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

14 WILLIAM JAMES MITCHELL,  
15  
16 Plaintiff,  
17  
18 v.  
19 TWIN GALAXIES, LLC,  
20  
21 Defendants.

Case No. 19STCV12592

[Hon. Hon. Wendy Chang, Department 36]

**REPLY TO MOTION FOR AN ORDER  
HOLDING DEFENDANT AND  
DEFENDANT’S COUNSEL IN  
CONTEMPT AND REQUEST FOR  
MONETARY SANCTIONS IN THE  
AMOUNT OF \$7,560.00**

**Hearing Date: September 28, 2023**  
**Time: 8:30 a.m.**  
**Dept: 36**  
**Reservation ID: Reserved by the Court**

Action Filed: 04/11/2019  
Trial Date: 11/17/2023

22 **INTRODUCTION**

23 Defendant Twin Galaxies, LLC admits in its opposition that it disseminated confidential  
24 deposition transcripts in violation of the parties’ protective order. Defendant’s opposition also  
25 confirms that its strategy is to try this case in the court of public opinion rather than in a court of  
26 law. This Court should not countenance Defendant’s blatant disregard for the parties’ protective  
27 order. Although Defendant nominally trots out a First Amendment defense, Defendant ignores that  
28 *it has already agreed not to disseminate confidential information and has agreed that the Court may  
punish it for doing so.* Finally, Defendant’s opposition is based on a misreading of the relevant

1 deposition testimony, which Defendant mistakenly argues shows Plaintiff removed the confidential  
2 designation from that deposition. Plaintiff did not. Defendant has a demonstrated history of violating  
3 discovery orders and providing confidential information to third parties; as such, Plaintiff's motion  
4 should be granted and the Court should additionally retroactively designate all deposition materials  
5 confidential.

## 6 ARGUMENT

### 7 **I. PLAINTIFF'S PRE-LITIGATION STATEMENTS ARE COMPLETELY** 8 **IRRELEVANT TO THIS MOTION**

9 Defendant leans heavily on statements Plaintiff allegedly made in an online video prior to  
10 the start of this litigation. See Opp. at 3. However, these out-of-court statements, allegedly made to  
11 an online magazine prior to the inception of this litigation, are irrelevant to the current motion. What  
12 is relevant, and binding on the parties, is their protective order. Defendant takes the outrageous  
13 position that a purported statement by the Plaintiff prior to the filing of this lawsuit that "the  
14 investigation into his Donkey Kong scores will be transparent and all information will be available"  
15 somehow negates the protective order in this case. Obviously no authority is cited in support of such  
16 a proposition. Defendant's reliance on a purported statement made before this action was filed  
17 confirms that Defendant's strategy is to try this case in the court of public opinion, presumably to  
18 sully Plaintiff's reputation and taint the jury pool.

### 19 **II. DEFENDANT ADMITS THAT IT DISSEMINATED THE TRANSCRIPT AND** 20 **VIDEO OF PLAINTIFF'S DEPOSITION TO THIRD PARTIES**

21 Defendant admits that it disseminated the transcript and video of Plaintiff's deposition to  
22 third parties. Opp. at 2, 6. Defendant further admits that it violated Government Code section  
23 69954(d), which prohibits a party who purchased a deposition transcript from providing it to others.  
24 However, despite admitting this violation, Defendant attempts to shrug it off by contending that  
25 Plaintiff lacks standing "to complain about Twin Galaxies' dissemination of deposition transcripts."  
26 Opp. at 6. Whether or not Plaintiff lacks standing to recover some amount of damages from  
27 Defendant's unauthorized dissemination of deposition transcripts, Plaintiff is certainly free to point  
28 it out as yet another example of Defendant's bad-faith tactics.

1 Defendant agrees that a portion of the deposition was designated confidential, but he takes  
2 the position that Plaintiff’s counsel thereafter retracted that designation. This is based on a  
3 misreading of what transpired during the deposition. On page 235 of the transcript, Plaintiff’s  
4 counsel designates the deposition as “confidential” going forward. Tashroudian Decl. Ex. 1 at  
5 235:16-20. On page 256, Plaintiff’s counsel withdraws the confidential designation “going  
6 forward.” *Id.* at 256:2-6. Defendant appears to believe Plaintiff’s counsel was saying the portion of  
7 the transcript previously designated confidential is no longer confidential. Opp. at 5. That is not the  
8 case. The only thing “withdrawn” was the confidential designation *from that point forward*.

9 What is of particular concern is that Defendant’s counsel provided the deposition to third  
10 parties *after* being informed of his misreading of the transcript and *after* Plaintiff’s counsel pointing  
11 out that he was violating the Government Code.

12 Defendant contends it has a right under the First Amendment to disseminate confidential  
13 information. It does not. Defendant *has already agreed* that it would not disseminate information  
14 marked confidential. Ross Decl. Ex. A. By entering into the joint protective order, Defendant agreed  
15 it would not disseminate confidential material to parties outside this litigation. Having admittedly  
16 done so, Defendant is now in violation of that order. Defendant cites cases involving *seeking* a  
17 protective order. Opp. at 7, citing *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245 &  
18 *Westinghouse Electric Corp. v. Newman & Holtzinger* (1995) 39 Cal.App.4th 1194. Here, a  
19 protective order has already been entered into. Plaintiff is not moving for a protective order; it is  
20 moving to hold Defendant and its counsel in contempt for violating *an extant protective order*.  
21 Conceivably, if Defendant wanted to be able to disseminate deposition transcripts and try this case  
22 in the court of public opinion, it could have declined to enter into that protective order. But it did,  
23 and must now face the consequences of violating it.

24 **III. THE COURT SHOULD RETROACTIVELY DESIGNATE ALL DEPOSITION**  
25 **MATERIALS CONFIDENTIAL**

26 As noted, Defendant’s strategy is to try this case in the court of public opinion instead of a  
27 court of law. Every time a witness is deposed in this matter, Defendant and its counsel provide a  
28 copy of the deposition materials to third parties, who post the materials online. This has resulted in

1 the vocal gaming community publicly embarrassing, harassing, and attacking the deponent. It has  
2 resulted in witnesses refusing to cooperate with the discovery process because they do not want to  
3 be exposed to the same attacks. Consequently, the Court should retroactively designate all  
4 deposition materials confidential and prohibit Defendant or its counsel from disseminating them to  
5 third parties.

6 **IV. THE COURT SHOULD IMPOSE MONETARY SANCTIONS ON DEFENDANT**  
7 **AND ITS COUNSEL**

8 Defendant contends the Court should not impose monetary sanctions on it and its counsel  
9 because, Defendant contends, Plaintiff has failed to show that the Plaintiff's attorney's rate is  
10 reasonable. Opp. at 9. This contention is meritless. Plaintiff's counsel has stated what her rate is in  
11 this matter and how many hours have been expended on it. Plaintiff's counsel is not required to do  
12 any more than that. Counsel is not, as Defendant argues, required to state how many years of  
13 experience she has, the type of experience she has, or the facts about other fee awards she has  
14 received. See *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559 ("Testimony of an attorney as to  
15 the number of hours worked on a particular case is sufficient evidence to support an award of  
16 attorney fees, even in the absence of detailed time records"); *Margolin v. Regional Planning*  
17 *Commission* (1982) 134 Cal.App.3d 999, 1004-1005 ("California courts have consistently held that  
18 a computation of time spent on a case and the reasonable value of that time is fundamental to a  
19 determination of an appropriate attorneys' fee award"). Plaintiff is not seeking a loadstar. Plaintiff  
20 is seeking reimbursement at Plaintiff's counsel billing rate. Defendant cites no authority to support  
21 its claim that Plaintiff's counsel must describe her resume in excruciating detail in order to justify  
22 an award of attorney's fees.

23 Defendant contends it is entitled to \$10,000 in sanctions for opposing Plaintiff's motion,  
24 citing Code of Civil Procedure section 128.5(a) as the authority for sanctions. Opp. at 9. Section  
25 128.5(a) permits the Court to "order a party, the party's attorney, or both, to pay the reasonable  
26 expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made  
27 in bad faith, that are frivolous or solely intended to cause unnecessary delay." However section  
28 128.5 also contains a safe harbor provision at subsection (f)(1)(b) which requires a party seeking

1 sanctions based upon the filing of a motion to file a noticed motion, and to serve the motion 21 days  
2 prior to filing it. Cal. Code Civ Proc § 128.5(f)(1)(b). Failing to do so is fatal to the request. *CPF*  
3 *Vaseo Associates, LLC v. Gray* (2018) 29 Cal.App.5th 997. Therefor from a procedural perspective  
4 the request must be denied.


5 In addition to the foregoing, as noted above, Plaintiff’s motion is not made in bad faith, is  
6 not frivolous, and is not intended to cause unnecessary delay. Defendant admits in its opposition  
7 that it disseminated confidential information to third parties, in violation of the parties’ protective  
8 order. Defendant’s request for sanctions should be denied.

9  
10 **CONCLUSION**

11 For the foregoing reasons, and those in his motion, Plaintiff respectfully requests that the  
12 Court grant its motion, impose sanctions in the amount of \$7,560.00 on Defendant and its counsel,  
13 and retroactively designate all deposition materials confidential in order to prevent continued  
14 harassment of witnesses and tainting of the jury pool.

15  
16  
17 DATED: September 20, 2023

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

18  
19  
20 By:   
21 Anthony J. Ellrod  
22 Attorneys for Plaintiff, WILLIAM JAMES  
23 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 September 20, 2023, I served true copies of the following document(s) described as **REPLY TO MOTION FOR AN ORDER HOLDING DEFENDANT AND DEFENDANT’S COUNSEL IN CONTEMPT AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$7,560.00** on the interested parties in this action as follows:

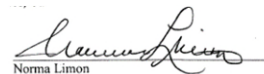
David Tashroudian, Esq. Mona Tashroudian, Esq. TASHROUDIAN LAW GROUP, APC 12400 Ventura Blvd. Suite 300 Studio City, CA 91604 Telephone: (818) 561-7381 Facsimile: (818) 561-7381 Email: <a href="mailto:david@tashlawgroup.com">david@tashlawgroup.com</a> Email: <a href="mailto:mona@tashlawgroup.com">mona@tashlawgroup.com</a>  <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: <a href="mailto:rwc@robertwcohenlaw.com">rwc@robertwcohenlaw.com</a>  <i>Attorneys for Cross-Defendant, WALTER DAY</i>
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**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address norma.limon@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 September 20, 2023, at Los Angeles, California.

[7643-70000]



Norma Limon