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10 Attorneys for Twin Galaxies, LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 WILLIAM JAMES MITCHELL,

14 Plaintiff,

15 v.

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

17 Defendants.

18 AND RELATED CROSS-ACTION

Case No. 19STCV12592

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

**COMPENDIUM OF EVIDENCE RE
TASHROUDIAN DECLARATION**

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

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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COMPENDIUM OF EVIDENCE

Plaintiff Twin Galaxies, LLC submits this compendium of evidence in support of its Motion to Compel William James Mitchel to produce of documents.

Respectfully submitted,

Dated: September 5, 2023

TASHROUDIAN LAW GROUP, APC

By: /s/ David Tashroudian, Esq.
David Tashroudian, Esq.
Mona Tashroudian, Esq.
Attorneys for Twin Galaxies, LLC

EXHIBIT 1

William James Mitchell
January 09, 2023

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Case No. 19STCV12592
HONORABLE WENDY CHANG (Dept. 36)

WILLIAM JAMES MITCHELL,

Plaintiff,

vs.

TWIN GALAXIES, LLC; and Does 1-10,

Defendants.

TWIN GALAXIES, LLC,

Cross-Complainant,

v.

WILLIAM JAMES MITCHELL; WALTER DAY;
and Roes 1-25,

Cross-Defendants.

VIDEOTAPED
DEPOSITION OF WILLIAM JAMES MITCHELL
Pages 1 through 376

Monday, January 9, 2023
10:01 a.m. - 6:32 p.m.
2440 West Cypress Creek Road
Fort Lauderdale, Florida

Stenographically Reported By:
JOYCE B. GIACOMA
Court Reporter

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9 BY: ANTHONY J. ELLROD, ESQ.
10 KRISTINA P. ROSS, ESQ. (Via Zoom)

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17 BY: DAVID TASHROUDIAN, ESQ.

18 ALSO PRESENT: JACE HALL
19 JOSEPH LANGSAM, Videographer

20 I N D E X

21 WILLIAM JAMES MITCHELL PAGE
22 Direct by Mr. Tashroudian 6
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24
25

1 BY MR. TASHROUDIAN:

2 Q. All right. Do you know, Mr. Mitchell, if any
3 objection was lodged to this notice of deposition?

4 MR. ELLROD: What do you mean by lodged?

5 BY MR. TASHROUDIAN:

6 Q. Did you object to the notice of deposition,
7 Mr. Mitchell?

8 MR. ELLROD: We filed a response to the -- to
9 the notice of deposition that included objections.

10 MR. TASHROUDIAN: All right. We can get to
11 this later.

12 BY MR. TASHROUDIAN:

13 Q. This stack of documents that your attorney
14 produced, Mr. Mitchell, is -- are these all of the
15 documents that are responsive to the notice of
16 deposition?

17 MR. ELLROD: That's all the documents that
18 we're producing on his behalf in response to the
19 notice of deposition.

20 BY MR. TASHROUDIAN:

21 Q. Mr. Mitchell, has Namco awarded you any award?

22 A. Yes.

23 Q. Okay. And what award is that?

24 A. Well, one was Player of the Century. And the
25 other one basically reflected the world's best Pac-Man

1 player. They've given me accolades at different events
2 such as their arcade in Chicago as well as in Tokyo.

3 Q. When did you receive the Player of the Century
4 award from Namco?

5 A. 1999.

6 Q. Was that September 17, 1999?

7 A. Yeah. You know it might have been the 18th,
8 but it was on or about the 17th.

9 Q. How did that -- how did that award look, the
10 Player of the Century one?

11 A. It was about the size of this notepad, I don't
12 know, what is that, about ten by eight, and dark, had a
13 Pac-Man, had a message written on it and signed by the
14 founder, president, CEO, whatever, Masaya Nakamura.

15 Q. Was it a plaque?

16 A. It was on a piece of wood. I'm not an expert.
17 So was it a plaque? It was on a piece of wood with
18 Pac-Man doing this, like...

19 MR. ELLROD: Thumbs up.

20 THE WITNESS: Yeah. I mean there's pictures
21 of it online.

22 BY MR. TASHROUDIAN:

23 Q. And where did it say -- did it say -- what did
24 it say on the front?

25 A. Oh, you want me to give it verbatim, I can't

1 give it to you verbatim. It recognized me as player,
2 my accomplishments, what I had done, my contribution to
3 Pac-Man, first perfect score. I mean, it's -- it's
4 online. You can see it.

5 Q. Did it say Player of the Century?

6 A. It said Player of the Century on it.

7 Q. And you're sure of that?

8 A. I'm sure of that.

9 Q. Where is that plaque located today?

10 A. It would be, I believe it's at the Hall of
11 Fame.

12 Q. Where's that?

13 A. That's in Ottumwa, Iowa.

14 Q. Is that the International Video Game Hall of
15 Fame?

16 A. That is.

17 Q. Okay. How did it get there?

18 A. Well, it, maybe it was 2010 that I initially
19 donated it there. To be honest, I keep very little of
20 what it is I receive. I'm not a --

21 MR. ELLROD: Just answer the question.

22 THE WITNESS: -- sentimental.

23 Okay. I donate most of my stuff there.

24 BY MR. TASHROUDIAN:

25 Q. All right. And who did you donate it to?

1 A. The International Video Game Hall of Fame.

2 Q. Was there anyone in particular that you gave
3 the doc -- the plaque to?

4 A. Well, at the time, Brian Cady was there, and
5 Jerry Byrum was there. I don't know which one.

6 Q. Do you know if Byrum -- Brian Cady is still
7 there?

8 A. No, I don't know.

9 Q. What about Jerry Byrum, do you know if he's
10 still there?

11 A. He is still there because he's the one that's
12 communicating.

13 Q. Communicating with you?

14 A. No, he sends out messages that I see online.

15 Q. And you receive communications from Jerry
16 Byrum?

17 A. No, I don't.

18 Q. You've never received one?

19 A. Have I never?

20 Q. Yes.

21 A. Yes, I have.

22 Q. And when was the last time you received a
23 communication from him?

24 A. Months ago.

25 Q. What was that about?

1 MR. ELLROD: I see three dots.

2 MR. TASHROUDIAN: Yes.

3 MR. ELLROD: No. Rotate left, rotate right,
4 insert blank page, insert from files, scan page and
5 delete.

6 MR. TASHROUDIAN: Maybe you can hand it to me
7 and I'll just find the exhibit.

8 MR. ELLROD: Are we not going to have --

9 MR. TASHROUDIAN: Paper, no.

10 MR. ELLROD: -- copies?

11 MR. TASHROUDIAN: I'll send you these, sure.

12 MR. ELLROD: How are they getting to the court
13 reporter?

14 MR. TASHROUDIAN: I'll email them to her.

15 BY MR. TASHROUDIAN:

16 Q. All right.

17 (Exhibit K to be marked for Identification.)

18 BY MR. TASHROUDIAN:

19 Q. Do you see this Exhibit K, Mr. Mitchell?

20 A. Oh yeah.

21 Q. Can you describe, too, what this is?

22 A. That was on stage, whether it was at 17th or
23 18th of September. That's Masaya Nakamura and Namco
24 cheerleaders at the Tokyo Game Show.

25 Q. Is this the Player of the Century plaque that

1 you're holding there?

2 A. I believe it is.

3 Q. All right. Who else is on stage with you
4 there?

5 A. Masaya Nakamura.

6 Q. All right. Where did this picture take place?

7 A. On stage at the Tokyo game show.

8 Q. In what year?

9 A. 1999.

10 Q. All right.

11 You know, there -- there should be a -- a done
12 at the top, do you see that there? All right. Now --
13 now, can you click on Exhibit L? You see that there?

14 A. Yes.

15 Q. All right.

16 (Exhibit L to be marked for Identification.)

17 BY MR. TASHROUDIAN:

18 Q. Can you tell us what this is?

19 A. This is a plaque I received from them. That's
20 the Pac-Man guy that I talk about. And this is the one
21 that talks about Pac-Man and how it's such a part of
22 the culture, how I achieved the first perfect score.

23 Q. Is this your Player of the Century plaque?

24 A. No, this is a different one.

25 Q. Is this the one that you were holding in the

1 picture?

2 A. No, it's not.

3 Q. So you were given -- given two different
4 plaques?

5 A. Two awards from Namco.

6 Q. All right.

7 A. Just like I said earlier.

8 Q. And this is one of them and the other one is
9 Player of the Century?

10 A. That's correct.

11 Q. Do you have any copies of the Player of the
12 Century plaque?

13 A. No.

14 Q. Any pictures of it?

15 A. I guess no, I'd have to look for them. I
16 don't know if I do.

17 Q. Have you looked for any of those pictures?

18 A. I haven't found any to this point.

19 Q. Have you looked for them is my question?

20 A. Yeah, I did a couple months back.

21 Q. Okay. And where'd you look for them?

22 A. Through emails, I asked a couple different
23 people if they had them.

24 Q. Who did you ask?

25 A. Well, I asked my wife if she had ever taken

1 any pictures. I think I asked Walter Day. That was
2 all.

3 Q. And what about Jerry Byrum, did you ask him?

4 A. Oh, no, I didn't.

5 Q. All right. Did you think to ask him?

6 A. No.

7 Q. Why not?

8 A. Why would he have pictures of them?

9 Q. Well, he has the -- the plaque at the
10 International Video Game Hall of Fame; is that right?

11 A. Yeah. You asked me about pictures.

12 Q. Okay. Did you ask him to take a picture of
13 the plaque for you?

14 A. No, I didn't.

15 Q. Could you have done that?

16 A. Could I have?

17 Q. Yes.

18 A. Of course I could have.

19 Q. Is there a reason that you didn't?

20 A. Yes, because you asked me if I had some. I
21 don't have them. You didn't ask me if I could go out
22 and research them.

23 MR. ELLROD: You don't need to -- you don't
24 need to respond anymore.

25 THE WITNESS: Okay.

1 BY MR. TASHROUDIAN:

2 Q. Have you asked Jerry for a copy of the plaque?

3 MR. ELLROD: For a copy of the plaque or
4 photograph of the plaque?

5 MR. TASHROUDIAN: Let's strike the question.

6 BY MR. TASHROUDIAN:

7 Q. Have you asked Jerry to send you the plaque so
8 you could produce it in this litigation?

9 A. Actually, I think I did.

10 Q. And what did he say?

11 A. He said, Okay, I'll look for it.

12 Q. And has he looked -- has he looked for it?

13 A. I don't know. You'd have to ask Jerry.

14 Q. When did you ask him?

15 A. We talked about this months ago.

16 Q. How did you talk to him?

17 A. On the telephone.

18 Q. All right. What number did you call?

19 A. Speed dial ten, I think.

20 Q. And is that his cell phone number, speed dial
21 ten?

22 A. Yeah, I guess it's his cell number.

23 Q. Okay. And what did he say to you?

24 A. He said okay. He said -- he said -- he said
25 I'll let you know what I find.

1 Q. Did you send him any messages?

2 A. No, I would not have sent him any messages.

3 Q. What about email communications, did you send
4 him any emails asking about the photo?

5 A. No, I did not.

6 Q. So I just want to be -- be clear. This is not
7 the -- the plaque that you were holding in that picture
8 with the women on the stage; is that right, this
9 Exhibit L?

10 A. Can I look -- can I look at the other one
11 again --

12 Q. Yeah.

13 A. -- for clarity?

14 Q. Go back.

15 MR. ELLROD: What was the other exhibit?

16 THE WITNESS: Oh, right here, I see it.

17 MR. TASHROUDIAN: K.

18 THE WITNESS: No, I don't, I don't believe so.

19 BY MR. TASHROUDIAN:

20 Q. That's a different plaque?

21 A. When I was on stage there were two different
22 plaques, and then there was a framed award as well, and
23 that's what he handed around the stage. You're asking
24 me if this is A or B, or is it B and A, or --

25 MR. ELLROD: I think the question is whether

1 the -- the -- the plaque that you were holding on

2 the stage in Exhibit L -- I don't see the Exhibit

3 K --

4 THE WITNESS: I don't believe it's the same

5 one, to answer your question.

6 MR. ELLROD: That's all.

7 BY MR. TASHROUDIAN:

8 Q. So there's a different -- there's a different
9 plaque then?

10 A. There's two plaques, that's correct.

11 Q. Understood.

12 And one says Player of the Century?

13 A. One speaks more Player of the Century, okay,
14 and not of Pac-Man and its contribution to the culture.

15 Q. All right. That --

16 A. You might say one is more about me.

17 Q. That wasn't my question. My -- my question is
18 the other one says Player of the Century, correct?

19 A. Yes.

20 Q. And that was issued to you by Namco?

21 A. By Namco.

22 Q. All right. And it says Namco on it, right?

23 A. It does say Namco on it.

24 Q. Okay. And that was given to you -- given to
25 you by Mr. Nakamura?

1 A. That is correct.

2 Q. At -- at the same Tokyo game show?

3 A. That is correct.

4 Q. On the stage, correct?

5 A. On the stage and a private ceremony in the
6 back prior to going on stage.

7 Q. So which one -- which plaque did you receive
8 in the private ceremony?

9 A. Both.

10 Q. Okay. And who was there?

11 A. Masaya Nakamura --

12 Q. Uh-huh.

13 A. -- other Namco people.

14 Q. What about Walter Day, was he present?

15 A. He was not there. Walter --

16 MR. ELLROD: You've answered.

17 BY MR. TASHROUDIAN:

18 Q. You also told me that there's a framed plaque?

19 A. That is correct.

20 Q. Framed certificate; is that right?

21 A. No, I didn't tell you that.

22 Q. Okay. So --

23 A. But if you'd like to ask me, I'll answer.

24 Q. Yes.

25 Was there a framed award that you also

1 received?

2 A. Yes, there was.

3 Q. Okay. And who -- who gave you that?

4 A. That was from the Classic Gaming Expo Show and
5 it was on stage with Walter Day and John Hardy.

6 Q. In Tokyo?

7 A. No, in Las Vegas.

8 Q. And what did that framed award say?

9 A. Biggest headline, Player of the Century.

10 Q. So you received two Player of the Century
11 awards?

12 A. Yeah. I believe you have a copy of that as
13 well.

14 Q. And why do you believe that?

15 A. Because it's all over the internet.

16 Q. Okay. So you received one from Namco, and
17 then you received another plaque from Namco, the one
18 that I showed you, and then you received the Player of
19 the Century award given to you by Walter Day?

20 A. So I've -- I have received three, you are
21 correct.

22 Q. All right. So I want to -- I want you to look
23 at Exhibit N.

24 (Exhibit N to be marked for Identification.)

25 BY MR. TASHROUDIAN:

1 Q. Do you see that?

2 A. Like I said, I believe -- Like I said, I
3 believe --

4 MR. ELLROD: Just answer questions, okay?

5 THE WITNESS: Understood.

6 BY MR. TASHROUDIAN:

7 Q. Now, what is this document, sir?

8 A. Player of the Century award. If I can zoom in
9 a little. Very good. Can't -- I can't read it, but I
10 recognize it.

11 MR. ELLROD: Okay.

12 THE WITNESS: That's all.

13 BY MR. TASHROUDIAN:

14 Q. Is that the Player of the Century award that
15 was awarded to you by Walter Day?

16 A. By Walter Day of Twin Galaxies --

17 Q. Yeah.

18 A. -- and John Hardy at the Classic Gaming Expo.

19 Q. All right. So you received two Player of the
20 Century awards, right?

21 A. That is correct.

22 Q. Okay. Now, if you wanted to go to the
23 International Video Game Hall of Fame and retrieve your
24 plaque from Namco that says Player of the Century on
25 it, could you do that?

1 MR. ELLROD: Objection, calls for speculation.

2 BY MR. TASHROUDIAN:

3 Q. You can answer the question.

4 A. I don't know.

5 Q. Are you associated with the video game --

6 International Video Game Hall of Fame at all?

7 A. I support them however I can.

8 Q. You're a director, aren't you?

9 A. You're wrong. I am not a director.

10 Q. Have you ever been a director?

11 A. No.

12 Q. I'd like to direct your attention at -- to

13 Exhibit O over there. Could you pull that up?

14 (Exhibit O to be marked for Identification.)

15 THE WITNESS: What does it matter if it says

16 I'm the director?

17 MR. ELLROD: Answer the question only, okay?

18 THE WITNESS: Okay.

19 MR. ELLROD: I don't know how to run this
20 thing.

21 MR. TASHROUDIAN: It was working a lot easier
22 or better yesterday.

23 BY MR. TASHROUDIAN:

24 Q. Here you are, sir, Exhibit O. Could you
25 scroll through that for me, please?

1 A. I don't believe I have any copies.

2 Q. You told me that you spoke to Jerry Byrum in
3 November, correct?

4 A. Well, not only did I speak with him, I met
5 with him, yes.

6 Q. You met with him in person.

7 And I don't recall if I asked you this, but
8 did you ask him for a copy of the plaque, the video
9 game Player of the Century plaque, at that time?

10 A. At that time, no.

11 Q. You also told me I think earlier that you had
12 asked him previously for a copy of the plaque, correct?

13 A. I asked him if he could find a copy, yes.

14 Q. Okay.

15 A. Not a copy. There's only one. You make it
16 sound like it's a piece of paper.

17 Q. Okay. So there's two of them though, right,
18 there are two plaques?

19 A. Two individual plaques.

20 Q. Yeah. One said Player of the Century and the
21 other one is the one I showed you as Exhibit -- Exhibit
22 L, correct?

23 A. That is correct.

24 Q. Do you know of any other pictures of the
25 player, the Namco Player of the Century plaque that

1 exists?

2 A. I don't -- I don't have any to show you, and
3 if you're asking me what other people have, I can't
4 speak for them.

5 Q. All right. Do you know whether or not the
6 International Video Game Hall of Fame has destroyed
7 your Namco Player of the Century plaque?

8 A. Do I know if they've done that?

9 Q. Yeah.

10 A. No.

11 Q. No one's ever told you that, right?

12 A. No. This is the first time hearing it.

13 Q. Did you follow up with Mr. Byrum about
14 production of this plaque?

15 A. I believe I asked him twice.

16 Q. And what did he say the second time you asked
17 him?

18 A. He said, I'll find it.

19 Q. And when did you ask him that?

20 A. I'm going to guess it was in the early fall,
21 maybe the summer.

22 Q. Has he sent you a copy of it yet?

23 A. No.

24 Q. Have you gone to Ottumwa, Iowa to ask for it?

25 A. No, I have not.

1 Q. Do you recall that camcorder recording your
2 game play?

3 A. It did not.

4 Q. All right. So I want to get back to this.

5 Mr. Childs allowed you to borrow that Donkey
6 Kong cabinet to play in Orlando, correct?

7 A. That is correct.

8 Q. All right. Did it have a PCB in it when he
9 gave it to you?

10 A. No, it didn't.

11 Q. Okay. So he gave you a -- a cabinet without a
12 PCB, right?

13 A. That's correct.

14 Q. Are you sure of that?

15 A. I'm a hundred percent sure of that.

16 Q. So it was delivered to you in Orlando without
17 a PCB?

18 A. It wasn't delivered to me, it was delivered to
19 the venue.

20 Q. It was delivered to the venue, got it.

21 And how was that Donkey Kong machine set up,
22 can you explain that to me?

23 A. No. Explain the question.

24 Q. Yeah. So eventually that Donkey Kong machine
25 had a PC board put into it, right?

1 A. Correct.

2 Q. Who did that?

3 A. It was a guy who Walter contacted, he was a
4 manager of Game Stop, he came over, received the board
5 that had been sent there, he put it inside the machine,
6 and that camcorder was used by the lady, Sheila, to
7 videotape him putting it in.

8 Q. Were you there?

9 A. I was, I watched.

10 Q. You watched the whole thing?

11 A. Yes.

12 Q. So explain to me what you saw.

13 A. I saw him take the board, and it was pretty
14 self-explanatory that this connects here, there, here,
15 there because you, it only connects one way. He
16 connected everything. He locked up the cabinet. He
17 put a padlock on it so that it could not be opened.

18 Q. When you say he connected everything, what --
19 what exactly do you mean?

20 A. He hooked up the board to all the connectors
21 -- excuse me, and the converter board got connected in
22 order to draw the signal that would be recorded, and
23 then he locked the cabinet.

24 Q. So he installed the converter board?

25 A. Yeah. Well, the converter board was already

1 there. It just had to be plugged in.

2 Q. The converter was already -- board was already
3 where?

4 A. Inside the cabinet.

5 Q. Okay. And he -- you saw him?

6 A. I saw him do it.

7 Q. You saw him install the converter board?

8 A. I saw him do everything.

9 Q. Okay. How did he install the converter board?

10 A. He plugged the stuff in where it goes.

11 Q. Does the converter board get plugged directly
12 into the Donkey Kong machine?

13 A. Well, how else? I don't understand the
14 question.

15 Q. Well, I'm asking you, like, what did he do to
16 plug in the converter board?

17 MR. ELLROD: If you know.

18 THE WITNESS: No. I mean, I -- I don't.

19 BY MR. TASHROUDIAN:

20 Q. But you saw him do it, right?

21 A. Yeah. I don't know how it works.

22 Q. Yeah. What else -- what did you see him do?

23 A. I saw him take many different wires that were
24 hanging all over the place and find the places where
25 they should go because, for example, three-prong only

1 A. I saw it.

2 Q. What was that converter board hooked up to?

3 A. It was in the machine. He plugged it in.

4 MR. ELLROD: Object as vague. What do you
5 mean?

6 MR. TASHROUDIAN: Okay.

7 THE WITNESS: It's not my area of expertise.

8 BY MR. TASHROUDIAN:

9 Q. That converter board outputted to a recording
10 device, right?

11 A. Oh yeah.

12 Q. What kind of recording device?

13 A. VCR.

14 Q. And where was that recording device placed?

15 A. It was on top of the machine.

16 THE WITNESS: I can't say nothing to you, huh?

17 MR. ELLROD: No, you can't. If you want to
18 chat, let us know and we'll go off the record.

19 BY MR. TASHROUDIAN:

20 Q. Do you want to go off the record?

21 A. No, I was just going to say something to him
22 that --

23 MR. ELLROD: Don't worry about it.

24 BY MR. TASHROUDIAN:

25 Q. Okay. So you arrived there Thursday night.

1 kind of removed from the situation that he had, so I
2 was able to say, Hey Jordan, there's somebody here
3 interested, and Jace Hall was happy to have me go there
4 and open the door for communications with Jordan. Once
5 those communications opened, I did nothing.

6 Q. All right. Did you provide Jace Hall with a
7 draft agreement for the purchase of --

8 A. Not a chance, no.

9 Q. Are you sure of that?

10 A. I'm very sure of that.

11 Q. Did you provide him with a copy of the
12 original Pete Bubea (phonetic) contract?

13 A. No, Walter had that.

14 Q. Did you provide Jace Hall a copy of that?

15 A. I don't think so. I can't see why --

16 MR. ELLROD: Yes or no.

17 BY MR. TASHROUDIAN:

18 Q. Were you -- did you receive -- did you receive
19 any portion of the funds that HD Films paid for Twin
20 Galaxies?

21 A. Actually, no.

22 Q. Not at all?

23 A. Not at all.

24 Q. Did you ask Walter why not?

25 A. No, because he offered them.

1 CERTIFICATE OF REPORTER

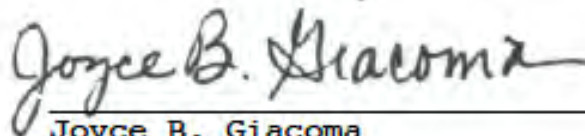
2 STATE OF FLORIDA

3 COUNTY OF BROWARD

4
5 I, Joyce B. Giacoma, Court Reporter, certify
6 that I was authorized to and did stenographically
7 report the deposition of WILLIAM JAMES MITCHELL, pages
8 5 through 371; that a review of the transcript was
9 requested; and that the transcript is a true record of
10 my stenographic notes.

11 I further certify that I am not a relative,
12 employee, attorney, or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorneys or counsel connected with the action, nor am
15 I financially interested in the action.

16 Dated this 17th day of January, 2023.

17
18 

19 _____
20 Joyce B. Giacoma
21 Court Reporter

EXHIBIT 2

**DECLARATION OF WALTER DAY
FILED UNDER SEAL**

EXHIBIT 3

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

WILLIAM JAMES)
MITCHELL,) Case No. 19STCV12592
)
Plaintiff,) DEPOSITION OF:
)
vs.) JERRY LEE BYRUM
)
TWIN GALAXIES,)
LLC; and DOES)
1-10,)
)
Defendants.)
)

TWIN GALAXIES,)
LLC,)
)
Cross-)
Complainant,)
)
vs.)
)
WILLIAM JAMES)
MITCHELL; WALTER)
DAY; and Roes)
1-25,)
)
Cross-)
Defendants.)

THE VIDEOCONFERENCE DEPOSITION OF JERRY LEE
BYRUM, taken before Tracy E. Barksdale,
Registered Professional Reporter and
Certified Shorthand Reporter, commencing at
6:38 p.m. CDT, June 26, 2023.

Reporter: Tracy E. Barksdale, RPR, CSR

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A P P E A R A N C E S

FOR THE PLAINTIFF/CROSS-DEFENDANT WILLIAM
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ALSO PRESENT:

Ali Ney, Videographer
Jace Hall
Billy Mitchell

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INDEX OF EXAMINATION

JERRY LEE BYRUM

June 26, 2023

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1 asking for your best estimate on things and
2 not a guess.

3 Do you understand the difference
4 between a guess and an estimate?

5 A. I do.

6 Q. Okay. Cool. It's also very important
7 that I get your best testimony today because
8 you will have an opportunity to review and
9 revise your deposition transcript and make
10 changes if you wish, but I will caution, if
11 you do make changes, I will have an
12 opportunity to comment on those changes at
13 the time of trial; do you understand that?

14 A. I do.

15 Q. Is there any reason that you can't give
16 your best testimony today?

17 A. No.

18 Q. You're not under the influence of any
19 drugs or alcohol now, are you?

20 A. No.

21 Q. Okay. All right. So Mr. Byrum, you're
22 here pursuant to a subpoena; correct?

23 A. Yes.

24 Q. Have you produced any documents in
25 response to that subpoena?

1 A. Well, no, I haven't, because I really
2 don't have any documents.

3 Q. Do you have any pictures of Billy
4 Mitchell's Pac-Man awards?

5 A. I do not.

6 Q. Have you ever seen any pictures of Billy
7 Mitchell's awards?

8 A. It's possible I have. I can't pinpoint
9 a specific instance when I have seen photos
10 of that.

11 Q. All right.

12 MR. TASHROUDIAN: Let's start with
13 this. Let's mark now as Exhibit A notice of
14 deposition of Jerry Byrum.

15 (Exhibit A marked)

16 BY MR. TASHROUDIAN:

17 Q. I'm gonna share my screen here.

18 Have you seen this document before,
19 sir?

20 A. Was that in the subpoena?

21 Q. Let me go to the subpoena document.

22 That might be a little similar. Have you
23 seen the subpoena document before, sir?

24 A. If that is the one that was sent to me,
25 then yes.

1 Q. Now, do you understand that the subpoena
2 also asks you to produce documents?

3 A. Yes, I did read that.

4 Q. Let's start with request for document
5 production number 1. Produce for inspection
6 all awards donated to you by William James
7 Mitchell, also known as Billy Mitchell, and
8 you are defined here as, shall mean Jerry
9 Byrum and all of its agents including
10 attorneys or other persons acting on his
11 behalf.

12 So did you look for any awards that
13 were donated to you by Mr. Mitchell?

14 A. David, will you do me a favor; can you
15 zoom that a little bit.

16 Q. Yes, of course. Number 1?

17 A. That's fine right there. Ask me again,
18 please.

19 Q. Yes. Did you look for any documents
20 that are responsive to request for production
21 number 1?

22 A. I have not.

23 Q. You didn't look for any awards that were
24 donated to you by Mr. Mitchell?

25 A. No. I did not.

1 Q. Is there a reason you didn't look for
2 those documents?

3 A. He hasn't given me any awards.

4 Q. How about request for production of
5 documents number 3, produce for inspection
6 all awards donated to the International Video
7 Game Hall of Fame by William James Mitchell,
8 also nobody as Billy Mitchell.

9 A. I didn't look for those either.

10 Q. Is there a reason?

11 A. I have been in this position for three
12 or four years. He's never donated anything
13 to me. And, to my knowledge, I've never
14 received anything, any awards from Billy.

15 Q. How about the International Video Game
16 Hall of Fame? Do you know if the IVGHOF has
17 received any donations from Billy Mitchell or
18 awards?

19 A. Not in my tenure.

20 Q. My question's a little bit different,
21 though. Do you know whether or not the hall
22 of fame -- we'll just call it the hall of
23 fame, make it easy -- has received any
24 donations from Billy Mitchell?

25 A. I don't. I don't know that.

1 Q. Has Mr. Mitchell ever called you and
2 asked you to look for pictures of his awards
3 that he had previously donated to the hall of
4 fame?

5 A. Not that I recall.

6 Q. Did he make any sort of request in 2022
7 for you to find and send him copies of his
8 awards that he's previously given to the hall
9 of fame?

10 A. I don't believe so. I don't recall any
11 conversation like that.

12 Q. Has he ever asked you to send him any
13 awards that he has donated to the hall of
14 fame?

15 A. Not that I recall.

16 Q. Did you look for any -- I'm looking at
17 number 7 here. Did you look for any
18 documents that the hall of fame might have
19 related to any recordings of Billy's game
20 play?

21 A. Currently the hall of fame doesn't have
22 anything. So these are, I mean, these
23 questions are all going to be no.

24 Q. So the hall of fame does not have any of
25 Mr. Mitchell's donated awards?

1 A. The hall of fame currently only owns
2 very, very few items that were given to them
3 by myself and others close to me in recent
4 years.

5 Q. Nothing from Billy Mitchell?

6 A. Not that I'm aware of, no.

7 Q. What about anything from Walter Day?

8 Does the hall of fame have anything from

9 Walter Day?

10 A. Let's see, I think Walter gave me a
11 jersey, a referee jersey at some point. I
12 believe there might, if I recall, from the
13 35th anniversary, there might be a Guinness
14 award. I don't recall where that went or
15 even who it was to. It might have been -- it
16 might -- I don't recall. I really don't.

17 Q. All right. What about this request for
18 production number 11, produce for inspection
19 all documents relating to your business
20 dealings with Mr. Mitchell. Did you look for
21 any of those documents?

22 A. I don't have any business dealings with
23 Billy.

24 Q. Have you had business dealings with
25 Mr. Mitchell in the past?

1 A. Probably 20, 25 years ago.

2 Q. Where would those business dealings have
3 been?

4 A. I used to work for Billy.

5 Q. In what respect?

6 A. At an arcade in Ottumwa, Iowa, in the
7 mid '80s.

8 Q. Did you guys ever own any businesses
9 together in the '90s?

10 A. No. I don't know. I don't believe so.

11 Q. Does the hall of fame have any documents
12 related to Mr. Mitchell's 2010 induction into
13 the hall of fame?

14 A. The hall of fame doesn't have anything
15 from 2010.

16 Q. I'm going to show you now here
17 Exhibit B, a photo.

18 (Exhibit B marked)

19 BY MR. TASHROUDIAN:

20 Q. See that there?

21 A. I do see it, yes.

22 Q. Do you recognize this photo, sir?

23 A. No.

24 Q. Did you take this photo?

25 A. I don't believe so, no. I'm not even

1 sure where that is.

2 Q. I understand. Have you ever seen any of
3 the three awards, four awards, rather, that
4 are represented in this photo?

5 A. So the one in the bottom left looks
6 familiar. Whether or not I can tell you when
7 I've seen it, I can't tell you that. The
8 award in the middle on the round base looks
9 familiar just simply because I believe that's
10 a hall of fame award from 2010, but I may be
11 mistaken.

12 Q. And what about these two awards with the
13 Pac-Man on it? Have you ever seen these?

14 A. Not that I recall.

15 Q. Have you ever seen an award issued by
16 Namco that says Player of the Century on it,
17 which was given to Mr. Mitchell by Namco?

18 A. So being under oath, my answer is I'm
19 pretty sure I have seen it, but I don't
20 recall when or where. It might have been in
21 2010.

22 Q. Well, what did it look like?

23 A. Oh, my gosh. You know, I don't know any
24 details. I really don't. That was 23 years
25 ago or 13 years ago.

1 Q. Are you sure that the award that you saw
2 was issued by Namco, and it says Player of
3 the Century award on it?

4 A. No.

5 Q. You're not sure of that?

6 A. No.

7 Q. Has Billy ever told you that he was
8 awarded the Player of the Century -- or
9 rather, strike the question.

10 Has Mr. Mitchell ever told you that
11 he was awarded an award that says Player of
12 the Century on it from Namco?

13 A. I believe he and I have spoken about it,
14 yes.

15 Q. Do you know whether or not Mr. Mitchell
16 is currently on the board of directors for
17 the hall of fame?

18 A. To my knowledge, he is.

19 Q. How long has he been on the board of
20 directors for the hall of fame?

21 A. The entire time I have been president.

22 I'm not sure how long before.

23 (Exhibit C marked)

24 BY MR. TASHROUDIAN:

25 Q. Marked now as Exhibit C, series of text

1 Q. You say here, in this bottom text here,
2 that you said in the other chat that you were
3 not coming to Tom Welch. When you refer to
4 other chat, what were you talking about here?

5 A. It was probably a previous message
6 maybe.

7 Q. Do you chat with Billy Mitchell on any
8 programs aside from your phone's default chat
9 program?

10 A. No.

11 Q. What about Signals? Do you use Signal?

12 A. What is Signal?

13 Q. Signal is a messaging application. Do
14 you use that?

15 A. No. I use Facebook Messenger, and I use
16 whatever's in my phone, Messenger.

17 Q. I just want to be clear here. Does the
18 International Video Game Hall of Fame have
19 any of Billy Mitchell's video game awards?

20 A. No.

21 Q. Does the International Video Game Hall
22 of Fame have any of Billy Mitchell's plaques
23 that were issued to him by Namco?

24 A. No. My statement earlier was that the
25 hall of fame doesn't own anything other than

1 a few pieces that have been given to us in
2 recent years. And when I say recent years, I
3 mean within the past three or four.

4 Q. And I want to be clear that Mr. Mitchell
5 has never asked you to send him copies or the
6 actual awards that he's previously donated to
7 the hall of fame; is that correct?

8 A. Not that I recall. I mean, I don't have
9 them.

10 Q. Let me go back to Exhibit B. Have
11 you -- did I ask you had you ever seen these
12 two plaques?

13 A. You did.

14 Q. Have you ever seen them?

15 A. Not that I recall, specifically. I
16 mean, I've seen that Pac-Man all over the
17 place, and whatever's written on that, I
18 don't know what that is. So I don't know
19 that I've seen those.

20 Q. Have you held those two plaques?

21 A. I doubt it.

22 Q. And you don't know where this picture
23 was taken, do you?

24 A. I don't.

25 Q. When was the last time you spoke with

1 this morning or evening, whatever it is. So
2 yeah, I'll pass.

3 MS. ROSS: All right.

4 EXAMINATION

5 BY MS. ROSS:

6 Q. Jerry, I just have a few questions about
7 the International Video Game Hall of Fame for
8 you.

9 When did you start working for the
10 International Video Game Hall of Fame?

11 A. I don't recall exactly. I'm wanting to
12 say it may have been around 2019.

13 Q. Did you have any involvement with the
14 International Video Game Hall of Fame in
15 2010?

16 A. Absolutely not.

17 Q. Okay. And currently you're the
18 president; is that correct?

19 A. That is correct.

20 Q. When did you become the president?

21 A. I believe it was around 2019.

22 Q. So when you first started on, you were
23 started on as the president?

24 A. No. Actually, yes. That is true.

25 Q. Okay. And how many employees does the

1 questions. I believe John may have said
2 that. Actually, he -- it was John. He did
3 say that when we were sitting down for a
4 panel, and I was part of the panel, and John
5 had said that Billy was supposed to be there
6 but couldn't make it.

7 MS. ROSS: What exhibit did we
8 leave off on? I think C?

9 MR. TASHROUDIAN: Yes, C.

10 MS. ROSS: Okay. This will be
11 Exhibit D.

12 (Exhibit D marked)

13 BY MS. ROSS:

14 Q. Can you see this email?

15 A. I can.

16 Q. Okay. Is this your email address,

17 Jerry --

18 A. It is not.

19 Q. That's not your current email address?

20 A. It is not.

21 Q. Well, that would explain why you didn't
22 get the email, potentially, then.

23 A. I haven't had that email for probably
24 five years at least.

25 Q. Okay. Do you recognize this as Laura's

C E R T I F I C A T E

1
2
3 I, Tracy E. Barksdale, Registered
4 Professional Reporter, do hereby certify that
5 there came before me via videoconference at
6 the time and place hereinbefore indicated,
7 the witness named on the caption sheet
8 hereof, who was by me duly sworn to testify
9 to the truth of said witness's knowledge,
10 touching and concerning the matters in
11 controversy in this cause; that the witness
12 was thereupon examined under oath, the
13 examination taken down by me in shorthand,
14 and later reduced to printed form under my
15 supervision and direction, and that the
16 deposition is a true record of the testimony
17 given and of all objections interposed.

18
19 I further certify that I am neither
20 attorney or counsel for, or related to or
21 employed by any of the parties to the action
22 in which this deposition is taken, and
23 further that I am not a relative or employee
24 of any attorney or counsel employed by the
25 parties hereto or financially interested in
the action.

Dated this 19th day of July 2023.



TRACY E. BARKSDALE, RPR

EXHIBIT 4

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

WILLIAM JAMES MITCHELL,)	
)	
Plaintiff,)	
)	Case No. 19STCV12592
vs.)	
)	Volume I
TWIN GALAXIES, LLC; and Does)	
1-10,)	
)	Pages 1 to 109
Defendants.)	
_____)	
)	

TWIN GALAXIES, LLC,)	
)	
Cross-Complainant,)	
)	
v)	
)	
WILLIAM JAMES MITCHELL; WALTER)	
DAY; and Roes 1-25,)	
)	
Cross-Defendants.)	
_____)	

REMOTE VIDEOCONFERENCED VIDEOTAPED DEPOSITION OF
JOHN GRUNWALD
Fairfield, Iowa
Thursday, July 20, 2023

Reported by:
ELIZABETH BORRELLI, CSR No. 7844, CCRR, CLR
JOB NO. 6414910

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Remote Videoconferenced Videotaped
Deposition of JOHN GRUNWALD, Volume I, taken on
behalf of the Defendant and Cross-Complainant
Twin Galaxies, LLC, at Fairfield, Iowa,
commencing at 8:02 a.m., Thursday, July 20,
2023, before Elizabeth Borrelli, a Certified
Shorthand Reporter in the State of California,
License No. 7844.

* * *

1 saying, you and I, and preparing that in a booklet.
2 In order for her to make a really accurate
3 transcript, we can't talk over one another.

4 So I'll just ask that if I ask a question,
5 you'll allow me to finish my question, and I'll
6 allow you to finish your answer, fair?

7 A. Yes.

8 Q. All right. Everything that you say today
9 will be written down, like I said, in a -- in a book
10 for you to review, and you'll be able to make
11 changes to your testimony. But I will comment on
12 those changes at trial, so it's very important that
13 you give me your best testimony here today.

14 Do you understand that?

15 A. Yes.

16 Q. All right. Is there any reason you can't
17 give your best testimony today?

18 A. No.

19 Q. Are you under the influence of any drugs
20 or alcohol?

21 A. No.

22 Q. All right. We'll dispose of the other
23 admissions. We'll get straight into it.

24 Mr. Grunwald, do you know why you're here
25 today?

1 A. Because of accusations involving awards
2 for Billy Mitchell.

3 Q. All right. What do you mean "by
4 accusations involving awards by Billy Mitchell"?

5 A. It has been stated, from what I've seen,
6 that I found awards, I took a picture of the awards,
7 and I either have the awards or know where they're
8 at.

9 Q. And do you know who's making those
10 acquisitions?

11 MS. ROSS: Objection to the term
12 "acquisitions." Vague and ambiguous.

13 THE WITNESS: When I received information
14 from you. You included an e-mail that stated that
15 Kristina Ross had -- was under the assumption or had
16 the information that I had taken the picture of the
17 four awards on a table, that I had found them at the
18 Bridge View Center in Ottumwa, and that either they
19 were there or I had them.

20 Q. Got it.

21 And can you -- can you elaborate on -- on
22 what awards these are?

23 A. Two Namco plaques, a certificate naming
24 Billy Mitchell video game player of the century, I
25 do believe, and a trophy that I do believe he

1 received when he was added to the hall of fame.

2 Q. All right. So we'll break down each of
3 these, as you sort of describe them, accusations and
4 we'll go through them.

5 Number one was the -- the accusation that
6 you found the awards, right? Now, did you find
7 those awards?

8 A. No, I did not.

9 Q. All right. Do you know who found those
10 awards?

11 A. They were brought to me by TriForce.

12 Q. And that's Isaiah TriForce Johnson?

13 A. Correct.

14 Q. When were they brought to you by
15 Mr. Johnson?

16 A. On June 23rd, I would say, approximately
17 7:30 p.m.

18 Q. Where did he bring those to you?

19 A. At the Meet Your Destiny Tournament at
20 the -- at the Bridge View Center in Ottumwa.

21 Q. Did he tell you where he got those awards
22 from?

23 A. No, he did not.

24 Q. Where inside the Bridge View Center did he
25 deliver those awards to you?

1 A. He made contact with me in the room that
2 we were running the games at, asked to go to a
3 different room, which I thought, okay, whatever he
4 had, because I did not know at that time, that there
5 were just the games going on. So we went to a
6 different room in the back area of the Bridge View
7 Center.

8 Q. And then he showed you the awards in that
9 back room?

10 A. Yes.

11 Q. You know, let's -- I guess we'll get to
12 that.

13 Did he -- was he carrying the awards?

14 A. He had them in a black garbage bag.

15 Q. So on June 23, around 7:00 -- 2023, around
16 7:00 p.m., Mr. Johnson approaches you in the area
17 where the games were being held, correct?

18 A. I believe it was about 730, but yes.

19 Q. Yes. It's very important because I have
20 the CCTV camera footage, so I just want to make sure
21 all of this is correct. 7:30 p.m.

22 So he shows up with a black trash bag; is
23 that correct?

24 A. Yes.

25 Q. And what does he tell you when he -- when

1 he approaches you with the black trash bag?

2 A. That he wanted to talk in another room.

3 Q. Did he tell you why he wanted to talk in
4 another room?

5 A. Nope.

6 Q. All right. So you guys walk into another
7 room; is that correct, with the trash bag?

8 A. We walked into the back hallway, and he
9 said, let's find a different spot. I had thought
10 about a storeroom that was right there. I think he
11 said a different spot, so we found a -- an empty
12 conference room in the back hallway.

13 Q. Okay. So you guys walk into this empty
14 conference room in the back hallway, and then does
15 he proceed to take these awards out of the bag?

16 A. Yes.

17 Q. All right. And how many awards did he
18 remove from the bag?

19 A. Four.

20 Q. Did you -- did you ask him what those
21 awards were?

22 A. I knew when I saw them what they were.

23 Q. How did you know what they were?

24 A. Because Billy had asked earlier in an
25 e-mail that if by chance we saw anything there while

1 we were at the Bridge View, if we could let him know

2 and asked for some more information about those.

3 And he said it was like a Namco plaque.

4 So when I saw the Namco name, I -- I

5 figured that's exactly what they were.

6 Q. All right. So once you saw the awards

7 come out of the black bag in this -- in this

8 conference room, you knew that TriForce had found

9 the awards, correct?

10 A. Yes.

11 Q. And these are the awards that Billy was

12 looking for in the e-mail that he sent you?

13 A. Yes.

14 Q. And you had been looking for those awards
15 that day, correct?

16 A. Yes. I was sent an e-mail in the morning
17 asking if we could keep our eyes open for that. And
18 that's when I contacted Laura, because I don't have
19 access to the space. And she's fairly new, and I
20 didn't know how much she even knew that they would
21 have been there at one time.

22 She checked a couple spaces on her own,
23 because I don't have access to those spaces. She
24 did not find them and reported that back to me.

25 After that, I hadn't looked anymore

1 A. Correct.

2 Q. All right. And he takes you into his back
3 room, and he shows you them, right?

4 A. Correct.

5 Q. And he takes them out of the bag -- out of
6 the black trash bag; is that correct?

7 A. Correct.

8 Q. Were you excited once he showed you the
9 awards and you had finally like completed the
10 treasure hunt?

11 A. Yes.

12 Q. Nice.

13 Did you asked TriForce where he found the
14 awards?

15 A. No.

16 Q. So I just want to be clear here.

17 You guys had been looking for these awards
18 all day. You were excited when he found them, but
19 you never asked TriForce where he found them?

20 MS. ROSS: Objection. Misstates
21 testimony. Asked and answered.

22 THE WITNESS: Okay.

23 BY MR. HELLING:

24 Q. You can answer the question.

25 A. He just stated that he had to get

1 something for Billy earlier. And when he came back
2 with that, I figured that was it. And, honestly, I
3 have always tried to stay out of any legal cases
4 involving Billy and others because I have not wanted
5 any -- any part of that.

6 Q. I understand that.

7 But, unfortunately, I think they're --
8 they're using you as a pawn right now.

9 MS. ROSS: Objection. Argumentative. I
10 move to strike from the record. It's not a
11 question.

12 BY MR. TASHROUDIAN:

13 Q. All right. So -- so TriForce busts out
14 these awards, and then what does he do with them?

15 A. He wants to let Billy know that we had
16 them. But he does not have a phone, so he asked if
17 we could call Billy on my phone.

18 Q. And you called Billy on your phone?

19 A. Yes.

20 Q. All right. And what did you guys talk
21 about on the phone?

22 A. I was going to tell you that call, I do
23 believe, was 7:53. And I had him on speaker phone,
24 and I told him that I think we have the awards he
25 was looking for.

1 Q. And what did Billy say?

2 A. He agreed that that was it. I don't
3 remember exactly what he said, but he said that they
4 are it. And I think he was very surprised.

5 Q. Did he ask you or TriForce where the
6 awards were found?

7 A. He said he did not want to ask. And I
8 figured because of his friendship with other people
9 that had been looking in previous years, he was glad
10 to get them and didn't want us to trouble with --
11 with friends that may have overlooked them before.

12 That was my -- my take on that. So he --
13 he did not ask. He said, I don't know -- I don't
14 want to know where they were found. I'm glad that
15 they were found. I think not word for word, but
16 that is basically, I think, what he said.

17 Q. He told you, though, that he didn't want
18 to know where they were found?

19 A. Yeah.

20 Q. All right. And then did you guys take
21 pictures of the plaques?

22 A. TriForce had his iPad there and took
23 pictures of the plaques, yes.

24 Q. And where were the plaques set up when he
25 was taking pictures of the plaques?

1 A. Those were on the floor.

2 Q. Do you know about how many pictures he
3 took?

4 A. I do not know. I would guess four,
5 because there were four trophies -- or four awards.
6 But I can't say for positive, no.

7 Q. Did you look at any of the Namco plaques?

8 A. I did not look close enough to -- to quote
9 anything from them. I knew they were the Namco
10 plaques. I recognized the Pac-Man from photos I've
11 seen over the years.

12 But, otherwise, I didn't think anything of
13 it. I didn't -- yeah, I didn't think I had to
14 scrutinize anything. I just thought we found the
15 plaques that he was looking for that had been lost,
16 and I was satisfied with that. I -- I was happy
17 that we could help.

18 Q. All right. But you didn't do anything,
19 right, to find those plaques?

20 A. No, I did not. I was working the
21 tournament. And if you check the CCTV, you'll see
22 that I was at the Bridge View Center running that
23 tournament.

24 Q. All right. So Mr. Johnson showed up at
25 the Bridge View Center that morning at 11:00 a.m.,

1 correct?

2 A. I -- I believe so, yes.

3 Q. All right. And then was he part of the
4 tournament with you?

5 A. He was helping run a Pac-Man and Tetris
6 tournament, yes.

7 Q. So then at some point between 11:00 a.m.
8 and 7:30, he went off to discover these plaques; is
9 that correct?

10 A. He went off to get some stuff, I think,
11 for Billy from the -- the arcade, and he took some
12 footage at the arcade, because they made some
13 changes. And that -- that's all I know there. He
14 said he was going there. And then he came back
15 later and had this -- this stuff.

16 Q. And where is the arcade?

17 A. It's in Ottumwa.

18 Q. Is it at the Bridge View Center?

19 A. No, it is not.

20 Q. Okay. So he left the Bridge View Center
21 and went to an arcade in Ottumwa; is that correct?

22 A. Correct.

23 Q. And then when he returned from the arcade
24 in Ottumwa, he had a trash bag full of Billy's
25 awards; is that right?

1 A. Correct.

2 Q. Including these two Namco awards?

3 A. Correct.

4 Q. And what's the -- what's the name of the
5 arcade that he went to?

6 A. I can't say exactly. It's old school
7 pinball arcade or something like that.

8 Q. And that's in Ottumwa?

9 A. Yes, it is.

10 Q. Do you know who owns that arcade?

11 A. I do believe Jerry Byrum owns it.

12 Q. Ah, interesting. Okay. Cool.

13 So he went to Jerry Byrum's arcade, picked
14 up the plaques and then came to you at the Bridge
15 View Center; is that correct?

16 A. I cannot say for sure that he got them
17 there. I know that he had to go get something there,
18 and he did not tell me where they came from.

19 Excuse me, my phone is ringing, I'm just
20 silencing that.

21 Q. Yeah, that's fine.

22 Do you know the address of the arcade?

23 A. No, I do not. I know that it is in the
24 mall in Ottumwa.

25 Q. Are you affiliated with the International

1 Video Game Hall of Fame, sir?

2 A. As of that weekend, yes.

3 Q. And what's your affiliation?

4 A. That weekend, I was voted on as a board
5 member.

6 Q. Do you know if Billy Mitchell is a board
7 member of the Hall of Fame?

8 A. I do believe he is.

9 Q. So you saw the July 6th e-mail from
10 Ms. Ross saying that you found the awards, correct?

11 A. Correct.

12 Q. That's an incorrect statement by her,
13 right?

14 A. Correct.

15 Q. That July 16 e-mail from her also said
16 that you took the pictures of the plaques, correct?

17 A. Correct.

18 Q. And that's an incorrect statement?

19 A. Correct.

20 Q. Those pictures were taken by TriForce
21 Johnson, right?

22 A. Correct.

23 Q. Well, at least the pictures that were
24 taken on June 23rd in the Bridge View Center, those
25 were taken by TriForce Johnson, right?

1 Q. Well, do you know what time it was that
2 you dropped him off at the Bridge View Center?

3 A. At the Bridge View Center or at...

4 Q. Correct. At the America Inn -- Americ- --
5 it's a weird name, AmericInn, right?

6 A. Yes. I texted Billy at 10:08 to say that
7 I had dropped him off at hotel, and then I returned
8 to the Bridge View Center.

9 Q. Okay. So you dropped him off at 10:08
10 with the box of the plaques, correct?

11 A. Yes.

12 Q. All right. And then you took him back to
13 the airport, right?

14 A. Correct.

15 Q. On the 25th?

16 A. Yes.

17 (Reporter requests clarification.)

18 MR. TASHROUDIAN: On the 25th?

19 BY MR. TASHROUDIAN:

20 Q. And he had that box of plaques with him,
21 right?

22 A. Correct.

23 Q. And he took that from Ottumwa onto the
24 plane with him; is that correct?

25 A. I saw him carry it to security, and then

1 he was gone.

2 Q. All right.

3 A. So, yes, I surmised that he did.

4 Q. And you paid for his flight from Des

5 Moines, or wherever it was, to Fort Lauderdale,

6 right?

7 A. Correct. And I also had to pay for an

8 extra piece of baggage when he left to go to

9 Florida.

10 Q. And what was that extra --

11 A. That would be --

12 Q. What was that extra --

13 A. That would be that box. He did not have

14 that box when he came to Ottumwa. He had that box

15 when he left.

16 Q. And he was getting on a flight to

17 Fort Lauderdale; is that correct?

18 A. Correct.

19 Q. And you booked and paid for that flight

20 for him to Fort Lauderdale, right?

21 A. Correct.

22 Q. And I just wanted to be certain that you

23 paid for the additional baggage for him to transport

24 these plaques down to Fort Lauderdale?

25 A. Correct.

1 day to ask if he had returned all right.

2 And he said that he did.

3 But that was all that I had talked about.

4 No discussion about the awards.

5 Q. And you notified Billy, right, that the
6 flight was going to be delayed?

7 A. Yes. Because he was going to have to pick
8 TriForce up at the airport.

9 Q. And how did you know that Billy was
10 picking TriForce up from the airport?

11 A. That was the plans we had made several
12 months ago.

13 Q. Okay.

14 A. So when he flew from Jamaica to
15 Fort Lauderdale, Billy was going to pick him up.
16 And they were supposed to fly up here together, and
17 then they would fly back together. And then he
18 would get them to the airport to send him back to
19 Jamaica.

20 Q. All right. Do you know if Billy picked up
21 TriForce from the airport in Florida?

22 A. I don't know if he did or somebody else
23 did, but somebody picked him up at the airport to
24 take him to Billy's house.

25 Q. How do you know that TriForce went to

1 Billy's house after the airport?

2 A. I had a -- well, I guess that's an
3 assumption on my part because that was our plan, is
4 that he would go there. And then Billy would get
5 him to the airport the next day to fly to Jamaica.

6 Q. And Billy told you that that was the plan,
7 correct?

8 A. That was the plan from the beginning, yes.

9 Q. I just want to be certain that Billy told
10 you that that was the plan, right?

11 A. Yes, I do believe so. I don't remember
12 exactly. We had a -- we had arrangements for a
13 ceremony in February, and that was going to be the
14 same plans then. But TriForce was not able to make
15 that trip.

16 Q. Let's go back to this second, you know,
17 sort of accusation, as you call it, about you taking
18 the pictures.

19 You didn't take the picture that was
20 ultimately shown to you, correct, the one with the
21 four plaques on the desk inside the hotel room with
22 the coffee machine?

23 A. Correct, I did not.

24 Q. And you weren't there when the picture was
25 taken?

1 A. I was not.

2 Q. Did anyone tell you to send that picture
3 to Laura Carrell?

4 A. Yes. TriForce asked me to send it to
5 Laura for -- so -- there's a text message that you
6 have, Facebook message, that says Billy would like
7 you to send this to Laura. I assumed it was so that
8 she knew that the plaques were found and that she
9 didn't have to bother trying to look or dig any
10 deeper with anybody at the Bridge View.

11 Q. Okay. So was it your understanding that
12 Billy was instructing you to send that photo to
13 Laura Carrell?

14 MS. ROSS: Objection as to the term
15 "instructed." Vague and ambiguous.

16 (Reporter requests clarification.)

17 MS. ROSS: As to the term "instructed."
18 Vague and ambiguous.

19 BY MR. TASHROUDIAN:

20 Q. And what was the answer?

21 A. He asked me to let her know by sending her
22 the picture, yes.

23 Q. And "he" is Billy, correct?

24 A. He, through TriForce. TriForce sent me
25 the picture with the message that Billy would like

1 me to send that to Laura.

2 Q. All right. Do you know if that photo had
3 been altered?

4 A. I have no clue.

5 Q. Do you know about how big a typical cell
6 phone photograph is?

7 A. Not offhand, no.

8 Q. It would be larger than a 150 kilobytes,
9 right?

10 MS. ROSS: Objection. Calls for expert
11 testimony.

12 You can answer, if you know.

13 THE WITNESS: I'm unsure offhand. I would
14 guess probably so.

15 BY MR. TASHROUDIAN:

16 Q. 150 kilobytes is pretty small, right?

17 A. Yeah.

18 Q. About the size of a Word file?

19 A. Possibly, yeah.

20 Q. Okay. So I just want to make sure that
21 you didn't take that picture, right?

22 A. I did not.

23 MS. ROSS: Objection. Asked and answered.

24 BY MR. TASHROUDIAN:

25 Q. Do you know who took that picture?

1 A. I can only --

2 MS. ROSS: Objection. Asked and answered.

3 THE WITNESS: -- surmise.

4 BY MR. TASHROUDIAN:

5 Q. I'm sorry, what was that?

6 A. I can only surmise.

7 Q. And what do you surmise?

8 A. Not Billy. It was TriForce.

9 Q. And he had those with him at the time the
10 pictures were taken, right?

11 A. The awards?

12 Q. Yeah.

13 A. Yes, I would guess so. He had those -- he
14 had those at his hotel room.

15 Q. All right. I want to go back to the
16 pictures you guys took of the awards at the Bridge
17 View Center.

18 That was about 7:50 p.m., right?

19 A. In that time, yeah. We had called Billy
20 at 7:53, I think it was.

21 Q. And TriForce was taking pictures of those
22 awards?

23 A. With his iPad.

24 Q. With his iPad.

25 Did you see him take the pictures?

1 Q. And Expo A is where you guys were doing
2 your -- or, actually, the -- probably the whole expo
3 hall right?

4 A. Expo A.

5 Q. Expo A is where you guys had the -- the
6 tournaments?

7 A. Correct.

8 Q. And TriForce approached you in Expo A; is
9 that correct?

10 A. Correct.

11 Q. And then from Expo A, you guys left
12 through this bottom door here?

13 A. Not through that door. There was a piano
14 blocking that door in the hallway. We went through
15 the door at bottom.

16 Q. Is this the door at the bottom up here
17 (indicating)?

18 A. Nope. At the bottom of the picture.

19 Q. I see.

20 A. Right there.

21 Q. Okay. So you walked through this door
22 (indicating) --

23 A. Correct.

24 Q. -- and then entered into C2 how?

25 A. Through the door right above -- oop. So

1 go back into the hallway.

2 Q. Okay.

3 A. Go up. Go up. Right there.

4 Q. And then left into here.

5 And the whole time --

6 A. In the top right corner.

7 Q. Top right corner up here? Oh, okay.

8 A. Nope.

9 There.

10 Q. So you guys were in the top right corner,
11 up here, looking the --

12 A. Correct.

13 Q. At about 7:00 -- between 7:30 to 8:00; is
14 it fair to say?

15 A. I would say -- yes.

16 Q. On June 23rd?

17 A. Yes.

18 Q. Excellent. All right.

19 And do you know where in Expo A he
20 originally approached you with the trash bag?

21 A. Right down by the door that had the piano
22 blocked.

23 Q. So right in here (indicating)?

24 A. Right in that area, yes. The bleachers
25 were pulled out, so that was an open area next to

1 the bleachers.

2 Q. All right. And then did you -- did you
3 give him a box when you guys were in the conference
4 room for him -- for him to put the awards in?

5 A. Yes.

6 Q. Where did you find the box?

7 A. The same spot that I had -- he had
8 approached me, next to the bleachers.

9 Q. Uh-huh.

10 A. There was an empty box from some of the
11 prizes.

12 Q. So you came back, you grabbed the box from
13 the bleacher area, and you returned to the
14 conference room for him to put them in the box?

15 A. Correct.

16 Q. All right. And then where did he store
17 the awards until you had returned into the hotel?

18 A. We carried them back into that spot again.

19 Q. I'm sorry, you carried them back into
20 which spot?

21 A. Into the Expo Hall A where he had
22 originally talked to me and we took the boxes from.
23 Because we had some storage there for prizes for the
24 games and things. That was just a back collecting
25 area away from the participants.

1 Q. Got it.

2 Okay. So you guys transferred the box --
3 so you take the awards out of the black trash bag in
4 this conference room C2, take pictures, put it back
5 in a box, and then return that box to the bleacher
6 area, correct?

7 A. Yes.

8 Q. And this all probably happened between
9 7:30 and 8:30 in the evening of June 23rd?

10 A. Yes.

11 Q. Okay. That's very, very helpful. Thank
12 you.

13 All right. Okay. So let me get to my
14 outline here.

15 We have your relationship (indiscernible.)

16 (Reporter requests clarification.)

17 BY MR. TASHROUDIAN:

18 Q. I'm sorry. I was just -- we have here
19 your relationship with the IVGHOF. And you
20 explained to me you're a board member, correct?

21 A. As of Sunday, the 24th, yes.

22 Q. All right. And you also told me that
23 Billy is an office of the IVGHOF?

24 A. I believe he is.

25 MS. ROSS: Objection. Misstates

1 A. Correct.

2 Q. And then at some point while TriForce was
3 with you, he left the Bridge View Center and he went
4 to Jerry Byrum's arcade in Ottumwa, right?

5 A. Correct.

6 Q. And then he returned from Jerry Byrum's
7 arcade in Ottumwa -- in Ottumwa with Billy
8 Mitchell's awards, these four awards, correct?

9 A. Correct.

10 Q. Including --

11 A. I can't say if he went anywhere else, but
12 that was where I knew he was headed at one point and
13 was returning from, correct.

14 Q. And those awards included the two Namco
15 plaques, right?

16 A. Correct.

17 Q. But you never asked TriForce where he
18 found those awards that you guys were looking for?

19 A. No.

20 Q. Did he tell you?

21 A. I felt it was -- I felt it was not my
22 business. My business was the tournament. My
23 business was having them work there. I did -- I
24 said I would help to see if I could locate them.
25 They were located. I was done.

1 Q. Was he acting -- some kind of -- oh,
2 sorry, let me stop the screen share.

3 (Reporter requests clarification.)

4 MR. TASHROUDIAN: Sorry. Let me stop the
5 screen share here.

6 BY MR. TASHROUDIAN:

7 Q. Was he acting suspicious at all?

8 MS. ROSS: Objection. Vague and ambiguous
9 as "suspicious." Calls for speculation. Assumes
10 facts not in evidence.

11 BY MR. TASHROUDIAN:

12 Q. Was he acting suspicious at all when he
13 returned --

14 MS. ROSS: Same objections.

15 BY MR. TASHROUDIAN:

16 Q. -- with the awards?

17 A. Shall I answer that?

18 Q. Yeah, you can answer it.

19 A. I would say no, not -- nothing that really
20 alarmed me.

21 Q. All right. Let's look now at Exhibit A.

22 (Whereupon Exhibit A was marked for
23 identification.)

24 BY MR. TASHROUDIAN:

25 Q. Share the screen here.

1 Do you recognize this document, sir?

2 A. Yes, I do believe that is the e-mail
3 thread.

4 Q. All right. You say here on June 24th at
5 7:31 a.m. -- this is an e-mail from you, John --
6 okay.

7 So I just want to make sure, is this a
8 true and correct copy of the e-mail thread between
9 you, Laura Carrell, Billy Mitchell, and Jerry Byrum
10 from --

11 A. Yes, I believe -- I believe so, yes.

12 Q. And you produced this pursuant to a
13 subpoena, right?

14 A. Yes.

15 Q. All right. I'm looking here now at the
16 e-mail from Saturday, June 24th, 2023. You say
17 here -- at 7:31 a.m.

18 You say here, "Thank you Billy. And to --
19 and to continue with the good news vibe...it appears
20 the lost has been found."

21 What do you mean here, "it appears the
22 lost has been found"?

23 A. The -- the lost trophies were found.

24 Q. Did TriForce ask you to write -- did
25 TriForce or Billy ask you to write to Laura telling

1 her that the awards had been found?

2 MS. ROSS: Objection. Asked and answered.

3 THE WITNESS: Yes.

4 BY MR. TASHROUDIAN:

5 Q. Is that a yes?

6 A. Yes, so that she wouldn't have to continue
7 looking.

8 Q. Okay. So -- do you know if those Billy or
9 if it was TriForce that instructed you to write to
10 Laura letting her know that the awards had been
11 found?

12 MS. ROSS: Objection. Asked and answered.

13 BY MR. TASHROUDIAN:

14 Q. You can answer.

15 A. I don't remember for sure. It might have
16 been Billy that -- that just asked me to let her
17 know because he was also conversing with her through
18 me to say, hey, can you help find them.

19 Q. And then you sent her this picture,
20 correct?

21 A. Yes.

22 Q. All right. And this picture was an
23 attachment to that same e-mail?

24 A. Yes.

25 Q. And who provided you with this picture,

1 again?

2 A. TriForce.

3 Q. And TriForce told you that Billy wanted

4 you to send this picture to Laura, correct?

5 A. Correct.

6 MS. ROSS: Objection. Asked and answered.

7 BY MR. TASHROUDIAN:

8 Q. Correct? Is that right?

9 A. Correct.

10 Q. And then you followed Billy's instructions

11 and sent this picture it Laura, right?

12 MS. ROSS: Objection. Calls for

13 speculation. Assumes facts not in evidence.

14 Misstates the testimony.

15 BY MR. TASHROUDIAN:

16 Q. Is that a yes?

17 A. Yes, I sent that picture to Laura.

18 Q. Pursuant to Billy's instructions, correct?

19 MS. ROSS: Same objections.

20 BY MR. TASHROUDIAN:

21 Q. Is that a yes?

22 MS. ROSS: He didn't try to answer yet.

23 THE WITNESS: Yes.

24 BY MR. TASHROUDIAN:

25 Q. And then you forwarded the e-mail you sent

1 to Billy so that he knew that you sent Laura a
2 picture -- let's -- let's strike the question.

3 You forwarded that e-mail with the picture
4 that you sent to Laura to Billy so that Billy would
5 know that you followed his instructions, correct?

6 A. Yes.

7 Q. And that's -- that's shown here at the
8 very top --

9 A. Yes.

10 Q. -- in this 6/25 e-mail to Billy Mitchell?

11 A. Correct.

12 Q. See if I have anything else.

13 All right. Let's mark now as Exhibit B
14 another series of text messages between you and
15 Billy Mitchell.

16 (Whereupon Exhibit B was marked for
17 identification.)

18 BY MR. TASHROUDIAN:

19 Q. This document has 26 pages.

20 You produced text messages between you and
21 Mr. Mitchell, correct, pursuant --

22 A. Yes.

23 Q. -- to subpoena?

24 Does this appear to be the text -- or
25 portions of the text messages between you and Billy

1 A. Correct.

2 Q. And then when you say here, "We just
3 didn't know if those were a clue that we were on the
4 right track."

5 When you refer to "we," that's just you
6 and Laura, right?

7 A. Correct.

8 Q. TriForce wasn't looking for any of this
9 stuff at the Hall of Fame on the 23rd, correct?

10 A. No. He wasn't even there at that time.

11 Q. He arrived at 11:00?

12 A. I do believe so, yes.

13 Q. All right. And then Billy says here on
14 page 6, "Sir, please don't share our treasure hunt
15 project with Jerry."

16 Do you know which Jerry he was talking
17 about?

18 A. Jerry Byrum.

19 Q. Then you respond here at 10:19 a.m.
20 saying, "I won't say a word to him."

21 And then you go on to say, "Laura got a
22 response from the guy who actually runs the center
23 and said swing by."

24 Do you know who that was?

25 A. I don't know his name, no.

1 That's you telling Billy that you dropped
2 TriForce off at the AmericInn, right?

3 A. Yes.

4 Q. Did you pay for that room for TriForce?

5 A. Meet Ottumwa did as part of our tournament
6 fees. We were in charge of all the fees, booking
7 the rooms, paying the workers and things like that.
8 Meet Ottumwa was direct billed for those rooms.

9 Q. How many rooms were -- were blocked off
10 for you guys?

11 A. We originally said 10, but I think we
12 probably had seven. And then --

13 Q. And TriForce -- and TriForce was in room
14 308?

15 A. Yes, I do believe so.

16 I'd like to state the only reason I know
17 what room he was in was because I had to have food
18 delivered to him. And on Sunday, I showed up to
19 help him take his stuff to the car. Otherwise, I
20 would not have known what room he was. I don't know
21 what room any of the people were in. I just knew
22 that they were booked.

23 Q. Did you enter Room 308 on Sunday?

24 A. On Sunday to help him take the stuff down
25 to the car, correct.

1 Q. Okay. That's good to know.

2 And you ordered him salmon with garlic

3 mashed potatoes and broccoli, right?

4 A. Correct.

5 Q. From Applebee's?

6 A. Correct.

7 Q. Was it any good?

8 A. Apparently, because he had that the day

9 before, and he liked -- liked it enough to ask for

10 it again.

11 Q. Right. Okay.

12 So when you entered -- you know, I'll show

13 you a picture of -- of the room so you can tell me

14 if that's what it looked like in there.

15 Now -- actually, let's go back here to

16 Exhibit A.

17 Do you see this picture, the attachment on

18 Exhibit A here?

19 A. Yes.

20 Q. All right. When you entered Room 03 --

21 308, did you see this desk in the room?

22 A. I do believe that was right on the

23 right-hand side, correct.

24 Q. So you can tell from this picture, right,

25 that the photo was taken in TriForce's hotel room?

1 A. I would agree with that.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Let's move on to Exhibit C.

5 (Whereupon Exhibit C was marked for
6 identification.)

7 BY MR. TASHROUDIAN:

8 Q. All right. Is this an e-mail that you
9 sent to -- is this, Exhibit C, an e-mail that you
10 sent to Billy Mitchell on 6/26 at 9:26 a.m.?

11 A. Yes.

12 Q. Why did you send this picture to Billy
13 Mitchell?

14 A. I do believe he asked what picture I sent
15 to Laura.

16 Q. And you forward -- how did he ask you
17 that? By text? By phone?

18 A. I don't remember offhand. If it's not in
19 the e-mails or the texts that I sent to you, then it
20 was by phone. But I don't remember offhand which
21 way it was.

22 Q. Did you talk to him regularly by phone
23 around this time?

24 A. During that weekend, I would say yes.

25 Q. Okay. I see here on Exhibit B, page 22,

1 at 6:26, "Pic is sent."

2 Do you see that there?

3 A. Yep.

4 Q. Is this you acknowledging to -- to Billy
5 that you sent the picture to him.

6 A. I would think, yes.

7 Q. All right. Let me see if there's a --
8 there are no text messages beforehand here, so is it
9 fair to say that you may have talked to him Monday
10 the 26th about the picture?

11 A. On the phone?

12 Q. On a the phone, yes.

13 A. Yes.

14 Q. All right. So on Monday the 26th, you
15 talked to him about the picture. He asked you to
16 send it to him. And you sent it to him, correct?

17 A. I think so, yes.

18 Q. But this is the same picture that he had
19 sent for you to send to Laura through TriForce,
20 correct?

21 A. Correct.

22 MS. ROSS: Objection. Misstates prior
23 testimony. Who is "he"?

24 MR. TASHROUDIAN: Billy. That -- that's
25 who "he" is. Billy is the mastermind, Kristina, in

1 case you haven't realized.

2 MS. ROSS: The question -- that's not a
3 question. I'm -- your question was talking about
4 multiple people. It was very confusing. You just
5 said "he."

6 MR. TASHROUDIAN: I'll try it again.
7 Let's try it again.

8 BY MR. TASHROUDIAN:

9 Q. So this picture that you sent in Exhibit
10 C, all right, this is the same picture that TriForce
11 had asked you to send to Laura through Billy,
12 correct?

13 A. Correct.

14 Q. Or, rather, that Billy had asked you to
15 send to Laura through TriForce in that Facebook text
16 message, which we'll get to.

17 A. Correct.

18 Q. And then you confirmed -- you sent this
19 e-mail to him with the picture -- of a picture that
20 he had sent to you originally, right?

21 A. Correct.

22 MS. ROSS: Objection. Vague and ambiguous
23 as to "he."

24 BY MR. TASHROUDIAN:

25 Q. And Billy had asked you, in fact, to ask

1 Laura to send him an e-mail confirming that the
2 awards are found, right?

3 A. I do believe so, yes. I think that is in
4 a text message.

5 Q. And Laura thought that was --

6 A. No. That may have been in a phone call
7 that I -- and I -- then I asked Laura to text
8 message. I think that's the way that is.

9 Q. So Billy called you up, and he said, hey,
10 John, can you have Laura send me a -- an e-mail
11 saying that the awards had been found?

12 A. I believe that was on the day that I was
13 returning after dropping TriForce off, but yes, I
14 believe so.

15 Q. Did you find that that was a weird
16 request?

17 A. Yes. And I do believe in the text message
18 to Laura it even says this is weird request.

19 Q. Why did you -- why did you think that was
20 a weird request?

21 A. I felt it was pretty redundant. But I've
22 only known Billy as a friend, casual friend for a
23 year and a half or two years. And I don't have a
24 lot of experience with a lot of people that have the
25 recognition that he does. So I felt, well,

1 picture at the plaque?

2 A. I don't remember if it was even the day
3 before that. It might have been. Give me a second.
4 I might be able to -- it was the day that we did the
5 League of Legends, so that was probably the -- the
6 previous day that we went to take the picture.

7 Q. All right. So I want to get this time
8 line straight.

9 On June 23rd, there was a -- there was a
10 panel discussion with TriForce Johnson, Walter Day,
11 and with Jerry Byrum, correct?

12 A. Yes, as well as Lonnie McDonald, myself,
13 and two other tournament organizers that I work
14 with.

15 Q. And what time did that panel discussion
16 end?

17 A. I believe it was probably about 5:00.

18 Q. 5:00.

19 And then TriForce left after that panel
20 discussion to go to Jerry Byrum's arcade, correct?

21 A. I do believe so, yes.

22 Q. And he returned two hours later with the
23 awards?

24 A. Approximately, yes.

25 Q. Do you know if he left with Jerry Byrum?

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.
3

4 I, Elizabeth Borrelli, Certified Shorthand
5 Reporter, Certificate No. 7844, for the State
6 of California, hereby certify:

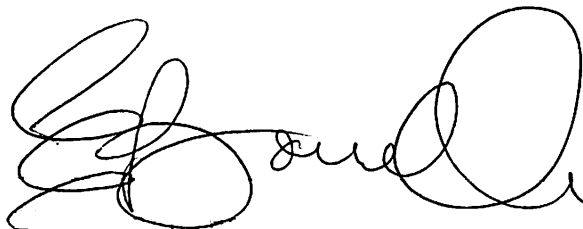
7 I am the deposition officer that steno-
8 graphically recorded the testimony in the foregoing
9 deposition;

10 Prior to being examined the deponent was
11 by me first duly administered an oath;

12 The foregoing transcript is a true record
13 of the testimony given.

14
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16 Dated: July 21, 2023

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Elizabeth Borrelli, CSR No. 7844

EXHIBIT 5

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

WILLIAM JAMES MITCHELL,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 19STCV12592
)	
TWIN GALAXIES, LLC,)	
)	
Defendant.)	
_____)	

DEPOSITION OF JOSH RYAN

June 2, 2023

Rick Galten, CSR No. 13202
977262



(310) 207-8000 Los Angeles	(415) 433-5777 San Francisco	(949) 955-0400 Irvine	(858) 455-5444 San Diego
(310) 207-8000 Century City	(408) 885-0550 San Jose	(760) 322-2240 Palm Springs	(800) 222-1231 Carlsbad
(916) 922-5777 Sacramento	(800) 222-1231 Martinez	(702) 366-0500 Las Vegas	(800) 222-1231 Monterey
(951) 686-0606 Riverside	(818) 702-0202 Woodland Hills	(702) 366-0500 Henderson	(516) 277-9494 Garden City
(212) 808-8500 New York City	(347) 821-4611 Brooklyn	(518) 490-1910 Albany	(914) 510-9110 White Plains
(312) 379-5566 Chicago	00+1+800 222 1231 Paris	00+1+800 222 1231 Dubai	001+1+800 222 1231 Hong Kong

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

WILLIAM JAMES MITCHELL,)
)
 Plaintiff,)
)
 vs.) Case No. 19STCV12592
)
TWIN GALAXIES, LLC,)
)
 Defendant.)
_____)

--o0o--

REMOTE DEPOSITION OF JOSH RYAN

Friday, June 2, 2023

--o0o--

Magna Legal Services
866-624-6221
www.magnals.com

Reported by:
Rick Galten, CSR No. 13202

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APPEARANCES:

For the Plaintiff:

Manning & Kass
Ellrod, Ramirez, Trester LLP
801 S. Figueroa Street, 15th Floor
Los Angeles, California 90017-3012
(213) 624-6900
tony.ellrod@manningkass.com
BY: Anthony J. Ellrod, Esq.
Kristina P. Ross, Esq.

For the Defendant:

Tashroudian Law Group, APC
12400 Ventura Boulevard
Suite 300
Studio City, California 91604
(818) 561-7381
david@tashlawgroup.com
BY: David Tashroudian, Esq.

ALSO PRESENT:

Jace Hall

--o0o--

1 Q. And I don't recall if I asked you.

2 Would the back of the cabinet be able to close
3 and lock with an RCA cable coming out of it?

4 A. Not as far as I know, no.

5 Q. So it wouldn't be able to lock, correct?

6 A. Correct.

7 Q. If there was an RCA cable coming out of it; is
8 that right?

9 A. Correct, yeah.

10 Q. So is it fair to say that there was no RCA cable
11 coming out of the back of the cabinet that you locked?

12 A. Oh, agreed, yes. That's correct.

13 Q. There was no cable, correct?

14 A. There was no cable.

15 Q. Got it. I just want to be 100 percent certain.

16 There was no RCA cable coming out of the back of

17 the --

18 A. Yes, there was no RCA cable. The only cable was
19 the power cable.

20 Q. All right. In other words, there's no way for
21 that game play to have been recorded to a VCR; is that
22 right?

23 A. Not externally, no.

24 Q. So a VCR would have to be inside the machine to
25 record?

1 A. If you didn't want a cable hanging out of it,
2 correct.

3 Q. And there was no VCR inside the machine when you
4 locked it, correct?

5 A. Correct.

6 Q. Now, let me ask you this question.

7 Since you're an audio/visual expert, is there
8 any way to record the game play that came out of the
9 PCB -- that you installed -- yeah, that's the question.

10 Is there any way to record the game play that
11 came out of that PCB that you installed in the manner in
12 which it was installed in the cabinet?

13 A. Oh, no. There -- in the way that it was
14 installed in the cabinet, the way I put it in the board
15 and put the board in, there were no connectors
16 externally. There were no other recording that I
17 noticed, recording equipment. So I would say no.

18 Q. Okay. Did Mr. Mitchell ever give you Mr. Hall's
19 contact information for you to contact him about your
20 installation of the PCB or about your --

21 A. No.

22 Q. -- involvement in this --

23 A. Not that I remember.

24 Q. Do you know where the Donkey Kong machine came
25 from?

1 A. I do not.

2 Q. Okay. Did anyone tell you that Mr. Mitchell had
3 it delivered to the -- to the hotel?

4 A. I -- I don't remember.

5 Q. You don't remember anyone telling you that; is
6 that correct?

7 A. Correct.

8 Q. I'm just reviewing my notes here. We may be
9 done. I'm just going to run through a couple of last
10 questions here.

11 Did you set up any A/V equipment in connection
12 with your installation of the PCB at the Mortgage
13 Brokers Convention?

14 A. Not at all.

15 Q. Did you set up any recording equipment in
16 connection with your installation of the PCB at the
17 mortgage -- PCB at the Mortgage Brokers Convention?

18 A. Not at all.

19 Q. Did you set up any external monitors in
20 connection with your installation of the PCB at the
21 Mortgage Brokers Convention?

22 A. No, I did not.

23 Q. And you know what PCB is, correct?

24 A. Correct.

25 Q. And that's the board that we're talking about?

1 A. Yes.

2 Q. Did you see a video converter board in the
3 cabinet where you installed the PCB at the Mortgage
4 Brokers Convention?

5 A. No. Or --

6 Q. Did you --

7 A. Let me say, I don't remember on that one.

8 Q. You don't remember seeing one in there, correct?

9 A. Correct.

10 Q. Did you see any RCA cables coming out of the
11 cabinet after you locked it?

12 A. No.

13 MR. TASHROUDIAN: All right. Just give me five
14 minutes. I'm going to confer with my client. And then
15 I think we're done.

16 MR. ELLROD: No, I have a few more questions
17 myself, actually.

18 MR. TASHROUDIAN: So let's come back at
19 11 o'clock.

20 (Off the record from 10:57 to 11:02.)

21 MR. ELLROD: Anyone? Are you done?

22 MR. TASHROUDIAN: Oh, yes, I'm sorry. Yes, I am
23 done, yes.

24 MR. ELLROD: Okay.

25 FURTHER EXAMINATION

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, RICK GALTEN, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 13202 issued by the Court Reporters Board of California and which is in full force and effect. (Bus. & Prof. Â§ 8016)

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties. (Civ. Proc. Â§ 2025.320(a))

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the deponent was first placed under oath or affirmation by me. (Civ. Proc. Â§Â§ 2025.320, 2025.540(a))

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record of the testimony given. (Civ. Proc. Â§ 2025.540(a))

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I have not, and shall not, offer or provide any services or products to any party's attorney or third party who is financing all or part of the action without first offering same to all parties or their attorneys attending the deposition and making same available at the same time to all parties or their attorneys. (Civ. Proc. Â§ 2025.320(b))

I shall not provide any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition to any party or any party's attorney or third party who is financing all or part of the action, nor shall I collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action. (Civ. Proc. Â§ 2025.320(c))

Dated: June 12, 2023



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DEPOSITION OFFICER'S CERTIFICATE

(Civ. Proc. Â§ 2025.520(e))

STATE OF CALIFORNIA)
) Ss.
COUNTY OF LOS ANGELES)

I, RICK GALTEN, hereby certify:

I am the deposition officer that
stenographically recorded the testimony in the foregoing
deposition.

Written notice pursuant to Code of Civil
Procedure, Section 2025.520(A), having been sent, the
deponent took the following action within the allotted
period with respect to the transcript of the deposition:

() In person, at the office of the
deposition officer, made the changes set forth on the
original of the transcript. (The parties attending the
deposition have been notified of said changes.)

() Approved the transcript by signing it.

() Refused to approve the transcript by not
signing it.

() By means of a signed letter, made the
changes and approved or refused to approve the
transcript as set forth therein. (Said letter has been
attached to the original transcript and copies thereof
mailed to all parties attending the deposition.)

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() Failed to approve the transcript within
the allotted time period.

Dated _____.

Rick Gatten

EXHIBIT 6

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

WILLIAM JAMES MITCHELL,)
)
Plaintiff,) Case No. 19STCV12592
vs.)
)
TWIN GALAXIES, LLC; and DOES)
1-10,)
)
Defendants.)
)
)
)
TWIN GALAXIES, LLC;)
)
Cross-Complainant,)
)
vs.)
)
)
WILLIAM JAMES MITCHELL;)
WALTER DAY; and ROES 1-25,)
)
Cross-Defendants.)
)

VIDEOTAPED DEPOSITION OF BRIAN CADY

APPEARING REMOTELY FROM

BONNEY LAKE, WASHINGTON

JULY 5, 2023

1:00 P.M.

REPORTED BY:

Mary E. Collins

CSR No. 12763

APPEARING REMOTELY FROM KOOTENAI COUNTY, IDAHO

1 REMOTE APPEARANCES:

2

3 For Plaintiff:

4 MANNING & KASS

5 LINNA LOANGKOTE

6 801 South Figueroa Street, 15th Floor

7 Los Angeles, California 90017

8 linna.loangkote@manningkass.com

9 tony.ellrod@manningkass.com

10

11 For Defendant:

12 TASHROUDIAN LAW GROUP

13 DAVID A. TASHROUDIAN

14 12400 Ventura Boulevard, Suite 300

15 Studio City, California 91604

16 david@tashlawgroup.com

17

18 Also present:

19 ROB DENOS, videographer

20 WILLIAM MITCHELL

21 JACE HALL

22

23

24

25

1 A. I believe it was at the Bridge View Center.

2 Q. Do you recall when the 2010 induction
3 ceremony took place?

4 A. No. Not off -- I mean, it's been some time
5 ago. No, I don't.

6 Q. Was it the summer of 2010?

7 A. It could be. I don't recall being cold, so I
8 would -- like I said, I believe it was sometime around
9 the summertime.

10 Q. What about August of 2010? Does that sound
11 about right?

12 A. It could have been.

13 Q. All right. What was your position with the
14 International Video Game Hall of Fame at the -- during
15 the time when the 2010 Hall of Fame induction ceremony
16 took place?

17 A. I had no position with them. I was simply --
18 I was an inductee.

19 Q. And you -- you currently have or hold any
20 position with the International Video Game Hall of
21 Fame?

22 A. Things have been quiet for a little bit, but
23 I believe I am on the board for the Hall of Fame at
24 this time.

25 Q. So you're on the board of directors; is that

1 Q. You about you don't recall seeing him then?

2 A. I did not know Pete at that time. I had
3 never met him. So I have no recollection of him
4 either being there or not being there. I had no idea
5 who he was.

6 Q. Do you know whether or not Billy Mitchell has
7 been named the Player of the Century by NAMCO?

8 A. I have no direct knowledge of that one way or
9 the other.

10 Q. Do you have any knowledge of that fact at
11 all?

12 A. No, I -- I -- I do not.

13 Like I said, I don't know -- I cannot -- I
14 don't have any information that either supports or
15 detracts from that.

16 Q. Has Billy Mitchell ever told you that NAMCO
17 awarded him video game Player of the Century in 1999?

18 A. I don't recall. Yeah. I honestly don't
19 recall.

20 I've heard that. I just don't remember where
21 from.

22 Q. In 2010 did Billy Mitchell donate any --

23 sorry, strike the question.

24 In 2010, did Billy Mitchell donate any

25 plaques or awards to you as a representative --

1 representative of the International Video Game Hall of
2 Fame?

3 A. No. And as I was not a representative of the
4 Hall of Fame, there -- I was neither a representative
5 of the Hall of Fame at that time. And no, he did not
6 give me any awards or plaques or donations.

7 Q. Has Billy Mitchell ever given you any awards
8 or plaques or donations of his personal awards?

9 A. Nothing of his awards.

10 Q. Have you ever seen any of Billy Mitchell's
11 Player of the Century awards?

12 A. I have not.

13 Oh, actually I take that back. I don't know.

14 If -- like I said, I've never -- when he was
15 in -- during 20 -- the 2010 event I was -- really
16 wasn't close enough to see anything one way or the
17 other.

18 Q. Do you know if Jerry Byrum is a
19 representative of the International Video Game Hall of
20 Fame in 2010?

21 A. I don't believe so. I don't -- I have no
22 idea if he was there or not, but I don't believe he
23 was a representative of the Video Game Hall of Fame at
24 that time.

25 Q. Do you know when he became a representative

1 so I -- I -- and I believe that's -- that all of us
2 that were there in 2010 were given those.

3 And the other items, no. I -- I don't recall
4 seeing. There -- I believe one of them may have been
5 on a table where Billy was signing autographs in 2010,
6 but I was never more closer than probably 30, 40 feet
7 from the table.

8 But the little stand-up one with the little
9 Pac-Man thumbs up, whether it was that one leaning up
10 or standing, I can't say. But that looks like it may
11 have been what I saw from a distance. But that's as
12 close -- I mean, I never got very close to it.

13 Q. All right. So let's break it down a little
14 bit.

15 This award in the center that says "Billy
16 Mitchell" on it, it appears to say "Class of 2010."

17 A. Yes.

18 Q. Is that similar to the award you were given
19 at the induction ceremony?

20 A. Correct, yes.

21 Q. And then there are these two plaques here
22 with Pac-Man on them.

23 Is it your testimony you've seen these -- one
24 of those two awards before?

25 A. I believe one of them was on a table where --

1 was at the 2010 events. I can't remember -- speak to
2 the context of where it was. I believe it may have
3 been there, but I was never very close to it. And so
4 it's difficult to say for sure.

5 Q. Have either ever these two plaques ever been
6 donated to you by Billy Mitchell to -- to remain at
7 the IVGHOF archives?

8 A. Not to me, no.

9 Q. What about this framed plaque here that says
10 the Player of the Century -- not plaque. This framed
11 certificate that says Player of the Century Award?

12 Have you ever seen that?

13 A. That does not look at all familiar.

14 Q. Did Billy Mitchell ever donate that document
15 to you?

16 A. No.

17 Q. I -- do you know the whereabouts of any of
18 Billy Mitchell's awards that were donated to the
19 International Video Game Hall of Fame?

20 A. No, I don't.

21 Q. Does the International Video Game Hall of
22 Fame regularly accept donations of awards from --

23 A. I don't know. I just don't know.

24 Q. How about while you were there, did you see
25 anyone or do you know if anyone has ever donated any

1 STATE OF IDAHO)
2 COUNTY OF KOOTENAI)

3

4 I, MARY E. COLLINS, CSR No. 12763 for the
5 State of California, do hereby certify:

6 That prior to being examined, the witness in
7 the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing but
9 the truth;

10 That said proceedings were taken remotely
11 before me at the time and places therein set forth and
12 were taken down by me in shorthand and thereafter
13 transcribed into typewriting under my direction and
14 supervision;

15 I further certify that I am neither counsel
16 for, nor related to, any party to said proceedings,
17 not in anywise interested in the outcome thereof.

18 In witness whereof, I have hereunto
19 subscribed my name this day, July 19, 2023.

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MARY E. COLLINS

Certified Shorthand Reporter #12763

EXHIBIT 7



EXHIBIT
K
Wm. Mitchell
01-09-2023

EXHIBIT 8

September 17, 1989

Mr. William J. Mitchell, Jr.
4700 Hollywood Blvd.
Hollywood, Florida 33021
U.S.A.

Dear Billy:

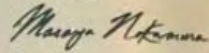
As Father of Pac-Man, I wish to extend my heartiest Congratulations on your amazing feat of becoming the first player ever to achieve a perfect score of 3,333,300 points on the Pac-Man game.

The news of your accomplishment which has spread quickly throughout the world comes to us at a very opportune time. We are currently preparing to celebrate Pac-Man's 20th Birthday on October 30, 1989 and as part of the celebration, we will be releasing "Pac-Man World 20th Anniversary" for the PlayStation platform in October. Your historical feat will help us remind the world of this special occasion and will also help bring back memories of yesteryears for many fans of Pac-Man when, as young players, they feverishly challenged every aspect of the Game. Most importantly, however, your feat will undoubtedly remind the world once again of the greatness of the Game itself.

The entire Namco Group joins me in congratulating you and thanking you for your invaluable support of Namco's most prominent game, the Pac-Man.

With personal Best Wishes,

Yours very truly,
NAMCO LTD.



Masaya Nakamura
Chairman & CEO

namco



EXHIBIT

L

Wm. Mitchell
01-09-2023

EXHIBIT 9

THE PLAYER OF THE CENTURY AWARD

AN AWARD HONORING THE CENTURY'S MOST SUCCESSFUL VIDEO GAME PLAYER

Created by The Video Game Hall of Fame and the Video Game Industry Museum
In recognition of historical contributions to the long tradition of video game playing,
Billy Mitchell has been awarded the historical accolade published in *Video Game's Official Video
Game & Medal Book of World Records* and will be forever honored for the following accomplishments:

Billy Mitchell

THE INDUSTRY'S MOST CELEBRATED VIDEO GAME PLAYER

As history's most famous video game player, Billy Mitchell has dominated the high-score race on most major game titles that any other player during the video game era's 30-year span. In addition to achieving history's first "perfect" Pac-Man score, Billy Mitchell is a past or present record holder on Ms. Pac-Man, Donkey Kong, Tetris, King of the Monsters and Centipede.



Published by the Video Game Industry Museum
and Video Game's Official, at 1010 1st St. NE
Atlanta, GA 30309
www.vgimuseum.com



EXHIBIT
N
Wm. Mitchell
01-09-2023

EXHIBIT 10

Walter Day
EXHIBIT
6.26.23

B



EXHIBIT 11

From: Kristina Ross Kristina.Ross@manningkass.com
Subject: RE: Mitchell NAMCO Award [Twin Galaxies v. Billy Mitchell]
Date: June 26, 2023 at 4:05 PM
To: David Tashroudian david@tashlawgroup.com, Anthony J. Ellrod Tony.Ellrod@manningkass.com
Cc: rwc robertwcohenlaw.com rwc@robertwcohenlaw.com



Here is the photograph that was recently received from IVGHOF.

Kristina Ross
Associate



801 S. Figueroa St., 15th Floor
Los Angeles, CA 90017
Main: (213) 624-6900 | Ext.: 2642
Direct: (213) 430-2642
Kristina.Ross@manningkass.com | manningkass.com

Dallas | Los Angeles | New York | Orange County | Phoenix | San Diego | San Francisco

Note: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. The information transmitted in or with this message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material and is protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any retransmission, dissemination, distribution, copying or other use of, or the taking of any action in reliance upon, this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message and deleting the material from your computer. Thank you. Manning & Kass, Ellrod, Ramirez, Trester, LLP

From: David Tashroudian <david@tashlawgroup.com>
Sent: Monday, June 26, 2023 3:28 PM
To: Anthony J. Ellrod <Tony.Ellrod@manningkass.com>; Kristina Ross <Kristina.Ross@manningkass.com>
Cc: rwc robertwcohenlaw.com <rwc@robertwcohenlaw.com>
Subject: Mitchell NAMCO Award [Twin Galaxies v. Billy Mitchell]

Good afternoon Tony & Kristina --

Walter Day testified today that Billy Mitchell has provided him with a picture of Mitchell's NAMCO "Player of the Century Award." We have been asking for a picture of this award for months now and have always been told that it does not exist. But it does.

I write to ask for a copy of the award in advance of Byrum's deposition today -- happening in 30 minutes -- considering that Mr. Mitchell has claimed that this award is in Byrum's possession. Please send a picture of the award over right away.

David

David A. Tashroudian, Esq.
TASH LAW GROUP
12400 Ventura Blvd., Suite 300
Studio City, California 91604
(818) 561-7381

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you have received this message in error, please notify the original sender immediately by telephone or by return e-mail and delete this message, along with any attachments, from your computer. Thank you.



EXHIBIT 12

On Fri, Jun 23, 2023, 9:11 AM Laura Carrell <lcarrell@meetottumwa.org> wrote:

Good morning, Billy! Can you tell me exactly what we're looking for? The only thing I had in the Convention & Visitors Bureau storage area was the three CD cases of discs, but no awards or anything. I can have the Bridge View Center staff help look, just let me know what and how many we're looking for. Do you know what year they might have last been seen here, too?

Thanks so much!

Laura Carrell

Executive Director

MeetOttumwa

102 Church St., Ottumwa, IA 52501-4209

O: 641.684.4303

C: 641.455.4361

www.meetottumwa.org



From: Bill Mitchell/Rickeys <rickeysshotsauce@aol.com>

Sent: Friday, June 23, 2023 1:11 AM

To: Laura Carrell <lcarrell@meetottumwa.org>; John Grunwald <john.grunwald@fairfieldsfuture.org>;
jerry.byrum@ibsa.com <jerry.byrum@ibsa.com>

Subject: Little help please

Hi there,

I expressed my regrets for not being able to attend and support this year's event.

One more concern, I expressed on more than a few occasions, of the many awards and memorabilia that were loaned to the IVGHOF and the Video Game Capital of the World a handful of them that were left and last seen at the Bridgeview Center have yet to be located.

Please make any effort possible to locate this because as expressed before, it has become quite important. It can stay with IVGHOF at a later time as part of my continuing support.

Still hoping you can help

Appreciative

Billy Mitchell
954-829-9464

Confidentiality Statement: This message is intended only for the use of the Addressee and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient, dissemination of this communication is prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify the sender immediately. Thank you.

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EXHIBIT 13

1 David A. Tashroudian [SBN 266718]
Mona Tashroudian [SBN 272387]
2 TASHROUDIAN LAW GROUP, APC
12400 Ventura Blvd., Suite 300
3 Studio City, California 91604
Telephone: (818) 561-7381
4 Facsimile: (818) 561-7381
Email: david@tashlawgroup.com
5 mona@tashlawgroup.com

6 Attorneys for Twin Galaxies, LLC

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 WILLIAM JAMES MITCHELL,

12 Plaintiff,

13 v.

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

15 Defendants.

17
18 AND RELATED CROSS-ACTION

Case No. 19STCV12592

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

***EX PARTE APPLICATION OF TWIN
GALAXIES, LLC FOR ORDER
REQUIRING PLAINTIFF TO PRODUCE
DOCUMENTS & APPEAR FOR
DEPOSITION; DECLARATION OF
DAVID A. TASHROUDIAN IN SUPPORT***

[Filed concurrently with [PROPOSED] Order]

Hearing Date

Date: July 7, 2023

Time: 8:30 a.m.

Place: Department 36

Action Filed: 4/11/2019

1 EX PARTE APPLICATION

2 Defendant and cross-complainant Twin Galaxies, LLC (“Twin Galaxies”) respectfully
3 applies *ex parte* pursuant to Rules 3.1200 *et seq.* the California Rules of Court (“CRC”) for an
4 order: (a) requiring plaintiff and cross-defendant William James Mitchell (“Plaintiff” or
5 “Mitchell”) to produce the NAMCO Video Game Player of the Century plaque and all other
6 NAMCO awards requested in discovery; and (b) ordering Plaintiff to sit for deposition to testify
7 to the facts surrounding the recent photograph of the NAMCO plaques.

8 There is an immediate danger pursuant to CRC 3.1202(c) that the NAMCO awards will be
9 secreted to Jamaica by Plaintiff’s associate Isaiah TriForce Johnson. [See Declaration of David
10 A. Tashroudian (“Tashroudian Decl.”), ¶¶ 7-15.] The NAMCO plaques are essential to Twin
11 Galaxies proving its claims for fraud and Civil RICO and will not be available for trial if this Court
12 does not immediately order production of the plaques. Moreover, Plaintiff should be required to
13 sit for deposition to explain where and how he received pictures of the NAMCO plaques that were
14 previously demanded in discovery but where he claimed the pictures do not exist.

15 Twin Galaxies has given notice of the *ex parte* application to counsel in this matter on July
16 5, 2023 by email. [See Tashroudian Decl., ¶17.]

17 The parties to this action are Twin Galaxies; plaintiff and cross-defendant William James
18 Mitchell; and, cross-defendant Walter Day. Mr. Mitchell is represented by Anthony J. Ellrod, 801
19 S. Figueroa St, 15th Floor, Los Angeles, CA 90017, phone (213) 624-6900. Mr. Day is represented
20 by Robert W. Cohen, 1901 Avenue of the Stars, Suite 1910, Los Angeles, CA 90067, phone (310)
21 282-7586. There have been no other *ex parte* applications of the same character or for the same
22 relief made by Twin Galaxies.

23 Respectfully submitted,

24 Dated: July 5, 2023

TASHROUDIAN LAW GROUP, APC

26 By: /s/ David Tashroudian, Esq.

27 David Tashroudian, Esq.
28 Attorneys for defendant and cross-
complainant Twin Galaxies, LLC

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. FACTS**

3 A. Plaintiff alleges he was proclaimed to be the Video Game Player of the Century by
4 NAMCO in 1999 but claims it was donated to the International Video Game Hall of
5 Fame.

6 Plaintiff alleges that he was proclaimed to be the Video Game Player of the Century by the
7 Japanese creator of the Pac-Man video game NAMCO at the 1999 Tokyo Game Show. [See
8 Tashroudian Decl., ¶ 2 (FAC at ¶ 2).] At deposition, Plaintiff claims that NAMCO awarded him
9 two plaques at the Tokyo Game Show with one being inscribed with the words “Video Game
10 Player of the Century.” [Tashroudian Decl., ¶ 3, Exh. A (Mitchell Depo., 21:16-30:21).]

11 Plaintiff was asked to produce the NAMCO Video Game Player of the Century plaque in
12 discovery and he responded that he is not in possession of the plaque because the plaque was
13 donated to the International Video Game Hall of Fame (“IVGHOF”) in 2010. [Tashroudian Decl.,
14 ¶ 4 (Mitchell Discovery Responses.)]

15 B. Twin Galaxies seeks third-party discovery to obtain the NAMCO Video Game Player
16 of the Century plaque.

17 Twin Galaxies subpoenaed Jerry Byrum, the current president of the IVGHOF, and
18 demanded production of the NAMCO Video Game Player of the Century plaque or pictures of the
19 same. Mr. Byrum appeared at deposition on the afternoon of June 26, 2023 and testified that
20 Mitchell did not donate the NAMCO Video Game Player of the Century plaque to him, and he
21 testified that the IVGHOF does not have the award. [Tashroudian Decl., ¶ 5.]

22 Twin Galaxies also subpoenaed Brian Cady, an IVGHOF member identified by Mitchell
23 as having knowledge of his donation of the plaque. Mr. Cady testified at deposition that Mitchell
24 did not donate any awards to the IVGHOF in 2010 when Mr. Cady was part of the organization.
25 [Tashroudian Decl., ¶ 6.] No representative of the IVGHOF has produced a the NAMCO Video
26 Game Player of the Century plaque, or a picture thereof, despite being subpoenaed to do so.

27
28

1 C. Plaintiff produces a purported picture of the NAMCO Video Game Player of the
2 Century plaque on June 26, 2023.

3 On the morning of June 26, 2023, Twin Galaxies deposed cross-complainant Walter Day
4 – Mitchell’s long-time (40 year) associate – who testified that Mitchell had shown him a picture
5 of the NAMCO Video Game Player of the Century award (the “Picture”). Counsel for Mitchell
6 and Day objected to questions about the picture on the grounds that the information sought is
7 subject to the common interest privilege by virtue of the parties’ joint defense agreement.
8 [Tashroudian Decl., ¶ 7.]

9 Twin Galaxies’ counsel demanded the immediate production of the Picture after Day’s
10 deposition and prior to Byrum’s deposition. Mitchell’s counsel complied and produced the picture
11 to Twin Galaxies’ counsel by email with filename “IVGHOF.jpeg” minutes prior to Byrum’s
12 deposition. Byrum testified that he has not seen the Picture before. [Tashroudian Decl., ¶ 8.]

13 D. The Picture was taken on, or about, June 24, 2023.

14 The Picture produced by Plaintiff’s counsel on June 24, 2023 was taken no later than June
15 23, 2023. The Picture is of four of Mitchell’s awards – two from NAMCO, one from the IVGHOF,
16 and another Player of the Century Award from Walter Day. [Tashroudian Decl., ¶ 9.]

17 The Picture also shows a laptop that is playing the YouTube video “BABYMONSTER
18 AHYEON SAYS THE "N" WORD (My Thoughts)” by Quani Covers which was posted to
19 YouTube on June 24, 2023 (the “YouTube Video”). The Picture in the top-right corner contains
20 a frame of the YouTube Video at video timestamp 2:23. Mitchell’s associate Isaiah TriForce
21 Johnson commented on the YouTube Video on June 24, 2023. [Tashroudian Decl., ¶¶ 10-13.]

22 E. Mitchell, Day, and Johnson were in Ottumwa, Iowa from June 22 through June 24.

23 Plaintiff is informed, believes, and based thereon alleges that all three of Mitchell, Day,
24 and Johnson were present in Ottumwa, Iowa between June 22 through June 24 at the event “Meet
25 Ottumwa Presents - Meet Your Destiny 2023!” [Tashroudian Decl., ¶¶ 14-16.] Plaintiff is further
26 informed and believes that the Picture was taken during the Ottumwa meeting between the three
27 considering that Mitchell sent Brian Cady a text message on June 23, 2023 about a “secret” relating
28 to Ottumwa. [Id. at ¶16.] On of Mitchell, Day or Johnson has the plaques.

1 **II. ARGUMENT**

2 A. Plaintiff has custody, control, or possession of the NAMCO Video Game Player of the
3 Century plaque and should be ordered to produce it immediately.

4 Twin Galaxies has previously demanded production of the NAMCO Video Game Player
5 of the Century plaque and Mitchell has claimed he does not have it because it was doated to the
6 IVGHOF.

7 The Picture – produced on June 26, 2023 – shows that either Mitchell, or one of his
8 associates Day or Johnson, currently have possession, custody, or control or the NAMCO Video
9 Game Player of the Century plaque. The Picture can be dated to no later than June 24, 2023 by
10 reason of the YouTube Video. The YouTube Video was posted on June 24 and the Picture shows
11 in the upper right-hand corner the frame at timestamp 2:23 from video. The match is perfect.

12 What is more is that Isaiah Triforce Johnson posted a comment on the Video on June 24,
13 2023 as well. This evidence is enough to show that Plaintiff or his associates have control over
14 the NAMCO Video Game Player of the Century Award and he should be required to produce it
15 pursuant to Twin Galaxies’ document request. (*See* Cal. Code Civ. Proc. § 2031.010(a).)

16 B. There is an immediate danger that the NAMCO Video Game Player of the Century
17 award will be taken oversees by Isaiah TriForce Johnson.

18 Twin Galaxies is informed and believes and based thereon alleges that Isaiah TriForce
19 Johnson resides in Jamaica. [Tashroudian Decl., ¶ 15.] Accordingly, Twin Galaxies does not
20 have the reach to obtain the NAMCO Video Game Player of the Century plaque in the foreign
21 jurisdiction in time for trial on October 27, 2023.

22 The NAMCO Video Game Player of the Century plaque is necessary for Twin Galaxies to
23 prove its fraud and its Civil RICO claims since Twin Galaxies’ allegation is Mitchell fabricated
24 the story of him being crowned “Video Game Player of the Century” by NAMCO as set forth in
25 Paragraph 17 of Twin Galaxies cross-complaint.

26 Accordingly, Twin Galaxies seeks the requested order to preserve evidence to prove its
27 case at trial. This evidence can be secreted by Mitchell to Jamaica and the only way to prevent
28 that is obtaining an order from this court requiring the immediate production of the plaque.

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C. Plaintiff should be ordered to sit for deposition re production of the Picture.

Twin Galaxies has previously demanded production of the NAMCO Video Game Player of the Century plaque or pictures of the same. Plaintiff has not produced any pictures or the actual plaque until June 26, 2023 – well after his deposition and well after the documents were requested. But the Picture, as produced, indicates from the filename IVGHOF.jpeg that the document was prepared by or obtained from the International Video Game Hall of Fame despite the fact that IVGHOF representatives have testified that Mitchell did not donate any of his awards to the organization. The Picture is also low resolution – with a file size of 148KB which is much smaller than a picture from a cellphone camera which is approximately 3-4MB. Meaning that the Picture is only 4.5% as large as a regular picture taken from a cellphone camera. That means the Picture and the text of the plaque cannot be read at this low of a resolution. The Picture also shows signs on manipulation and deliberate obfuscation where the text occurs in the form of blurring with a photo-editing tool. Mitchell should be required to sit for deposition to explain these anomalies and to explain the origin of the Picture. Twin Galaxies will pay the costs.

Respectfully submitted,

Dated: July 5, 2023

TASHROUDIAN LAW GROUP, APC

By: /s/ David Tashroudian, Esq.
David Tashroudian, Esq.
Attorneys for defendant and cross-complainant Twin Galaxies, LLC

1 **DECLARATION OF DAVID A. TASHROUDIAN**

2 I, David A. Tashroudian, declare that:

3 1. I am an attorney duly licensed to practice law before this Court and I am counsel
4 of record for Twin Galaxies. I make this declaration in support of Twin Galaxies’ *ex parte*
5 application. The facts declared to herein are known to me personally to be true and if called as a
6 witness to testify to these facts, I could and would do so.

7 2. Plaintiff alleges that he was proclaimed to be the Video Game Player of the Century
8 by the Japanese creator of the Pac-Man video game NAMCO at the 1999 Tokyo Game Show. A
9 true and correct copy of Plaintiff’s allegation in Paragraph 2 of his First Amended Complaint is
10 reproduced below:

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

15
16 3. At deposition, Plaintiff claimed that NAMCO awarded him two plaques at the
17 Tokyo Game Show with one being inscribed with the words “Video Game Player of the Century.”
18 A true and correct copy of pages 21 through 30 of Plaintiff’s deposition taken on January 9, 2023
19 is attached to this declaration as Exhibit A and is incorporated herein by this reference.

20 4. Plaintiff was asked to produce the NAMCO Video Game Player of the Century
21 plaque in discovery and he responded that he is not in possession of the plaque because the plaque
22 was donated to the International Video Game Hall of Fame (“IVGHOF”) in 2010. True and
23 Correct copies of Plaintiff’s responses to Special Interrogatory No. 120 and Demand for
24 Production No. 9 where he indicates that the plaques were donated to the IVGHOF are reproduced
25 on the next page:
26
27
28

13 **SPECIAL INTERROGATORY NO. 120:**

14 State all facts, including the date of donation, supporting the contention made in response to
15 Special Interrogatory No. 11 that you donated the "Video Game Player of the Century" plaque that
16 was created by NAMCO on or about September 17, 1999 to the International Video Game Hall of
17 Fame in Ottumwa, Iowa.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 120:**

19 Responding Party objects to this Interrogatory on the grounds that it is vague, ambiguous,
20 overbroad, and compound.

21 Subject to and without waiving the foregoing objections, Responding Party responds: In or
22 about 2010, Responding Party donated the "Video Game Player of the Century" award plaque to
23 the Intentional Video Game Hall of Fame located at 102 Church St, Ottumwa, Iowa 52501, when
24 he visited its facility in Ottumwa, Iowa.

27 **DEMAND FOR PRODUCTION NO. 9:**

28 Produce for inspection all non-privileged DOCUMENTS, including any actual physical

4866-9453-7509.1

8

**RESPONSE OF PLAINTIFF WILLIAM JAMES MITCHELL TO FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS PROPOUNDED BY DEFENDANT TWIN GALAXIES, LLC**

1 awards or plaques, that support the contention in Paragraph 7 of your June 22, 2020, Declaration
2 that: "On September 17, 1999, on behalf of the Japanese Amusement Machine and Manufacturing
3 Association, NAMCO proclaimed me as the "Video Game Player of the Century."

4 **RESPONSE TO DEMAND FOR PRODUCTION NO. 9:**

5 Responding Party objects to this Request on the grounds that it is overbroad, burdensome,
6 oppressive and harassing. Responding Party objects to this Request on the grounds that it fails to
7 identify the requested documents with sufficient particularity. Responding Party further objects to
8 this Request to the extent that it seeks documents already in the possession of Responding Party
9 and/or equally, if not more available to them. The Request improperly seeks information protected
10 by Responding Party's constitutional right of privacy. Cal. Const. Art. I, § 1; *Valley Bank of*
11 *Nevada v. Superior Court* (1975) 15 Cal. 3d 652, 656.

12 Subject to and without waiving the foregoing objections, Responding Party responds:
13 Upon a diligent search and reasonable inquiry, Responding Party is unable to comply because the
14 requested items no longer exist, or are no longer in your possession as Responding Party donated
15 all actual physical awards or plaques obtained from his videogame career to the International
16 Videogame Hall of Fame located in Ottumwa, Iowa.

1 5. Twin Galaxies subpoenaed Jerry Byrum, the current president of the IVGHOF, and
2 demanded production of the NAMCO Video Game Player of the Century plaque or pictures of the
3 same. Mr. Byrum appeared at deposition on the afternoon of June 26, 2023 and testified that
4 Mitchell did not donate the NAMCO Video Game Player of the Century plaque to him, and he
5 testified that the IVGHOF does not have the award or responsive documents. I deposed him.

6 6. Twin Galaxies also subpoenaed Brian Cady, an IVGHOF member identified by
7 Mitchell as having knowledge of donation of the plaque. Mr. Cady testified at deposition on July
8 5, 2023 that Mitchell did not donate any awards to the IVGHOF in 2010, nor did he donate any
9 awards to Mr. Cady. I took Mr. Cady's deposition.

10 7. On the morning of June 26, 2023, I deposed cross-complainant Walter Day –
11 Mitchell's long-time (40 year) associate – who testified that Mitchell had recently shown him a
12 picture of the NAMCO Video Game Player of the Century award. Counsel for Mitchell and Day
13 objected to further questions about the picture on the grounds that the information sought is subject
14 to the common interest privilege by virtue of the parties' joint defense agreement.

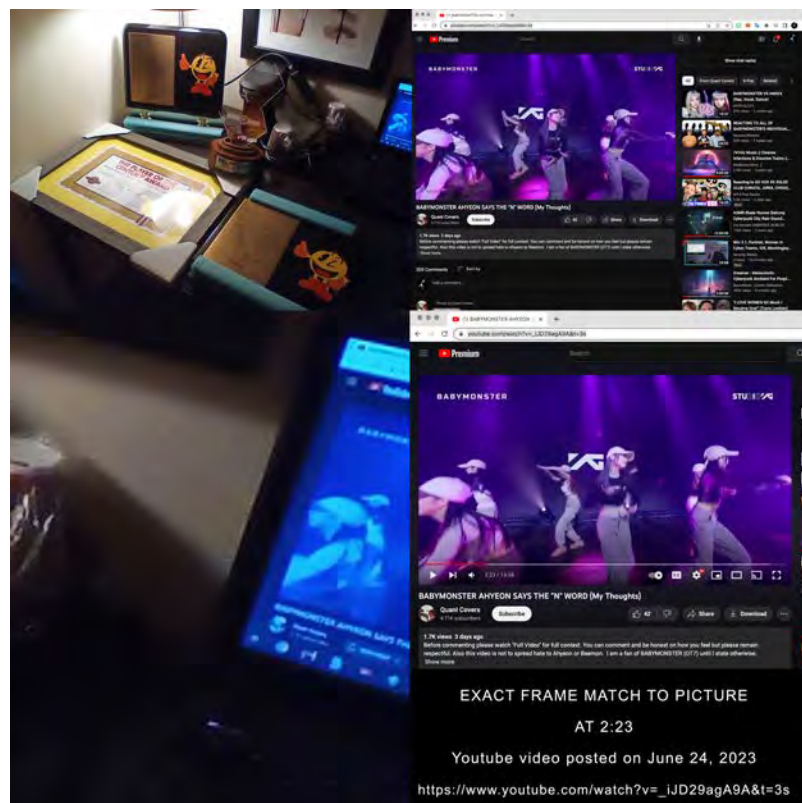
15 8. I demanded from Mitchell's counsel the immediate production of the picture after
16 Day's deposition and prior to Byrum's deposition. Mitchell's counsel complied and produced the
17 picture to me by email with filename "IVGHOF.jpeg" minutes prior to Byrum's deposition (the
18 "Picture"). Byrum testified that he has not seen the Picture before. A true and correct copy of the
19 Picture is reproduced below:



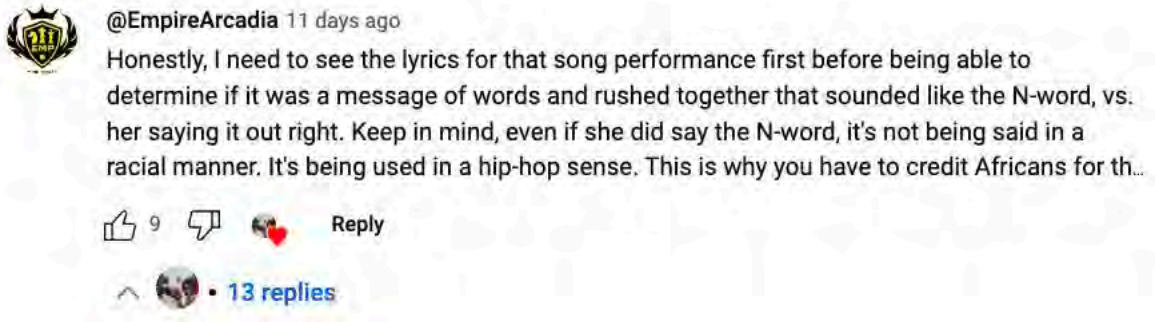
1 9. The Picture produced by Plaintiff’s counsel on June 24, 2023 was taken no later
2 than June 24, 2023 as set forth in Paragraphs 10 and 11 below. The Picture is of four of Mitchell’s
3 awards – two from NAMCO, one from the IVGHOF, and another Player of the Century Award
4 from Walter Day.

5 10. The Picture shows a laptop in the upper right-hand corner that is playing the
6 YouTube video “BABYMONSTER AHYEON SAYS THE “N” WORD (My Thoughts)” by
7 Quani Covers which was posted to YouTube on June 24, 2023 (the “YouTube Video”). The
8 Internet hyperlink to access the YouTube Video is
9 https://www.youtube.com/watch?v=_iJD29agA9A&ab_channel=QuaniCovers. The YouTube
10 Video has a premier date of June 24, 2023 and I personally observed that date on the YouTube
11 site on July 5, 2023. All of the comments on the video were posted on or after June 24, 2023.

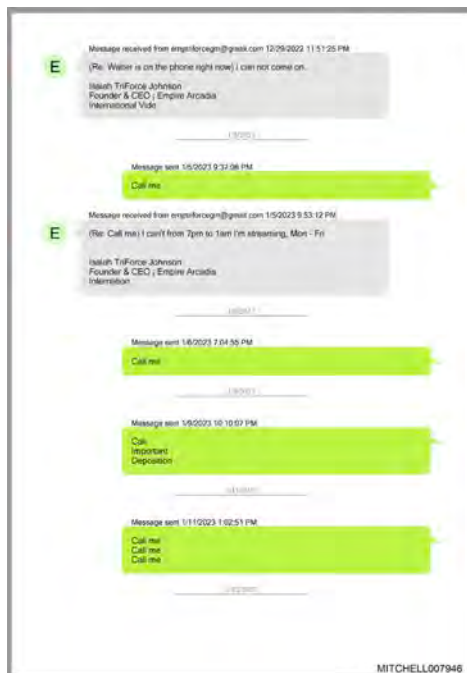
12 11. The Picture contains a frame of the YouTube Video captured at video timestamp
13 2:23. A side-by-side comparison of the YouTube Video at 2:23 with the video captured on the
14 laptop screen in the Picture is reproduced below and shows definitively that the Picture was taken
15 no later than the date the YouTube Video was posted – June 24, 2023.



1 12. Mitchell's associate Isaiah TriForce Johnson commented on the YouTube Video
2 on June 24, 2023 under the YouTube username EmpireArcadia. A true and correct copy of Mr.
3 Johnson's comment on the YouTube Video posted on June 24, 2023 is reproduced below:



10 13. Isaiah TriForce Johnson is known to me to be an associate of Mr. Mitchell and I
11 know him to be the Founder and CEO of Empire Arcadia. Mr. Johnson has submitted a declaration
12 in support of Mitchell's opposition to Twin Galaxies' motions in this case, and Mitchell has
13 submitted a number of correspondences in this case between him and Mr. Johnson related to
14 Mitchell's defamation claims. For example, Mitchell has produced document MITCHELL
15 007946 where Mr. Johnson's signature line shows that he is the Founder and CEO of Empire
16 Arcadia. The two were talking about Mr. Mitchell's deposition on the day of the deposition on
17 January 9, 2023 as shown below:



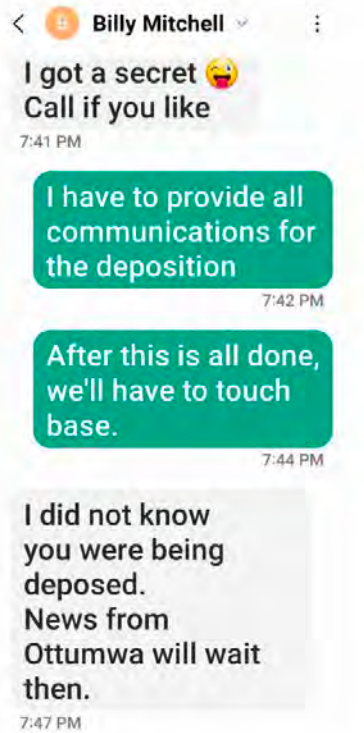
1 14. Twin Galaxies is informed, believes, and based thereon alleges that all three of
2 Mitchell, Day, and Johnson were present in Ottumwa, Iowa between June 22 through June 24 at
3 the event “Meet Ottumwa Presents - Meet Your Destiny 2023!” The event was described as “Meet
4 the Father of Esports - WALTER DAY, the most famous video game player of the 20th century -
5 BILLY MITCHELL and international esports ambassador - TRIFORCE JOHNSON Come join
6 us for three days of games, competition, and fun as we celebrate video games in the video game
7 capital of the world, Ottumwa, Iowa!” on the Meet Ottumwa Facebook page which I Personally
8 visited on July 5, 2023. Moreover, the screenshots below show the three in a promotional video
9 posted on YouTube for the event, and the video can be found at the following URL:
10 https://www.youtube.com/watch?v=8yU559GvibI&ab_channel=FHSEsports



17 15. Twin Galaxies is informed and believes that one of either Mitchell, Day, or Johnson
18 have possession, custody, or control of the NAMCO Player of the Century Award plaque.
19 Plaintiff’s discovery responses which I have personally reviewed indicate that Mr. Johnson works
20 and lives in Jamaica. Accordingly, there is a real immediate risk that Plaintiff will be able to
21 withhold production of the plaque by giving it to Mr. Johnson to take to Jamaica.

22 16. This information and belief is also based on the fact that on June 23, 2023, Mr.
23 Mitchell wrote by email to Mr. Cady about a “secret” that he had concerning “[n]ews from
24 Ottumwa.” Mr. Cady produced the communication in response to a subpoena and testified that
25 the communication came from Mr. Mitchell on June 23, 2023. Again, I took the deposition today.
26 The communication, which is reproduced in full below, is circumstantial evidence that Mitchell,
27 Day, and Johnson are hiding a secret -- with that secret likely being the plaques that were allegedly
28 given to Mr. Mitchell by NAMCO. This Court should order Mr. Mitchell to produce the secret

1 plaques he alluded to in this June 23, 2023 text message to Cady.



15 DECLARATION RE NOTICE

16 17. On July 5, 2023 at 4:30 p.m. I wrote by email to counsel for Mr. Mitchell and Mr.
17 Day to give notice of this application. The contents of the email notice are: “I write to give notice
18 that on Friday, July 7, 2023 at 8:30 a.m. or as soon thereafter as the matter may be heard, Twin
19 Galaxies will apply *ex parte* in Department 36 of the LASC, Stanley Mosk branch, for an order
20 compelling production of William James Mitchell's NAMCO plaques, and for an order requiring
21 Mr. Mitchell to sit for deposition regarding the current disposition of the plaques and all pictures
22 of the plaques. Will Plaintiff oppose the application?” I received no response as of filing.

23 I declare, under penalty of perjury of the laws of the State of California, that the preceding
24 is true and correct. Executed this 5th day of July, 2023 at Los Angeles, California.

25 
26 _____
27 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 July 5, 2023, I served the herein described document(s):

***EX PARTE* APPLICATION OF TWIN GALAXIES, LLC FOR ORDER REQUIRING PLAINTIFF TO PRODUCE DOCUMENTS & APPEAR FOR DEPOSITION; DECLARATION OF DAVID A. TASHROUDIAN IN SUPPORT**

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 jeg@manningllp.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.

Anthony J. Ellrod aje@manningllp.com
MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
801 S. Figueroa St, 15th Floor
Los Angeles, California 90017-3012

Attorneys for Plaintiff
WILLIAM JAMES MITCHELL

Robert W. Cohen rwc@robertwcohenlaw.com
Law Offices of Robert W. Cohen, APC
1901 Avenue of the Stars, Suite 1910
Los Angeles, CA 90067

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 July 5, 2023 at Los Angeles, California.



Mona Tashroudian

EXHIBIT 14

From: Kristina Ross Kristina.Ross@manningkass.com
Subject: RE: Meet and Confer re NAMCO Plaques [Mitchell v. Twin Galaxies]
Date: July 6, 2023 at 10:11 AM
To: David Tashroudian david@tashlawgroup.com, Anthony J. Ellrod Tony.Ellrod@manningkass.com
Cc: Linna Loangkote Linna.Loangkote@manningkass.com



Sorry for the delay, but we are agreeable to a 15 day continuance from your current motion to compel deadline.

Please propose some dates for the IDC.

For clarity, my understanding is that the plaques are at the Bridgeview Center in Iowa, not in the possession of a single individual, but that Mr. Grunwald was the one that located and took the photograph of them.

Thanks,

Kristina

Kristina Ross

Associate



801 S. Figueroa St., 15th Floor

Los Angeles, CA 90017

Main: (213) 624-6900 | Ext.: 2642

Direct: (213) 430-2642

Kristina.Ross@manningkass.com | manningkass.com

Dallas | Los Angeles | New York | Orange County | Phoenix | San Diego | San Francisco

Note: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. The information transmitted in or with this message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material and is protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any retransmission, dissemination, distribution, copying or other use of, or the taking of any action in reliance upon, this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message and deleting the material from your computer. Thank you. Manning & Kass, Ellrod, Ramirez, Trester, LLP

From: David Tashroudian <david@tashlawgroup.com>
Sent: Wednesday, July 5, 2023 6:48 PM
To: Kristina Ross <Kristina.Ross@manningkass.com>; Anthony J. Ellrod <Tony.Ellrod@manningkass.com>
Cc: Linna Loangkote <Linna.Loangkote@manningkass.com>
Subject: Re: Meet and Confer re NAMCO Plaques [Mitchell v. Twin Galaxies]

Good evening Kristina --

Thank you for taking my call today. We met and conferred about the production of the plaques in the IVGHOF.jpeg document you sent me on June 26, 2023. I indicated that I was going to apply *ex parte* on July 7, 2023 to obtain an order compelling the physical production of the plaques. You told me that the plaques are in the possession of John Grunwald in Iowa. I did not know that -- I thought Isaiah TriForce Johnson had the plaques and was

going to run away to Jamaica. I asked that your client obtain the plaques from Mr. Grunwald and produce them in California for my inspection and you said you would talk to Tony about that.

After our call, and considering you are in trial Friday and I am in arbitration next week, I think we can resolve this issue with an IDC as opposed to an *ex parte* application. Accordingly, I request an additional 15 days to move to compel further responses to the discovery you sent back to me on June 9, 2023. That way, we have some breathing room to get an IDC date from the judge and brief the issue.

Will you agree to the continuance to allow for an IDC?

Please let me know this evening as my *ex parte* papers are due by tomorrow morning.

Regards,

David A. Tashroudian, Esq.
TASH LAW GROUP
12400 Ventura Blvd., Suite 300
Studio City, California 91604
(818) 561-7381

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On Wed, Jul 5, 2023 at 2:35 PM David Tashroudian <david@tashlawgroup.com> wrote:

Hi Kristina and Linna --

Can either of you meet and confer today regarding Mitchell's NAMCO plaques?

David A. Tashroudian, Esq.
TASH LAW GROUP
12400 Ventura Blvd., Suite 300
Studio City, California 91604
(818) 561-7381

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EXHIBIT 15

From: Laura Carrell lcarrell@meetottumwa.org 
Subject: Re: Plaque Production & CCTV Preservation [Mitchell v. Twin Galaxies]
Date: July 7, 2023 at 2:30 PM
To: David Tashroudian david@tashlawgroup.com
Cc: john.grunwald@fairfieldsfuture.org

LC

Hello David - to your three points:

1. I do not have the awards, nor does Bridge View Center.
2. I do not have access to any pictures of the awards.
3. Meet Ottumwa rents an office inside Bridge View Center, but we are not associated with the venue as an entity. To receive the CCTV footage from Bridge View Center/VenuWorks, please submit a written request to:

Bridge View Center/VenueWorks
Attn: Jacob Pilkington and/or Scott Hallgren
102 Church St.
Ottumwa, Iowa 52501

If you need to be in contact sooner, please call Bridge View Center at 641.684.7000 and ask to speak with Operations Manager Jacob Pilkington. He will give you a venue email address to submit the request.

Please let me know if there is anything else I can do to help.
Thank you.

Laura Carrell

Executive Director

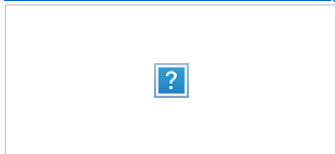
MeetOttumwa

102 Church St., Ottumwa, IA 52501-4209

O: 641.684.4303

C: 641.455.4361

www.meetottumwa.org



From: David Tashroudian <david@tashlawgroup.com>
Sent: Friday, July 7, 2023 3:05 PM
To: Laura Carrell <lcarrell@meetottumwa.org>
Cc: john.grunwald@fairfieldsfuture.org <john.grunwald@fairfieldsfuture.org>
Subject: Plaque Production & CCTV Preservation [Mitchell v. Twin Galaxies]

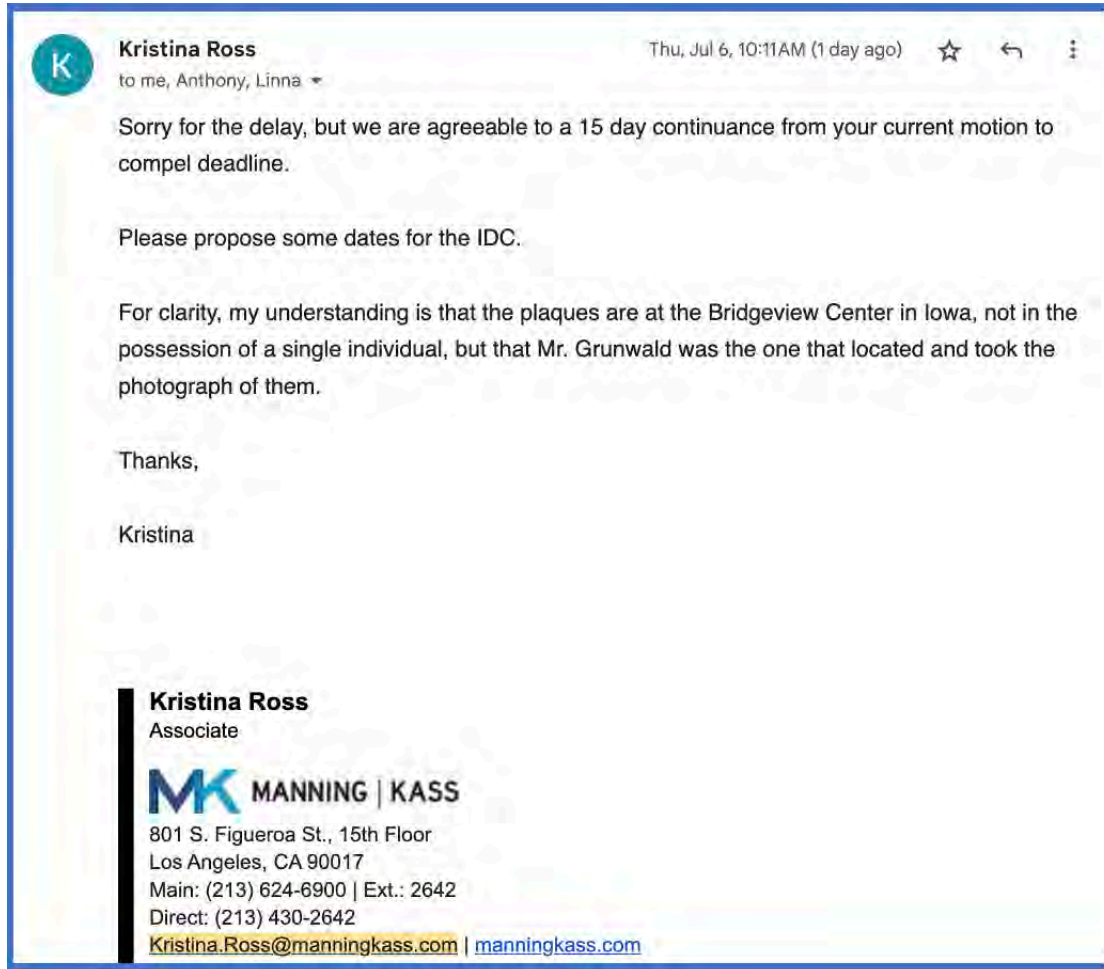
Good afternoon Laura --

Thank you for taking my call earlier today. As I explained, I represent Twin Galaxies in the defamation claim asserted by Billy Mitchell in California. We have trial approaching in October 2023. I have been trying to track down two awards (plaques) that Billy Mitchell claims he was awarded by the creator of Pac-Man in 1999. Discovery in this case has turned up your name and John Grunwald's name as people with information related to the plaques.

An email from Mr. Mitchell to you, Mr. Grunwald, and Jerry Byrum was produced at Mr. Byrum June 26, 2023 deposition. A copy of that email from Mr. Byrum's deposition is attached for review and that is how I got your contact information. On that same day, Mr. Mitchell produced a picture of the plaques and his lawyers indicated to me that Mr. Grunwald took that picture. A copy of the picture is attached for your reference.

is attached for your reference.

Mr. Mitchell and his attorneys have told me that the plaques are with the Bridgeview Center. A copy of Mr. Mitchell's attorney's correspondence to that effect is reproduced below for your reference.



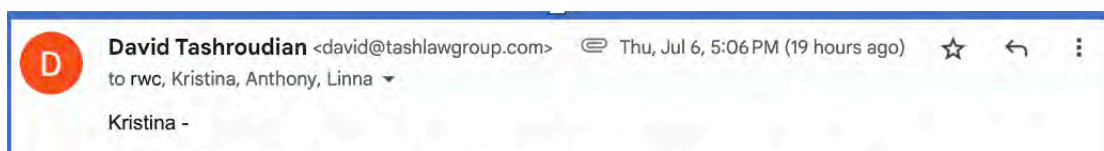
My understanding from our conversation is that the Bridgeview Center is not in possession of the plaques or the picture. I appreciate your candor on that point. My suspicion and inference from the facts that I have is that Isaiah Triforce Johnson (or one of Mr. Mitchell's other associates) is in possession of the plaques. I am attaching a declaration I prepared recently to this email as well with facts that support my suspicion. Take a read if you care to apprise yourself about the controversy regarding the picture and the plaques.

I think what happened is that either Mr. Mitchell, or one of his associates, hid a box of Mr. Mitchell's awards at the Bridgeview Center during the June 22-24 Meet Ottumwa event for Mr. Grunwald to find.

Accordingly, I ask for 3 things from you:

- (1) production of each physical award of Billy Mitchell's that the Center has;
- (2) production of a high resolution copy of the picture of the awards that was allegedly taken by Mr. Grunwald; and,
- (3) preservation of CCTV footage from the Center for the period of June 20-26 to determine if anyone planted a box with Mr. Mitchell's awards at the Center where Mr. Grunwald found the awards.

The reason these awards are so important is that I suspect Billy Mitchell has fabricated the awards that were allegedly discovered by Mr. Grunwald. My argument on falsification to Billy Mitchell's lawyers is below for you to see what I am dealing with with respect to these plaques:



How about July 24, 25, or 26 for the IDC? Does that work for you Robert Cohen?

To continue our meet and confer efforts on production of the physical plaques, we demand immediate inspection because Plaintiff obviously has control of the plaques . I alluded to these facts on our phone call. I set them forth in my declaration supporting the *ex parte* application that we did not file because of these meet and confer efforts. I am attaching a copy of the declaration for your reference to the facts.

In addition, and again like I told you on the phone, the plaques in the picture are replicas -- they are fake. Plaintiff is manufacturing evidence and trying to avoid production to further his deception. Just take a look at the attached comparison of the real plaque and Billy's farce. This preliminary analysis clearly shows (1) the proportions of Pac-Man are off; and (2) the text does not match -- i.e. 9 lines in para 2, and 11 lines in Billy's recent production at para 2. Physical production and analysis of the plaques is in the interests of justice to prevent fraud on the court.

Accordingly, I ask if you will produce the physical plaques for inspection?



Thank you for your attention and for hearing me out. I am searching for the truth and the information you have is critical to me finding the truth.

David

David A. Tashroudian, Esq.
TASH LAW GROUP
12400 Ventura Blvd., Suite 300
Studio City, California 91604
(818) 561-7381

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EXHIBIT 16

TASHROUDIAN LAW GROUP

12400 Ventura Blvd., Ste. 300, Studio City, CA 91604 ▪ david@tashlawgroup.com ▪ 818.561.7381

July 7, 2023

VIA ELECTRONIC DELIVERY

Bridge View Center
Attn: Jacob Pilkington
102 Church St.
Ottumwa, Iowa 52501
E: jacob@bridgeviewcenter.com

RE: Letter of Litigation Hold & Preservation of Evidence [Case No. 19STCV12592]

Dear Mr. Pilkington,

I am counsel for Twin Galaxies, LLC in the defense of the defamation charge brought by William James Mitchell in the matter of William James Mitchell v. Twin Galaxies, LLC, Case No. 19STCV12592 currently pending in the Superior Court of the State of California, County of Los Angeles (the "Lawsuit").

We believe the Bridge View Center is in possession of evidence relevant to the Lawsuit. It is our suspicion that between June 20, 2023 through June 24, 2023, someone planted four awards belonging to Mr. Mitchell at the Center. The awards were either a planted in a box, or without. A picture of the awards allegedly found at the Center was produced in this litigation by Mr. Mitchell and is reproduced below:



We believe the awards were planted by either Walter Day, Isaiah Triforce Johnson, William James Mitchell, or Jerry Byrum. Photos of these individuals are reproduced below:



Isaiah TriForce Johnson



Billy Mitchell

Walter Day



Jerry Byrum

Accordingly, we respectfully demand that the Bridge View Center retain all video camera and CCTV footage from June 20, 2023 through June 24, 2023 for us to determine whether any of these four individuals planted the awards at the Center. We are in the process of determining where the awards were found to help narrow the cameras to look at, but until that point we request that no footage from June 20, 2023 through June 24, 2023 be destroyed.

Thank you for your prompt attention to this matter. Please call or write with any questions. Your help in preserving evidence will allow the truth to come out at trial in the Lawsuit and that is always a worthy endeavor.

Very truly yours,



David Tashroudian, Esq.
TASHROUDIAN LAW GROUP, APC

EXHIBIT 17



Triforce

Active Now



Well that's kind of good because Billy wants me to send you something

Triforce forwarded an image



He asked if you could send Laura this picture instead of the ones we took on the floor.



Don't forget the headphones please

Stating to her we found it.



Will do



Triforce replied to you



Message



EXHIBIT 18

Subject: Fwd: Little help please
From: John Grunwald <john.grunwald@fairfieldsfuture.org>
Date: 6/25/23, 8:06 AM
To: Billy Mitcell <rickeyshotsauce@aol.com>

This is the picture I forwarded to Laura.

----- Forwarded message -----
From: **John Grunwald** <john.grunwald@fairfieldsfuture.org>
Date: Sat, Jun 24, 2023, 9:44 PM
Subject: Re: Little help please
To: Laura Carrell <icarrell@meetottumwa.org>

On Sat, Jun 24, 2023, 7:39 AM Laura Carrell <icarrell@meetottumwa.org> wrote:
Good news all around! What a great way to start community play day.
Thanks for everything!
Laura

Get [Outlook for iOS](#)

From: John Grunwald <john.grunwald@fairfieldsfuture.org>
Sent: Saturday, June 24, 2023 7:31:10 AM
To: Bill Mitchell/Rickeys <rickeyshotsauce@aol.com>
Cc: Laura Carrell <icarrell@meetottumwa.org>
Subject: Re: Little help please

Thank you Billy!!! And to continue with the good news vibe...it appears the lost has been found. :)

Thank you for your help and support!

John

On Fri, Jun 23, 2023, 11:05 PM Bill Mitchell/Rickeys <rickeyshotsauce@aol.com> wrote:
Hey there,
Sharing good news with you .
I have received several contacts in regards to the event, all very favorable.
The first was of course Old School Gamer Magazine.
I have 3 interviews beginning Monday and I will be sure to turn the focus to Ottumwa and High School Esports.

Your hard work never goes unnoticed

Sincerely,

Billy Mitchell
954-829-9464

----- Original message -----
From: John Grunwald <john.grunwald@fairfieldsfuture.org>



Date: 6/23/23 10:28 AM (GMT-05:00)

To: Laura Carrell <icarrell@meetottumwa.org>

Cc: Bill Mitchell/Rickeys <rickeysshotsauce@aol.com>, jerry.byrum@ibsa.com

Subject: Re: Little help please

As far as awards, would they be plaques?

On Fri, Jun 23, 2023, 9:11 AM Laura Carrell <icarrell@meetottumwa.org> wrote:

Good morning, Billy! Can you tell me exactly what we're looking for? The only thing I had in the Convention & Visitors Bureau storage area was the three CD cases of discs, but no awards or anything. I can have the Bridge View Center staff help look, just let me know what and how many we're looking for. Do you know what year they might have last been seen here, too?

Thanks so much!

Laura Carrell

Executive Director

MeetOttumwa

102 Church St., Ottumwa, IA 52501-4209

O: 641.684.4303

C: 641.455.4361

www.meetottumwa.org



From: Bill Mitchell/Rickeys <rickeysshotsauce@aol.com>

Sent: Friday, June 23, 2023 1:11 AM

To: Laura Carrell <icarrell@meetottumwa.org>; John Grunwald <john.grunwald@fairfieldsfuture.org>; jerry.byrum@ibsa.com <jerry.byrum@ibsa.com>

Subject: Little help please

Hi there,

I expressed my regrets for not being able to attend and support this year's event.

One more concern, I expressed on more than a few occasions, of the many awards and memorabilia that were loaned to the IVGHOF and the Video Game Capital of the World a handful of them that were left and last seen at the Bridgeview Center have yet to be located.

Please make any effort possible to locate this because as expressed before, it has become quite important. It can stay with IVGHOF at a later time as part of my continuing support.

Still hoping you can help

Appreciative

Billy Mitchell
954-829-9464

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received_278720044837902.jpeg



Attachments:

received_278720044837902.jpeg

145 KB

EXHIBIT 19



<http://www.arcaderestoration.com/media/Graphics/cge2000/billysmall.jpg>

EXHIBIT 20





EXHIBIT 21



<http://www.jammajup.co.uk/classic-gaming-expo-2005/Picture042.jpg>



<http://www.jammajup.co.uk/classic-gaming-expo-2005/Picture044.jpg>



<http://www.jammajup.co.uk/classic-gaming-expo-2005/Picture043.jpg>



<http://www.jammajup.co.uk/classic-gaming-expo-2005/Picture039.jpg>

EXHIBIT 22



Video Game Documentary- CHASING GHOSTS (2006)

EXHIBIT 23

September 17, 1999

Mr. William J. Mitchell, Jr.
4799 Hollywood Blvd
Hollywood, Florida 33021
U.S.A.

Dear Billy,

As Father of Pac-Man, I wish to extend my heartiest Congratulations on your amazing feat of becoming the first player ever to achieve a perfect score of 3,333,360 points on the Pac-Man game.

The news of your accomplishment which has spread quickly throughout the world comes to us at a very opportune time. We are currently preparing to celebrate Pac-Man's 20th birthday on October 10, 1999 and as part of the celebration, we will be releasing "Pac-Man World 20th Anniversary" for the PlayStation platform in October. Your historical feat will help us remind the world of this special occasion and will also help bring back memories of yesteryears for many fans of Pac-Man when, as young players, they feverishly challenged every aspect of the Game. Most importantly, however, your feat will undoubtedly remind the world once again of the greatness of the Game itself.

The entire Namco Group joins me in congratulating you and thanking you for your invaluable support of Namco's most prominent game, the Pac-Man.

With personal Best Wishes,

Yours very truly,
NAMCO LTD.

[SIGNATURE]

Masaya Nakamura
Chairman & CEO

NAMCO

EXHIBIT 24

NAMCO PLAQUE FROM KING OF KONG



EXHIBIT 25

1 Anthony J. Ellrod (State Bar No. 136574)
tony.ellrod@manningkass.com

2 Kristina P. Ross (State Bar No. 325440)
kristina.ross@manningkass.com

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

4 801 S. Figueroa St, 15th Floor
Los Angeles, California 90017-3012
5 Telephone: (213) 624-6900
6 Facsimile: (213) 624-6999

7 Attorneys for Plaintiff, WILLIAM JAMES MITCHELL

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10
11 WILLIAM JAMES MITCHELL,

12 Plaintiff,

13 v.

14 TWIN GALAXIES, LLC,

15 Defendants.

Case No. 19STCV12592

[Hon. Hon. Wendy Chang, Department 36]

**PLAINTIFF WILLIAM JAMES
MITCHELL'S RESPONSE TO THIRD
SET OF SPECIAL INTERROGATORIES
PROPOUNDED BY DEFENDANT TWIN
GALAXIES, LLC**

Action Filed: 4/11/2019

Trial Date: 10/27/23

16
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19 PROPOUNDING PARTY: Defendant TWIN GALAXIES, LLC

20 RESPONDING PARTY: Plaintiff WILLIAM JAMES MITCHELL

21 SET NO.: Three

22 Pursuant to Sections 2030.210, *et seq.*, of the California Code of Civil Procedure, Plaintiff
23 WILLIAM JAMES MITCHELL (“Responding Party”) hereby submits these objections and
24 responses to the Third Set of Interrogatories propounded by Defendant TWIN GALAXIES, LLC
25 (“Propounding Party”).

26 **PRELIMINARY STATEMENT**

27 Responding Party has not completed his investigation of the facts relating to this case, his
28 discovery or his preparation for trial. All responses and objections contained herein are based only

1 upon information that is presently available to and specifically known by Responding Party. It is
2 anticipated that further discovery, independent investigation, legal research and analysis will supply
3 additional facts and add meaning to known facts, as well as establish entirely new factual
4 conclusions and legal contentions, all of which may lead to substantial additions to, changes in and
5 variations from the responses set forth herein.

6 These responses, while based on diligent inquiry and investigation by Responding Party,
7 reflect only the current state of Responding Party’s knowledge, understanding, and belief, based
8 upon the information reasonably available to him at this time. As this action proceeds, and further
9 investigation and discovery are conducted, additional or different facts and information could be
10 revealed to Responding Party. Moreover, Responding Party anticipates that Propounding Party may
11 make legal or factual contentions presently unknown to and unforeseen by Responding Party which
12 may require Responding Party to adduce further facts in rebuttal to such contentions. Consequently,
13 Responding Party may not yet have knowledge and may not fully understand the significance of
14 information potentially pertinent to these responses. Accordingly, these responses are provided
15 without prejudice to Responding Party’s right to rely upon and use any information that he
16 subsequently discovers, or that was omitted from these responses as a result of mistake,
17 inadvertence, surprise, or excusable neglect. Without in any way obligating himself to do so,
18 Responding Party reserves the right to modify, supplement, revise, or amend these responses, and
19 to correct any inadvertent errors or omissions which may be contained herein, in light of the
20 information that Responding Party may subsequently obtain or discover.

21 Nothing in this response should be construed as an admission by Responding Party with
22 respect to the admissibility or relevance of any fact or document, or of the truth or accuracy of any
23 characterization or statement of any kind contained in Propounding Party’s interrogatories.

24 Each of the following responses is made solely for the purpose of this action. Each response
25 is subject to all objections as to relevance, materiality, and admissibility, and to any and all
26 objections on any ground that would require exclusion of any response if it were introduced in court.
27 All objections and grounds are expressly reserved and may be interposed at the time of trial, hearing,
28 or otherwise. Furthermore, each of the objections contained herein is incorporated by reference as

1 though fully set forth in each response.

2 The following objections and responses are made without prejudice to Responding Party's
3 right to produce at trial, or otherwise, evidence regarding any subsequently discovered information.
4 Responding Party accordingly reserves the right to modify and amend any and all responses herein
5 as research is completed and contentions are made.

6 Nothing contained herein is to be construed as a waiver of any attorney-client privilege, work
7 product doctrine, or any other applicable privilege or doctrine. To the extent any interrogatory may
8 be construed as calling for disclosure of information protected from discovery by the attorney-client
9 privilege, the work product doctrine, or any other privilege or protection, a continuing objection to
10 each and every such interrogatory is hereby interposed.

11 **GENERAL OBJECTIONS**

12 Responding Party generally objects to the Interrogatories as follows:

13 1. Responding Party objects generally to the Interrogatories to the extent that they seek
14 to elicit information that is neither relevant to the subject matter of this action, nor reasonably
15 calculated to lead to the discovery of admissible evidence;

16 2. Responding Party objects generally to the Interrogatories to the extent that they are
17 unreasonably overbroad in scope, and thus burdensome and oppressive, in that each such request
18 seeks information pertaining to items and matters that are not relevant to the subject matter of this
19 action, or, if relevant, so remote therefrom as to make its disclosure of little or no practical benefit
20 to Propounding Party, while placing a wholly unwarranted burden and expense on Responding Party
21 in locating, reviewing and producing the requested information;

22 3. Responding Party objects generally to the Interrogatories to the extent that they are
23 burdensome and oppressive, in that ascertaining the information necessary to respond to them would
24 require the review and compilation of information from multiple locations, and voluminous records
25 and files, thereby involving substantial time of employees of Responding Party and great expense
26 to Responding Party, whereas the information sought to be obtained by Propounding Party would
27 be of little use or benefit to Propounding Party;

28 4. Responding Party objects generally to the Interrogatories to the extent that they are

1 vague, uncertain, overbroad, and without limitation as to time or specific subject matter;

2 5. Responding Party objects generally to the Interrogatories to the extent that they seek
3 information at least some of which is protected by the attorney-client privilege or the attorney work-
4 product doctrine, or both;

5 6. Responding Party objects generally to the Interrogatories to the extent that they seek
6 to have Responding Party furnish information that is a matter of the public record, and therefore is
7 equally available to the Propounding Party as they are to Responding Party; and

8 7. Responding Party objects generally to the Interrogatories to the extent that they seek
9 to have Responding Party furnish information that is proprietary to Responding Party and contain
10 confidential information.

11 8. Responding Party objects to the interrogatories, and to any individual interrogatory
12 set forth therein, to the extent that they are compound and constitute an impermissible effort to
13 circumvent the 35 special interrogatory limit set by Section 2030.030 of the California Code of Civil
14 Procedure.

15 9. Responding Party expressly incorporates each of the foregoing General Objections
16 into each specific response to the requests set forth below as if set forth in full therein. An answer
17 to a request is not intended to be a waiver of any applicable specific or general objection to such
18 request.

19 Without waiver of the foregoing, Responding Party further responds as follows:

20 **RESPONSES TO SPECIAL INTERROGATORIES**

21 **SPECIAL INTERROGATORY NO. 145:**

22 Have YOU (“YOU” or “PLAINTIFF” or “YOUR” shall mean Plaintiff WILLIAM JAMES
23 MITCHELL, his employees and agents, including attorneys, or other PERSONS acting on their
24 behalf) asked anyone from the International Video Game Hall of Fame in Ottumwa, Iowa to return
25 to YOU any of the awards that YOU previously donated so that YOU can produce the awards in
26 this litigation?

27 **RESPONSE TO SPECIAL INTERROGATORY NO. 145:**

28 Yes.

1 **SPECIAL INTERROGATORY NO. 156:**

2 IDENTIFY all DOCUMENTS related to any payment by Walter Day to YOU from 2014 to
3 the present.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 156:**

5 None.

6 **SPECIAL INTERROGATORY NO. 157:**

7 IDENTIFY all DOCUMENTS related to any payment by Walter Day to YOU from 2014 to
8 the present.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 157:**

10 Responding Party object to this Special Interrogatory on the grounds that it was asked and
11 answered in Special Interrogatory No. 156.

12 **SPECIAL INTERROGATORY NO. 158:**

13 IDENTIFY all DOCUMENTS related to any payment by Twin Galaxies, Inc. to YOU from
14 2014 to the present.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 158:**

16 None.

17 **SPECIAL INTERROGATORY NO. 159:**

18 IDENTIFY all DOCUMENTS related to any payment by Twin Galaxies, Inc. to YOU from
19 1999 to 2014.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 159:**

21 None.

22 **SPECIAL INTERROGATORY NO. 160:**

23 State the amount of every payment made by Walter Day to YOU.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 160:**

25 Responding Party objects to this to the extent that it assumes facts not in evidence.

26 None.


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DATED: June 9, 2023

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

By: 

Anthony J. Ellrod
Kristina Ross
Attorneys for Plaintiff
WILLIAM JAMES 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 June 9, 2023, I served true copies of the following document(s) described as **PLAINTIFF WILLIAM JAMES MITCHELL’S RESPONSE TO THIRD SET OF SPECIAL INTERROGATORIES PROPOUNDED BY DEFENDANT TWIN GALAXIES, LLC** 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: david@tashlawgroup.com Email: mona@tashlawgroup.com <i>Attorney for Defendants, TWIN GALAXIES</i>	Robert W. Cohen, Esq. Law Offices of Robert W. Cohen 1901 Avenue of The Stars, Suite 1910 Los Angeles, CA 90067 Telephone: (310) 282-7586 Email: rwcohen@robertwcohenlaw.com <i>Attorneys for Cross-Defendant, WALTER DAY</i>
--	--

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address kathy.johnston@manningkass.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 June 9, 2023, at Los Angeles, California.



Kathy Johnston

EXHIBIT 26

1 Anthony J. Ellrod (State Bar No. 136574)
 aje@manningllp.com
2 Linna T. Loangkote (State Bar No. 287480)
 lil@manningllp.com
3 **MANNING & KASS**
4 **ELLROD, RAMIREZ, TRESTER LLP**
5 801 S. Figueroa St, 15th Floor
6 Los Angeles, California 90017-3012
7 Telephone: (213) 624-6900
8 Facsimile: (213) 624-6999
9 Attorneys for Plaintiff WILLIAM JAMES MITCHELL

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT- STANLEY MOSK**

13 WILLIAM JAMES MITCHELL,
14 Plaintiff,
15 v.
16 TWIN GALAXIES, LLC,
17 Defendants.

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

**PLAINTIFF WILLIAM JAMES
MITCHELL'S RESPONSE TO FIRST SET
OF FORM INTERROGATORIES
PROPOUNDED BY DEFENDANT TWIN
GALAXIES, LLC**

Action Filed: 4/11/2019

18 PROPOUNDING PARTY: Defendant Twin Galaxies, LLC
19 RESPONDING PARTY: Plaintiff William James Mitchell
20 SET NO.: One

21 Pursuant to Sections 2030.210, *et seq.*, of the California Code of Civil Procedure, Plaintiff
22 William James Mitchell ("Responding Party") hereby submits these objections and responses to
23 the First Set of Form Interrogatories propounded by Defendant Twin Galaxies, LLC
24 ("Propounding Party").

25 **PRELIMINARY STATEMENT**

26 Responding Party has not completed his investigation of the facts relating to this case, his
27 discovery or his preparation for trial. All responses and objections contained herein are based only
28 upon information that is presently available to and specifically known by Responding Party. It is

1 Isaiah TriForce Johnson.

2 (c) Responding Party, Carlos Pinero, Isaiah TriForce Johnson

3 (d) N/A

4

5 (a) Request for Admission No. 43

6 (b) Responding Party objects to the phrase “completed” as it is vague, ambiguous, and
7 overbroad. Subject to and without waiving the foregoing objections, Responding Party responds:
8 Deny.

9 Responding Party bases its denial on the fact that Responding Party did not complete a
10 Donkey Kong Junior world record game on July 3, 2010.

11 (c) Responding Party

12 (d) N/A

13

14 (a) Request for Admission No. 47

15 (b) Responding Party objects to the phrase “original master video tapes” as it is vague,
16 ambiguous, and overbroad. Subject to and without waiving the foregoing objections, Responding
17 Party responds: Admit that Responding Party is not aware of anyone who could be in possession
18 of the original master videotapes, but as to the remainder of the Request, Responding Party denies.

19 Responding Party bases its denial on the fact that Twin Galaxies lost the original master
20 videotapes of Responding Party’s videotaped Donkey Kong performances of 1,047,200 points and
21 1,050,200 points and cannot locate it.

22 (c) Responding Party

23 (d) N/A

24

25 (a) Request for Admission No. 49

26 (b) Responding Party objects to the phrase “played Donkey Kong for Carlos Pineiro”
27 as it is vague, ambiguous, and overbroad. Subject to and without waiving the foregoing objections,
28 Responding Party responds: Deny.

1 Responding Party bases its denial on the fact that Responding Party has never played
2 Donkey Kong for the purpose of helping anyone test the validity of the claims against his Donkey
3 Kong score performances that are at issue in this case.

4 (c) Responding Party, Carlos Pineiro

5 (d) N/A
6

7 (a) Request for Admission No. 50

8 (b) Responding Party objects to the phrase “played Donkey Kong for Steven Kleisath”
9 as it is vague, ambiguous, and overbroad. Subject to and without waiving the foregoing objections,
10 Responding Party responds: Deny.

11 Responding Party bases its denial on the fact that Responding Party has never played
12 Donkey Kong for the purpose of helping anyone test the validity of the claims against his Donkey
13 Kong score performances that are at issue in this case.

14 (c) Responding Party, Steven Kleisath

15 (d) N/A
16

17 (a) Request for Admission No. 51

18 (b) Responding Party objects to the phrase “played Donkey Kong for Carlos Pineiro”
19 as it is vague, ambiguous, and overbroad. Responding Party also objects on the grounds that this
20 Request has been asked and answered. Subject to and without waiving the foregoing objections,
21 Responding Party responds: Deny.

22 Responding Party bases its denial on the fact that Responding Party has never played
23 Donkey Kong for the purpose of helping anyone test the validity of the claims against his Donkey
24 Kong score performances that are at issue in this case.

25 (c) Responding Party, Carlos Pineiro

26 (d) N/A
27

28 (a) Request for Admission No. 52

1 (b) Responding Party objects to the phrase “obtained a television for Carlos Pineiro” as
2 it is vague, ambiguous, and overbroad. Subject to and without waiving the foregoing objections,
3 Responding Party responds: Deny.

4 Responding Party bases its denial on the fact that Responding Party never obtained a
5 television for Carlos Pineiro to test the allegations that he cheated to achieve the Donkey Kong
6 score performances that are at issue in this case. After Mr. Pineiro made a general request for a
7 television, Responding Party texted Mr. Pineiro, without knowledge of the purpose of the request,
8 a picture of an old leftover television in his home with an offer to give it to Mr. Pineiro. Mr.
9 Pineiro, on his own accord, and without instruction from Responding Party, stated that he would
10 use the television for testing purposes.

11 (c) Responding Party, Carlos Pineiro

12 (d) N/A

13
14 (a) Request for Admission No. 53

15 (b) Responding Party objects to the phrase “assisted for Carlos Pineiro” as it is vague,
16 ambiguous, and overbroad. Subject to and without waiving the foregoing objections, Responding
17 Party responds: Deny.

18 Responding Party bases its denial on the fact that Responding Party neither participated in
19 Carlos Pineiro’s technical testing nor did Responding Party play Donkey Kong for the purpose of
20 assisting Mr. Pineiro.

21 (c) Responding Party, Carlos Pineiro

22 (d) N/A

23 DATED: August 24, 2022

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

24
25 By: 

26 Anthony J. Ellrod
27 Linna T. Loangkote
28 Attorneys for Plaintiff WILLIAM JAMES
MITCHELL

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing **PLAINTIFF WILLIAM JAMES MITCHELL'S RESPONSE TO FIRST SET OF FORM INTERROGATORIES PROPOUNDED BY DEFENDANT TWIN GALAXIES, LLC** and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on August 23, 2022, at Hollywood, Florida.

WILLIAM JAMES MITCHELL
Print Name of Signatory

William J. Mitchell
Signature

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 August 24, 2022, I served true copies of the following document(s) described as **PLAINTIFF WILLIAM JAMES MITCHELL'S RESPONSE TO FIRST SET OF FORM INTERROGATORIES PROPOUNDED BY DEFENDANT TWIN GALAXIES, LLC** 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: david@tashlawgroup.com Email: mona@tashlawgroup.com	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 shc@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 August 24, 2022, at Los Angeles, California.



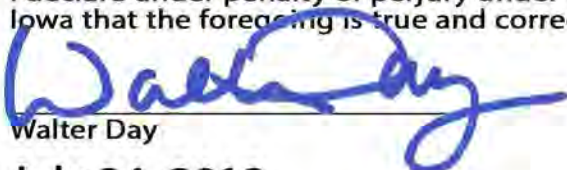
Steve Chang

EXHIBIT 27

I, Walter Day, attest to the following:

1. Shortly after the release of The King of Kong at the Slamdance Film Festival in January 2007, Billy informed me that he would begin preparations to immediately reclaim the Donkey Kong world record at a paid appearance scheduled for July 2007.
2. Weeks before the Florida Mortgage Brokers' Convention, a 1980's-themed event, Billy expressed his intent to go above and beyond in establishing the authenticity of his world record, in view of doubts and concerns raised in the gaming community with respect to world record performances by Steve Wiebe.
3. In order to establish the authenticity of the world record attempt, the Donkey Kong PCB (hardware game board) was sent to Wayne Shirk, Senior Engineer at Nintendo, for certification. Mr. Shirk was contacted and agreed to analyze and authenticate the board as original Nintendo hardware.
4. Billy and I both participated in these phone communications with Mr. Shirk.
5. After receiving and analyzing the board and authenticating it as Nintendo hardware, Wayne shipped the board directly to the convention venue, to the attention of Shela Kiniry, of the Florida Mortgage Brokers.
6. I then contacted a local Gamestop manager and requested his assistance installing and securing the board inside the Donkey Kong cabinet.
7. After receiving instructions from me, he arrived at the venue on Thursday. With Shela and hotel security present, he installed the Donkey Kong board into the cabinet, along with the recording apparatus, and padlocked the cabinet and retained the only key.
8. All of these actions were recorded on video for Twin Galaxies archives.
9. I was assured by the third party, the Florida Mortgage Brokers, that no person had access to the inside of the cabinet throughout the weekend.
10. After a full day of gaming attempts by Billy, I received a call, around midday Saturday from senior referee Todd Rogers, who along with Kimberly Mahoney, was at the event witnessing the attempts and executing Twin Galaxies protocol.
11. From Todd Rogers, Kim Mahoney, and Billy I learned of the success of that Saturday and was confident that all of my directives were followed.
12. Sometime after the event had ended, on Monday, the Gamestop Manager returned to the venue and unlocked the back of the cabinet and retrieved the Donkey Kong board, in the presence of Shela Kiniry and hotel security.
13. As per my instructions, the gameboard was shipped off to Wayne Shirk at Nintendo to once again be recertified as the same Nintendo hardware he previously certified.
14. After authenticating the board for a final time, Wayne shipped the board back to Billy.
15. At no point, throughout the entire process of the board's certification, did Billy Mitchell have access to the hardware. Every person involved in this process was an unaffiliated third party, such as Shela Kiniry, Wayne Shirk, and the local Gamestop manager. The idea that anything other than legitimate Donkey Kong hardware could have gotten inside the cabinet is fallacious.

I declare under penalty of perjury under the laws of the states of California and Iowa that the foregoing is true and correct to the best of my knowledge.


Walter Day

July 24, 2019

Date

EXHIBIT 28

Walter Day Declaration

I, Walter Day, declare that:

1. I am an individual over the age of 18 and I make this declaration on factual information surrounding the Billy Mitchell high-score dispute. I make this declaration based on facts known to me personally to be true, and if called as a witness to testify to them, I would do so.
2. My name is Walter Day. I am the founder and former owner of Twin Galaxies. I owned the company from 1982 to 2014, when I sold it to Jason Hall. I spent my 32 years of ownership facilitating organized videogame competition, and in that time, I created partnerships with other videogame adjudicators, such as the International Video Game Hall of Fame and Guinness World Records; I still remain partnered with both organizations to this day.
3. Throughout my career, I naturally acquired substantial knowledge about Mitchell's world records, including the Pac-man and Donkey Kong records in question. On September 9, 2019, I sent Guinness World Records a letter titled "*Walter Day – Letter to Guinness World Records,*" where I outlined my testimony about the undeniable falsity of the Twin Galaxies allegations. I attached this letter as **EXHIBIT A**, and I will allow it to operate as my "Proof of Falsity." Therefore, I will provide other pertinent facts in this declaration, specifically the Twin Galaxies Adjudication Ruleset from 1982 to 2014 and my knowledge about the Twin Galaxies investigation.

TWIN GALAXIES RULESET, 1981 – 2014

4. From 1982 to 2014, Twin Galaxies adjudicated records through two methods: on-site referee adjudication and video adjudication. In the 1980s, Twin Galaxies solely operated through on-site referee verification, because players rarely possessed video equipment. In the 1990s, we introduced video adjudication, so players could participate from their homes remotely.

5. On-site referee adjudication occurred through the command and control of Twin Galaxies. We assigned a Twin Galaxies referee, sometimes more than one referee, to observe a record attempt. The Twin Galaxies referee confirmed the videogame's hardware, settings, and other relevant factors. The referee adjudicated the record attempt as it occurred, acting as a direct eye-witness. If the player achieved a new high-score, then the record received immediate acceptance. If a record received on-site referee verification, then it did not require a videotape for archival.
6. Video adjudication allowed players to submit high-scores from remote locations. The player simply attempted a record on video, complied with the outlined rules for the videogame, then sent the video to Twin Galaxies. We adjudicated the record through the videotape.

PRE-ORDAINED CONCLUSION

7. On February 2, 2018, I learned about the allegations against Mitchell. I decided to honorably refrain from public comment in order to allow Jason Hall's administration to investigate the situation. Since I knew Mitchell was innocent, I possessed no doubt that the allegations would be dropped. However, at the very least, I expected a phone call from Hall, assuming he would inquire about my testimonial facts for evidentiary consideration.
8. On or about March 13, 2018, roughly one month prior to the Twin Galaxies decision, I received the expected phone call from Jason Hall. After a short and civil conversation, Hall changed the topic to the Billy Mitchell investigation. However, to my surprise, Hall did NOT seek my testimony. To the contrary, he asked me, "How will you feel when I announce that Billy [Mitchell] cheated?" In other words, Hall concluded his verdict already. I told Hall that it would negatively affect me, because I knew the allegations were false. I argued against Hall's allegations by citing numerous testimonial facts set forth within **Exhibit A**, and I stressed that since I met Mitchell, he never expressed interest in emulation. However, Hall unbelievably

disregarded my testimony, and he did not report it in his evidentiary findings. Hall's biased and negative nature toward Mitchell in this phone call cannot be overstated.

9. Moreover, Hall claims that he based his conclusion upon the failure to reproduce the "artifacts" on Mitchell's alleged videotapes; Hall stated this in his declaration (*See Paragraph 46*). However, Hall called me before he attempted to reproduce the "artifacts" on the alleged videotapes. On March 30, 2018, Twin Galaxies provided an update of its investigation titled, "Twin Galaxies Explores Capturing Equipment used in Billy Mitchell Score." This article provided the first update in their attempts to reproduce the "artifacts," and it occurred nearly two weeks after my conversation with Hall. Through this evidence, I can personally testify that Hall determined his conclusions before even testing his allegations. The article can be found here: https://www.twingalaxies.com/feed_details.php/875/twin-galaxies-explores-capturing-equipment-used-in-billy-mitchell-score

INTENTIONAL DISREGARD OF EVIDENCE IN FAVOR OF MITCHELL

10. Throughout the investigation, Twin Galaxies intentionally disregarded the obvious evidence disproving the allegations, or at the very least, deliberately ignored it. Firstly, it failed to corroborate the allegations against Mitchell with any and all obvious sources. It ignored the referees who adjudicated Mitchell's records, Todd Rogers and Kimberly Mahoney; it ignored the disinterested third-party eye-witnesses; and it ignored the third-party organizations involved in the records, specifically the Florida Association of Mortgage Brokers and Boomers Arcade. Furthermore, Hall disregarded my own testimony from our phone conversation, omitting it from his evidentiary findings until the initiation of legal proceedings on September 9, 2019.
11. While Hall ignored the obvious eye-witnesses, he sought out any testimonial claims which supported the allegations against Mitchell. Specifically, Hall sought out testimonial evidence that

legitimized the videotapes he was using because as the custodian of video game world records he had failed to maintain custody of the evidence submitted when these records were set. In fact, Twin Galaxies had lost the chain of custody of these tapes for at least a decade prior to his investigation. When he acquired Twin Galaxies, Hall was not in possession of the tapes and did not seek to obtain them from the original Twin Galaxies archive in New Hampshire. The tapes were removed from the archive by a third party and were not in the possession of Twin Galaxies. Hall based his investigation on tapes that he received from a third party and to date cannot certify any tape as Mitchell's original submission because he has never been in possession of this evidence and lost the chain of custody at least a decade before.

12. Again, in September 2019, Mitchell issued a retraction demand to Twin Galaxies, and Hall continued to support his lost chain of custody with testimonials. Hall posted numerous interviews with former Twin Galaxies referee Robert Mruczek, who possesses personal animosity for Mitchell. Hall also posted an interview with former Twin Galaxies referee Greg Sakundiak for the same purpose. To sum up, the fact that Hall ignored the key eye-witnesses while embracing testimony against Mitchell is undeniable. One may easily infer that Hall *knew* that the eye-witnesses would categorically refute the allegations, and as a result, he chose to ignore them.
13. Secondly, Twin Galaxies disregarded the fact that the Senior Engineer at Nintendo verified Mitchell's hardware as original and unmodified. Prior to Mitchell's 1,050,200 point record. We undertook the process to verify Mitchell's hardware with the Senior Engineer at Nintendo, because it ensured the veracity of his record beyond reproach. However, Hall refused to even investigate these facts, electing to claim that "Twin Galaxies does not care..." (*See Jason Hall Declaration, Exhibit A, Page 851*). Similar to the eye-witnesses, Twin Galaxies refused to even investigate it, because it clearly acted with a deliberate effort to avoid the truth.

HIDING EVIDENCE IN FAVOR OF MITCHELL

14. In February 2018, Mr. Dwayne Richard shipped a package to Hall. The package contained Mitchell's alleged Donkey Kong videotapes and a videotape of Mitchell's Pac-man record. Upon reception, Hall attributed the Donkey Kong videotapes to Mitchell; however, Hall oddly said that he "did not know" who owned the Pac-man videotape. Shortly after, Hall released the Donkey Kong videotapes for public review, but chose to keep the Pac-man videotape private.
15. On March 22, 2018, on a Facebook Livestream, Hall displayed Mitchell's Pac-man tape for a short period. Prior to its display, Hall stated that "I have a Perfect Pac-man sitting here. I don't know if it belongs to Billy [Mitchell]." However, upon inserting the tape, the truth revealed itself. Mitchell's physical presence appeared on the videotape, and the audience heard Mitchell's voice present in the recording. Hall's entire audience immediately recognized that the tape belonged to Mitchell, expressing statements such as "This is Billy [Mitchell's] tape," and "You can hear Billy [Mitchell] playing." Hall did not address these comments; to the contrary, he quietly ended the viewing and never displayed the videotape thereafter. Hall's Facebook broadcast occurs here:

https://www.facebook.com/watch/live/?v=10156194515649904&ref=watch_permalink
16. On April 11, 2018, Mitchell texted Hall, asking "Can you please look over the Perfect Pac-man tape that is said to be mine in your possession." However, Hall refused Mitchell's request, saying "that's outside of the scope of the current dispute work being done." (*See Billy Mitchell Declaration – Exhibit 62*). Most notably, Hall does not deny to Mitchell that the tape belongs to him. To the contrary, his texts implies acknowledgement of the fact.
17. On April 12, 2018, Twin Galaxies announced that Mitchell did not use an "original unmodified PCB" and removed ALL of Mitchell's records. In other words, it accused him of cheating.

Although its investigation only encompassed his Donkey Kong records, it also removed his Pac-man records despite the fact that no evidence existed to justify this action. Most importantly, Twin Galaxies also requested Guinness World Records to follow its decision, and Guinness World Records complied believing that Twin Galaxies requested proper action.

18. Because Hall's Facebook broadcast proved that the tape belonged to Mitchell, the Twin Galaxies community mounted pressure on Hall to publicly release Mitchell's videotape. The community causally attributed the videotape to Mitchell, and it demanded Hall to publicly release the videotape for transparency. However, Hall refused, and to this day, he maintains that he "does not know" who owns the videotape, going as far as to tell his community that "any and all association of that tape with any specific person based on that [Facebook] broadcast is based on public speculation and has not been proven by anyone as definitive." Hall's quote occurs here:

<https://www.twingalaxies.com/jace-hall/wall/7423/how-many-still-stand-/page/5#comments>

19. Through the facts incorporated in paragraphs 10 through 14, Hall clearly knew the tape belonged to Mitchell. However, it leaves two important questions: "Why would Hall hide the videotape?" and "Why does this matter?" Hall hid the Pac-man videotape for three reasons: 1) The undisputable evidence contained within it opposed his decision to remove Mitchell's Pac-man record; 2) The videotape would have provided Mitchell undisputable evidence to publicly refute the Twin Galaxies allegations; 3) Mitchell would have utilized the videotape as evidence for Guinness World Records to justify a reinstatement of his Pac-man record. Hall clearly wanted to avoid any public relations nightmares for Twin Galaxies, and as a result, he elected to bury the videotape from the public eye.

20. Moreover, this evidence matters, because it provides concrete evidence that Hall possessed a malicious state of mind [Actual Malice] toward Mitchell. In *Herbert v. Lando*, 441 U.S. 153

(1979), the Supreme Court of the United States ruled that “[A]ny competent evidence either direct or circumstantial, can be resorted to, and all the relevant circumstances surrounding the transaction may be shown...” to show malice. Hall’s decision to hide evidence in favor of Mitchell provides direct proof of a subjective intent to defraud Mitchell. Through the facts set forth herein, one can clearly infer through objective evidence that Hall desired to suppress all evidence in favor of Mitchell and deprive him of the ability to combat the Twin Galaxies allegations on any level.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this day, June 21, 2020, in Ottumwa, Iowa.



Walter Day

EXHIBIT 29

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Superior Court of California
County of Los Angeles
Department 36

FILED
Superior Court of California
County of Los Angeles

OCT 26 2020

Sherri R. Carter, Executive Officer/Clerk
By , Deputy
Douglas Canada

WILLIAM JAMES MITCHELL,
Plaintiff,
v.
TWIN GALAXIES, LLC; and Does 1-10,
inclusive,
Defendants.

Case No.: 19STCV12592
Hearing Date: 10/15/2020
~~SENTENCE~~ **RULING RE: Defendant's
Special Motion to Strike (anti-SLAPP);
Defendant's Motion for Undertaking**

Defendant's Special Motion to Strike (anti-SLAPP) is denied.

Defendant's Motion for Undertaking is granted. Plaintiff is to post a bond in the amount of \$81,225.00 within 30 days of this order. (CCP § 1030(d).)

Background

This case arises out of allegedly defamatory statements made by Twin Galaxies, LLC ("Twin Galaxies"), which operates the website www.twingalaxies.com that publishes score records on leaderboards for video games and provides forums for discussion on video games. (See Hall Decl., ¶¶ 3-5.) Twin Galaxies' leaderboards' records and rankings have been historically recognized as official records of achievement in video games and have been used by Guinness World Records. (*Id.* ¶ 7.)

Plaintiff William James ("Billy") Mitchell is a well-known figure in the video game community for his records in several video games including Donkey Kong, Pac-Man, and others. (FAC, ¶ 1.) Plaintiff first became prominent in the 1980s, when he was included in a photo spread of game champions in Life Magazine. (FAC, ¶ 1.) In 1999, Plaintiff achieved the first

1 perfect score on the original Pac-Man. (FAC, ¶ 2.) In the 2000s, Plaintiff set record scores of
2 1,047,200 on Donkey Kong (the “King of Kong ‘tape’”) and 1,050,200 on Mortgage Brokers
3 (the “Mortgage Brokers score”). (FAC, ¶ 3.) Plaintiff has appeared in several documentaries on
4 competitive gaming, including *The King of Kong: A Fistful of Quarters* (2007) and is owner of
5 “Rickeys’ Hot Sauce.” (FAC, ¶¶ 5-6.)

6 On April 12, 2018, Twin Galaxies published a statement that it would remove Plaintiff’s
7 scores from its leaderboards and ban Plaintiff from participation in the leaderboards. Twin
8 Galaxies stated:

9 [Mitchell's] taped Donkey Kong score performances of 1,047,200 (the King of
10 Kong "tape"), 1,050,200 (the Mortgage Brokers score) that were historically used
11 by Twin Galaxies to substantiate those scores and place them in the database were
12 not produced by the direct feed output of an original unmodified Donkey Kong
Arcade PCB. . . .

13 From a Twin Galaxies viewpoint, the only important thing to know is whether or
14 not the score performances are from an unmodified original DK arcade PCB as
15 per the competitive rules. We now believe that they are not from an original
16 unmodified DK arcade PCB, and so our investigation of the tape content ends
with that conclusion and assertion. . . .

With this ruling Twin Galaxies can no longer recognize Billy Mitchell as the 1st
million point Donkey Kong record holder.

17 (FAC, ¶ 18.)

18 Plaintiff asserts this statement is defamatory and false because it claims Plaintiff did not
19 achieve his record scores legitimately through the competitive rules, *i.e.*, by cheating. (FAC,
20 ¶ 19.) Plaintiff counters that his scores were made on certified arcade boards in front of hundreds
21 of people, and, that an investigation preceding this statement made by Twin Galaxies was biased
22 as under Twin Galaxies’ new ownership by Jason (“Jace”) Hall. (FAC, ¶¶ 23-25.)

23 Defendant Twin Galaxies has filed a Special Motion to Strike, asserting that Twin
24 Galaxies’ statement was made at the request of forum members after a technical investigation;
25 and that allowing Plaintiff to use the courts to recover for defamation would have chilling effects
26 on the freedom of speech, setting a precedent for others to challenge the public debate on video
27 game scores in courts. (*See* Mot. at pp. 1-2.) Plaintiff has opposed. Defendant has filed a reply.
28 Plaintiff has filed a sur-reply.

1 Defendant Twin Galaxies also has filed a Motion for Undertaking, on grounds that
2 Plaintiff resides out-of-state, and that there is a reasonable possibility that Defendant will obtain
3 judgment in the matter, which largely mirrors the grounds for its Special Motion to Strike.
4 Plaintiff has opposed. Defendant has filed a reply.

5
6 **I. Special Motion to Strike (anti-SLAPP)**

7
8 1. Evidentiary Objections

9 *Plaintiff's Request to Strike Defendant's Evidentiary Objections to Sur-Reply*

10 Plaintiff on October 7, 2020, filed an objection and request the court strike Defendant's
11 evidentiary objections filed on September 28, 2020, to Plaintiff's declaration filed with a sur-
12 reply brief.

13 Plaintiff's request is denied. The objection is overruled. This court has not issued a ruling
14 that it would not consider an objection to evidence submitted with Plaintiff's sur-reply, such that
15 the objections constitute a pleading "not drawn or filed in conformity with . . . an order of the
16 court." (CCP § 436.) The court considers the objections.

17
18 *Defendant's Objections to Sur-Reply Evidence*

19 Defendant on September 28, 2020 filed objections to Plaintiff's supplemental declaration
20 filed on September 25, 2020, and the Declaration of Walter Day attached as Exhibit 1 to the
21 same declaration.

22 Defendant objects to Plaintiff's entire declaration filed on September 25, 2020 on
23 grounds that the declaration is unsigned. Plaintiff re-submitted a signed declaration on October 1,
24 2020. The general rule is new evidence is not permitted within reply papers while the court has
25 discretion to admit these forms of reply papers. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522,
26 1537–38.) A trial court has discretion whether to accept new evidence in reply papers. (*Alliant*
27 *Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1308.) The inclusion of additional
28 evidentiary matter with the reply is only allowed in "the exceptional case" and, if permitted, the

1 other party should be given the opportunity to respond. (*Jay v. Mahaffey*, 218 Cal.App.4th at
2 1538.)

3 Considering the foregoing, the court considers Plaintiff's re-submitted declaration filed
4 October 1, 2020. Objection 174 is OVERRULED.

5 The remaining objections to the supplemental evidence submitted with Plaintiff's sur-
6 reply are ruled on as follows:

7 Mitchell Declaration: OVERRULED: 175, 177, 178, 179, 180, 182-185, 187-192.
8 SUSTAINED: 176, 181, 186.

9 Day Declaration: OVERRULED: 194, 196, 197. SUSTAINED: 193, 195, 198.

10
11 *Defendant's Objections to Opposition Evidence*

12 The court rules as follows on Plaintiff's declaration filed on June 22, 2020, and the
13 declaration of Walter Day attached as Exhibit 1 to the same declaration:

14 Mitchell Declaration and Exhibits:

15 OVERRULED: 1, 2, 6-10, 12-14, 18, 26-28, 30-33, 36, 37, 40-44, 46-49, 51, 53-
16 55, 57, 61, 63-65, 70-72, 75, 79, 86-91, 93-96, 101-103, 115-131, 134, 137, 138, 140, 141, 143,
17 145, 147, 148, 153, 154, 157, 158-168, 171, 173.

18 SUSTAINED: 11, 15, 16, 17, 19-25, 29, 34, 35, 38, 39, 45, 50, 56, 58, 60, 62, 66,
19 67, 73, 74, 76-78, 80-85, 98-100, 104-114, 132, 133, 135, 136, 139, 142, 144, 145, 146, 149,
20 150-152, 155, 156, 169, 170, 172.

21 SUSTAINED IN PART: 3 ("As a result . . . as a professional gamer."); 4 ("Twin
22 Galaxies personally coordinated . . . before locking the machine entirely."); 5 ("and Shirk
23 confirmed . . . throughout the performance."); 52 ("In summary, the . . . allegation of cheating.");
24 59 ("As stated previously . . . in allegations of fact"); 68 ("I learned about this . . . in a class-
25 action lawsuit." "It never contacted . . . contact from Hall."); 69 ("The refusal of two . . . contact
26 from Hall."); 92 ("Therefore, the defamation . . . per quod determination."); 97 ("and there is no
27 argument . . . these special damages.").

18/27/2020

1 *Plaintiff's Objections to Defendant's Moving Evidence*

2 The court rules as follows on Plaintiff's objection to the declaration of Jason Hall
3 submitted March 30, 2020: OVERRULED: 1, 2. SUSTAINED: 3, 4.
4

5 2. Moving Defendant's Requests for Judicial Notice

6 Moving Defendant requests judicial notice of the Complaint in the action *Mitchell v. The*
7 *Cartoon Network, Inc., et al.* (D.N.J., Nov. 20, 2015), Case No. 3:15-cv-05668-AET-LHG; and
8 the Opinion of Hon. Judge Anne E. Thompson of November 20, 2015 in the same action.

9 Judicial notice is granted of each request. (CEC § 452(d).) The court notes that it may
10 take judicial notice of the existence of a factual finding in another proceeding but not the truth of
11 that finding. (*Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120; see
12 *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-65.) "A court may take judicial notice of
13 [another] court's action, but may not use it to prove the truth of the facts found and
14 recited. [Citations.]" (*Steed*, 204 Cal.App.4th at 120 (quoting *O'Neill v. Novartis Consumer*
15 *Health, Inc.* (2007) 147 Cal.App.4th 1388, 1405) (emphasis in original).)
16

17 3. Timely Filing under CCP § 425.16

18 A special motion to strike "may be filed within 60 days of the service of the complaint or,
19 in the court's discretion, at any later time upon terms it deems proper." (CCP § 425.16(f).)
20 Moving Defendant filed this motion on March 30, 2020, in relation to the First Amended
21 Complaint served by mail on March 12, 2020. (FAC, Proof of Service.) The motion is thus
22 timely.
23

24 4. Legal Standard

25 A special motion to strike "may be filed within 60 days of the service of the complaint or,
26 in the court's discretion, at any later time upon terms it deems proper." (CCP § 425.16(f).)
27 In determining whether to grant or deny a Code of Civil Procedure section 425.16 special motion
28 to strike, the court engages in a two-step process. (*Shekhter v. Financial Indemnity Co.* (2001) 89

1 Cal.App.4th 141, 150.) First, the court must decide whether the moving party has met the
2 threshold burden of showing that the plaintiff's cause of action arises from the moving party's
3 constitutional rights of free speech or petition for redress of grievances. (*Id.*) This burden does
4 not require a defendant to prove subjective intent to chill the defendant's exercise of
5 constitutional speech or petition rights. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29
6 Cal.4th 53, 58.) This burden may be met by showing the act which forms the basis for the
7 plaintiff's cause of action was an act that falls within one of the four categories of conduct set
8 forth in Code of Civil Procedure Section 425.16, subdivision (e):

- 9 (1) any written or oral statement or writing made before a legislative, executive, or
10 judicial proceeding, or any other official proceeding authorized by law, [¶]
- 11 (2) any written or oral statement or writing made in connection with an issue under
12 consideration or review by a legislative, executive, or judicial body, or any other official
13 proceeding authorized by law, [¶]
- 14 (3) any written or oral statement or writing made in a place open to the public or a public
15 forum in connection with an issue of public interest, or [¶]
- 16 (4) any other conduct in furtherance of the exercise of the constitutional right of petition
17 or the constitutional right of free speech in connection with a public issue or an issue of
18 public interest.

19 If the defendant meets this initial burden, the burden shifts to the plaintiff to establish a
20 probability of prevailing on the claim by presenting facts which would, if proved at trial, support
21 a judgment in the plaintiff's favor. (*Shekhter*, 89 Cal.App.4th at 150-51.) In making its
22 determination on this prong, the trial court is required to consider the pleadings and the
23 supporting and opposing affidavits stating the facts upon which the liability or defense is based.
24 (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 646.) The plaintiff's proof
25 must be made upon competent admissible evidence. (*Sweetwater Union High School Dist. v.*
26 *Gilbane Building Co.* (2019) 6 Cal.5th 931, 940.) The court "does not weigh evidence or resolve
27 conflicting factual claims." (*Id.*) The court's inquiry "is limited to whether the plaintiff has stated
28 a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable
judgment" accepting the plaintiff's evidence as true. (*Id.*) "The court evaluates the defendant's
showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.]

1 '[C]laims with the requisite minimal merit may proceed.'" (*Id.*; see also *Navellier v. Sletten*
2 (2002) 29 Cal.4th 82, 89.)

3
4 5. Discussion

5
6 *Prong One: Protected Activity*

7 The court first decides whether the moving party has met the threshold burden of
8 showing the plaintiff's cause of action arises from the moving party's constitutional rights of free
9 speech or petition for redress of grievances. (*Shekhter v. Financial Indemnity Co.* (2001) 89
10 Cal.App.4th 141, 150.) The moving defendant must identify "all allegations of protected
11 activity" and show that the challenged claim arises from that activity. (*Bel Air Internet, LLC v.*
12 *Morales* (2018) 20 Cal.App.5th 924, 934.) The statutory phrase "'arising from' means the
13 defendant's act underlying the plaintiff's cause of action must *itself* have been an act in
14 furtherance of the right of petition or free speech." (*City of Cotati v. Cashman* (2002) 29 Cal.4th
15 69, 78 (emphasis in original).)

16 Moving Defendant asserts Plaintiff's causes of action arise from Twin Galaxies'
17 protected activities as a "written or oral statement or writing made in a place open to the public
18 or a public forum in connection with an issue of public interest" under Code of Civil Procedure,
19 Section 425.16(e)(3), or alternatively, as conduct "in furtherance of the exercise of the
20 constitutional right of petition or the constitutional right of free speech in connection with a
21 public issue or an issue of public interest" under Code of Civil Procedure, Section 425.16(e)(4).
22 (Mot. at p. 6.)

23
24 (1) *Public Forum*

25 The court agrees that Twin Galaxies' statements were made in a public forum.

26 Websites accessible to the public such as newsgroups are "public forums" for purposes of
27 the anti-SLAPP statute. (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, at fn. 4.) A court may
28 consider whether the website is "a place that is open to the public where information is freely

1 exchanged.” (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1007.)

2 The statements were made by Twin Galaxies on its website forums, which are accessible
3 to the public, and where members of the public exchange conversation on video game topics.
4 (Hall Decl., ¶¶ 21, 38.) The thread questioning Plaintiff’s scores was initiated by a Twin
5 Galaxies website registered user in a forum provided for users to dispute the veracity of a Twin
6 Galaxies verified score appearing on a leaderboard. (Hall Decl., ¶¶ 11, 20.) As of March 14,
7 2020, there were 170 unique contributors who commented in the thread, 211 users who voted,
8 and 3,770 content entries. (Hall Decl., ¶ 23.) The forums for disputing scores are open to any
9 registered user of the website. (Hall Decl. ¶ 12.) Defendant’s statements were made in in that
10 thread. (Hall Decl., ¶ 38.)

11 Plaintiff on opposition does not dispute that the statements were made in a public forum.

12
13 (2) *Issue of Public Interest*

14 The court also agrees that Twin Galaxies’ statements involved an issue of public interest.
15 As stated by the Supreme Court in *FilmOn.com Inc. v. DoubleVerify Inc.*:

16
17 In articulating what constitutes a matter of public interest, courts look to certain
18 specific considerations, such as whether the subject of the speech or activity “was
19 a person or entity in the public eye” or “could affect large numbers of people
20 beyond the direct participants” [Citation.]; and whether the activity “occur[red] in
21 the context of an ongoing controversy, dispute or discussion” [Citation.], or
22 “affect[ed] a community in a manner similar to that of a governmental entity”
23 [Citation.].

24 ((2019) 7 Cal.5th 133, 145–46.)

25 First, Plaintiff as the subject of Defendant’s statements is a person “in the public eye.”
26 (*Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 898.) As stated in Plaintiff’s Complaint, Plaintiff
27 “rose to national prominence in the 1980’s when Life magazine included him in a photo spread
28 of game champions.” (FAC, ¶ 1.) Plaintiff achieved the first perfect score on the original Pac-
Man in 1999, causing Namco to bring him to Japan for the Tokyo Game Show and named him
the “Video Game Player of the Century.” (FAC, ¶ 2.) Plaintiff achieved record-breaking scores

1 on Donkey Kong in the 2000s. (FAC, ¶ 3.) In 2006, MTV selected Plaintiff as one of “The 10
2 Most Influential Video Gamers of All Time” and Oxford American published an article by David
3 Ramsay describing Plaintiff as “probably the greatest arcade video game player of all time.”
4 (FAC, ¶ 4.) Plaintiff has appeared in several documentaries on competitive gaming. (FAC, ¶ 5.)
5 Plaintiff is also the owner of a hot sauce company, built in part on Plaintiff’s fame as a video
6 game record-holder. (FAC, ¶ 6.)

7 Second, when an issue “is not of interest to the public at large, but rather to a limited, but
8 definable portion of the public (a private group, organization, or community), the constitutionally
9 protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or
10 discussion, such that it warrants protection by a statute that embodies the public policy of
11 encouraging *participation* in matters of public significance.” (*Du Charme v. International*
12 *Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 119.)

13 Defendant establishes that the issue of Plaintiff’s video games scores are of interest to the
14 video gaming community, and that its statements occurred in the context of an ongoing
15 controversy, dispute or discussion, to warrant protection under the anti-SLAPP statute’s public
16 policy of encouraging participation in matters of public significance. As noted above,
17 Defendant’s statements were in a thread on its publicly-viewable website where members of the
18 video game community exchange conversation on video game topics. (Hall Decl. ¶¶ 21, 38.) In
19 the forum thread on Plaintiff’s scores, as of March 14, 2020, there were 170 unique contributors
20 who commented, 211 users who voted, and 3,770 content entries. (Hall Decl., ¶ 23.) The thread
21 had been viewed 2,394,329 times on Twin Galaxies’ website as of the same date. (*Id.*) Defendant
22 has also provided information on Twin Galaxies’ engagement with the video gaming community
23 in the process of investigating the dispute and publishing its conclusion. Among other
24 contributors, after initiating the thread, the Twin Galaxies user Jeremy Young, under the
25 pseudonym Xelnia (Hall Decl. ¶ 20) in posts number 186 and 187 made a presentation in support
26 of the dispute. (Hall Decl. ¶ 25.) Twin Galaxies announced it would take up the dispute claim.
27 (Hall Decl. ¶ 27.) Contributions to the discussion were made by, among others, Robert Childs,
28 who assisted Plaintiff in the original recording of his score performances (Hall Decl. ¶¶ 29-31)

1 that Twin Galaxies attempted to replicate with four staff members and published as post number
2 2387 (Hall Decl. ¶¶ 32-33). Twin Galaxies held a four-plus hour live public discussion stream,
3 reviewing the performances. (Hall Decl. ¶ 34.)

4 The foregoing differs from the circumstances in *FilmOn.com Inc. v. DoubleVerify*
5 *Inc.* (2019) 7 Cal.5th 133 (*FilmOn.com*). There, reports made by DoubleVerify Inc., a for-profit
6 company that offers online tracking, verification, and “brand safety” services to internet
7 advertisers, which generated confidential reports for profit and exchanged them confidentially
8 without being part of an attempt to participate in a larger public discussion, did not qualify for
9 anti-SLAPP protection, despite the topic itself being one of public interest. (*FilmOn.com*, 7
10 Cal.5th at 140.)

11 Plaintiff in the opposition does not dispute the statement was one that involved an issue
12 of public interest. Accordingly, Defendants meets the burden to show that Plaintiff’s claims
13 arose from statements in connection with an issue in the public interest. The burden thus shifts to
14 Plaintiff to establish a probability of prevailing on his claims. (CCP § 425.16(b)(1).)

15
16 *Prong Two: Probability of Prevailing on the Merits*

17 The burden shifts to Plaintiff Mitchell to establish a probability of prevailing on the claim
18 by presenting facts which would, if proved at trial, support a judgment in Plaintiff’s favor.
19 (*Shekhter*, 89 Cal.App.4th at 150-51.) Plaintiff’s proof must be made upon competent admissible
20 evidence. (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931,
21 940 (*Sweetwater*)). The court “does not weigh evidence or resolve conflicting factual claims.”
22 (*Id.*) The court’s inquiry “is limited to whether the plaintiff has stated a legally sufficient claim
23 and made prima facie factual showing sufficient to sustain a favorable judgment” accepting the
24 plaintiff’s evidence as true. (*Id.*) “The court evaluates Defendant’s showing only to determine if
25 it defeats Plaintiff’s claim as a matter of law. [Citation.] ‘[C]laims with the requisite minimal
26 merit may proceed.’” (*Id.*; see also *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

27
28 (1) Defamation

1 Defamation constitutes an injury to reputation. (*Shively v. Bozanich* (2003) 31 Cal.4th
2 1230, 1242, *as modified* (Dec. 22, 2003).) It may occur by means of libel, which is “a false and
3 unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the
4 eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to
5 be shunned or avoided, or which has a tendency to injure him in his occupation.” (Civ. Code, §
6 45; *see Shively*, 31 Cal.4th at 1242.)

7 A threshold issue is whether the plaintiff is a public figure. The Plaintiff has stated he
8 assumes for purposes of the instant motion that he is at least a limited purpose public figure with
9 respect to video game playing, which is the subject of the instant controversy. (Opp. at p. 12.) In
10 light of the Plaintiff’s public and longstanding career in the video game industry as alleged in the
11 FAC and Plaintiff’s declaration, the court accepts this acknowledgement. (*See, e.g.*, Decl. ¶¶ 2-
12 5.)

13 As such, here Plaintiff is subject to the additional requirement to recover for defamation
14 “unless he proves, by clear and convincing evidence [Citation], that the libelous statement was
15 made with ‘actual malice’—that is, with knowledge that it was false or with reckless disregard of
16 whether it was false or not.” (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 256
17 (*Reader's Digest*) (quoting *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 280 (*New York*
18 *Times Co.*)).)

19
20 *i. Statement of Fact*

21 Defendant asserts that Plaintiff cannot establish falsehood in the statement made by
22 Defendant, because the statement made is one of opinion, not fact. Whether a statement is one of
23 fact or opinion is a question of law to be decided by the court. (*Baker v. Los Angeles Herald*
24 *Examiner* (1986) 42 Cal.3d 254, 260.)

25 The court in *Overstock.com, Inc. v. Gradient Analytics, Inc.* summarized the court’s
26 analysis:

27 [A] a false statement of fact, whether expressly stated or implied from an
28 expression of opinion, is actionable. [Citation.] The key is not parsing whether a
published statement is fact or opinion, but “whether a reasonable fact finder could

1 conclude the published statement declares or implies a provably false assertion of
2 fact.” [Citation.] And, when deciding whether a statement communicates or
3 implies a provably false assertion of fact, we use a totality of the circumstances
4 test. [Citation.] This entails examining the language of the statement. “ ‘For words
5 to be defamatory, they must be understood in a defamatory sense... [¶] Next, the
6 context in which the statement was made must be considered.’ ” [Citation.] The
7 contextual analysis requires that courts examine the nature and full content of the
8 particular communication, as well as the knowledge and understanding of the
9 audience targeted by the publication. [Citation.]

10 ((2007) 151 Cal.App.4th 688, 701 (*Overstock*).

11 “[T]he relative anonymity afforded by the Internet forum promotes a looser, more relaxed
12 communication style.” (*Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154, 1162.) However, “the
13 mere fact speech is broadcast across the Internet by an anonymous speaker does not ipso facto
14 make it nonactionable opinion and immune from defamation law.” (*Bently Reserve LP v.*
15 *Papaliolios* (2013) 218 Cal.App.4th 418, 429.)

16 Twin Galaxies’ statement reads in pertinent part:

17 **Summary Decision:**

18 Based on the complete body of evidence presented in this official dispute thread,
19 Twin Galaxies administrative staff has unanimously decided to remove all of
20 Billy Mitchell’s’ scores as well as ban him from participating in our competitive
21 leaderboards. . . .

22 The rules for submitting scores for the original arcade Donkey Kong competitive
23 leaderboards requires the use of original arcade hardware only. The use of
24 MAME or any other emulation software for submission to these leaderboards is
25 strictly forbidden. . . .

26 Twin Galaxies has meticulously tested and investigated the dispute case assertions
27 as well as a number of relevant contingent factors, such as the veracity of the
28 actual video performances that the dispute claim assertions rely upon. . . .

29 **Here are our specific findings:**

30 - The taped Donkey Kong score performances of 1,047,200 (the King of Kong
31 "tape"), 1,050,200 (the Mortgage Brokers score) that were historically used by
32 Twin Galaxies to substantiate those scores and place them in the database were
33 not produced by the direct feed output of an original unmodified Donkey Kong
34 Arcade PCB.

35 - The 1,062,800 (the Boomers score) Donkey Kong performance does not have
36 enough of a body of direct evidence for Twin Galaxies to feel comfortable to
37 make a definitive determination on at this time. . . .

38 - The 1047 and 1050 score performance videos we have in our possession (and
39 are basing our determinations on) are in fact the performances that were used by
40 previous Twin Galaxies administration as justification for those scores to be

1 entered into the database and for Twin Galaxies to attribute those specific
2 accomplishments to Billy Mitchell. We have several different and unique sources
3 of these performances and access to private historical Twin Galaxies referee e-
4 mail distribution records showing where these sources acquired their copies and
5 what the purpose was. . . .

6 From a Twin Galaxies viewpoint, the only important thing to know is whether or
7 not the score performances are from an unmodified original DK arcade PCB as
8 per the competitive rules. **We now believe that they are not from an original
9 unmodified DK arcade PCB, and so our investigation of the tape content
10 ends with that conclusion and assertion. . . .**

11 **With this ruling Twin Galaxies can no longer recognize Billy Mitchell as the
12 1st million point Donkey Kong record holder. . . .**

13 (Hall Decl., Exh. B (formatting in original).)

14 Contextually, the statement is presented as Twin Galaxies' "conclusion" after the
15 investigation it undertook into the claims made by a member of its website forum. As discussed
16 above, Twin Galaxies provides a forum for public dispute on video game scores, in which
17 members may participate. After a dispute claim and dispute process, a Twin Galaxies
18 administrator decides to remove or not remove the contested score from its leaderboards. (Hall
19 Decl. ¶¶ 13-15.) In this case, the dispute was extensive and resulted in a determination by Twin
20 Galaxies staff, based upon public comment and investigation, and Twin Galaxies' own inability,
21 and all known third party public investigation's inability, to reproduce images and artifacts in
22 Plaintiff's score performances. (See Hall Decl. ¶¶ 37-38.) Twin Galaxies then posted these
23 "ultimate findings" in the claim thread. (See *id.* ¶ 38.)

24 Twin Galaxies' "conclusion" includes the language "We now believe that [the score
25 performances] are not from an original unmodified [Donkey Kong] arcade PCB" Twin
26 Galaxies also makes the "specific finding": "The taped Donkey Kong score performances of
27 1,047,200 (the King of Kong "tape"), 1,050,200 (the Mortgage Brokers score) that were
28 historically used by Twin Galaxies to substantiate those scores and place them in the
database were not produced by the direct feed output of an original unmodified Donkey Kong
Arcade PCB." (Hall Decl., Exh. B.) A third "specific finding" as to another Donkey Kong
("Boomers score") performance was that Twin Galaxies did "not have enough of a body of direct
evidence for Twin Galaxies to feel comfortable to make a definitive determination on at this

1 *time.*” (*Id.*)

2 Considering the foregoing, a reasonable fact finder could conclude the published
3 statement declares or implies a provably false assertion of fact, in particular, that Plaintiff’s King
4 of Kong “tape” and Mortgage Brokers score were not produced by the direct feed output of an
5 original, unmodified Donkey Kong Arcade PCB. In addition, a reasonable fact finder could find
6 implied within this facts that actions were taken to make such circumstances occur. There is
7 support as well in that the third finding appears to imply that Twin Galaxies would only makes
8 “definitive determination[s]” based on sufficient direct evidence. That the statement is then made
9 with qualifying language (“We now believe ...”) does not under the circumstances, considering
10 Twin Galaxies holding itself out as an arbiter of sorts of fact, necessarily make the statement into
11 one where a reasonable factfinder would not understand it as fact. (*See Overstock*, 151
12 Cal.App.4th at 703.)

13
14 *ii. Falsity*

15 As a public figure for purposes of the instant dispute, plaintiff has the burden to prove not
16 only the falsity of the challenged statement, but also that defendant acted with “actual malice.”
17 (*New York Times Co.*, *supra*, at 279-280.) Falsity must be established by a preponderance of the
18 evidence. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 81 (*Alnor*).

19 To support his burden to prove falsity, first, Plaintiff attests that the King of Kong “tape”
20 was made on an original unmodified PCB. (Mitchell Decl. ¶ 9.) Plaintiff cites to evidence, for the
21 Mortgage Brokers score, that there was on-site referee adjudication and that the hardware was
22 verified by the Senior Engineer at Nintendo. Walter Day, the founder and former owner of Twin
23 Galaxies, attests to the on-site referee adjudication, and Plaintiff has submitted declarations by
24 the referees Todd Rogers and Kimberly Mahoney. (Mitchell Decl. Exh. 1, ¶ 5 (Day Decl.); Exhs.
25 9, 10 (Rogers and Mahoney Decls.)) The referees attest to the integrity of the arcade machine,
26 and that the machine was an original Donkey Kong Arcade machine with original unmodified
27 hardware. (*See* Rogers Decl. ¶ 6; Mahoney Decl. ¶¶ 3, 4.) Next, Plaintiff attests to having
28 complied with Mr. Day’s requirement to verify hardware with the Senior Engineer at Nintendo,

1 Wayne Shirk; and attests that he never accessed hardware before or after the performance.
2 (Mitchell Decl. ¶ 25.) Plaintiff also provides evidence in support of the Donkey Kong “tape”
3 showing that the score could be achieved; this evidence, however, supports that the scores were
4 achievable, rather than going to the integrity of the hardware itself. (See Mitchell Decl. Exh. 21
5 (Lakeman Decl.)) Last, Plaintiff provides testimony that the possibility of Plaintiff using
6 MAME emulation for the scores is unlikely or impossible because the specific version of MAME
7 alleged was not created until after the King of Kong “tape”. (Mitchell Decl. ¶ 49.)

8 Defendant asserts that it can prove the truth of the statements. Defendant offers evidence
9 in support that the scores could not have been made on an original unmodified PCB in the
10 declarations of Jason Hall and Carlos Pineiro. Mr. Hall attests that Twin Galaxies tested the
11 scores by attempting to reproduce certain artifacts on the girders drawn in the game, including a
12 “Girder Finger” that appeared in the King of Kong “tape” and the Mortgage Brokers score, and
13 was not able to capture the same artifacts in its testing. (See Supp’l Hall Decl. ¶¶ 17-18.) Mr.
14 Pineiro attests that the person who started the dispute claim also demonstrated that the Girder
15 Finger could not be reproduced form an unmodified original PCB. (See Pineiro Decl. ¶¶ 10-12.)
16 Mr. Pineiro was also unable to reproduce the same artifacts. (See *id.* ¶¶ 16, 18.)

17 There is therefore a dispute in the evidence as to the truth or falsity of the statement.
18 However, the court’s inquiry on an anti-SLAPP motion “is limited to whether the plaintiff has
19 stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a
20 favorable judgment” accepting the plaintiff’s evidence as true, and not weighing the evidence or
21 resolving factual disputes. (*Sweetwater, supra*, at 940.) The court does not find Plaintiff’s claim
22 of falsity has been defeated as a matter of law. (*Id.*)

23
24 *iii. Actual Malice*

25 As a public figure for purposes of the instant dispute, plaintiff has the burden to prove
26 that defendant acted with “actual malice.” (*New York Times Co., supra*, at 279-280.) Plaintiff has
27 the burden to prove actual malice by clear and convincing evidence, requiring Plaintiff to
28 demonstrate by “a finding of high probability” that Twin Galaxies “either knew [the] statement

1 was false or subjectively entertained serious doubt [the] statement was truthful.” (*Alnor*, 148
2 Cal.App.4th at 84.)

3 To demonstrate actual malice, a plaintiff may rely on inferences drawn from
4 circumstantial evidence. (*Id.* at 84.) Such inferences may be drawn from circumstantial evidence
5 of a failure to investigate; anger and hostility towards the plaintiff; or reliance on sources known
6 to be unreliable or known to be biased against the plaintiff. (*Reader’s Digest, supra*, at 258.) The
7 evidence is relevant only to the extent that it reflects on the subjective attitude of the publisher.
8 (*Id.*) The failure to conduct a thorough and objective investigation, standing alone, does not
9 prove actual malice; and mere proof of ill will alone may likewise be insufficient. (*Id.*) “the
10 failure to investigate must fairly be characterized as demonstrating the speaker purposefully
11 avoided the truth or deliberately decided not to acquire knowledge of facts that might confirm
12 the probable falsity of charges.” (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th
13 97, 114.)

14 Plaintiff asserts that Plaintiff’s evidence shows that statements made, sources not
15 interviewed, and acts taken during the dispute claim investigation indicate subjective doubt as to
16 the accuracy of the statements; and that Defendant’s statements were made with reckless
17 disregard for the truth, in particular that statements made by Defendant’s principal Mr. Hall
18 indicate the dispute claim investigation was decided before completion of Twin Galaxies’
19 investigation; and that the evidence supports a purposeful avoidance of the truth.

20 In support, Plaintiff offers evidence that (1) Mr. Hall, before the completion of the
21 dispute claim investigation, told Mr. Day that Mr. Hall “didn’t care” about referees who could
22 verify the hardware; (2) Twin Galaxies did not contact these referees; (3) Twin Galaxies
23 disregarded verification of the hardware by a Senior Engineer of Nintendo; (4) Twin Galaxies
24 used biased investigators; and (5) Twin Galaxies, despite its defense that it followed its internal
25 rules on its methods of contacting sources who could verify the scores, in fact contacted other
26 sources outside of those rules. Plaintiff asserts that foregoing shows actual malice, in particular
27 because there was no need to rush to publish the statement. (*See Widener v. Pacific Gas &*
28 *Electric Co.* (1977) 75 Cal.App.3d 415, 434, *disapproved of on other grounds by McCoy v.*

1 *Hearst Corp.* (1986) 42 Cal.3d 835.)

2 Plaintiff's evidence supports that on a phone call to Mr. Hall on February 24, 2018,
3 Plaintiff urged Hall to interview Twin Galaxies personnel and eyewitnesses to Plaintiff's scores,
4 and that Mr. Hall refused and stated he "doesn't care what anybody says." (Mitchell Decl. ¶ 44.)
5 Plaintiff's evidence supports that Mr. Hall made a website post stating that, because Twin
6 Galaxies' dispute concerned whether the performances were made by MAME recordings and not
7 original arcade gameplay, it "[d]oes not matter one bit what someone knew or didn't know. TG
8 does not care about certified boards, or any other non-relevant item to the dispute claim. What
9 matters is the actual content on the tape(s) as it stands. . . . Either the performances on the tapes
10 were produced by original DK hardware, or they were not." (Mitchell Decl. ¶ 45, Exh. 27.)
11 Plaintiff attests that Mr. Hall in phone conversations in April 2018 again refused to interview
12 Plaintiff's proposed witnesses and documentation, stating that "it doesn't matter" and that Mr.
13 Hall "didn't care." (Mitchell Decl. ¶ 61.)

14 Plaintiff provides evidence that Mr. Hall telephoned Mr. Day on March 13, 2018, roughly
15 one month prior to Twin Galaxies' statement, during which Mr. Hall asked, "How will you feel
16 when I announce that Billy [Mitchell] cheated?" (Mitchell Decl., Exh. 1 ¶ 8 (Day Decl.))
17 Plaintiff alleges this shows that Twin Galaxies' decision had already been made prior to
18 completion of Twin Galaxies' investigation, and prior to a Facebook broadcast reviewing
19 videotapes of Plaintiff's scores. (*See id.* ¶ 54.) Plaintiff provides evidence that Twin Galaxies did
20 not contact referees of the Mortgage Brokers score who attest to the hardware's integrity. (*See*
21 Mitchell Decl. ¶ 84; Exh. 9; Exh. 10, ¶ 6.)

22 Defendant asserts that it defeats Plaintiff's claim of actual malice as a matter of law.
23 Defendant relies on its investigation process and the rules of its dispute claim process.

24 Mr. Hall attests Twin Galaxies did not interview eyewitnesses because there was no
25 evidence that the King of Kong "tape" was live, such that eyewitness testimony would provide
26 relevant information; because Plaintiff did not identify witnesses by name; because Plaintiff did
27 not post evidence in the dispute claim thread relating to a live performance prior to the statement;
28 and because evidence of live performances is irrelevant to the dispute. (Hall Decl. ¶ 22.) It

1 appears Defendant through Mr. Hall considered the relevant dispute to be whether or not the
2 performances on videotape performances were in fact captured from an unmodified original
3 PCB; and that as a result, the only relevant evidence was that relating to the video recordings,
4 and not to the machines. (*See, e.g.*, Supp'l Hall Decl. ¶ 8.)

5 The court is not persuaded that such limitation defeats Plaintiff's claim as a matter of
6 law; in particular, how an interview of referees to at least the Mortgage Brokers live performance
7 would not have been relevant to the integrity of the machines that the referees watched, when
8 Defendant's statement concludes that the taped performances could not have been made on
9 original unmodified hardware. Plaintiff has provided support of having requested referees be
10 interviewed prior to the release of the statement. (*See, e.g.*, Mitchell Decl. ¶ 44.) In addition, the
11 status of the PCB hardware as original and/or unmodified appears to be at least supportable by
12 Nintendo's Senior Engineer by verification; and Defendant has not provided a reason for failure
13 to investigate this information after Plaintiff requested. The failure sounds rather in avoidance of
14 information, rather than a failure to investigate, considering Mr. Hall's affirmative refusals and
15 Plaintiff's requests.

16 Next, the court does not follow the logic that Defendant's internal rules, providing that
17 only evidence submitted in the dispute claim thread would be considered, provides Defendant a
18 legal defense to the tort of defamation. (*See* Supp'l Hall Decl. ¶ 16.) Defendant has not provided
19 authority as to how its internal processes have legal effect.

20 The court last considers the allegation that Defendant did not harbor doubt as its
21 statement was made on Twin Galaxies' investigation in the dispute claim thread and based on
22 Mr. Pineiro's conclusion as well that the performances could not have been made on an original
23 unmodified PCB. Again, however, such facts are offered in support that the Defendant did not
24 harbor doubt but is insufficient to defeat Plaintiff's claim as a matter of law, where the court
25 cannot not weigh conflicting evidence on the anti-SLAPP motion.

26 Based on the foregoing, Plaintiff satisfies the burden on the anti-SLAPP motion of a
27 prima facie case supporting actual malice, sufficient to overcome the burden of "minimal merit."
28 (*Sweetwater, supra*, at 940.)

1
2 *iv. Special Damages*

3 “A libel which is defamatory of the plaintiff without the necessity of explanatory matter,
4 such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face.

5 Defamatory language not libelous on its face is not actionable unless the plaintiff alleges and
6 proves that he has suffered special damage as a proximate result thereof.” (Civ. Code, § 45a.)

7 ““Special damages’ means all damages that plaintiff alleges and proves that he or she has
8 suffered in respect to his or her property, business, trade, profession, or occupation, including the
9 amounts of money the plaintiff alleges and proves he or she has expended as a result of the
10 alleged libel, and no other.” (Civ. Code, § 48a(d)(2).)

11 Defendant argues that Plaintiff has not pled special damages with respect to Defendant’s
12 statement, which Plaintiff must do as the statement is libel *per quod*. Plaintiff asserts the
13 statement is rather libel *per se*, and that regardless Plaintiff has suffered direct damages in loss of
14 sales in Plaintiff’s hot sauce business.

15 Even if the statement is one of libel *per quod*, Plaintiff has offered adequate evidence in
16 support of special damages. Plaintiff provides evidence that his public persona as established in
17 “The King of Kong: A Fistful of Quarters” is linked to the Rickey’s hot sauce business, through
18 publicity materials linking by appearance Plaintiff’s person, the film, and the hot sauce brand.
19 (See, e.g., Mitchell Decl. ¶¶ 125-127, Exhs. 51-54.) Plaintiff next has brought evidence that in
20 2018 through 2019 revenue for Rickey’s hot sauce sales went down, from an average of
21 \$800,216 from 2013-2017 and actual sales of \$796,068 in 2017, to \$410,267 in 2018 and
22 \$431,632.98 in 2019. (Mitchell Decl. ¶¶ 127-28, Exhs. 55-57.)

23
24 *v. Common Interest Privilege*

25 “In a communication, without malice, to a person interested therein, (1) by one who is
26 also interested, or (2) by one who stands in such a relation to the person interested as to afford a
27 reasonable ground for supposing the motive for the communication to be innocent, or (3) who is
28 requested by the person interested to give the information.” (Civ. Code, § 47(c).)

1 Defendant asserts Twin Galaxies' statement is privileged under the common interest
2 privilege. Plaintiff asserts that because the statement was made to the public at large, it is
3 analogous to one made by a news outlet, and thus does not fall under the common interest
4 privilege. In light that the statement was made available to the public in general, the court agrees
5 with Plaintiff; a closer relationship between the publisher of information and the receivers of it.
6 (*See Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 752.)

7
8 *vi. Conclusion*

9 Based on the foregoing, Defendant Twin Galaxies' special motion to strike Plaintiff's
10 defamation cause of action is DENIED.

11
12 (2) False Light

13 For the same reasons, Defendant's motion to the extent that it is alleged against
14 Plaintiff's False Light cause of action is DENIED. The cause of action arises out of the same
15 publication on Defendant's website and is alleged on the same substantive grounds. (*Gilbert v.*
16 *Sykes* (2007) 147 Cal.App.4th 13, 34 (collapse of defamation claim also defeats causes of action
17 arising from same publications on website).)

18
19 **II. Motion for Undertaking (CCP § 1030)**

20
21 **1. Evidentiary Objections**

22
23 *Plaintiff's Objection to Defendant's Evidence on Reply*

24 Plaintiff objects to Defendant's supplemental evidence submitted with its reply brief.

25 The general rule of motion practice is that new evidence is not permitted within reply
26 papers and the court has discretion to admit these forms of reply papers. (*Jay v. Mahaffey* (2013)
27 218 Cal.App.4th 1522, 1537-38.) A trial court has discretion whether to accept new evidence in
28 reply papers. (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1308.) The

1 inclusion of additional evidentiary matter with the reply is only allowed in “the exceptional case”
2 and, if permitted, the other party should be given the opportunity to respond. (*Jay v. Mahaffey*,
3 218 Cal.App.4th at 1538.)

4 Defendant’s motion for an undertaking was filed on September 22, 2020 after Defendant
5 had obtained permission for the court to consider Defendant’s supplemental evidence submitted
6 in support of its anti-SLAPP motion. In light that the grounds for Defendant’s motion primarily
7 rely on evidence already before the court, and that the motion largely mirrors Defendant’s anti-
8 SLAPP motion, the court does not consider the new evidence in declarations submitted with
9 Defendant’s reply brief.

10
11 2. Timely Filing

12 Defendant filed its motion for an undertaking on September 22, 2020, for the hearing date
13 of October 15, 2020. The proof of service indicates timely electronic service on September 22,
14 2020. (CCP § 1005(b).) Plaintiff timely opposed on October 1, 2020. (*Id.*) Defendant timely
15 replied on October 7, 2020. (*Id.*)

16
17 3. Legal Standard

18 When the plaintiff in an action resides out of the state, the defendant may, at any time,
19 apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to
20 secure an award of costs and attorney's fees which may be awarded in the action. (CCP §
21 1030(a); *Shannon v. Sims Service Center, Inc.* (1985) 164 Cal.App.3d 907, 913.) The motion
22 must be made on the grounds that the plaintiff resides out of the state and that there is a
23 reasonable possibility that the moving defendant will obtain judgment in the action. (CCP
24 § 1030(b); *Shannon, supra*, 164 Cal.App.3d at 913.) The motion must be accompanied by an
25 affidavit in support of the grounds for the motion that sets forth the nature and amount of the
26 costs and attorney’s fees the defendant has incurred and expects to incur by the conclusion of the
27 action. (*Id.*)

28 “The determinations of the court under this section have no effect on the determination of

1 any issues on the merits of the action or special proceeding and may not be given in evidence nor
2 referred to in the trial of the action or proceeding.” (CCP § 1030(f).)

3
4 4. Discussion

5
6 *(1) Declaration*

7 Defendant has provided the declaration of David Tashroudian, counsel for Defendant.
8 Mr. Tashroudian attests that the Defendant anticipates Defendant will incur \$81,225.00 in this
9 action. The amount consists of \$7,875 in connection with a Code of Civil Procedure section
10 2033.420(a) motion, which Defendant expects to incur approximately 15 hours at counsel’s fee
11 rate of \$525/hour; and \$73,350.00 which primarily comprises the costs for 21 expected
12 depositions and filing fees of \$1,350.00. (Tashroudian Decl. ¶ 6.) Defendant’s declaration
13 supports the statutory requirements of section 1030.

14 Plaintiff does not challenge the amount of the costs and fees requested by the Defendant,
15 and the court thus accepts the amount requested as reasonable.

16
17 *(2) Out-of-State Residence*

18 Defendant alleges Plaintiff lives out-of-state. (Mot. p. 7.) There is no dispute on this
19 point; and Plaintiff has alleged in the First Amended Complaint that Plaintiff’s state of residence
20 is Florida. (FAC ¶ 18; *see generally Opp.*)

21
22 *(3) Reasonable Possibility of Defendant Obtaining Judgment*

23 Defendant Twin Galaxies asserts it has a reasonable possibility of prevailing against
24 Plaintiff, because Plaintiff is unable to show that Defendant acted with the requisite
25 constitutional malice with respect to Defendant’s alleged defamatory statement. Defendant also
26 asserts there is a reasonable possibility that a factfinder will determine that the statement is true,
27 an affirmative defense to defamation. Plaintiff opposes on grounds that Plaintiff has a substantial
28 likelihood of prevailing and that Twin Galaxies thus cannot establish a reasonable possibility of

1 prevailing; and that Defendant's motion is prematurely brought at the start of litigation.

2 A motion requiring the plaintiff to post a security can be brought by a defendant "at any
3 time." (CCP § 1030(a).) The court does not find persuasive Plaintiff's argument that the motion
4 is prematurely brought at this stage in the litigation; evidence has been brought to the court's
5 attention by means of declarations at this stage in the litigation.

6 The court's analysis on a motion for an undertaking is to determine only whether the
7 Defendant shows a "reasonable possibility" of prevailing; the moving defendant is not required
8 to show there is no possibility that the opposing party could win at trial. (*Baltayan v. Estate of*
9 *Getemyan* (2001) 90 Cal.App.4th 1427, 1432.) An opposition on the merits thus must allege that
10 the moving defendant fails to make an adequate prima facie showing of a reasonable possibility
11 of success in the action.

12 Considering the evidence on this motion, the court finds that Defendant has satisfied the
13 low burden to show a reasonable possibility of prevailing in this action. Defendant has supported
14 that its statement does not show actual malice, and on the instant motion the court is not
15 restricted in its consideration thereof. Defendant's evidence in support of Defendant's anti-
16 SLAPP motion, as discussed above, supports that Twin Galaxies did not harbor doubt as to the
17 truth of its statement, as its statement was made after Twin Galaxies' lengthy investigation on the
18 dispute. (*See* Hall Decl. ¶¶ 28-36 (detailing process of dispute investigation); ¶¶ 37-38
19 (conclusion based on investigation).) The testimony of Mr. Hall's belief that eyewitness evidence
20 was unnecessary may reasonably go in the Defendant's favor on this point, undermining
21 Plaintiff's claim that Defendant acted with reckless disregard of the truth. Defendant has also
22 provided the declaration of Mr. Pineiro, which concludes that Plaintiff's performances could not
23 have been made on an original unmodified PCB based on Mr. Pineiro's analysis. (Supp'l Pineiro
24 Decl. ¶¶ 17-19.) Next, Plaintiff's showing that Plaintiff can show actual malice, discussed *supra*,
25 does not establish that Defendant cannot show a prima facie claim of a reasonable possibility of
26 prevailing on the issue of malice with the evidence weighed.

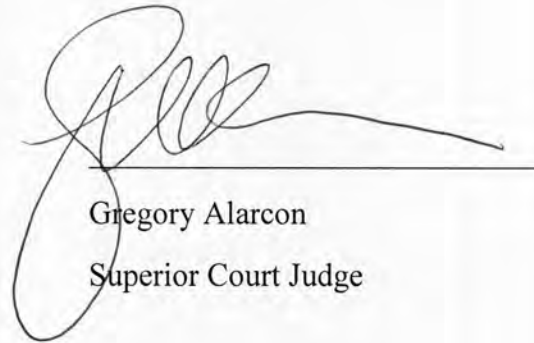
27 The same evidence goes toward Defendant's affirmative defense of the truth of the
28 statement, which forms a complete defense to defamation, and provides support of a reasonable

1 possibility of prevailing on this affirmative defense. (*See Campanelli v. Regents of University of*
2 *California* (1996) 44 Cal.App.4th 572, 581.) Defendant has additionally provided the declaration
3 of David Race, who attests to having worked with Mr. Pineiros and having tested the hardware,
4 and an inability to reproduce the artifacts discussed above, supporting that the videotapes could
5 not have come from an original unmodified Donkey Kong PCB. (*See Race Decl.* ¶¶ 19-20.)

6 In sum, Defendant Twin Galaxies meets its burden to demonstrate that Plaintiff is not a
7 California resident and that Defendant has a reasonable possibility of success in this action. The
8 court thus GRANTS Defendant's motion for an undertaking. Plaintiff is to post a bond in the
9 amount of \$81,225.00 within 30 days of this order. (CCP § 1030(d).)

10
11
12
13
14 Dated:

OCT 26 2020



Gregory Alarcon
Superior Court Judge

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):

COMPENDIUM OF EVIDENCE RE TASHRODIAN DECLARATION

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.

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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