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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

11 WILLIAM JAMES MITCHELL,

12 Plaintiff,

13 v.

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

15 Defendants.

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28
AND RELATED CROSS-ACTION

Case No. 19STCV12592

Assigned to: Hon. Wendy Chang
[Dept. 36]

**DECLARATION OF DAVID A.
TASHROUDIAN**

*[Filed concurrently with: (1) Motion to
Compel; (2) Declaration of Laura Carrell; (3)
Declaration of Matthew Gabler; (4)
Declaration of Jacob Pilkington; and (5)
Compendium of Evidence]*

Hearing

Date: September 28, 2023

Time: 8:30 a.m.

Place: Department 36

Reservation ID: Reserved by Court

Action Filed: 4/11/2019

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1 **DECLARATION OF DAVID A. TASHROUDIAN**

2 I, David A. Tashroudian, declare as follows:

3 1. I am an individual over the age of 18 and I make this declaration based upon facts
4 known to me personally to be true. I am the attorney of record for defendant and cross-complainant
5 Twin Galaxies, LLC ("Defendant") and I make this declaration in support of Defendant's motion
6 to compel production of documents and request for sanctions against plaintiff William James
7 Mitchell ("Plaintiff") and his counsel. If called as a witness to testify to the facts set forth herein,
8 I would, with joy and exuberance, do so. Note that all exhibits are attached to the compendium.

9 **LORE OF THE NAMCO PLAYER OF THE CENTURY PLAQUE**

10 2. Plaintiff alleges in paragraph 2 of his first amended complaint in this action that he
11 was named the "Video Game Player of the Century" by NAMCO. He pleads, verbatim:

12 After a hiatus, Mitchell returned to gaming in the late 1990's. On July 3, 1999,
13 Mitchell achieved the first perfect score of 3,333,360 points on the original Pac-
14 Man. As a result, Pac-Man's manufacturer, Namco, brought Mitchell to Japan for
15 the Tokyo Game Show and named him the "Video Game Player of the Century."

16 3. Plaintiff made a similar allegation in paragraph 17(P) of his complaint in Billy
17 Mitchell v. The Cartoon Network, Inc., et al. filed on July 21, 2015 in the United States District
18 Court for the District of New Jersey bearing case number 3:15-cv-05668-AET-LHG (the "District
19 Court Action"). This Court previously took judicial notice (request filed March 30, 2020) of the
20 District Court Action in connection with Defendant's special motion to strike. Plaintiff pleads at
21 paragraph 17(P) of the District Court Action as follows: "September 15, 1999 – Billy Mitchell is
22 honored as the Video Game Player of the Century on the Namco stage at the 1999 Tokyo Games
23 show."

24 4. I deposed Plaintiff in Fort Lauderdale, Florida on January 9, 2023 for six and a half
25 hours. Plaintiff testified at deposition that on September 17, 1999, the manufacturer of the iconic
26 video game *Pac-Man*, Namco, awarded him a plaque that Plaintiff was sure said "Player of the
27 Century" on it (the "Namco Player of the Century Plaque"). [See Exhibit 1 (Mitchell Depo., 16:21-
28 18:8).]

1 5. Plaintiff responded similarly to Defendant’s special interrogatory number 119
2 asking what the front of the Namco Player of the Century Plaque says. On October 17, 2022
3 Plaintiff responded that: “[t]he words printed on the “Video Game Player of the Century” award
4 plaque state that Responding Party is recognized as the ‘Video Game Player of the Century’ for
5 his gaming achievements that century.”

6 6. Plaintiff testified at deposition that he was given two plaques by Namco and a
7 framed award by Walter Day at the 1999 Tokyo Game Show. [See Exhibit 1 (Mitchell Depo.,
8 27:6-29:11 & 29:18-31:21).] He claimed he was given the Namco Player of the Century Plaque
9 and another plaque that refers to Pac-Man and its contribution to the culture both on stage and in
10 a private ceremony. [Id.] He also testified that he was presented on stage in Japan with a framed
11 certificate from Walter Day which, in Plaintiff’s words, said, “[b]iggest headline, Player of the
12 Century” (the “Day Player of the Century Award”). [Exhibit 1 (Mitchell Depo., 27:19-24 & 29:20-
13 31:21).]

14 7. At deposition Plaintiff authenticated a photo of himself on stage at the 1999 Tokyo
15 Game Show holding what he alleges to be the Namco Player of the Century Plaque. [See Exhibit
16 1 (Mitchell Depo., 21:16-22:9).] The photo shows him on stage next to the father of Pac-Man,
17 Masaya Nakamura and the two are flanked by nine models. A true and correct copy of the picture
18 of Plaintiff on stage with Masaya Nakamura at the Tokyo Game Show holding the Namco Player
19 of the Century Award is attached to the Compendium of Evidence as Exhibit 7, and is reproduced
20 below:

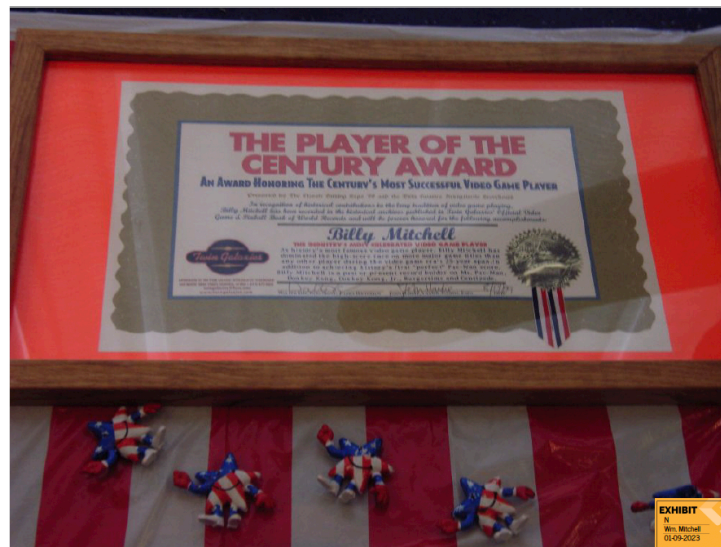


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27 8. At deposition Plaintiff authenticated the picture of another Namco plaque with Pac-
28 Man (the “Alternate Namco Plaque”) and testified that he received it from Namco and claimed

1 that it was different from the Namco Player of the Century Plaque he was holding on stage with
2 Mr. Nakamura and the nine models. [See Exhibit 1 (Mitchell Depo., 22:18-23:10).] The text of
3 the Alternate Namco Plaque is legible and nowhere does it say Player of the Century on it. I have
4 attached a true and correct copy of my translation to the Compendium of Evidence as Exhibit 23.
5 A true and correct copy of the Alternate Namco Plaque is attached to the Compendium of Evidence
6 as Exhibit 8, and reproduced below:



15 9. At deposition Plaintiff authenticated a photograph of the Day Player of the Century
16 Award. [See Exhibit 1 (Mitchell Depo., 29:22-31:21).] A true and correct copy of the Day Player
17 of the Century Certificate is attached to the Compendium of Evidence as Exhibit 9, and is
18 reproduced below:



1 10. At deposition Walter Day authenticated a picture from the 1999 Tokyo Game Show
2 of “Billy Mitchell receiving the video game player of the century” award at Namco’s booth. [See
3 Exhibit 2 (Day Depo., 68:13-69:11).] The picture shows Plaintiff holding the Day Player of the
4 Century Award next to Day and Masaya Nakamura. A true and correct copy of this picture is
5 attached to the Compendium of Evidence as Exhibit 10, and is reproduced below:



15 EFFORTS TO PHYSICALLY INSPECT THE PLAYER OF THE CENTURY PLAQUE

16 11. Plaintiff was asked to produce the physical Namco Player of the Century Plaque
17 for inspection in request for production number 9. On August 22, 2022, he responded to request
18 number 9 that he cannot comply with the request because he “[...] donated all actual physical
19 awards or plaques obtained from his videogame career to the International Videogame Hall of Fame
20 located in Ottumwa, Iowa.”

21 12. As a follow-up, Plaintiff was asked to produce all awards he donated to the
22 International Video Game Hall of Fame in request for production number 231 – one of the
23 document requests at issue in this motion. Plaintiff responded on June 9, 2023 again that he was
24 unable to comply because he “donated all of the awards from his videogame career to the
25 International Videogame Hall of Fame in or about 2010.”

26 13. Plaintiff elaborated in his responses to special interrogatories numbers 120 and 121
27 certifying that Jerry Byrum has knowledge of the fact that he donated the Namco Player of the
28 Century Plaque to the International Video Game Hall of Fame in 2010. But when asked at

1 deposition who he donated the Namco Player of the Century Plaque to in 2010, Plaintiff responded
2 that he gave the plaque to either Jerry Byrum or Brian Cady. [See Exhibit 1 (Mitchell Depo.,
3 18:9-19:5).] He testified that the plaque was at the International Video Game Hall of fame as of
4 the date of his deposition. [Id.] Plaintiff also testified that a few months before his deposition, he
5 asked Mr. Byrum by telephone if he would send the Namco Player of the Century Play to him so
6 he could produce it in this litigation, to which Mr. Byrum responded “okay,” “I’ll let you know
7 what I find,” and “I’ll find it.” [Exhibit 1 (Mitchell Depo., 25:7-25, 43:2-13, & 44:13-25).]

8 14. I deposed Jerry Byrum pursuant to subpoena in the afternoon of June 26, 2023. To
9 do so, I domesticated a California subpoena through Iowa case no. FIF013270 filed in the County
10 of Polk styled as William James Mitchell vs Twin Galaxies LLC and arranged to have Mr. Byrum
11 personally served at his home in Des Moines, Iowa. Mr. Byrum was commanded to produce,
12 among other things, all awards, and picture of those awards, that Plaintiff donated to either him or
13 to the International Video Game Hall of Fame. He did not produce any documents at deposition.
14 Mr. Byrum testified that he did not have any documents responsive to the subpoena. [See Exhibit
15 3 (Byrum Depo., 9:21-10:2).] He testified that the International Video Game Hall of Fame does
16 not have anything from 2010. [Exhibit 3 (Byrum Depo., 16:11-17).] He testified that the
17 International Video Game Hall of Fame does not have the Namco Player of the Century Plaque.
18 [Exhibit 3 (Byrum Depo., 21:21-22:3).] He testified that Plaintiff has not given him any awards
19 and that the International Video Game Hall of Fame has not received any donations from Plaintiff
20 during his tenure as president of the organization which started in 2019. [Exhibit 3 (Byrum Depo.,
21 11:4-12:19 & 28:6-24).] Mr. Byrum testified that the International Video Game Hall of Fame
22 owns “very few items that were given to them by myself and other close to me in recent years,”
23 and that he was not aware of any donations of awards by Plaintiff. [Exhibit 3 (Byrum Depo., 11:4-
24 12:19 & 28:6-24).] He also testified that Plaintiff has not asked him to send to Plaintiff any of the
25 awards Plaintiff donated to the association. [Exhibit 3 (Byrum Depo., 14:1-15 & 22:4-9).]

26 15. I subpoenaed Brian Cady to sit for deposition and to produce documents. I deposed
27 Mr. Cady on July 5, 2023. He was asked to produce all communications with Plaintiff and to
28 produce all awards donated to him or the International Video Game Hall of Fame by Plaintiff. Mr.

1 Cady did produce recent text message communications, but did not produce any awards. He
2 testified that Plaintiff did not donate any plaques or awards to him in 2010, or ever for that matter.
3 [See Exhibit 6 (Cady Depo., 24:22-25-9).] He testified that he did not have any position with the
4 International Video Game Hall of Fame in 2010 and that he was only an inductee. [Exhibit 6
5 (Cady Depo., 13:13-24).]

6 16. To date, Plaintiff has refused to produce the Namco Player of the Century Plaque
7 for Defendant's inspection.

8 DISCOVERY OF THE ALLEGED NAMCO PLAQUES

9 17. Mr. Day testified at deposition on the morning of Monday, June 26, 2023 that
10 Plaintiff showed him a picture of the Namco Player of the Century Plaque by email "last week."
11 [See Exhibit 2 (Day Depo., 56:5-72:25).] Mr. Day's counsel and Plaintiff's counsel objected to
12 my questions about where, when, and how Plaintiff provided Mr. Day with a picture of the Namco
13 Player of the Century Plaque asserting a joint defense privilege and Mr. Day was instructed not to
14 answer. [Id.] Mr. Day did testify that the picture of the Namco Player of the Century plaque
15 shown to him by Plaintiff in June 2023 said "video game player of the century" on it, and that is
16 "what lept [sic] out of the page." [See Exhibit 2 (Day Depo., 70:8-71:15).]

17 18. After Mr. Day's deposition, on June 26, 2023 at 3:38 p.m. I sent an email to
18 Plaintiff's counsel demanding production of the picture of the Namco Player of the Century Plaque
19 Mitchell showed Mr. Day and which Mr. Day testified regarding. I wanted the picture prior to
20 Mr. Byrum's deposition which was happening right afterward at 4:00 p.m.. Plaintiff's counsel
21 Kristina Ross sent me a picture depicting four awards – two being plaques from Namco, one being
22 the Day Player of the Century Award, and the other being a trophy (the "June 2023 Picture"). The
23 filename as provided to me by Ms. Ross is "IVGHOF.jpeg." Ms. Ross told me during Mr.
24 Byrum's deposition that her client had provided her with the June 2023 Picture earlier that day. I
25 provided the June 2023 Picture to Defendant's expert to perform a comparative analysis against
26 other examples of the Namco plaques in the public domain. A true and correct copy of my June
27 26, 2023 email to Ms. Ross and her response with the June 2023 Picture she produced is attached
28

1 to the Compendium of Evidence as Exhibit 11. A true and correct copy of the picture reflected in
2 the filename “IVGHOF.jpeg.” is reproduced below:



11 19. I questioned Mr. Byrum about the June 2023 Picture at his deposition. He testified
12 that he did not recognize the photo nor did he recognize the Namco awards in the photo and he
13 did not know who took the photo. [See Exhibit 3 (Byrum Depo., 16:16-17:14).]

14 20. Ms. Ross introduced Exhibit D at Mr. Byrum’s deposition which appeared to be
15 part of an email chain from Plaintiff to Laura Carrell, John Grunwald, and Jerry Byrum. Mr.
16 Byrum testified that he did not receive the email reflected in Exhibit D. [See Exhibit 3 (Byrum
17 Depo., 33:10-24).] A true and correct copy of Exhibit D to Mr. Byrum’s deposition is attached to
18 the Compendium of Evidence as Exhibit 12.

19 21. Through extensive research and investigation, right before the Fourth of July
20 holiday, I was able to determine that the photograph in “IVGHOF.jpeg” was likely taken by Isaiah
21 TriForce Johnson at the AmericInn in Ottumwa, Iowa. I was able to link Isaiah TriForce Johnson
22 – who I know to be an associate of Plaintiff – because the laptop in the far right side of the screen
23 shows a YouTube video that Mr. Johnson commented on June 24, 2023. I was able to link the
24 hotel room to the AmericInn in Ottumwa, Iowa because I searched hotel review sites in Ottumwa,
25 Iowa and looked through thousands of pictures until I found a picture of a room the AmericInn
26 which shows the same art as the art on the wall of the IVGHOF.jpeg picture. Moreover, I knew
27 Mr. Johnson was staying in Ottumwa, Iowa between June 22 and 24th to attend an e-sports event
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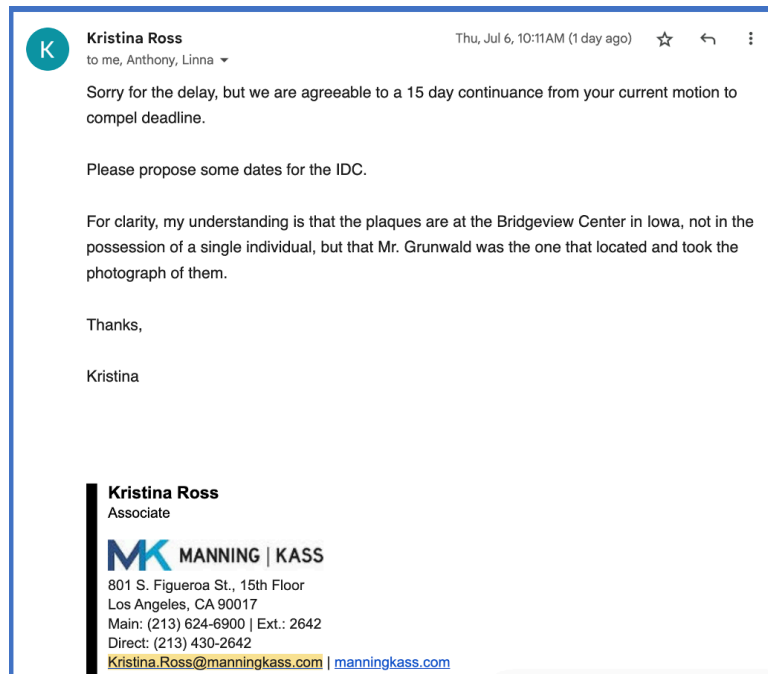
1 at the Bridge View Center (the “Event”) because he posted that he was going to attend the event
2 on his Twitter page, as reproduced below:



22. I know from my research in this case and the extensive discovery in this matter that Mr. Johnson resides out of the country in Jamaica. Accordingly, and because I believed that Mr. Johnson was going to imminently flee with the awards shown in the June 2023 Picture, on July 5, 2023, I prepared an *ex parte* application for an order compelling production of the Namco plaques. A true and correct copy of my July 5, 2023 *ex parte* application and supporting declaration are attached to the Compendium of Evidence as Exhibit 13.

23. I gave written notice of the *ex parte* application to Plaintiff’s counsel on July 5, 2023. Shortly after giving notice and prior to filing the application, I was contacted by Ms. Ross to meet and confer about the application. We spoke on the telephone and Ms. Ross told me that she and the supervising attorney Anthony Ellrod were in a bench trial through July 7, 2023. I explained to her that I was concerned that Mr. Johnson had the plaques and was going to take them to Jamaica. She told me on the phone that I was told at Mr. Byrum’s deposition that the plaques were at Bridge View Center in Ottumwa, Iowa. Based on Ms. Ross’ representation that the plaques were at the Bridge View Center and considering counsel’s trial schedule, I agreed to withdraw the *ex parte* application.

1 24. I memorialized my telephone call with Ms. Ross by email on July 5, 2023 at 6:48
2 to further our meet and confer efforts. Ms. Ross responded on July 6, 2023 at 10:11 a.m. and again
3 misrepresented to me that the plaques were at the Bridge View Center; and John Grunwald was
4 the one who located the plaques and took the photograph of them. A true and copy of my July 5,
5 2023 meet and confer email and Ms. Ross' July 6, 2023 response is attached to the Compendium
6 of Evidence as Exhibit 14. Ms. Ross' July 6, 2023 email is reproduced below:



18 25. I contacted Laura Carrell at the Bridge View Center on July 7, 2023 by email to
19 determine the location of the Namco plaques in the June 2023 Picture and to determine if she had
20 any higher resolution pictures of the Namco plaques. She responded on the same that she did not
21 and directed me to Jacob Pilkington to obtain CCTV footage from the Bridge View Center. She
22 and I also talked on the phone that day. John Grunwald was copied on the email. A true and
23 correct copy of my July 7, 2023 email is attached to the Compendium of Evidence as Exhibit 15.

24 26. I also contacted Jacob Pilkington on July 7, 2023. I spoke with him on the phone
25 about preservation of CCTV footage from the Bridge View Center during the time period from
26 June 20 – June 24, 2023. I prepared a litigation hold letter after our call and sent it to Mr.
27 Pilkington to ensure the CCTV was not destroyed. A true and correct of my July 7, 2023 litigation
28 hold letter is attached to the Compendium of Evidence as Exhibit 16.

1 27. On July 12, 2023, I contacted John Grunwald about sitting for deposition in this
2 matter. A few days later, I was contacted by Mr. Grunwald’s attorney and we ultimately arranged
3 for Mr. Grunwald’s deposition to take place on July 20, 2023 pursuant to a subpoena.

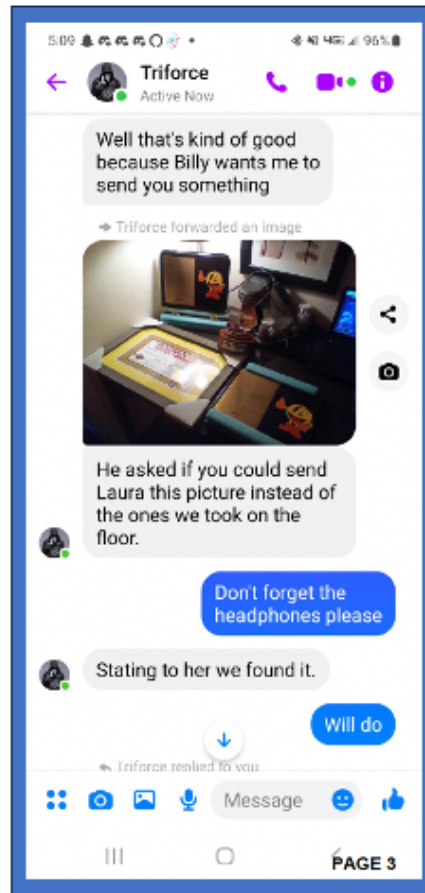
4 28. John Grunwald sat for deposition on July 20, 2023. I deposed him. He was
5 represented by counsel. He produced a number of documents in response to the subpoena
6 including communications between himself and each of Plaintiff, Isaiah TriForce Johnson, and
7 Laura Carrell.

8 29. Mr. Grunwald testified that he did not find the awards reflected in the June 2023
9 Picture. [See Exhibit 4 (Grunwald Depo., 10:22-12:20).] He testified that Isaiah TriForce Johnson
10 brought the awards to him at the Bridge View Center on June 23, 2023 in a black trash bag. [Id.]

11 30. Mr. Grunwald testified the Mr. Johnson left the Bridge View Center on June 23,
12 2023 sometime after 5:00 p.m. [Exhibit 4 (Grunwald Depo., 99:7-21).] Mr. Grunwald testified
13 that Mr. Johnson “went to get some stuff for Billy” at a local arcade owned by Jerry Byrum and
14 he returned to the tournament with a black trash bag full of the awards. [Exhibit 4 (Grunwald
15 Depo., 17:12-18:5 & 20:24- 22:18).] He testified that Mr. Johnson took him to a backroom at
16 approximately 7:30 p.m. to show him the four awards in the June 2023 Picture that were in the
17 black trash bag. [Exhibit 4 (Grunwald Depo., 12:24-13:10).] Mr. Johnson proceeded to take the
18 four awards out of the trash bag, placed them on the floor in the backroom and took pictures of
19 each award on his iPad. [Exhibit 4 (Grunwald Depo., 18:13-20:6).] Mr. Grunwald
20 contemporaneously called Plaintiff on speaker phone at 7:53 p.m. while Mr. Johnson was taking
21 pictures of the awards and Plaintiff told Grunwald he did not want to know where the awards were
22 found. [Id.]

23 31. Mr. Grunwald testified that he did nothing to find the awards. [See Exhibit 4
24 (Grunwald Depo., 20:18-23).] He also testified unequivocally that Ms. Ross’ July 6, 2023 email
25 stating that “Mr. Grunwald was the one that located and took the photograph of [Plaintiff’s
26 awards]” is incorrect. [Exhibit 4 (Grunwald Depo., 23:9-19).] With respect to the June 2023
27 Picture, Mr. Grunwald testified that it was taken in Mr. Johnson’s hotel room. [Exhibit 4
28 (Grunwald Depo., 52:23-54:2).]

1 32. Mr. Grunwald testified that Mr. Mitchell instructed him to send the June 2023
2 Picture to Laura Carrell and to tell her the awards were found. [See Exhibit 4 (Grunwald Depo.,
3 30:2-31:1).] Mr. Mitchell sent this instruction through Mr. Johnson as evinced by the Facebook
4 messenger communications between Johnson and Grunwald on June 24, 2023 at 9:53 a.m.
5 produced pursuant to subpoena, a true and correct copy of which is attached to the Compendium
6 of Evidence as Exhibit 17; and a copy of which is reproduced below:



21 33. Mr. Grunwald dutifully carried out Plaintiff's instructions and he sent Ms. Carrell
22 the June 2023 Picture by email telling her that the photos had been found with Plaintiff all the
23 while getting updates on the status of he "treasure hunt" and exactly which photo was sent to Ms.
24 Carrell. [See Exhibit 4 (Grunwald Depo., 44:21-46:18; 47:3-23; 47:25-48:11; 50:13-20 & 54:8-
25 55:2).] Mr. Grunwald also testified that Plaintiff instructed him to ask Ms. Carrell to send an email
26 stating that the awards had been found. [Exhibit 4 (Grunwald Depo., 56:25-57:18).] Mr.
27 Grunwald made the request but Ms. Carrell did not comply because the request was weird – he
28

1 thought so too. [Id.] A true and correct copy of the email chain between Grunwald and Carrell
2 related to the June 2023 Picture is attached to the Compendium of Evidence as Exhibit 18.

3 34. At the end of the event Mr. Grunwald took Mr. Johnson to the airport for Mr.
4 Johnson to fly to Fort Lauderdale where Mr. Mitchell lives. [See Exhibit 4 (Grunwald Depo.,
5 25:12-26:25 & 28:12-29:8).] Mr. Grunwald paid for the extra baggage fee for Mr. Johnson to fly
6 to Fort Lauderdale on June 25, 2023 with the awards. [Id.] Mr. Grunwald also kept Mr. Mitchell
7 apprised of the delays to Mr. Johnson's flight because the plan was for Mr. Mitchell to pick Mr.
8 Johnson up from the airport.

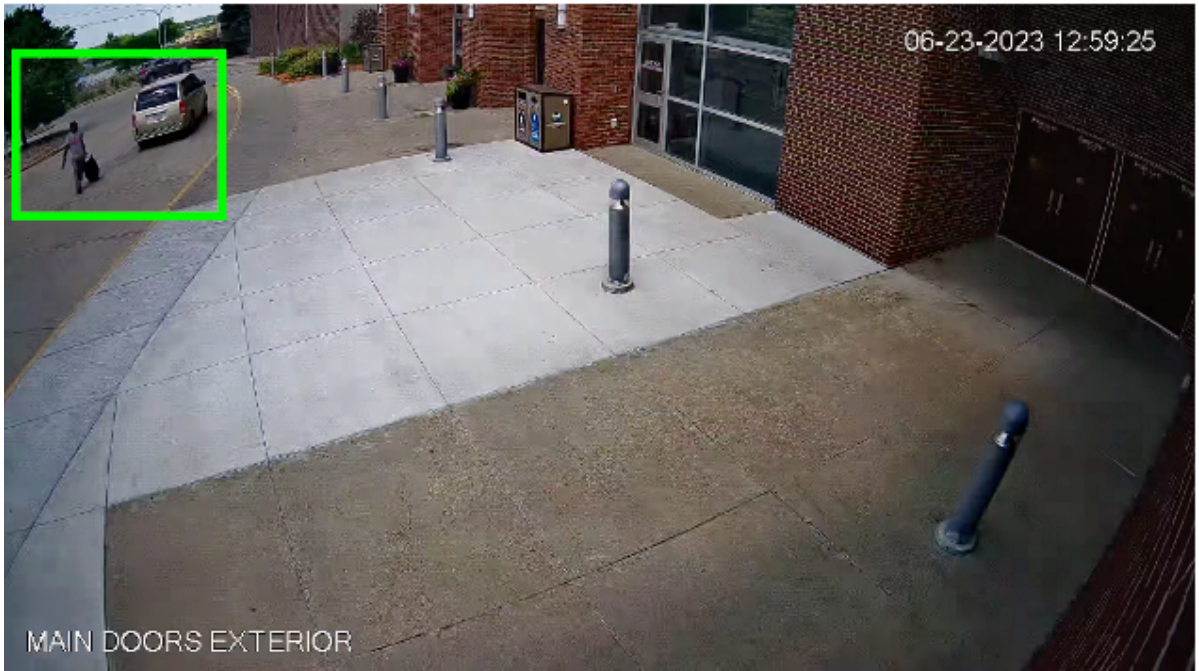
9 BRIDGE VIEW CENTER CCTV FOOTAGE OF THE PLAQUE DISCOVERY

10 35. Jacob Pilkington at the Bridge View Center produced CCTV footage from June 23,
11 2023. He produced approximately 100 clips of CCTV footage ranging in length from about fifteen
12 (15) minutes to five (5) hours. All of the still footage herein is from the Surveillance Footage
13 produced by Mr. Pilkington and authenticated in paragraphs 5 and 6 of his declaration filed
14 concurrently herewith and which I personally reviewed. I captured the still footage by playing
15 the Surveillance Footage that was authenticated by Mr. Pilkington and stopping the playback on a
16 frame I wanted to capture and then used my computer operating system to take a snapshot of my
17 screen which I then pasted into this declaration.

18 36. On September 4, 2023, I visited John Grunwald's Facebook site and found a picture
19 of Mr. Johnson at the Bridge View Center at the Event wearing a light grey shirt with a red logo,
20 a dark grey long sleeve undershirt, light colored pants, and dark shoes. I recognize Mr. Johnson
21 and Mr. Grunwald in the picture from my investigation in this matter The picture I found is
22 reproduced below:



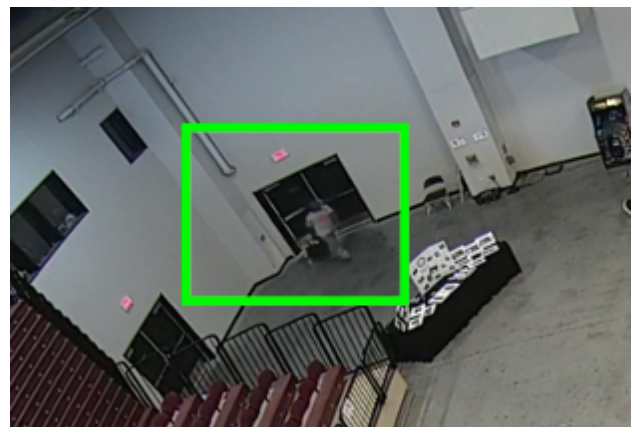
1 37. I reviewed surveillance footage from the Main Door Exterior and I captured Mr.
2 Johnson in the clothing described with a rolling duffle bag arriving at the Bridge View Center in
3 a gold van on June 23, 2023 at 12:59 p.m. in the footage below:



15 38. I reviewed surveillance footage from Expo A, and from the South Service Entry
16 and I captured Mr. Jonson entering the expo hall where the Event was being held through a
17 backdoor on June 23, 2023 at approximately 1:00 p.m. in the footage below:



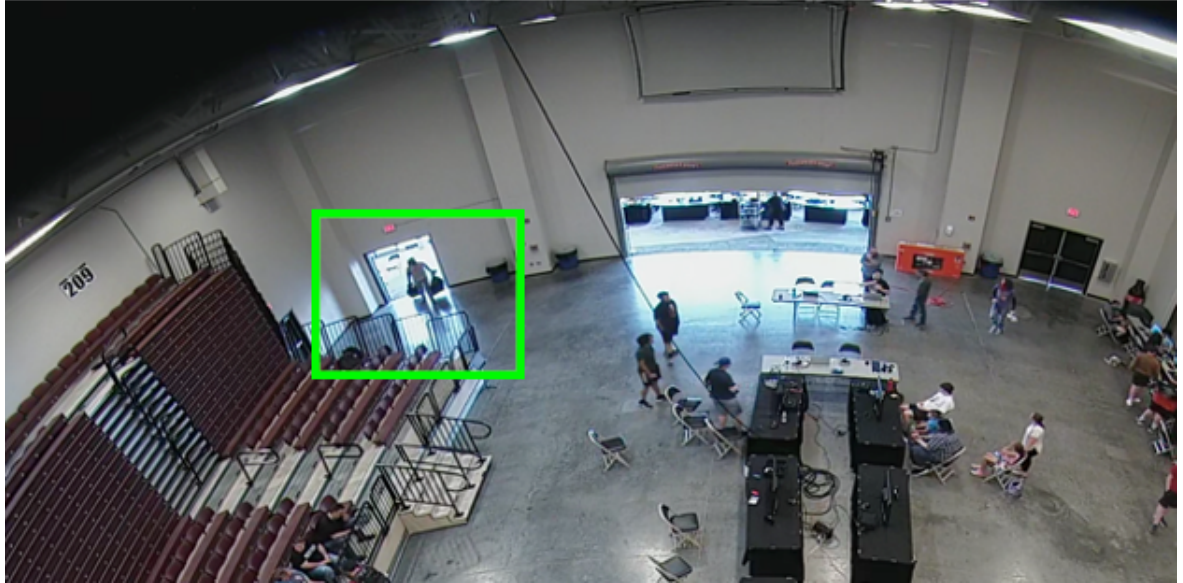
25 South Service Entry



26 Expo A – 1:00 p.m.

27
28 ///

1 40. I reviewed the surveillance footage from Expo A and I captured Mr. Jonson
2 entering the expo hall through the front entrance on June 23, 2023 at 7:47 p.m. carrying a black
3 trash bag and rolling his duffle bag, the footage is below:



14 41. I reviewed the surveillance footage from the South Service Entrance and I captured
15 Mr. Johnson carrying the black trash bag of awards and I captured him and Grunwald packing the
16 awards into a cardboard box on June 23, 2023 at 8:05 p.m. and 8:09 p.m. in the footage below:



///
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1 THE NAMCO PLAYER OF THE CENTURY PLAQUE IN THE PUBLIC DOMAIN

2 43. Plaintiff was asked to produce pictures of all awards he donated to the International
3 Video Game Hall of Fame in request for production number 232 – another of the document
4 requests at issue in this motion. Plaintiff responded on June 9, 2023 that he is “unable to comply
5 because the requested items if they ever existed no longer exist, or are no longer in his possession due
6 to the length of time that has passed since these photographs may have been taken.”

7 44. Despite his response to inspection demand number 232, Plaintiff testified at
8 deposition that “[...] there’s pictures of [the Namco Player of the Century Plaque] online.” [See
9 Exhibit 1 (Mitchell Depo., 17:3-21).] He also testified that there pictures of the Day Player of the
10 Century Award on the Internet as well. [Exhibit 1 (Mitchell Depo., 29:18-30:15).] Accordingly,
11 I searched online and found pictures of the Namco Player of the Century Plaque, the Alternate
12 Namco Plaque, and the Day Player of the Century Award.

13 45. In my investigation, I discovered that Plaintiff was at the 2000 Classic Gaming
14 Expo in Las Vegas and displayed both the Namco Player of the Century Namco Plaque and the
15 Day Player of the Century Award. I found a photo of Plaintiff at this event pointing to a table
16 where the these two awards are situated at the web URL
17 <http://www.arcaderestoration.com/media/Graphics/cge2000/billysmall.jpg> last accessed on
18 September 4, 2023. A true and correct copy of the photo of Plaintiff at the 2000 Classic Gaming
19 Expo with the two awards is attached to the Compendium of Evidence as Exhibit 19.

20 46. In my investigation, I discovered that Walter Day posted a picture of the Namco
21 Player of the Century Plaque displayed at a 2001 Twin Galaxies exposition at the Mall of America
22 in Minnesota on his Facebook page. Mr. Day admitted the genuineness of the photos in response
23 to Defendant’s request for admission. A true and correct copy of images of the Namco Player of
24 the Century Award as displayed in 2001 at the Mall of America are attached to the Compendium
25 of Evidence as Exhibit 20. I provided these photos to Mr. Gabler for his expert analysis.

26 47. In my investigation, I discovered Plaintiff was at the 2005 Classic Gaming Expo
27 in the United Kingdom and displayed both the Alternate Namco Plaque and the Day Player of the
28 Century Award. I found several pictures of Plaintiff and the Alternate Namco Plaque at this event

1 at the web URL <http://www.jammajup.co.uk/classic-gaming-expo-2005>, last accessed on
2 September 4, 2023. The photos of the awards and the specific URL associated with the photos
3 are attached to the Compendium of Evidence as Exhibit 21. I provided photos of the Alternate
4 Namco Plaque to Mr. Gabler for his expert analysis.

5 48. In my investigation, I discovered that Plaintiff brandished the Namco Player of the
6 Century Plaque in the 2006 movie *Chasing Ghosts: Beyond the Arcade*. I found the movie on
7 YouTube at the URL https://www.youtube.com/watch?v=tA_iTvKYATw last accessed on
8 September 4, 2023. I found a scene where Plaintiff holds the Namco Player of the Century Plaque
9 at timestamp 19:25 and captured the image. A true and correct copy of the still image from
10 *Chasing Ghosts: Beyond the Arcade* at timestamp 19:25 where Plaintiff is holding the Namco
11 Player of the Century Plaque is attached to the Compendium of Evidence as Exhibit 22. I provided
12 this image to Mr. Gabler for his expert analysis.

13 49. In my investigation, I discovered that Plaintiff points to what appears to be the
14 Namco Player of the Century Plaque in the 2007 movie *The King of Kong: A fistful of Quarters*.
15 I produced a copy of this movie to Plaintiff in discovery. I found a scene where Plaintiff points to
16 the Namco Player of the Century Plaque at timestamp 7:59 and captured the image. A true and
17 correct copy of the still image from *The King of Kong: A fistful of Quarters* at time stamp 7:59
18 where Plaintiff points to the Namco Player of the Century Plaque is attached to the Compendium
19 of Evidence as Exhibit 24. I provided this image to Mr. Gabler for his expert analysis.

20 FALSE DISCOVERY STATEMENTS BY PLAINTIFF

21 50. Plaintiff testified at his deposition that he did not receive any portion of the
22 \$200,000 that Defendant's predecessor HD Films, Inc. paid Walter Day to purchase the rights to
23 Twin Galaxies. [See Exhibit 1 (Mitchell Depo., 308:18-23).] Plaintiff's special interrogatory
24 responses to interrogatories nos. 156-160 are in accord that there are no documents related to any
25 payment from a Walter Day or Twin Galaxies, Inc. to Plaintiff. A true and correct copy of
26 Plaintiff's responses to Defendant's special interrogatories, set 3 is attached to the Compendium
27 of Evidence as Exhibit 25.

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1 51. Walter Day, however, testified that he paid \$33,000.00 of the purchase price for
2 Twin Galaxies directly to Plaintiff in 2018, and Plaintiff asked Mr. Day to keep this fact a secret
3 after the two were sued in Defendant’s cross-complaint in 2021. [See Exhibit 2 (Day Depo., 123:3-
4 136:6).]

5 52. Plaintiff testified that he was not a director of the International Video Game Hall
6 of Fame. [See Exhibit 1 (Mitchell Depo., 32:5-18).] Walter Day testified that he founded the
7 International Video Game Hall of Fame in 2009 and that Plaintiff has been a member of the board
8 since 2010 or 2011. [Exhibit 2 (Day Depo., 203:8-205:2 & 208:11-16).] Jerry Byrum testified
9 similarly that Plaintiff is currently on the board of directors for the Hall of Fame and has been
10 since Mr. Byrum assumed the post in 2019. [Exhibit 3 (Byrum Depo., 18:15-22).]

11 53. Plaintiff testified that Josh Ryan from Gamestop installed a VCR and convertor
12 board to record as a direct feed the output of his *Donkey Kong* gameplay and world record
13 performance at the 2007 Florida Association of Mortgage Brokers convention. [See Exhibit 1
14 (Mitchell Depo., 142:21-144:8 & 151:9-15).]

15 54. Josh Ryan, who was subpoenaed by Plaintiff, testified that he did not install any
16 VCR to the *Donkey Kong* arcade machine at the 2007 convention. [See Exhibit 5 (Ryan Depo.,
17 45:14-25).] In fact, he testified that there was no converter board installed in the game machine,
18 no RCA video recording cable coming from the machine to hook a VCR up to after he locked the
19 machine, and to be sure he testified there was absolutely no way for the video game play coming
20 from the machine at the 2007 Florida Association of Mortgage Brokers convention in Florida to
21 be recorded to a VCR. [Exhibit 5 (Ryan Depo., 65:18-66:17 & 67:8-68:12).]

22 55. Plaintiff testified at a deposition that he “never once” helped Carlos Pineiro in his
23 testing of the claims against Plaintiff’s *Donkey Kong* scores. [See Exhibit 1 (Mitchell Depo.,
24 205:4-8).] This answer was consistent with his responses to Defendant’s first set of requests for
25 admission where he certifies that he “neither participated in Carlos Pineiro’s technical testing nor
26 did Responding Party play *Donkey Kong* for the purpose of assisting Mr. Pineiro,” and that he
27 “has never played *Donkey Kong* for the purpose of helping anyone test the validity of the claims
28 against his *Donkey Kong* score performances that are at issue in this case.” A true and correct copy

1 of Plaintiff's response to Defendant's first set of requests for admission is attached to the
2 Compendium of Evidence as Exhibit 26.

3 56. Plaintiff was shown a video at his deposition where he was playing Donkey Kong for
4 Carlos Pineiro to perform "video tests." [See Exhibit 1 (Mitchell Depo., 211:9-212:24.)]

5 DAY DECLARATIONS WRITTEN BY PLAINTIFF'S SON

6 57. Plaintiff produced the July 24, 2019 declaration of Walter Day in discovery as
7 document marked MITCHELL0001776. A true and correct copy of Walter Day's July 24, 2019
8 declaration is attached to the Compendium of Evidence as Exhibit 27.

9 58. Walter Day testifies, under penalty of perjury, in paragraph 7 of the declaration that
10 Josh Ryan from Gamestop installed "recording apparatus" to the *Donkey Kong* machine Mr. Ryan
11 setup at the 2007 Florida Association of Mortgage Brokers convention in Florida where Plaintiff
12 achieved and allegedly recorded one of the score performances at issue in this case. [See Exhibit
13 2 (Day Depo., 92:10-95:7).] Mr. Day testified that Plaintiff's son wrote the declaration. [Id.]

14 59. Plaintiff produced the June 21, 2020 declaration of Walter Day in discovery as
15 document marked MITCHELL000009-14. In paragraph 8 of this declaration, Day ascribed the
16 following quote to Jason Hall: "How will you feel when I announce that Billy [Mitchell] cheated?"
17 A true and correct copy of Walter Day's June 21, 2020 declaration is attached to the Compendium
18 of Evidence as Exhibit 28. Mr. Day testified that Plaintiff's son wrote the June 2020 declaration.
19 [See Exhibit 2 (Day Depo., 146:21-158:3).] He also testified that Mr. Hall did not say the quoted
20 words above. What Day testified to is that Mr. Hall asked was "how it would affect [Walter Day]
21 if Billy was determined to have cheated."

22 60. A true and correct copy of this Court's order denying Defendant's anti-SLAPP
23 motion is attached to the Compendium of Evidence as Exhibit 29.

24 61. As an side and an important note, Walter Day testified that he was interviewed with
25 Plaintiff and his son by the producer of *The King of Kong: A Fistful of Quarters* for a new film
26 and the parties discussed the lawsuit with the producer on camera. [See Exhibit 2 (Day Depo.,
27 21:7-38:11).]

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1 action/FEHA suit, settling another case for \$2,000,000, and trying a four-week securities fraud
2 action in the Orange County Superior Court, Complex Division. I know from my industry contacts
3 and from meeting with my colleagues and by reading the latest information on attorney's fees that
4 the reasonable hourly rate for an attorney with my fourteen years of experience is \$625.00.

5 70. I have spent over 131 hours seeking the discovery that Plaintiff has failed to
6 produce. My hours are broken down below, in summary fashion and if the Court so wishes, I will
7 provide detailed time records to prove my time.

8 a. Depositions: I spent 32 hours on the depositions necessary to prove plaintiffs
9 fraud a in this case. I spent 18 hours preparing for Plaintiff's deposition, and
10 6.5 hours taking it for a total of 24.5 hours – with ¼ of that time, or 6 hours,
11 being dedicated to seeking out information related to this motion. I spent 6
12 hours preparing for, securing, and taking Jerry Byrum's deposition. I spent 12
13 hours preparing for and taking John Grunwald's deposition. I spent 3 hours
14 preparing for and taking the deposition of Brian Cady. I spent 4 hours preparing
15 for and taking the deposition of Walter Day on the matters relevant to this
16 motion. I spent 1 hour on the deposition of Josh Ryan as it relates to this matter.

17 b. Meet and Confer Efforts: I spent 12 hours in the month of July 2023 meeting
18 and conferring with Plaintiff's counsel on the production of the plaques. This
19 time was spent sending multiple emails to Plaintiff's counsel demanding
20 production of the plaque, telephone calls with Kristina Ross, sending and
21 responding to meet and confer correspondences, drafting the IDC statement,
22 and preparing and appearing at the informal discovery conference.

23 c. Investigation: I spent 28 hours investigating Plaintiff's claims regarding
24 discovery of the Namco plaques. I spent 6 hours investigating the June 2023
25 Picture to determine its origins by searing through YouTube videos matching
26 the one shown in the picture on the laptop and sifting through hotel review sites
27 to find the hotel room where the June 2023 photo was taken. I spent 22 hours
28 reviewing 87 CCTV video clips provided to me by Jacob Pilkington at the

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Bridge View Center to find relevant footage of Plaintiff staging discovery of the Namco plaques.

d. Motion Drafting: I spent 59 hours drafting the instant motion and supporting documents. First, I spent 7 hours drafting the July 5, 2023 *ex parte* application and supporting declaration that was not filed because Plaintiff's counsel misrepresented to me the location of the plaques. I spent 14 hours researching and drafting the motion itself. I spent 16 hours reviewing and annotating the six deposition transcripts I used to support the motion. I spent another 17 hours drafting my declaration and 3 hours formatting the documents attached to the compendium of evidence. I spent 1.5 hour drafting the Pilkington declaration, .5 hours drafting the Carrell declaration, and 3 hours drafting the Gabler declaration.

71. The 131 hours that I spent obtaining the relief requested in this order is reasonable given the time, effort and energy I put into the investigation and the quality of work presented here. In sum, the attorney's fees that Defendant has incurred in this matter is equal to \$81,875.00.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this fifth day of September, 2023 at Los Angeles, California.



David A. Tashroudian

PROOF OF SERVICE

Case No. 19STCV12592

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 **TASHROUDIAN LAW GROUP, APC**, located 12400 Ventura Blvd., Suite 300, Studio City, California 91604. On September 5, 2023, I served the herein described document(s):

DECLARATION OF DAVID A. TASHROUDIAN

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Woodland Hills, California addressed as set forth below.

X E-File - by electronically transmitting the document(s) listed above to tony.ellrod@manningkass.com & rwc@robertwcohenlaw.com pursuant to an agreement of the parties.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

by overnight courier of the document(s) listed above to the person(s) at the address(es) set forth below.

Anthony J. Ellrod *tony.ellrod@manningkass.com*
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Attorneys for Cross-Defendant
WALTER DAY

I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 6, 2023 at Woodland Hills, California.



Mona Tashroudian