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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

WILLIAM JAMES MITCHELL,

Plaintiff,

v.

TWIN GALAXIES, LLC; and Does 1-10,

Defendants.

AND RELATED CROSS-ACTION

Case No. 19STCV12592

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

**NOTICE OF MOTION AND MOTION TO
COMPEL FURTHER RESPONSES TO
DEFENDANT'S REQUEST FOR
PRODUCTION OF DOCUMENTS, SET
III; REQUEST FOR TERMINATING
SANCTIONS AND MONETARY
SANCTIONS AGAINST PLAINTIFF AND
HIS COUNSEL ANTHONY J. ELLROD
AND MANNING & KASS IN THE
AMOUNT OF \$81,875.00**

*[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) Compendium of Evidence]*

Hearing

Date: September 28, 2023

Time: 8:30 a.m.

Place: Department 36

Reservation ID: Reserved by Court

Action Filed: 4/11/2019

1 **NOTICE OF MOTION**

2 **TO THE HONORABLE COURT AND TO ALL ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on September 28, 2023 at 8:30 a.m. in Department 36 of
4 the Los Angeles Superior Court located at 111 N. Hill Street, Los Angeles, CA 90012, defendant
5 and cross-complainant Twin Galaxies, LLC ("Defendant") will and hereby does move, pursuant
6 to California Code of Civil Procedure sections 2023.010, 2023.030(a); 2023.030(d), 2031.310(a)
7 and pursuant to the Court's inherent authority to control the litigation before it, for an order: (1)
8 of dismissal of Plaintiff's complaint as a terminating sanction; (2) compelling further responses
9 and production of the documents requested in requests for production numbers 231, 251, 265, and
10 293 in set III of its requests; (3) requiring plaintiff to sit for deposition and pay the expenses; and
11 (4) for monetary sanctions against Plaintiff and his counsel Anthony J. Ellrod and the firm
12 Manning & Kass in the amount of \$81,875.00. The grounds for the requested order are that
13 Plaintiff has engaged in the willful and egregious misuse of the discovery process and his attorneys
14 advised him to do so; and that Plaintiff's discovery responses are evasive and his objections are
15 without merit.

16 This motion is based on the notice of motion; the attached memorandum of points and
17 authorities; the declarations (and exhibits thereto) of David A. Tashroudian, Matthew Gabler,
18 Jacob Pilkington, and Laura Carrell; the compendium of evidence; upon this Court's records and
19 files of this action; upon the oral argument of counsel; and upon all evidence the Court may receive
20 at or before the hearing of the motion.

21 Respectfully submitted,

22 Dated: September 5, 2023

TASHROUDIAN LAW GROUP, APC

23
24 By: /s/ David Tashroudian, Esq.
25 David Tashroudian, Esq.
26 Mona Tashroudian, Esq.
27 Attorneys for Twin Galaxies, LLC
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**¹

3 Plaintiff has engaged in deliberate and egregious discovery abuse throughout the course of
4 this litigation by lying at deposition and by engaging in the spoliation of evidence with the intent
5 to defraud the Court. His fraud includes the creation of evidence and the manipulation of witnesses
6 and documents to establish facts that are untrue – namely that he was named the “Video Game
7 Player of the Century” by reason of a plaque given to him by Namco. Plaintiff concocted a scheme
8 to create false evidence showing that the Namco plaque was found by John Grunwald at the Bridge
9 View Center in Ottumwa, Iowa. Plaintiff’s attorneys participated in the fraud and advised Plaintiff
10 to commit the fraud when they intentionally misrepresented to Defendant’s counsel in an email
11 dated July 6, 2023 that the awards were found by John Grunwald and that they were at the Bridge
12 View Center in Iowa, when Plaintiff and his attorneys knew these facts were untrue and had known
13 so since June 23, 2023. It appears they were all in on it together. Defendant is prejudiced by
14 Plaintiff’s abuse of the discovery process and the only remedy appropriate to curb the abuse is the
15 terminating sanction of dismissal.

16 Defendant seeks production of the “Video Game Player of the Century” plaque that
17 Plaintiff claims he was given by the Japanese video game maker Namco. The facts as set forth
18 below are that Plaintiff has the plaque and he is refusing to produce anything other than a low-
19 resolution and manipulated photo of it because the plaque he has is a forgery. He should be ordered
20 to produce the plaque so Defendant can prove his fraud.

21 Defendant seeks production of communications between Plaintiff’s son, Plaintiff, and
22 counsel. Plaintiff’s son – ostensibly a Manning & Kass law clerk – wrote declarations with false
23 statements for witnesses and those false statements have been submitted as evidence in this case.
24 In fact, this Court quoted Plaintiff’s false evidence written by his son in its order denying
25 Defendant’s special motion to strike. The communications sought are not shielded by the attorney-
26 client privilege according to the crime-fraud exception when Plaintiffs’ son suborned perjury.

27 ¹ Defendant omits a facts section to avoid redundancy as all of the facts and supporting evidence are set forth in the
28 accompanying declaration of David A. Tashroudian, the contents of which are expressly incorporated herein by this
reference.

1 Twin Galaxies also seeks production of a settlement agreement, and the videos Plaintiff
2 received in settlement, of the defamation claim he made against Benjamin Smith in February 2020.
3 The videos are relevant because they show Plaintiff with percipient witnesses Carlos Pineiro and
4 Robert Childs in February 2018 during the pendency of Plaintiff's investigation into his score.
5 The agreement itself is relevant because it purports to settle a defamation claim based on the same
6 conduct Plaintiff is suing Defendant for.

7 Defendant seeks an order from the Court requiring Plaintiff to sit for deposition to explain
8 at least where the Namco plaque was found, who found it, where it is, is it still in its original
9 condition from 24 years ago, and whether it has been altered.

10 Not a only is the terminating sanction of dismissal appropriate under the circumstances,
11 but so is the imposition of monetary sanctions. Plaintiff has failed and refused to produce the
12 documents requested without substantial justification and he abused the discovery process.
13 Accordingly, Plaintiff and his attorney should be jointly liable to Defendant for the amount of
14 \$81,875.00 which represents the costs and fees Defendant incurred in bringing this motion.

15 **II. ARGUMENT**

16 A. The terminating sanction of dismissal is warranted for Plaintiff's deliberate and 17 willful discovery misconduct.

18 The trial court is permitted to impose monetary and terminating sanctions against anyone
19 who has engaged in misuse of the discovery process. (Cal. Code. Civ. Proc., § 2023.030.) Misuse
20 of the discovery process includes making an evasive response to discovery. (Cal. Code. Civ. Proc.,
21 § 2023.010.) Other sanctionable discovery abuses include spoliation of evidence and providing
22 false discovery responses. (See Williams v. Russ (2008) 167 Cal.App.4th 1215, 1223 (terminating
23 sanctions for intentional spoliation of evidence); see also Saxena v. Goffney (2008) 159
24 Cal.App.4th 316, 333-334 (sanctions for willfully false discovery responses); see also Cedars-
25 Sinai Medical Center v. Superior Court (1998) 18 Cal.4th 1, 12 ("Destroying evidence in response
26 to a discovery request after litigation has commenced would surely be a misuse of discovery.").)
27 Terminating sanctions include "striking part or all of the pleadings, dismissing part or all of the
28 action, or granting a default judgment against the offending party." (Cedars-Sinai, 18 Cal.4th at

1 p. 12.)

2 Case law authorizes the imposition of terminating sanctions as a first remedy based on the
3 inherent power of the court where the plaintiff has willfully engaged in deliberate and egregious
4 discovery misconduct. (See Stephen Slesinger, Inc. v. Walt Disney Co. (2007) 155 Cal.App.4th
5 736, 761-765 (a case of first impression recognizing that trial courts have the inherent power to
6 impose a terminating sanction “when a plaintiff’s deliberate and egregious misconduct makes any
7 sanction other than dismissal inadequate to ensure a fair trial.”); see also Department of Forestry
8 & Fire Protection v. Howell (2017) 18 Cal.App.5th 154, 197–198 (terminating sanctions for
9 repeated false, misleading, and evasive discovery responses; false deposition testimony; and
10 spoliation).)

11 Plaintiff has willfully engaged in deliberate and egregious misuse of the discovery process.
12 One, Plaintiff has created fake physical evidence that he is refusing to produce. Two, he has used
13 others in an attempt to create evidence and to secrete it away. And three, he has repeatedly lied in
14 discovery as part of a pattern of giving evasive and false discovery responses to thwart Defendant’s
15 search for the truth. On top of all this, he and his counsel have misrepresented the location of
16 evidence and the provenance of evidence. The facts support these allegations and Defendant
17 cannot have a fair trial under these circumstances so terminating sanctions are warranted.

18 1. Plaintiff created fake Namco Plaques.

19 Plaintiff produced the June 2023 Picture to show an image of the Video Game Player of
20 the Century plaque he was allegedly awarded by Namco. The abnormally low resolution image
21 shows for the first time ever, two Pac-Man plaques awarded to Plaintiff. The plaques in the June
22 2023 Picture are replicas of the one plaque that was actually presented to Plaintiff at the 1999
23 Tokyo Game Show by Namco. [Gabler Decl., ¶¶ 5-24.]

24 Defendant’s expert prepared a comparative morphological analysis of the standing plaque
25 in the June 2023 Picture and a known picture of a Pac-Man plaque awarded to Plaintiff. The
26 known picture is from 2001, has a base, and is the same plaque as the one Mitchell is holding on
27 stage at the 1999 Tokyo Game Show. [Tashroudian Decl., ¶¶ 7 & 46.] The comparative analysis
28 shows that the two plaques are different. [Gabler Decl., ¶ 9, Exh. 2.] The Pac-Man figure on the

1 standing plaque in the June 2023 Picture is much smaller than the 2001 example. [Id, at ¶¶ 14-
2 15.] The feet at the base of the plaques are different. [Id, at ¶ 16.] The lines of text in the
3 comparison do not match – with the June 2023 example showing 17 lines of text total (11 in the
4 second paragraph); and the 2001 example showing 15 lines of total text (9 in the second
5 paragraph). [Id, at ¶ 18.]

6 Plaintiff has created the fiction of a second plaque with 17 lines of text because he lied at
7 deposition that he was given a plaque by Namco with the words “Video Game Player of the
8 Century.” [Tashroudian Decl., ¶¶ 4-6.] But that never happened as Defendant has alleged in
9 paragraph 17 of its cross-complaint. Plaintiff did receive a plaque from Namco, but the plaque
10 did not say player of the century on it. [Id. at ¶ 7-9, 43-49.] Defendant has produced pictures of
11 the plaque Plaintiff received from Namco, including still images from movies where Mitchell is
12 either holding the plaque or pointing to it. [Id. 43-49.] All of the images of the Namco plaque
13 that are in the public domain show the plaque has always had the same text pattern with 15 lines
14 total – whether the plaque is pictured with the base or not. [Gabler Decl., ¶ 19-23, Exh. 3.]
15 Additionally, the Namco plaque has historically been displayed by Plaintiff at conventions alone
16 – without a second Pac-Man plaque. There’s only ever been one. [Tashroudian Decl., ¶¶ 45-47.]

17 Plaintiff was presented with a “Player of the Century” framed certificate at the 1999 Tokyo
18 Game Show by cross-defendant Walter Day. [Tashroudian Decl., ¶¶ 9-10.] Plaintiff took a picture
19 next to Masaya Nakamura holding his “Player of the Century Award” from Walter Day and from
20 then forward has misrepresented to the public that he was proclaimed the Video Game Player of
21 the Century by Namco. He was not. Walter Day gave him a piece of paper that said that, Namco
22 did not give him a plaque that says it. Plaintiff has created this second Plaque as a cover-up.

23 2. Plaintiff staged discovery of the Namco plaques and misdirected Defendant
24 concerning the whereabouts of the plaques.

25 The most egregious discovery violation is Plaintiff’s willful fabrication of evidence
26 concerning the recent discovery of the Namco Player of the Century Plaque and his counsel’s
27 purposeful misdirection about the location of the item.

28 Plaintiff’s counsel produced the June 2023 Picture on June 26, 2023 with a file name of

1 IVGHOF.jpeg after Mr. Day begrudgingly testified to its existence. [Tashroudian Decl., ¶¶ 17-
2 18.] Defendant discovered the June 2023 picture was taken by Isaiah TriForce Johnson – a known
3 associate of Plaintiff – in a hotel room in Ottumwa, Iowa. [Tashroudian Decl., ¶ 21.] Defendant
4 gave *ex parte* notice to Plaintiff’s counsel Ms. Ross of his intent to compel production of the
5 plaques immediately based on the discovery that TriForce took the picture. [*Id.*, at ¶ 22.] But
6 Defendant did not file the prepared application because Plaintiff’s counsel misrepresented on July
7 6, 2023 that the “plaques are at the Bridge View Center, not in the possession of a single individual,
8 but that Mr. Grunwald was the one that located and took the photograph of them.” [*Id.*, at ¶ 24.]

9 This was purposeful misdirection on the part of Plaintiff’s counsel. John Grunwald, the
10 person who counsel represented found the awards and took the June 2023 Picture testified
11 differently. [Tashroudian Decl., ¶¶ 27-34.] He testified that he did not take the June 2023 Picture
12 nor did he find the awards. [*Id.*, at ¶¶ 29-31.] Instead he testified that the June 2023 Picture was
13 taken by Isaiah TriForce Johnson who brought the awards to him in a large trash bag during an e-
14 sports event held at the Bridge View Center from June 22-24, 2023 (the “Event”). [*Id.*, at ¶¶ 29-
15 31.] Surveillance footage of the Event confirms Mr. Grunwald’s testimony. [*Id.*, at ¶¶ 35-41.]

16 After Mr. Grunwald’s deposition, Plaintiff changed his story and alleged in his IDC papers
17 that Isaiah TriForce Johnson magically found the plaques in his friend Jerry Byrum’s arcade when
18 he left the Bridge View Center on June 23, 2023 to go look for his own memorabilia. This story
19 is disproved by the Bridge View Center’s CCTV footage which Defendant has obtained.
20 [Tashroudian Decl., ¶¶ 26, 35-41; *see also* Plikington Decl., ¶¶ 5-6.] Mr. Johnson is observed
21 arriving to the Event at 12:59 p.m. on June 23, 2023 in a gold Dodge van with his rolling duffle
22 bag and enters through a back service entrance. [Tashroudian Decl., ¶¶ 37-38.] He leaves the
23 event at 6:56 p.m. with his duffle bag in tow and is accompanied by a man in a red hat. [*Id.*, at ¶
24 39.] Mr. Johnson returns 42 minutes later at 7:38 p.m. with the same man and the same duffle bag
25 but without a black trash bag. [*Id.*] Ten minutes after that at 7:37 p.m., Mr. Johnson enters the
26 Event through the main doors carrying a large trash bag full of awards and proceeds to a back
27 room to take pictures of the awards with Mr. Grunwald and to pack the awards while Plaintiff was
28 on speakerphone. [*Id.*, at ¶¶ 40-41.] The Namco awards in the June 2023 Picture were not found

1 by Mr. Johnson at Mr. Byrum's arcade as claimed in the IDC papers. Rather, the awards were at
2 the Bridge View Center hidden away somewhere by Mr. Johnson (likely the day before) where he
3 retrieved them after he returned at 7:37 p.m. to then stage their discovery by Mr. Grunwald.

4 The deposition testimony and documents show that Plaintiff used others – including his
5 own lawyers if they were not complicit – to create the impression that the plaques were found at
6 the Bridge View Center. The first indication that the awards were found was from a cryptic partial
7 email sent by Plaintiff on June 23, 2023 to Laura Carrell asking for her to look for his awards
8 introduced by Ms. Ross during the deposition of Jerry Byrum. [Tashroudian Decl., ¶ 20.] The
9 deposition testimony shows that after Plaintiff sent that email to Ms. Carrell, he instructed Mr.
10 Grunwald to send Ms. Carrell the June 2023 Picture along with an email stating that the awards
11 were found and Mr. Grunwald complied. [*Id.*, at ¶¶ 31-33.] Plaintiff also asked Mr. Grunwald to
12 ask Ms. Carrell to send an email confirming the awards were found. [*Id.*, at ¶ 33; *see also* Carrel
13 Decl. ¶ 2.] Plaintiff engaged in these acts to create the false and misleading narrative that these
14 awards were indeed “found” at the Bridge View Center – a narrative that was echoed by Plaintiff's
15 counsel thirteen days later on July 6, 2023.

16 But as of July 6, 2023, Plaintiff knew the awards were not at the Bridge View Center.
17 Indeed he knew as of June 26, 2023 that the awards were not at the Center. Isaiah TriForce
18 Johnson flew to where Plaintiff lives in Fort Lauderdale, Florida with the awards in a box to deliver
19 them to Plaintiff on June 25, 2023. [Tashroudian Decl., ¶ 34.] That was always the plan and
20 Grunwald even gave Plaintiff updates throughout the day about Mr. Johnson's flight. [*Id.*] In his
21 IDC statement, Plaintiff claims that he could not pick up Mr. Jonson from the airport because Mr.
22 Johnson's flight was delayed too late. The story is that Mr. Johnson left the airport and shipped
23 the box of awards back to Jerry Byrum in Iowa and got back in time for his 10:25 a.m. international
24 flight to Jamaica. The story does not make any sense when you consider why Mr. Johnson would
25 mail the awards back to where he found them in Iowa instead of mailing them to Plaintiff who
26 lives in Fort Lauderdale and who was the intended recipient of the package. It also does not make
27 sense for Mr. Johnson to mail the parcel when the earliest post office in the area opens at 8:30 a.m.
28 and Plaintiff could have arrived at the airport at that time to pick up such an important piece of

1 evidence that will prove facts in his favor. None of it makes sense because Billy Mitchell will
2 make up facts without regard to the truth.

3 3. Plaintiff has repeatedly lied in deposition and in discovery.

4 Plaintiff has willfully engaged in a deliberate scheme to give evasive discovery answers.
5 Almost everything that Billy Mitchell says is untrue. Plaintiff lied in deposition about the fact that
6 he received \$33,000.00 by bank wire transfer from Walter Day of the funds Defendant's
7 predecessor used to purchase Twin Galaxies. [Tashroudian Decl., ¶ 50-51.] Plaintiff tried to
8 cover-up the lie by telling Mr. Day to keep this fact a secret. [Id.] Plaintiff's discovery responses
9 are also evasive and false as he responds to Defendant's interrogatories that there are no documents
10 evincing payment by Mr. Day to Plaintiff in connection with the sale of Twin Galaxies. [Id.] The
11 payment was made by wire – there is a receipt or bank entry. This information is crucial to
12 Defendant proving its *alter-ego* allegations, its fraud claims, and its Civil RICO claims. Plaintiff
13 attempted to hide this evidence to prevent Defendant from having a full and fair trial on the merits.

14 Plaintiff lied at deposition about being a director of the board for the International Video
15 Game Hall of Fame. He testified that he was not a member of the board despite the organizations
16 website listing him as a director with his biography. [Tashroudian Decl., ¶ 50-51.] The founder
17 of the organization Walter Day testified that Plaintiff has been a member of the board of directors
18 since 2010 or 2011. [Id.] The current president of the organization Jerry Byrum testified that
19 Plaintiff is now a board member and has been since at least 2019 when Mr. Byrum took charge.
20 [Id.] Plaintiff has lied about this fact because he does not want to be presumed to have control
21 over the awards he allegedly donated to the hall of fame in 2010. Plaintiff has hidden behind this
22 donation and used it as basis of his refusal to produce the plaques so far. Defendant will be denied
23 a fair trial if the plaques are not produced because they go to the very heart of its Civil RICO and
24 fraud claims. Be certain that he is refusing to produce the plaques because they are bad replicas.

25 Plaintiff also lied at deposition about his 1,050,200 Mortgage Brokers score performance
26 being recorded to tape by a VCR at the time it was allegedly achieved at the 2007 convention.
27 [Tashroudian Decl., ¶ 53.] Plaintiff subpoenaed and deposed Josh Ryan, the Gamestop manager
28 that Plaintiff claims setup the arcade machine and recording equipment for this score. Mr. Ryan

1 testified that a he did not hook up any recording equipment to the machine and that there was no
2 way for the gameplay coming out of that machine to have been recorded. [Id, at ¶ 54.] The truth
3 of where and how this game is recorded is a central fact to Defendant's truth defense.
4 Defendant cannot prove its defense in light of such misrepresentations.

5 Billy Mitchell has also lied about the fact that Carlos Pineiro was working on his behalf to
6 disprove the dispute regarding his scores. Plaintiff has sworn under oath in his discovery responses
7 and at deposition that he has never played *Donkey Kong* for anyone – not even Carlos Pineiro – to
8 test the accusations against Plaintiff's scores. [Tashroudian Decl., ¶ 55.] That is far from the
9 truth and Plaintiff realized that when he was shown a video at deposition of him playing *Donkey*
10 *Kong* with Carlos Pineiro recording the open back of an arcade machine hooked up to a 2-bit
11 converter and monitor where Mr. Pineiro clearly and loudly announces that he is performing video
12 tests. [Id, at ¶ 54.] Plaintiff has maintained this lie despite incontrovertible video evidence and
13 that has prejudiced Defendant. Defendant relied on the fact that Plaintiff represented during the
14 dispute process that Carlos Pineiro was working to disprove the challenge against Plaintiff's score.
15 Indeed, Defendant cites Mr. Pineiro's findings in its ultimate conclusion and printed statement
16 which it is now being sued for. Plaintiff's incredulity has resulted in unfairness to Defendant as it
17 will not be able to fully defend itself at trial in the face of Mitchell's misrepresentations.

18 B. Plaintiff should be compelled to produce the Namco plaque in the June 2023
19 Picture because he has control over them.

20 Defendant's request for production number 231 seeks all award donated by Mr. Mitchell
21 to the International Video Game Hall of Fame. Plaintiff's response that he cannot comply because
22 the requested item no longer exist is evasive and compliance must be ordered by the Court. (*See*
23 *Cal. Code Civ. Proc., § 2031.310(a)(2).*) Plaintiff can produce the plaques if he wants to.
24 According to Plaintiff, the plaques are with his friend Jerry Byrum at the International Video Game
25 Hall of Fame. Plaintiff has asked Mr. Byrum to find the plaques previously and Mr. Byrum
26 responded that the will find it. [Tashroudian Decl., ¶ 13.] These plaques were found and they
27 were going to be returned to Plaintiff in Florida by his other associate Mr. Johnson. This fact
28 shows that Plaintiff has control over the plaques as they were just a few months ago scheduled to

1 be personally delivered to him. Now that Mr. Byrum has the plaques and they have been
2 discovered, Plaintiff should be able to produce them pursuant to this discovery request.

3 The plaques should be ordered to be produced for the additional reason that they will prove
4 whether Plaintiff has misused the discovery process by spoliating evidence. It is of paramount
5 importance that this Court maintain the sanctity of evidence produced at trial and the manner to
6 do so here is to order compliance with the request to produce the plaques.

7 C. Plaintiff should be forced to produce communications between him, his son, and
8 his attorneys because his son has suborned perjury.

9 Defendant's document request number 265 seeks all communications between Plaintiff,
10 his attorneys, and his son William James Mitchell, IV from January 1, 2020 to the present. As a
11 threshold matter, Plaintiff has not provided a privilege log for the documents he withheld from
12 production based on the attorney-client privilege or the work product doctrine. A log should be
13 produced forthwith. Production should be compelled because Plaintiff's attorney-client privilege
14 and work product objections are without merit in light of the fact that Plaintiff's son – a purported
15 Manning & Kass law clerk – suborned perjury by Walter Day. (*See* Cal. Code Civ. Proc., §
16 2031.310(a)(3).).

17 Twin Galaxies discovered that Plaintiff's son has written declarations for witnesses with
18 false statements that have been submitted as evidence in this matter. The most glaring example
19 came out during the June 26, 2023 deposition of Walter Day.

20 Mr. Day submitted a declaration dated June 21, 2020 in opposition to Twin Galaxies' anti-
21 SLAPP motion where he quoted Jace Hall of Twin Galaxies as having asked him, a month prior
22 to publication of the allegedly defamatory statement at issue, "How will you feel when I announce
23 that Billy [Mitchell] cheated?" Day went on to declare that this statement showed Jace Hall had
24 a pre-ordained conclusion that Plaintiff cheated. This Court even cited Walter Day's declaration
25 and the supposed Hall quote at page 17 of its order denying the special motion to strike.
26 [Tashroudian Decl., ¶¶ 59-60.]

27 Mr. Day admitted at deposition that Jace Hall did not say the words he quoted in his June
28 21 declaration. He testified that what Mr. Hall actually asked was "how it would affect [Walter

1 Day] if Billy was determined to have cheated.” Mr. Hall’s actual statement does not have the pre-
2 ordained conclusion connotation that the other fabricated quote does. [Tashroudian Decl., ¶¶ 59-
3 60.] Day testified that Plaintiff’s son prepared the declaration for his signature and the son wrote
4 the false quote and attributed it to Jace Hall. By swearing that Jace Hall said the quoted words
5 when he did not, Walter Day made a false statement under oath and perjured himself. Plaintiff’s
6 son suborned perjury by writing the fabricated quote in a declaration he knew Day would sign and
7 submit to this Court. The worst part of it all is that this Court relied on the falsified evidence in
8 denying the special motion to strike resulting in a miscarriage of justice by all measures.

9 Plaintiff submitted another false declaration to the court written by his son for Walter Day
10 dated July 24, 2019. Plaintiff’s son wrote that declaration as well and he wrote for Walter Day to
11 swear to the fact that Josh Ryan from Gamestop installed the recording equipment to record
12 Plaintiff’s 2007 Mortgage Brokers score. Ryan testified at deposition that he did not install any
13 recording equipment. [Tashroudian Decl., ¶¶ 54 & 58.]

14 The attorney-client privilege does not shield communications where the attorney’s services
15 were procured to commit a crime or a fraud. (See Cal. Evid. Code, § 956.) This is known as the
16 crime-fraud exception to the privilege. The crime-fraud exception applies to communications
17 ordinarily shielded by the attorney-client privilege. (See BP Alaska Exploration, Inc. v. Superior
18 Court (1988) 199 Cal.App.3d 1240, 1249 (proponent made prima facie showing that opposing
19 counsel’s letter was an attempt to defraud proponent).) If the exception applies, the
20 communications are not subject to the privilege. (See, e.g., State Farm Fire & Casualty Co. v.
21 Superior Court (1997) 54 Cal.App.4th 625, 643.)

22 Here the crime-fraud exception applies to communications between Plaintiff, his son, and
23 Plaintiff’s lawyers by virtue of the fact the son is a law clerk suborning perjury by writing false
24 statements for witnesses to sign and submit to this Court. Perjury is a crime under Penal Code
25 section 118 and suborning perjury is a crime under Penal Code section 127. The communications
26 between Plaintiff, his son, and his lawyers are not privileged and should be ordered produced
27 accordingly.

28 Lastly, and worth mentioning, is the fact that Day testified at his deposition that he and

1 Plaintiff are currently filming a movie with the producer of *The King of Kong* and this lawsuit is
2 discussed in the movie. Day testified that Plaintiff and his son were interviewed by the filmmaker
3 on camera about the lawsuit with Day present. [Tashroudian Decl., ¶ 61.] The matters discussed
4 by Plaintiff, his son, Day, and the filmmaker are not privileged and the privilege is waived for all
5 communications on the issues disclosed on film.

6 D. Plaintiff should be required to produce the settlement agreement with Benjamin
7 Smith and all videos received in settlement.

8 Demand No. 251 seeks all documents, including all video recordings, Plaintiff received in
9 connection with settlement of the defamation claim he made against Benjamin Smith. Demand
10 No. 293 seeks production of the settlement agreement itself. These requests should be ordered
11 produced because Plaintiff's relevance objection is not meritorious. (*See* Cal. Code Civ. Proc., §
12 2031.310(a)(3).).

13 Plaintiff sued Benjamin Smith aka Apollo Legend in February 2020 for defamation in
14 Florida for making YouTube videos where he alleged Plaintiff cheated to achieve his Donkey
15 Kong scores; and for asking questions of Plaintiff and videorecording the responses at an arcade
16 event. Plaintiff testified at deposition that he settled the defamation claim with Smith and obtained
17 ownership of videos created by Smith of Plaintiff with percipient witnesses in this case, such as
18 Carlos Pineiro and Robert Childs in February 2018 at the time of the events giving rise to his
19 claim. Plaintiff testified that there are a handful videos that are in his son's possession, and by
20 extension now his attorney's possession.

21 Plaintiff has maintained throughout this litigation that Carlos Pineiro was not working on
22 his behalf to investigate the dispute regarding Plaintiff's Donkey Kong scores. But the
23 overwhelming evidence is that Pineiro was working for Plaintiff. For example, Defendant
24 produced and questioned Plaintiff at deposition about a video recording of him playing the *Donkey*
25 *Kong* video game while Pineiro tested arcade and video equipment. The relevance of the videos
26 that Plaintiff received in the Smith settlement is that they contain admissions by Plaintiff that
27 Pineiro was working on his behalf. There is one video from Smith in particular where Plaintiff
28 notoriously points to Pineiro and says Pineiro is working on the dispute. This video by Smith was

1 published on the Internet until Plaintiff's settlement when it was taken down. This evidence is
2 highly relevant and speaks directly to events that happened during Plaintiff's investigation of the
3 scores with Pineiro – again a fact that Plaintiff incredulously denies despite his own words, Carlos
4 Pineiro's videotaped deposition testimony, the Benjamin Smith video, and a mountain of other
5 evidence showing that Pineiro was working on behalf of Plaintiff.

6 In addition, the settlement agreement itself is also relevant and should be produced. The
7 terms of the settlement agreement of the defamation claim that Plaintiff made against Smith is
8 relevant to mitigation of damages which is an affirmative defense set forth by Defendant. Plaintiff
9 compromised his claim with Smith and Defendant's liability will be offset by amounts paid by
10 Smith as a co-tortfeasor for the same injury. The settlement agreement is therefore relevant and
11 discoverable.

12 E. Plaintiff should be ordered to sit for deposition to explain away his fraud.

13 Defendant was deprived of a fair opportunity to depose Plaintiff considering the evasive
14 and false discovery responses he has given thus far. Plaintiff should therefore be ordered to sit for
15 deposition, at his expense, so that Defendant has a fair shake. The second deposition session is
16 particularly necessary to determine facts regarding discovery and location of the Namco plaques.

17 F. Monetary sanctions are warranted against Plaintiff and his counsel.

18 Monetary sanctions are appropriate because Plaintiff has refused to produce the documents
19 requested in Defendant's requests for production of documents numbers 231, 251, 265, and 293
20 without substantial justification and because he and counsel have engaged in discovery abuse by
21 making evasive discovery responses, and by falsifying evidence. (*See* Cal. Code Civ. Proc., §
22 2030.010(a); *see also* Cal. Code Civ. Proc., § 2031.310(h).).

23 All of the information sought in requests for production of documents numbers 231, 251,
24 265, and 293 is discoverable and the objections made by plaintiff, as set forth above, are
25 unmeritorious. Monetary sanctions are appropriate because there is no substantial justification for
26 Plaintiff's failure to produce the requested documents.

27 Monetary sanctions are available also because Plaintiff has, as set forth in detail herein,
28 and in all the moving papers, engaged in willful and egregious discovery misconduct. There is no

1 question about that. (*See* Cal. Code Civ. Proc., § 2023.030(a).) Plaintiff's attorney advised the
2 conduct and furthered it in a July 6, 2023 email by intentionally misrepresenting the identity of
3 the person who found the awards. Based on this fact, the burden has shifted to Plaintiff's attorney
4 to demonstrate that it did not recommend that conduct. (*See Ghanooni v. Super Shuttle* (1993) 20
5 Cal.App.4th 256, 262.) If the attorney did not actively participate in misrepresenting the location
6 of the plaques and who found them, then it was Billy Mitchell that lied to his attorneys about the
7 location of the plaque and who took the picture – that is an even bigger problem for Manning &
8 Kass than these sanctions alone. Therefore, Plaintiff and his counsel should be ordered to pay
9 Defendant the amount of \$81,875.00 as costs and fees for bringing this motion.

10 **III. CONCLUSION**

11 Defendant respectfully requests that this Court grant the motion in full and issue the
12 requested orders in the interests of justice. If this Court is inclined to deny this motion, Defendant
13 respectfully requests that the Court first hold an evidentiary hearing where the videos of all six
14 deposition, and the CCTV footage, can be played and Plaintiff can give live testimony as to
15 circumstances around the discovery of the plaques.

16 Respectfully submitted,

17 Dated: September 5, 2023

TASHROUDIAN LAW GROUP, APC

19 By: /s/ David Tashroudian, Esq.
20 David Tashroudian, Esq.
21 Mona Tashroudian, Esq.
22 Attorneys for Twin Galaxies, LLC
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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):

NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET III; REQUEST FOR TERMINATING SANCTIONS AND MONETARY SANCTIONS AGAINST PLAINTIFF AND HIS COUNSEL ANTHONY J. ELLROD AND MANNING & KASS IN THE AMOUNT OF \$81,875.00

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@mannigkass.com & rwc@robertwcohenlaw.com pursuant to an agreement of the parties.

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

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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



Mona Tashroudian