted its own editorial statement about Mr. Mitchell's Pac-man records.

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Marsha K. Hoover, Esq.

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Secondly, regarding Mr. Mitchell's other records (i.e. Donkey Kong), we know GWR did not draw its defamatory statement from Twin Galaxies, because its own statement directly contradicts Twin Galaxies. GWR claims Mr. Mitchell's records were obtained while using MAME, while Twin Galaxies stated that it could not conclude Mr. Mitchell used MAME. Once again, it is impossible for GWR to rely on Twin Galaxies for information never stated by the latter.

Thirdly, on top of Twin Galaxies' never stating Mr. Mitchell's Pac-man records as falsified, GWR made no attempt whatsoever to verify the veracity of its statement. It did not consult relevant documents, it did not interview obvious witnesses, and it did not provide Mr. Mitchell an opportunity to respond. If GWR performed any of the aforementioned actions, it would never have made such damaging statements. The Supreme Court of the United States has routinely ruled actions parallel to GWR's as reckless disregard, and by extension, actual malice.

Lastly, even if GWR retains private, internal communications with Twin Galaxies reflecting its statement, it does not absolve GWR from liability. In *Khawar v. Globe Internat*, the California Supreme Court set precedent that a republisher may be found of actual malice if it failed to consult relevant documentary sources and interview obvious witnesses. In this case, GWR obviously did not consult the Twin Galaxies statements or attempt to contact any obvious witnesses, such as Mr. Walter Day or even Mr. Mitchell himself. *See also, e.g., Southern Air Transport, Inc. v. Post Newsweek Stations Florida, Inc.* (Fla. 3d DCA 1990) 568 So. 2d 927. [actual malice found where the publisher failed to give the plaintiff an opportunity to respond].

Once again, Mr. Mitchell offers GWR the opportunity to mediate the monetary damages and the wording of its announcement. Mr. Mitchell offers to agree to confidentiality regarding the monetary damages, and in addition, Mr. Mitchell offers GWR the opportunity to negotiate his public statement. Therefore, both parties may consent to each other's announcements. Mr. Mitchell requests a response from GWR no later than December 31, 2019. If GWR decides to reject this offer, Mr. Mitchell will name it as a "Doe" defendant to his litigation in Los Angeles County and proceed against it.

We expressly urge your party to consider its options. GWR loses nothing from meeting for mediation, and its current offer will not resolve this issue.

Marsha K. Hoover, Esq.
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We look forward to your response.

Very truly yours,

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

JAMES E. GIBBONS

JEG/jeg
cc: Billy Mitchell