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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
19
20
21
22

Case No. 19STCV12592

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

**REPLY DECLARATION OF DAVID A.
TASHROUDIAN**

*[Filed concurrently with Objections to
Evidence; and, Reply]*

Hearing

Date: September 28, 2023

Time: 8:30 a.m.

Place: Department 36

Reservation ID: 538297587672

Action Filed: 4/11/2019

Trial Date: 11/17/2023

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DECLARATION OF DAVID A. TASHROUDIAN

I, David A. Tashroudian, declare as follows:

1. I am an individual over the age of 18 and I make this declaration based upon facts known to me personally to be true. I am the attorney of record for defendant and cross-complainant Twin Galaxies, LLC (“Defendant”) and I make this declaration in support of Defendant’s motion to compel production of documents and request for sanctions against plaintiff William James Mitchell (“Plaintiff”) and his counsel. If called as a witness to testify to the facts set forth herein, I would do so.

DEPOSITION TESTIMONY OF WALTER DAY

2. Attached to this declaration as Exhibit 2 are true and correct pages 1-2, 21-38, 52-72, 92-95, 123-136, 146-158, 203-205, 208, 230-231 from the June 26, 2023 deposition of Walter Day. This exhibit was originally referenced in the Compendium of Evidence, Exhibit 2 as being filed under seal. But Plaintiff referenced this exhibit in his opposition and has not objected to the description of Mr. Day’s testimony in the motion so these unredacted portions of Mr. Day’s deposition are being filed herewith. I met and conferred about the impropriety of the confidential designations to this testimony before the filing of this motion on August 30, 2023. Plaintiff has yet to identify any specific portion of the deposition to remain confidential as required by the parties’ protective order when, as here, the entirety of the deposition is marked confidential during the deposition itself. I took the deposition and I met and conferred with Plaintiff’s counsel.

DECLARATION RE ATTORNEYS FEES

3. I spent ten hours preparing this reply. The ten hours were spent mainly researching and writing the reply brief. I spent an hour preparing this declaration and evidentiary objections.

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



David A. Tashroudian

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

WILLIAM JAMES MITCHELL,

Plaintiff,

vs.

CASE NO. 19STCV12592

TWIN GALAXIES, LLC; and Does 1-10,

Defendants.

AND RELATED CROSS-ACTIONS.

CONFIDENTIAL VIDEOTAPED DEPOSITION OF WALTER DAY

APPEARING REMOTELY

VOLUME I

JUNE 26, 2021

8:04 a.m.

REPORTED STENOGRAPHICALLY BY:

Deborah L. Heskett

CSR No. 11797

APPEARING FROM SAN BERNARDINO COUNTY, CALIFORNIA

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21 LAW OFFICES OF ROBERT W. COHEN, APC
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Also Present:

ROB DENOS, VIDEOGRAPHER

BILLY MITCHELL

JACE HALL

1 Q Anything else?

2 A Also what's gonna happen at the events that I
3 just went to, that Billy Mitchell wanted to be at the
4 events but he couldn't be.

5 Q All right. What else?

6 A Small talk.

7 Q You guys -- you guys discuss any films that you
8 guys are shooting together right now?

9 A No, we didn't.

10 Q You guys are shooting films together right now,
11 though, aren't you?

12 A There's a movie being done on my music.

13 Q There's a movie being done on your music?

14 A I'm a composer, and there's a movie being done
15 on my music.

16 Q Who's involved in preparing that movie?

17 A A man named Ed Cunningham.

18 Q Are you and Mr. Mitchell working on any other
19 movie?

20 A No, just that.

21 Q Is this law -- is this lawsuit any part of that
22 movie?

23 A Not -- I don't know.

24 Q What do you mean you don't know, sir?

25 A I mean I don't know what they have planned

1 for -- for -- I don't know what they -- I don't know
2 what they have planned for the movie.

3 Q What --

4 A All I know is it's about my music.

5 Q When did this movie begin shooting?

6 A Six months ago.

7 Q Have you been interviewed as part of the movie?

8 A Oh, yeah.

9 Q How many times?

10 A The movie is about me, so I have been filmed
11 extensively.

12 Q Did you discuss this lawsuit -- lawsuit in any
13 of your interviews as part of the movie?

14 A Yes, I definitely mentioned it.

15 Q Do you know who else has been interviewed as
16 part of this movie?

17 A Local people in Fairfield, musicians.

18 Q What about Billy Mitchell, do you know if he
19 has been interviewed as part of this movie?

20 A Yeah, I believe he's in it.

21 Q He is in the movie; is that correct?

22 A He's in the movie.

23 Q How do you know that?

24 A 'Cause I just know that.

25 Q Have you and him been interviewed and filmed

1 together?

2 A I can't remember if we have or not.

3 Q Have you and Mr. Mitchell discussed the lawsuit
4 together on film for the movie?

5 A We haven't discussed it together on film for
6 the movie.

7 Q Do you know if Mr. Mitchell has discussed the
8 lawsuit on film for the movie?

9 A I think you'll have to ask him that.

10 Q But my question is do you know whether or not
11 he has discussed --

12 MS. ROSS: Objection. Calls for speculation.
13 Asked and answered.

14 THE WITNESS: Sorry? Was that addressed to me?

15 MS. ROSS: No, Mr. Day. Sometimes the
16 attorneys will insert objections. You can still answer
17 unless your own attorney instructs you not to.

18 So you can go ahead and answer the question.

19 BY MR. TASHROUDIAN:

20 Q Do you need the question again?

21 A What's the question again?

22 Q So the question again is do you know whether or
23 not Billy Mitchell has been interviewed on film
24 regarding the lawsuit as part of your movie?

25 A I believe he has.

1 Q Do you know when that occurred?

2 A No.

3 Q Was it this year?

4 A Yes.

5 Q How do you know that he has been interviewed
6 regarding this lawsuit as part of your film?

7 A 'Cause he told me.

8 Q What did he tell you?

9 MR. ELLROD: I'm going to assert an objection
10 to any conversations between Mr. Day and Mr. Mitchell on
11 the ground that the parties have entered into a joint
12 defense agreement and that -- and, therefore, based upon
13 attorney-client communications and joint defense
14 privileges.

15 MR. TASHROUDIAN: Madam Reporter, can you read
16 the question back, please?

17 (Record read)

18 THE WITNESS: Just that he got interviewed.

19 MR. COHEN: Excuse me. Hold on. There was an
20 objection based upon privilege, and if there's a
21 privilege, you shouldn't answer the question.

22 MR. TASHROUDIAN: Well, I'm not sure that
23 you're asserting there's a privilege between Mr. Day and
24 Mr. Mitchell, are you?

25 MR. ELLROD: Yes. There's a joint defense

1 privilege.

2 MR. TASHROUDIAN: That's not a privilege

3 though. I can still ask questions regarding

4 conversations between Mr. Mitchell and Mr. Day.

5 MR. COHEN: It is a privilege. It's a joint

6 defense agreement.

7 MR. TASHROUDIAN: So are you instructing the

8 witness not to answer?

9 MR. COHEN: Yes, I just did.

10 MR. TASHROUDIAN: I'll just ask the question

11 again. Let's get the objection.

12 BY MR. TASHROUDIAN:

13 Q All right. Mr. Day, did you speak with

14 Mr. Mitchell about his interview regarding this lawsuit

15 in connection with your movie that you two are filming?

16 MR. COHEN: Objection based upon the privilege

17 described on the record and, therefore, instruction not

18 to answer.

19 MR. TASHROUDIAN: I just want to be clear.

20 What was that privilege again?

21 MR. COHEN: It was already stated on the

22 record. It was a joint defense agreement.

23 MR. TASHROUDIAN: So I just want to be clear

24 here. Your joint defense agreement somehow makes

25 conversations between the two parties, the two

1 defendants, cross-defendants, rather, somehow

2 privileged; is that correct?

3 MR. COHEN: Sounds right to me, yes.

4 MR. TASHROUDIAN: And you're instructing the

5 witness not to answer based upon this joint defense

6 privilege; is that correct?

7 MR. COHEN: You got it. I already did, yes.

8 MR. TASHROUDIAN: Do you have a copy of this

9 joint defense agreement?

10 MR. COHEN: Who are you asking?

11 MR. TASHROUDIAN: Let's ask Mr. Day here.

12 BY MR. TASHROUDIAN:

13 Q Mr. Day, do you have a copy of any joint

14 defense agreement between you and Mr. Mitchell?

15 A Well, if -- if one is in place.

16 MR. COHEN: Mr. Day, do you understand the

17 question? He asked you if you have a copy of a

18 document. The answer to that question is either, yes, I

19 have it, or no, I don't have it.

20 THE WITNESS: No, I don't have it.

21 MR. TASHROUDIAN: Mr. Cohen, do you mind

22 sending me a copy of the joint defense agreement?

23 MR. COHEN: I'm not under oath today. I'm not

24 going to get into that right now.

25 MR. TASHROUDIAN: I understand that. I'm not

1 asking any questions. I'm just wondering if you'll send
2 me a copy of that.

3 MR. ELLROD: The agreement itself is
4 privileged.

5 MR. TASHROUDIAN: I'm sorry?

6 MR. ELLROD: The agreement itself is
7 privileged.

8 MR. TASHROUDIAN: The agreement itself is
9 privileged as well?

10 MR. ELLROD: Yes. You are not entitled to a
11 copy of our joint defense agreement.

12 MR. TASHROUDIAN: I just want to be clear here.
13 The parties are refusing to provide a copy of this joint
14 defense agreement that somehow creates a privilege
15 between the two cross-defendants; right? Is that
16 correct?

17 MR. ELLROD: If you want a copy, you can serve
18 discovery for it, and we can argue before the judge
19 whether you are entitled to a copy of it, but I don't
20 believe you are.

21 BY MR. TASHROUDIAN:

22 Q Now, Mr. Day, you had told me that you spoke to
23 Mr. Mitchell two or three times in the last couple of
24 days regarding this deposition.

25 Do you recall that testimony?

1 A Say that again.

2 Q Yeah. You had testified earlier that you spoke
3 to Mr. Mitchell about two to three times in the last
4 couple of days regarding today's deposition.

5 Do you recall that testimony?

6 A Do I recall making that statement?

7 Q Yes, just now, couple minutes ago.

8 A No.

9 Q Well, is that correct, though, that you've
10 spoken to Mr. Mitchell two or three times in the last
11 couple of days regarding today's deposition?

12 A Is that what I said a few minutes ago?

13 Q It is, yes.

14 A Okay. Then I guess I stand by it.

15 Q And what did you guys talk about?

16 MR. COHEN: Objection for the same reasons
17 already stated.

18 MR. TASHROUDIAN: Are you instructing the
19 witness not to answer, Mr. Cohen?

20 MR. COHEN: Yes.

21 MR. TASHROUDIAN: Out of curiosity, Mr. Cohen,
22 do you have any authority that says the communications
23 between two parties, two codefendants, are privileged?

24 MR. COHEN: I don't know. I'm not going to
25 talk about that right now though.

1 MR. TASHROUDIAN: I'd like to meet and confer
2 with you, if possible, on the record so we can just
3 resolve this so I don't have to come back and depose
4 Mr. Walter Day again.

5 MR. COHEN: I'm not going to do that on the
6 record.

7 BY MR. TASHROUDIAN:

8 Q Were any lawyers present on these telephone
9 calls that you had with Mr. Mitchell in the last couple
10 days?

11 MR. COHEN: Objection. Instruction not to
12 answer.

13 BY MR. TASHROUDIAN:

14 Q I'm not asking for any communications. I'm
15 asking whether or not any lawyers were on the telephone
16 with you --

17 MR. COHEN: Same objection.

18 BY MR. TASHROUDIAN:

19 Q -- and Mr. Mitchell?

20 MR. TASHROUDIAN: Allow me to finish my
21 question, please.

22 BY MR. TASHROUDIAN:

23 Q The question is were any lawyers present on the
24 telephone call between you and -- telephone calls
25 between you and Mr. Mitchell in the last couple of days

1 where you guys discussed today's deposition?

2 MR. COHEN: Same objection.

3 MR. TASHROUDIAN: Are you instructing the
4 witness not to answer?

5 MR. COHEN: Yes.

6 BY MR. TASHROUDIAN:

7 Q Is there anyone else aside from Mr. Mitchell
8 and aside from your attorneys who you spoke with
9 regarding today's deposition?

10 A No.

11 Q What have you told Ed Cunningham about the
12 lawsuit?

13 A I told him I was innocent.

14 Q Anything else?

15 A And that it was a lot of stress.

16 Q Anything else?

17 A That summarizes it. If I told him anything
18 else, I can't think of what it is.

19 Q Were all these conversations recorded?

20 A I don't think so.

21 Q Were did they occur?

22 A In my house.

23 Q In person?

24 A In person.

25 Q Was there a film crew there?

1 A Yeah. They were filming me -- they were
2 filming me singing.

3 Q Did they film any of your conversations with
4 Mr. Cunningham regarding this lawsuit?

5 A No, I don't think so.

6 Q How could you describe this lawsuit, sir?

7 MR. COHEN: Objection. Vague and ambiguous and
8 calls for a narrative.

9 BY MR. TASHROUDIAN:

10 Q Can you describe this lawsuit?

11 THE WITNESS: Am I supposed to respond?

12 MR. COHEN: I'm not sure I understand the
13 question.

14 BY MR. TASHROUDIAN:

15 Q Yes. The question is can you describe the
16 lawsuit -- or how would you describe the lawsuit between
17 Twin Galaxies, Billy Mitchell and yourself?

18 A Completely needless.

19 Q Which part?

20 A The whole thing needless. It just doesn't need
21 to happen. Neither side needs to be suing the other
22 side. That's my opinion, but then I'm a -- but then I'm
23 more of a turning-the-cheek person.

24 Q This includes Billy Mitchell's affirmative
25 lawsuit for defamation against Twin Galaxies; right?

1 A Well, Billy's -- Billy is doing what he feels
2 he has to do, so I stand behind him trying to get
3 fulfillment and closure on this. But I'm just not a
4 lawsuit guy. That's really the answer.

5 Q You'd agree with me, though, with your initial
6 assessment that this is a needless lawsuit by Billy
7 Mitchell?

8 A No.

9 MR. COHEN: Objection.

10 THE WITNESS: It's a needless lawsuit by Jace
11 Hall.

12 MR. COHEN: Hold on. Walter, that's fine, but
13 just for going forward, if I object, give me time to
14 finish the objection.

15 THE WITNESS: Okay.

16 MR. COHEN: Let me finish my thoughts.

17 THE WITNESS: Okay.

18 BY MR. TASHROUDIAN:

19 Q You're saying it's a needless lawsuit by Jace
20 Hall; is that correct?

21 A Yeah.

22 Q Would you describe this lawsuit as an epic
23 battle?

24 MR. COHEN: Objection. We're here to ask him
25 questions about facts, not his opinions.

1 BY MR. TASHROUDIAN:

2 Q Would you describe this lawsuit as an epic
3 battle, sir?

4 MR. COHEN: Objection. Vague and ambiguous.
5 Irrelevant.

6 BY MR. TASHROUDIAN:

7 Q You can answer the question, Mr. Day.

8 A Not in particular.

9 Q If it were an epic battle, it would make for a
10 pretty good movie, wouldn't it?

11 MR. COHEN: Same objection.

12 BY MR. TASHROUDIAN:

13 Q You can answer the question.

14 A If it were an epic battle, it might make a good
15 movie.

16 Q And you're making a movie about this epic
17 battle right now, aren't you?

18 A No. We are making a movie about my music.

19 Q But this epic battle features prominently in
20 your movie, doesn't it?

21 A No.

22 Q Do you know if any of your lawyers have been
23 interviewed as part of this movie that you're making?

24 A I don't believe so.

25 Q You don't believe so or no?

1 A I'd say no.

2 Q What about any of Billy Mitchell's lawyers, do
3 you know if any of them have been interviewed as part of
4 this movie you guys are making?

5 A I would say no.

6 Q Do you know that for certain?

7 A I believe -- I believe that's the right answer.

8 Q What's the basis of your belief?

9 A Just because I have my ear to the ground and I
10 sort of know what's happening with the film, and no such
11 things happened, I'm pretty sure.

12 Q Go ahead.

13 A I'm pretty sure.

14 Q Do you know who else has been interviewed as
15 part of this movie in connection with the lawsuit?

16 A Billy Mitchell.

17 Q Aside from Mr. Mitchell, anybody else?

18 A His son.

19 Q Billy Mitchell, Jr. Okay. Aside from him,
20 anyone else?

21 A I think that's it.

22 Q Have you sat in on any of these interviews?

23 A No.

24 Q None of them?

25 A No. They've -- actually, there was one, which

1 I was a part of with Billy Mitchell, Jr., and me, but he
2 did all the talking, and I can't remember what he said.

3 Q When did this interview take place?

4 A Many months ago.

5 Q This year though; right?

6 A Yes.

7 Q And Billy Mitchell, Jr., Billy Mitchell's son,
8 was talking about this lawsuit?

9 A Yeah.

10 Q Do you know about how long the interview took?

11 A No.

12 Q Do you know where the interview took place?

13 A In a hotel room in Fairfield.

14 Q Why was Billy Mitchell, Jr., interviewed as
15 part of the movie?

16 A Because he seems to know a lot about it.

17 Q He seems to know a lot about what?

18 A The lawsuit.

19 Q Have you been provided any film footage to
20 review in connection with this movie?

21 A Not at all.

22 Q All right. Tell me about this interview with
23 Mr. Mitchell's son in connection with the lawsuit.

24 How long did it last?

25 A I don't know.

1 Q You don't know how long it lasted?

2 A A guess is 10, 15 minutes at the most.

3 Q Was the plaintiff in this case, Billy Mitchell,
4 William James Mitchell, rather, present as well?

5 A I can't remember.

6 Q You can't remember if he was there, sir?

7 A I think he was.

8 Q He was there; right?

9 A I think he was, yeah.

10 Q And you can recall him being in the room with
11 the two of you being interviewed; right?

12 A Yeah.

13 Q Okay. So where was he situated in respect --
14 with respect to where you were situated?

15 A I don't know. Just sitting in another chair.

16 Q And were you and Mr. Mitchell's son sitting in
17 another chair?

18 A Yeah.

19 Q So when I asked you the question originally,
20 why did you tell me that you don't remember whether he
21 was there?

22 A Oh, well, then I realized I did remember.

23 Q And that realization happened within a matter
24 of two or three seconds?

25 MR. COHEN: Objection. This is not a real

1 question about a fact. Ask him a fact question.

2 THE WITNESS: Ask me facts.

3 BY MR. TASHROUDIAN:

4 Q Okay. I'll give you a fact here. You know

5 that you respond to my questions with "I don't

6 remember," but you do really remember, that's a form of

7 perjury; correct, Mr. Mitchell [sic]?

8 MR. COHEN: You know what, don't even -- don't

9 even engage with that, Mr. Day.

10 Objection. Ask him fact questions.

11 BY MR. TASHROUDIAN:

12 Q All right. Who was asking the questions during

13 this 10- or 15-minute interview with Mr. Mitchell, Jr.?

14 We'll call him Billy's son because I know they

15 share very similar names. I don't know if he's a junior

16 or IV or what. We'll call him Billy Mitchell's son, so

17 let's ask the question again.

18 The question is -- I don't remember the

19 question.

20 Who else was present during this interview with

21 Mr. Mitchell's son?

22 A Billy and Bill, Jr.

23 Q Was Ed Cunningham there?

24 A Ed was there.

25 Q Who was asking the questions?

1 A Ed was.

2 Q What was Ed asking Billy Mitchell's son?

3 A I don't remember.

4 Q Do you remember any questions?

5 A No, not at all.

6 Q Do you remember anything that -- that

7 Mr. Cunningham and Billy Mitchell's son spoke about?

8 A They talked about the cross-complaint, but I
9 can't remember details.

10 Q Well, aside from the cross-complaint, did they
11 talk about any other aspect of this lawsuit?

12 A No, not that I can remember.

13 Q Did they talk about any of the witness
14 testimony that's been adduced in this lawsuit thus far?

15 A I can't remember.

16 Q When did you -- you started Twin Galaxies
17 didn't you, Mr. Day?

18 A Yes.

19 Q When did that happen?

20 A November 10th, 1981.

21 Q And that was by opening the Twin Galaxies
22 Arcade in Ottumwa, Iowa; is that correct?

23 A That's right.

24 Q How long did you have that arcade open for?

25 A Until March 6th, 1984.

1 I think Jace had it.

2 Q Did Namco, the creator of PAC-MAN, eventually
3 hear of Billy Mitchell's achievement of a perfect
4 PAC-MAN score?

5 A Oh, yes, they did.

6 Q How do you know that?

7 A Because I went to Tokyo, Japan, and I saw them
8 honor him.

9 Q So you went to Tokyo, Japan, and you saw Namco
10 honor Billy Mitchell; is that correct?

11 A Oh, yes.

12 Q When did you go to Tokyo, Japan?

13 A About September 17th, 1999.

14 Q September 17, 1999?

15 A Uh-huh.

16 Q Did you -- is that a yes?

17 A That's a yes.

18 Q Did you go there with Billy Mitchell?

19 A I went there with Billy Mitchell.

20 Q Did you guys go there on the same flight?

21 A Yes, we did.

22 Q Were you sitting in first class?

23 A I don't -- I don't think I was.

24 Q Was Billy Mitchell sitting in first class?

25 A I think he was.

1 Q Who paid for your flight to get out there?

2 A Well, I paid for my flight. Billy contributed
3 some money.

4 Q So you flew out there on September 17, 1999; is
5 that correct?

6 A Say that again.

7 Q Flew out there on September 17, 1999; is that
8 correct?

9 A About that -- about that date.

10 Q All right. When did you return from Japan?

11 A Couple days later.

12 Q Did you return with Billy Mitchell?

13 A No, I returned alone.

14 Q Did Mr. Mitchell return with you on the same
15 day?

16 A No. He stayed for a couple days more.

17 Q Did anyone at Namco during that time period
18 honor Mr. Mitchell?

19 A Oh, yes. They honored him tremendously.

20 Q And what were the honors that you were present
21 to observe?

22 A Well, the video game player of the century
23 award was created by Twin Galaxies, and there was a
24 ceremony there at the Namco booth where that award was
25 presented to Billy. It was actually presented to Billy

1 and Mr. Masaya Nakamura at the same time.

2 And I was extremely pleased and amazed by how
3 much Namco got into it, how enthralled they were with
4 Billy for being the first perfect PAC-MAN and for how
5 enthralled they were with Billy for being the video game
6 player of the century. And I was extremely impressed
7 with the amount of pride they had that their local --
8 their guy who did the first perfect PAC-MAN was also the
9 video game player of the century.

10 And so I witnessed them taking him around and
11 proudly introducing him as the video game player of the
12 century, the person -- to the leaders of the other
13 companies there at the Tokyo game show, very impressed.
14 And then I went home and I didn't see what happened
15 next.

16 What happened next is they got him up on the
17 stage and they presented him with I think -- I think it
18 was, like, four awards and they -- they essentially on
19 the stage proclaimed him the video game player of the
20 century, introduced him as the video game player of the
21 century, and they presented him an award. And I
22 believe, if I understand correctly, I believe that one
23 of the awards actually says video game player of the
24 century. And so -- so they honored him.

25 So I wasn't there, so I -- I'm just going by

1 my -- my understanding of what happened, but you'd have
2 to get up with Namco to get any further details.

3 Q That -- well, that was a pretty impressive
4 recollection, sir, of an event that you weren't present
5 at. Let's break that down a little bit.

6 You said Namco presented Billy Mitchell with
7 four awards onstage?

8 A Yeah. See, I'm going by -- I'm going by what
9 was explained to me by Billy.

10 Q So Billy told you this story; is that correct?

11 A Billy explained it to me 'cause I wasn't there.

12 Q And when did he tell you this story?

13 A Oh, years ago.

14 Q All right. So Billy told you the story that
15 onstage at the Tokyo game convention, or whatever it was
16 called in 1999, Namco gave him four different awards;
17 correct?

18 A Yeah.

19 Q And one of the awards from Namco was also a
20 player of the century award?

21 A Well, it's -- definitely said video game player
22 of the century.

23 Q And that was awarded to him by Namco?

24 A I believe so.

25 Q And this is separate from the video game player

1 of the century award that you gave Billy?

2 A Yeah. Yeah. But they also -- but they also --
3 my understanding is they also held that one in their
4 hands and presented it to Billy.

5 Q Okay. So I just want to be really clear here.
6 So your understanding is that Billy Mitchell was awarded
7 a video game player of the century award by Twin
8 Galaxies; correct?

9 A Yes.

10 Q All right. And then he was also awarded a
11 separate video game player award by Namco; is that
12 right?

13 A Well, he was -- he was presented with some
14 separate awards, and one of them said video game player
15 of the century on it, on the text.

16 Q So video game player of the century award from
17 Namco; correct?

18 A I don't know if it was officially a video game
19 player of the century award, but it was an award that
20 said video game player of the century on it.

21 Q And that was presented by Namco and not Twin
22 Galaxies; correct?

23 A No, by Namco.

24 Q Have you seen that award ever?

25 A Saw a picture of it.

1 Q When did you see a picture of it?

2 A In the last week.

3 Q Who showed you a picture of it?

4 A Billy did.

5 Q How did he show you a picture of it, sir?

6 A By email.

7 Q Bear with me for a second.

8 A I'm going to get some water.

9 MR. TASHROUDIAN: Let's do this, why don't we
10 take a five-minute break. Let's return at 9:15. That
11 will be a seven-minute break.

12 THE VIDEOGRAPHER: The time now is 9:08 a.m.
13 We are off the record.

14 (Recess taken)

15 THE VIDEOGRAPHER: We are back on the record.
16 The time now is 19 -- 9:18 a.m.

17 BY MR. TASHROUDIAN:

18 Q All right. Mr. Mitchell -- excuse me, Mr. Day,
19 you had told me right before we broke that Mr. Mitchell
20 sent you an email a couple of days ago, maybe last week,
21 with a copy of a video game player of the century award
22 issued to him by Namco; is that correct?

23 A No, that's not correct.

24 Q What's incorrect about my statement?

25 A I don't know if it was officially a video game

1 player of the century award.

2 In the context of its promotional stuff, it
3 calls him the video game player of the century, but I
4 can't remember if it specifically was a video game
5 player of the century award.

6 Does that make sense?

7 Q Yeah. Well, maybe you can -- maybe we'll drill
8 that down.

9 How did the award that Mr. Mitchell sent you
10 last week look?

11 A Well, it had a big image of PAC-MAN on it and
12 it looked like it was on some -- it looked like it was
13 laid out on some nice material, some nice fabric or nice
14 wood or something.

15 Q Was it a plaque?

16 A It looked like a plaque.

17 Q Why did Mr. Mitchell send you that -- that
18 award?

19 A 'Cause he wanted me to see it.

20 Q Why did he want you to see it? Did you ask for
21 it?

22 MS. ROSS: Objection. Calls for speculation.

23 THE WITNESS: Well, I think he wanted me to see
24 it.

25 ///

1 BY MR. TASHROUDIAN:

2 Q Did you ask for it?

3 A No, no, I didn't ask for it.

4 Q Did he send it to you in anticipation of
5 today's deposition?

6 MS. ROSS: Objection. Calls for speculation.

7 MR. ELLROD: Also this falls within joint
8 defense agreement.

9 MR. TASHROUDIAN: All right. Let's stop here.
10 Which attorney is appearing today to defend Billy
11 Mitchell in this deposition? Is it Ms. Ross or is it
12 Mr. Ellrod? I need to know one or the other. I mean,
13 we can't have two attorneys making objections here, so
14 which one is it?

15 MR. ELLROD: We both represent Mr. Mitchell.
16 If you want just one of us speaking objections, we will
17 try to comply with that.

18 MR. TASHROUDIAN: So is it Ms. Ross or is it
19 going to be Mr. Ellrod? Which one?

20 MR. ELLROD: Ms. Ross.

21 MR. TASHROUDIAN: Thank you.

22 BY MR. TASHROUDIAN:

23 Q So back to my question, Mr. Day. Do you know
24 why Mr. Mitchell sent you a copy of that award?

25 MS. ROSS: Same objections. Calls for

1 speculation and to the extent it goes to the joint
2 defense privilege.

3 MR. COHEN: Same objection. Also asked and
4 answered.

5 MR. TASHROUDIAN: Are you instructing the
6 witness not to answer?

7 MR. COHEN: Yes.

8 MR. TASHROUDIAN: All right. Let's mark now as
9 Exhibit A a Namco plaque.

10 (Exhibit A identified)

11 MR. TASHROUDIAN: I'm going to share my screen.

12 MR. ELLROD: Debbie, there's a "We are off the
13 record" sign up. Is that supposed to be up?

14 (Discussion off the record)

15 BY MR. TASHROUDIAN:

16 Q Okay. Mr. Mitchell, do you see this Exhibit A
17 on your screen here?

18 A I'm not Mr. Mitchell.

19 Q Yes, I knew that. I knew that. Let's start
20 the question again.

21 Mr. Day, do you see my Exhibit A on the screen
22 here, the Namco --

23 A I do.

24 Q -- plaque?

25 A I do.

1 Q Is this the award, the picture of the award,
2 that Mr. Mitchell sent to you yesterday or last week?

3 A No, no, but there's a resemblance.

4 Q So he sent you a different award?

5 A There's a different -- there's a different
6 image that I saw.

7 Q How's it different?

8 A Well, has a different body of text.

9 Q Can you share that with us, Mr. Mitchell --
10 Mr. Day? So we are talking about the same thing here.

11 MR. COHEN: What are we talking about? We are
12 not going to -- I'm not sure I understand what you're
13 asking.

14 BY MR. TASHROUDIAN:

15 Q My question is this: You're telling me that
16 Mr. Mitchell sent you an award, a picture of an award,
17 that's different from this; is that correct?

18 MR. COHEN: We are not going to talk about
19 that, communications, recent communications with
20 Mr. Mitchell and the deponent today.

21 MR. TASHROUDIAN: He already testified about
22 it, Robert.

23 MR. COHEN: Well --

24 MR. TASHROUDIAN: It wasn't -- there wasn't an
25 objection, so I am allowed to inquire into it.

1 BY MR. TASHROUDIAN:

2 Q Mr. Mitchell --

3 MR. COHEN: I know you're not because I'm

4 telling him not to.

5 BY MR. TASHROUDIAN:

6 Q Mr. Day, did Mr. Mitchell send you a copy of a

7 Namco award that's different than the one that I'm

8 showing here in Exhibit A?

9 MR. COHEN: Same objection.

10 BY MR. TASHROUDIAN:

11 Q Mr. Day, did Mr. Mitchell send you a copy of a

12 Namco award that's different from the one that's shown

13 here in Exhibit A?

14 MR. COHEN: Same objection.

15 MR. TASHROUDIAN: Are you instructing the

16 witness not to answer?

17 MR. COHEN: Yes.

18 BY MR. TASHROUDIAN:

19 Q All right. Mr. Day, did Mitchell send you a

20 Namco -- a picture of a Namco award that says video game

21 player of the century award?

22 MR. COHEN: Same objection.

23 MR. TASHROUDIAN: Is there a reason that you're

24 not letting your client talk about awards that were

25 shown to him by Mr. Mitchell?

1 MR. COHEN: Yes. Privilege, as we've explained
2 earlier.

3 MR. TASHROUDIAN: Again, what's the privilege,
4 sir?

5 MR. COHEN: I've already explained it. We are
6 not going to get into it again.

7 MR. TASHROUDIAN: No, I think you have to state
8 the privilege.

9 MR. COHEN: I think I don't, and I'm not going
10 to, so let's ask other questions.

11 MR. TASHROUDIAN: Is it an attorney-client
12 privilege?

13 MS. ROSS: Yes. It's the basis of
14 attorney-client privilege. We signed a joint defense
15 agreement, as already stated multiple times, and the
16 basis of that is based in attorney-client privilege.
17 There's also the common interest privilege. You can
18 google it on a break if you want.

19 BY MR. TASHROUDIAN:

20 Q Was this the first time that you saw any other
21 Namco award besides this one presented to you by Billy
22 Mitchell?

23 A Yes.

24 Q Did Mr. Mitchell tell you where it came from,
25 the award?

1 MR. COHEN: Objection. Same -- same objection.

2 BY MR. TASHROUDIAN:

3 Q Did Mr. Mitchell tell you where this video game
4 player of the century award from Namco came from?

5 MR. COHEN: Same objection.

6 MR. TASHROUDIAN: Are you instructing the
7 witness not to answer, sir?

8 MR. COHEN: Yes.

9 BY MR. TASHROUDIAN:

10 Q How did the award look, Mr. Day? Did it look
11 like this?

12 A Like that.

13 Q Sorry?

14 MR. COHEN: Same objection.

15 MR. TASHROUDIAN: I'm not asking for
16 communications. I'm asking for him to recall what the
17 award looked like.

18 THE WITNESS: Like that.

19 BY MR. TASHROUDIAN:

20 Q I'm sorry?

21 A It looked like that.

22 Q It looks like this.

23 Where -- where did it say video game player of
24 the century award on it?

25 MR. COHEN: Same objection. We are not going

1 to talk about communications he received from
2 Mr. Mitchell in recent communications.

3 MR. TASHROUDIAN: Mr. Cohen, I'm not asking
4 about that. I'm asking about what the award that he
5 saw, the award that he was shown by Mr. Mitchell last
6 week, what did it look like.

7 MR. COHEN: That's sounds to me like a
8 communication.

9 MR. TASHROUDIAN: It does not sound like a
10 communication.

11 MR. COHEN: Well, it does to me. I'm
12 instructing him not to answer.

13 BY MR. TASHROUDIAN:

14 Q Do you recall what the award looked like,
15 Mr. Day?

16 MR. COHEN: Same objection.

17 BY MR. TASHROUDIAN:

18 Q What's the big secret here, Mr. Day?

19 MR. COHEN: Same objection.

20 MR. TASHROUDIAN: What's the big secret, Rob?

21 MR. COHEN: Same objection.

22 BY MR. TASHROUDIAN:

23 Q What are you guys hiding? What are you hiding,
24 Mr. Day?

25 MR. COHEN: Same objection.

1 MR. ELLROD: Are you serious, David?

2 MR. TASHROUDIAN: Yes.

3 MR. ELLROD: I call that kind of harassing. I
4 call it a little bit argumentative. And I call it
5 entirely improper.

6 BY MR. TASHROUDIAN:

7 Q What did the award that Mr. Mitchell showed you
8 last week look like, Mr. Day?

9 MR. COHEN: Same objection. Let's not do this
10 anymore 'cause it's getting harassing, so that's the end
11 of that.

12 BY MR. TASHROUDIAN:

13 Q All right. I just want to make sure, though,
14 Mr. Mitchell sent you an award last week that's
15 different from --

16 MR. COHEN: Okay. You know what, this is
17 getting too much. It's really -- you're moving into
18 harassing territory and I won't allow it.

19 MR. TASHROUDIAN: Just let me finish the last
20 question and we will be done.

21 MR. COHEN: No, I won't. That's -- you've done
22 it, like, five times, more maybe. We are not doing it
23 anymore.

24 BY MR. TASHROUDIAN:

25 Q Have you talked to Jerry Byrum about any of the

1 awards that Mr. Mitchell has donated to the
2 International Video Game Hall of Fame?

3 A No.

4 Q Have you ever asked him about any of the awards
5 that Mr. Mitchell has donated?

6 A I don't remember asking.

7 Q All right. So let's go back to my original
8 line of questioning.

9 So Billy Mitchell told you that he received
10 four awards from Namco; correct?

11 A Four awards.

12 Q All right. And do you recall what those four
13 awards were?

14 A I don't recall what they were.

15 Q But was one this award that I'm showing you
16 here in Exhibit A?

17 A Yes.

18 Q And then there was another separate award from
19 Namco that says somewhere video game player of the
20 century on it; correct?

21 A Yes.

22 Q And it looked similar to this Exhibit A; is
23 that right?

24 A Yes.

25 Q And the first time you saw that award was just

1 a couple of weeks ago; is that correct?

2 A Yes.

3 Q And in an email from Billy Mitchell to you;

4 correct?

5 A Yes.

6 MR. COHEN: Objection. Instruction not to

7 answer.

8 BY MR. TASHROUDIAN:

9 Q Is that a yes?

10 MR. COHEN: Objection. Don't do that anymore.

11 Okay?

12 BY MR. TASHROUDIAN:

13 Q All right. So that's two awards.

14 What were the other two awards that

15 Mr. Mitchell received from Namco that he told you about?

16 A Well, one of the awards would have been the

17 video game player of the century award from Twin

18 Galaxies, which, based on my understanding, they had in

19 their hands and they presented that to him as they

20 introduced him as the video game player of the century

21 to the public. So that would be one of them. And the

22 fourth thing, I'm not sure. Can't remember.

23 Q All right. Let's mark now as Exhibit B a

24 picture.

25 (Exhibit B identified)

1 BY MR. TASHROUDIAN:

2 Q Do you see this picture, sir?

3 A Yes.

4 Q Can you describe this person to me, sir?

5 A Certainly. A Namco booth. Masaya Nakamura
6 receiving the video game of the century award, Billy
7 Mitchell receiving the video game player of the century
8 award.

9 Q And this is the video game player of the
10 century award that was issued by Twin Galaxies; correct?

11 A Exactly.

12 Q Were you present when Billy Mitchell was given
13 a video game player of the century award from Namco?

14 A No, I wasn't. I told you I left. I had gone
15 home, and so everything that I know about it was
16 reported to me.

17 Q By Billy Mitchell; is that correct?

18 A Billy Mitchell.

19 Q And when did -- did Billy Mitchell tell you
20 when he was presented with the video game player of the
21 century award by Namco?

22 A Well, he told me that he was honored on the
23 stage at the video game player of the century.

24 Q Did he tell you that that was when he was given
25 the actual video game player of the century award from

1 Namco?

2 A Well, I -- I don't remember that, but I
3 remember him telling me that this award that I got, the
4 award that came from me, was presented to him on the
5 stage as they proclaimed him, they crowned him, when
6 they honored him as the video game player of the
7 century.

8 Q Bear with me for a moment.

9 Let's mark now as Exhibit C a picture of Billy
10 Mitchell on stage with Masaya Nakamura.

11 (Exhibit C identified)

12 BY MR. TASHROUDIAN:

13 Q Do you see that, sir?

14 A I do.

15 Q Is this -- do you see that award there that
16 Mr. Mitchell is holding?

17 A That's the PAC-MAN award.

18 Q Is this the video game player of the century
19 award that Mr. Mitchell showed you a couple of weeks
20 ago?

21 A I think that's the PAC-MAN player award.

22 My understanding is that there's numerous
23 pictures with him holding different awards. That's my
24 understanding.

25 Q The video game player of the century award that

1 you saw a couple of week ago, did it have -- did it look
2 like this?

3 A Yeah.

4 Q It said video game player of the century on it?

5 A Yeah.

6 Q Do you know where it said video game player of
7 the century on it?

8 A In the text.

9 Q What else did the text say, sir, to your
10 recollection?

11 A I don't remember.

12 Q The only thing you remember is that it said
13 video game player of the century on it?

14 A Because that's what left out. That's what left
15 out of the page.

16 Q Let's mark now as Exhibit D. Back a little bit
17 here.

18 (Exhibit D identified)

19 BY MR. TASHROUDIAN:

20 Q Can you see the text on my screen there, sir?

21 A I do.

22 Q Is this the text of the award that Billy
23 Mitchell sent you a picture of last week?

24 A No.

25 MR. COHEN: Objection. Instruction. Don't do

1 that anymore. You know -- you are doing it on purpose.

2 Walter, don't talk about recent communications.

3 Okay?

4 MR. TASHROUDIAN: I'm not asking about

5 communications. I'm asking about what he's observed and

6 I --

7 MR. COHEN: To me, I don't -- I detect no

8 apprecial -- appreciable difference between those two

9 concepts.

10 BY MR. TASHROUDIAN:

11 Q So let's just get this for the record.

12 Mr. Day, is this the text of the award that

13 Mr. Mitchell sent you last week?

14 MR. COHEN: Objection. Instruction not to

15 answer. You're doing this on purpose. We're not going

16 to do that anymore.

17 BY MR. TASHROUDIAN:

18 Q Are you willing to answer the question,

19 Mr. Day?

20 MR. COHEN: Don't do that anymore, Counsel.

21 Okay?

22 MR. TASHROUDIAN: Are you willing to produce a

23 copy of that email to me, Rob Cohen?

24 MR. COHEN: I'm not gonna -- anyway, ask the

25 witness questions if you have any. Okay?

1 recording equipment; correct?

2 A I don't believe I did.

3 Q Is there a reason why you didn't give him
4 installation --

5 A No. No reason that I can remember.

6 MR. COHEN: Walter, let me caution you just to
7 remember to let him finish his question before you
8 answer. It's hard for the court reporter to pick it up
9 if you talk over each other.

10 MR. TASHROUDIAN: Let's mark now as Exhibit F a
11 declaration of Walter Day dated July 24, 2019, bearing
12 Bates stamp number MITCHELL 1776.

13 (Exhibit F identified)

14 BY MR. TASHROUDIAN:

15 Q Do you see this, sir?

16 MS. ROSS: I don't think you're sharing your
17 screen.

18 MR. TASHROUDIAN: Perfect. That's why you
19 can't see it.

20 BY MR. TASHROUDIAN:

21 Q Do you see my screen now, sir?

22 A Yeah, I do.

23 Q Do you recall signing this declaration?

24 A I do.

25 Q Who wrote this declaration?

1 A Well, it's my information. There was help by
2 Billy Mitchell, Jr.

3 Q He wrote all of this text; isn't that correct?

4 A He wrote a lot of it for sure.

5 Q Did you write any of this text?

6 A A lot of it is my -- a lot of it is my
7 information.

8 Q But my question is a little bit different.

9 Did you physically type any of this text?

10 A No.

11 Q To your knowledge, Billy Mitchell's son did it;
12 is that correct?

13 A That's right.

14 Q You say here at the very bottom: I declare
15 under penalty of perjury under the laws of the State of
16 California and Iowa that the foregoing is true and
17 correct to the best of my knowledge.

18 Do you see that there?

19 A To the best of my knowledge.

20 Q And so do you -- do you still subscribe to that
21 statement?

22 A Yes.

23 Q Do you see here paragraph 7?

24 A Yeah.

25 Q Can you read this for me and tell me if any of

1 this is incorrect?

2 A After receiving instructions from me, he
3 arrived at the venue on Thursday with Sheila and hotel
4 security present. He installed the Donkey Kong board in
5 the cabinet along with the recording apparatus and
6 padlocked the cabinet and retained the only key.

7 So that contradicts what I just said.

8 Q Yes. My question is, is there anything that is
9 incorrect in that paragraph 7?

10 A Well, at the time -- at the time this was
11 composed, I must have had the information that he put
12 the recording apparatus in there; however, I just don't
13 simply remember it now.

14 Q Where did that information come from that he
15 had the -- that he -- that Josh Ryan installed the
16 recording apparatus?

17 A Well, it would have been originally explained
18 to me by Billy Mitchell because I wasn't there.

19 Q So is this paragraph 7 correct?

20 A I would say that -- I would say that it must be
21 correct and I must be wrong in my memories that he
22 didn't have the recording apparatus.

23 Q So I'm trying to get -- get this straight.
24 Which one is true, sir, did Josh Ryan install the
25 recording apparatus or not?

1 A Number 7 must be true.

2 Q So what you just told me previously that he
3 didn't -- meaning Josh Ryan didn't install recording
4 apparatus, that was untrue; correct?

5 A That was a mistake. That was me not -- that's
6 me. I simply don't remember the details. No -- I'm
7 guilty of not remembering details.

8 Q Was Todd Rogers a senior referee for Twin
9 Galaxies in July of 2007?

10 A Absolutely.

11 Q Was Kimberly Mahoney a Twin Galaxies referee in
12 July of 2007?

13 A Absolutely.

14 Q Did you send her with Todd Rogers to adjudicate
15 the 1040 -- the 1050 score performance at the mortgage
16 brokers convention?

17 A Yeah, she was approved.

18 Q Who approved her?

19 A I would approve her.

20 Q You would have or you did?

21 A I did.

22 Q Recall specifically approving Ms. Mahoney to go
23 and adjudicate this score?

24 A Yeah. I'm absolutely certain that I approved
25 her.

1 So I always remained the sole owner of Twin
2 Galaxies.

3 Q Jace Hall purchased Twin Galaxies from you and
4 Billy Mitchell; correct?

5 A No. He purchased it from me.

6 Q How much did he pay you for Twin Galaxies?

7 A 200,000.

8 Q The first payment was \$68,000; is that correct?

9 A That sounds right.

10 Q The second payment was about 93,000?

11 A I don't know.

12 Q You received a second payment though; right?

13 A Yeah.

14 Q Do you recall if it was above

15 90-some-odd-thousand dollars?

16 A Could have been. Could have been 93?

17 (Stenographer clarification)

18 BY MR. TASHROUDIAN:

19 Q My question was you received the first payment
20 from Jace Hall for purchase of Twin Galaxies of about
21 \$68,000; correct?

22 A Yes.

23 Q That payment came in 2014?

24 A That sounds right.

25 Q You received a second payment of approximately

1 \$90,000 in 2018; correct?

2 A That sounds right.

3 Q So just to recap, two payments, one 2014 and
4 one in 2018; correct?

5 A Yes.

6 Q What happened to the funds that were paid to
7 you in 2014?

8 A I split them amongst almost two dozen people.

9 Q Did you --

10 A I rewarded -- I rewarded contributors.

11 Q Those contributors that you paid from the 2014
12 sales proceeds, were they required to sign any
13 nondisclosure agreement?

14 A Well, I was working with Joel West, and Joel
15 West was on fire, Oh, we have to have NDAs, we have to
16 do NDAs, and so I said, Okay. We will do NDAs, thinking
17 it didn't matter. And so he did NDAs, but the NDA thing
18 backfired. It just infuriated people and they accused
19 us of paying hush money, which didn't make sense to me,
20 hurt my feelings. But, yeah, people signed NDAs.

21 Q Did Billy Mitchell sign an NDA?

22 A I don't remember. I don't think so.

23 Q Who signed an NDA?

24 A Oh, you'd have to have the list of people. I
25 think that that list was sent to Jace. I don't remember

1 it.

2 Q Did Billy Mitchell receive any of the funds
3 that were paid by Jace in 2014?

4 A \$5,000 was allocated to go to him, but it ended
5 up -- it ended up in the possession of Joel West who
6 went and spent it on T-shirts and stuff like that.

7 Q Did the money go to Billy Mitchell and then to
8 Joel West?

9 A No, it went to Joel West.

10 Q Directly from who?

11 A I think so.

12 It went into an account that was masterminded
13 by Joel West.

14 Q So let's back up here. The \$68,000 that Jace
15 paid in 2014, where did that money go?

16 A It went to about almost around 20 different
17 people.

18 Q My question is this: Where did the money
19 actually go? Did it go to your account?

20 A Yes, it came to my account.

21 Q Who controlled that account?

22 A Well, I did.

23 Q And then did you make the distributions to the
24 20-odd people?

25 A Yes, I did.

1 Q All right. And there was a \$5,000 allocation
2 to Billy Mitchell; correct?

3 A Exactly.

4 Q Where -- how did that -- where did that money
5 go after it hit your account, Billy Mitchell's
6 allocation?

7 MR. COHEN: Objection. Lack of foundation.
8 Calls for speculation.

9 You can answer if you -- well --

10 THE WITNESS: I don't remember.

11 BY MR. TASHROUDIAN:

12 Q Was it ever distributed to Billy Mitchell?

13 MR. COHEN: Sorry. Objection.

14 THE WITNESS: No.

15 MR. COHEN: I'm not sure what -- what exactly
16 are you asking?

17 BY MR. TASHROUDIAN:

18 Q The money that came from Jace Hall, the money
19 that Jace Hall purchased Twin -- used to purchase Twin
20 Galaxies with came to your account; correct?

21 A Yeah.

22 Q Mr. Mitchell? Mr. Day? Yes?

23 A Yes, David.

24 Q Okay. And then, Walter, you took that money
25 and you distributed it to 20-odd people; correct?

1 A Yeah.

2 Q All right. My question is the \$5,000 that was
3 allocated to Mr. Mitchell, was that money sent to
4 Mr. Mitchell?

5 A I can't remember how we did it, but it never
6 ended up in his possession.

7 Q How do you know that?

8 A Because I know that Joel West spent it, was
9 very vocal about spending it, and so I knew it happened.

10 Q Are there any records showing where that money
11 was distributed to?

12 A I have no records. I have no bookkeeping.

13 Q What about any email correspondences regarding
14 that money, are there --

15 A I don't --

16 Q -- any email correspondences?

17 A I don't know if I have any of those or not.

18 MR. COHEN: Walter, you know what, it's really
19 important, not for my sake or conversation's sake, but
20 for the court reporter's sake. It's hard to type when
21 both people are talking at the same time. Okay?

22 BY MR. TASHROUDIAN:

23 Q Did you look, Mr. Day, for any emails around
24 that time period regarding the distribution of those
25 funds?

1 A No.

2 Q You didn't look?

3 Do you have access to the email account that
4 you maintained in 2014?

5 A Yes, I do.

6 Q Have you deleted any of your text messages or
7 your email messages?

8 A I deleted a lot, but I don't know if I deleted
9 those or not.

10 Q And you didn't look for them; is that right?

11 A Didn't look for them.

12 Q Did you look for any email correspondences in
13 connection with this lawsuit at all?

14 A No, I haven't.

15 Q Is it fair to say that you have not conducted a
16 reasonably diligent search for any documents in
17 connection with this lawsuit?

18 A I think I have to do better.

19 Q That wasn't my question.

20 MR. TASHROUDIAN: Madam Reporter, can you read
21 my question back, please?

22 (Record read)

23 THE WITNESS: I haven't.

24 BY MR. TASHROUDIAN:

25 Q Do you know whether or not you were asked to

1 produce documents in connection with this lawsuit?

2 A Yes, I do know.

3 Q And did you look for any documents that were
4 responsive to any of the requests that I sent to you?

5 A I'm just very slow in responding.

6 Q My question is a little bit different.

7 Did you look for any documents that are
8 responsive to the requests that I sent you?

9 A No.

10 Q All right. So I want to get back to this whole
11 funds to Billy Mitchell stuff.

12 Do you know if any of those \$68,000 were sent
13 to Billy Mitchell in any way?

14 A No.

15 Q You don't know one way or the other if they
16 were?

17 A No, they weren't.

18 Q And they were instead sent to Joel West?

19 A Joel West.

20 Q Did Billy Mitchell tell you to do that?

21 A I think he did.

22 Q How did he tell you?

23 A Say that again.

24 Q How did he tell you?

25 A Well, he would have told me directly.

1 Q By email?

2 A Maybe, maybe not.

3 Q Okay. There's a second payment of about

4 \$90,000 made by Jace Hall in or about 2018.

5 Do you recall that second payment?

6 A Yes, I do.

7 Q Where did that 90-some-odd-thousand dollars go?

8 A I spent it.

9 Q It went to you and only you?

10 A Mainly me.

11 Q Who else did it go to?

12 A I gave some money to the original founder of

13 Twin Galaxies, John Bloch.

14 Q How much did you give to Mr. Bloch?

15 A Oh, maybe about \$10,000.

16 Q Did you give any of that \$90,000 to anybody

17 else aside from Mr. Bloch?

18 A I can't quite -- I can't remember.

19 Q Put your thinking cap on, Walter.

20 MR. COHEN: Anyway, that's -- go ahead.

21 BY MR. TASHROUDIAN:

22 Q You know, Walter, you're doing great, and I

23 appreciate your -- your candor and your honesty. I just

24 would like you to really think about who else you gave

25 portions of that \$90,000 to.

1 A Well, I'm here to be honest.

2 MR. COHEN: That's not a question. Walter,
3 that's not a question. What you do is you answer
4 questions. You don't comment on things. You answer
5 questions.

6 THE WITNESS: I refunded --

7 MR. COHEN: There's no question pending right
8 now, Walter. Waiting for a question.

9 BY MR. TASHROUDIAN:

10 Q Yeah. My question is can you think for me real
11 hard, Mr. Day, what you did with the \$90,000 second
12 payment that was made by Twin Galaxies to you?

13 MR. COHEN: The question is can you think
14 really hard about that. Can you think really hard about
15 that? That's a yes or a no.

16 THE WITNESS: Yes, I can think hard.

17 BY MR. TASHROUDIAN:

18 Q So what happened to the funds?

19 A I'm thinking hard.

20 I gave \$33,000 to Billy Mitchell.

21 Q That wasn't too hard, was it?

22 A Well, I'm here to tell the truth, but you have
23 to --

24 MR. COHEN: You're here to answer -- yeah,
25 you're here to tell the truth, but you're here to answer

1 his questions, not to respond to his off the cuff --
2 off-the-cuff comments.

3 BY MR. TASHROUDIAN:

4 Q How did you give that \$33,000 to Billy
5 Mitchell?

6 A Bank transfer.

7 Q What year?

8 A What?

9 Q What year?

10 A 2018.

11 Q Was there any agreement signed between you and
12 Mr. Mitchell in connection with that bank transfer?

13 A No, not at all. It was completely a gift.

14 Q Completely a gift? That's a --

15 A It was completely a gift, thanking him for all
16 the goodwill he'd give to the community, for all the
17 people he supported, to all the favors he did for
18 everybody, and for just all the uplifting things he did
19 for everybody else. Completely a gift.

20 Q Did Mr. Mitchell ask you to keep that fact a
21 secret?

22 MS. ROSS: Objection. Argumentative.

23 THE WITNESS: He was pretty open about it.

24 BY MR. TASHROUDIAN:

25 Q My question is a little bit different.

1 Did he ask you to keep that fact a secret?

2 MS. ROSS: Objection. Argumentative. Asked
3 and answered.

4 BY MR. TASHROUDIAN:

5 Q That you paid him \$33,000, did he ask you to
6 keep that a secret?

7 A Yes.

8 Q Did he tell you why he wanted you to keep that
9 a secret?

10 A Because people would judge him.

11 Q When was last time he told you to keep that
12 fact a secret?

13 A Oh, I don't know.

14 Q Can you estimate for me?

15 MR. COHEN: Hold on. Let me -- I am inserting
16 an objection. If this question calls for recent
17 communications you've had with Billy Mitchell during the
18 time that you had your joint defense agreement in place,
19 within the last year or so, whatever it was, during this
20 lawsuit, then don't talk about that. If you can't
21 answer it without invading that privilege, then don't
22 answer it.

23 BY MR. TASHROUDIAN:

24 Q Do you need the question again, Mr. -- Mr. Day?

25 A My name is Billy Mitchell.

1 Q Do you need the question back, Mr. Day?

2 A Give me the -- give me the question back again.

3 MR. TASHROUDIAN: Madam Reporter, can you do
4 that for him, please?

5 (Record read)

6 THE WITNESS: So according to my legal counsel,
7 I can't answer.

8 BY MR. TASHROUDIAN:

9 Q Do you know if Billy Mitchell give any of those
10 funds to Joel West?

11 A Well --

12 MR. COHEN: Sorry. Sorry for being slow on the
13 uptake there.

14 Same admonishment. To the extent that you
15 learned things during the course -- in the privilege
16 that we've discussed; namely, from Billy Mitchell while
17 this joint defense agreement was in place, don't talk
18 about that. If you can answer without invading that,
19 then go ahead.

20 THE WITNESS: Okay. Then I can't answer.

21 BY MR. TASHROUDIAN:

22 Q Well, sitting here today do you know whether or
23 not Mr. Mitchell give any of those funds to Joel West?

24 MR. COHEN: Same admonishment.

25 ///

1 BY MR. TASHROUDIAN:

2 Q Do you know, sir?

3 MR. COHEN: Same admonishment.

4 THE WITNESS: I don't know.

5 BY MR. TASHROUDIAN:

6 Q And you're saying that this payment was made by
7 bank transfer; correct?

8 A Bank transfer.

9 Q Is that right?

10 A Yes.

11 Q Directly to Billy Mitchell's bank account; is
12 that right?

13 A Yes, I guess.

14 MR. COHEN: Don't guess. If he -- well,
15 anyway, yes. Sorry. Don't guess.

16 BY MR. TASHROUDIAN:

17 Q When was that payment to Billy Mitchell made?

18 A 2018.

19 Q What month?

20 A I don't know.

21 Q Can you estimate for me?

22 A No, can't.

23 Q Middle of the year? End of the year?

24 A Don't know.

25 Q Was it made by you or was it made by Twin

1 Galaxies to Mr. Mitchell?

2 A It was made by Twin Galaxies to Mr. Mitchell.

3 Q Twin Galaxies, Inc.?

4 A Whatever the bank account was at the time.

5 Q But that was initiated by you; correct?

6 A Yes, by me.

7 Q You know, let's do this: Did you pay anybody
8 else aside from Billy Mitchell, any money from that
9 90,000 bucks?

10 A John Bloch.

11 Q What about aside from John Bloch?

12 A Todd Rogers.

13 Q Oh, Todd Rogers. That's interesting. How much
14 did you pay him?

15 A I think maybe about a thousand dollars.

16 Q Anybody else?

17 A No. I kept the money.

18 Q Why did you pay Todd Rogers?

19 A It was a gift.

20 Q Did either Mr. Mitchell or Todd Rogers sign any
21 documents in connection with the payment that you made
22 to them?

23 A No, not at all.

24 Q All right. Let's mark now as Exhibit O. Share
25 my screen.

1 When did you first become aware of the
2 controversy surrounding Billy Mitchell's Donkey Kong
3 scores?

4 A I think it was "The King of Kong" movie.

5 Q And what was the controversy surrounding Billy
6 Mitchell's Donkey Kong scores?

7 A I'm actually -- I'm actually right now being
8 challenged to remember what it was. It was the tape in
9 "The King of Kong." It was -- the tape had some static
10 area in it, and so people who weren't familiar with
11 Donkey Kong play automatically presumed that the tape
12 with the static represents a false submission.

13 Q Okay. What about the current controversy
14 surrounding Billy Mitchell's Donkey Kong score
15 performances, when was the first time that you learned
16 about this controversy?

17 A I think it's when they started posting things
18 on the Donkey Kong forum.

19 Q Do you recall when about that was?

20 A No idea.

21 Q So let me see if this will reflect -- refresh
22 your recollection. I'm now sharing and marking as
23 Exhibit P the declaration of Walter Day dated here
24 June 1, 2020.

25 (Exhibit P identified)

1 BY MR. TASHROUDIAN:

2 Q Let's go back to the first page.

3 Are you familiar with this document, sir?

4 A I don't recognize it, but it looks like
5 something I wrote.

6 Q All right. I'm going to direct your attention
7 here to paragraph 7.

8 Do you see that there?

9 A Uh-huh.

10 Q Says here: On February 2nd, 2018, I learned
11 about the allegations against Mitchell. I decided to
12 honorably refrain from public comment in order to allow
13 Jason Hall's administration to investigate the
14 situation.

15 Do you see that there?

16 A Uh-huh.

17 Q Is that a yes?

18 A Uh-huh.

19 Q So that's a yes; correct?

20 A Yeah.

21 Q All right. So does this refresh your
22 recollection as to when you learned about the
23 allegations against Mr. Mitchell?

24 A Well, it doesn't refresh my memory, but it
25 appears to be approximately when I learned.

1 Q And so how did you learn about the allegations
2 against Mr. Mitchell?

3 A Well, I was in India doing a medical treatment.

4 Q Uh-huh.

5 A And then when I went online, checked emails and
6 stuff, I saw that there was this controversy going on.

7 Q Do you recall who informed you first about this
8 controversy?

9 A No, I have no idea who it was.

10 Q Do you know if Jace Hall ever reached out to
11 you about the controversy?

12 A We talked once.

13 Q When was that?

14 A I don't know.

15 Q You talked on the phone once?

16 A Yeah.

17 Q Is that here on or about March 13, 2018?

18 A Could be.

19 Q Do you know if Mr. Hall reached out to you at
20 any time before that?

21 A No.

22 Q Bear with me. I am marking now as Exhibit Q an
23 email from Jace Hall to Walter Day and Billy Mitchell
24 bearing Bates stamp number TG 1342.

25 (Exhibit Q identified)

1 BY MR. TASHROUDIAN:

2 Q Have you ever seen this email, sir?

3 A I don't recognize it.

4 Q It's from Jace Hall on 8/29/2017 at 6:05 p.m.,
5 addressed to Walter Day and Billy Mitchell; subject,
6 interesting.

7 It says here: You may want to look at this.

8 It's a link that appears to be to the Jeremy Young
9 disputes regarding Billy Mitchell's score.

10 Do you see that there?

11 A Uh-huh.

12 Q Is that a yes?

13 A Oh, I see -- I see -- I see what you got here.

14 Q Did you respond to this email?

15 A I would say definitely not.

16 Q Why do you say definitely not?

17 A Because I probably didn't look at it.

18 Q I am marking now as Exhibit R a response from
19 Walter Day dated -- well, document bearing Bates stamp
20 number TG 1492, which is Mr. Day's August 29, 2017
21 response to Mr. Hall's email with subject, interesting.

22 (Exhibit R identified)

23 BY MR. TASHROUDIAN:

24 Q Do you see this here?

25 A Uh-huh.

1 Q Is that a yes?

2 A Yeah.

3 Q Does this refresh your recollection as to
4 whether or not you responded to Mr. Hall's August 29th
5 inquiry?

6 A Well, that's my response. I don't know how
7 Billy and Todd responded.

8 Q But you did respond; right?

9 A I mean, that's my response there.

10 Q And you say here: There's nothing I could
11 possibly say on this.

12 Is that right?

13 A Yes.

14 Q What do you mean by that?

15 A Well, their accusations were about technology,
16 and I'm completely, completely not knowledgeable about
17 technology. You know, there's a MAME. MAME does not
18 work in the arcade capita, especially in the arcade era.
19 So it was all about MAME, so I was completely at a loss
20 as to what to comment on.

21 Q So you didn't have anything to add regarding
22 the --

23 A Not at this point.

24 Q Did you later have anything to add?

25 A Well, yeah. I want -- yeah, later on I --

1 later on the mortgage brokers thing was an important
2 thing to discuss.

3 Q So you'd agree with me that Mr. Hall reached
4 out to you very early on in this dispute process;
5 correct?

6 A That looks like the case.

7 Q And you told him that there's nothing that you
8 could add to this; right?

9 A I say it right there.

10 Q You say it right there. I see.

11 So let's go back to Exhibit P, your
12 declaration. On page 7 here it says: On February 2,
13 2018, I learned about the allegations against
14 Mitchell -- Mr. Mitchell.

15 That's not entirely true; right? You learned
16 about it earlier in August of 2017; right?

17 A Yeah, but I didn't remember.

18 Q Did you write this paragraph 7?

19 A I got help but -- but, you know, I was part of
20 it.

21 Q I'm sorry, you got help?

22 A I definitely participated in it.

23 Q Who wrote it?

24 A Well, I think -- I think Billy, Jr., would have
25 helped, but --

1 Q Did Billy, Jr., write this part on February 2,
2 2018?

3 A I don't remember.

4 Q All right. Then let's go on to paragraph 8:
5 On or about March 13th, 2018, roughly one month prior to
6 Twin Galaxies' decision, I received the expected phone
7 call from Jason Hall.

8 Do you see that there?

9 A Uh-huh.

10 Q Is that a yes?

11 A Uh-huh.

12 Q I need you to answer yes, please.

13 A Yes.

14 Q Did you write that sentence?

15 A Could be.

16 Q After a short and civil conversation, Hall
17 changed the topic to the Billy Mitchell investigation.

18 Did you write that sentence?

19 A Possibly.

20 Q Either you or Billy's son; right?

21 A Yeah. I -- I probably participated in that.

22 Q How did this come to you? Did this come to you
23 by email from --

24 A I don't remember.

25 Q Would you still have the email address that

1 this came to?

2 A I have no idea.

3 Q Have you looked in your emails to see if you
4 have a copy of this document?

5 A No, not at all.

6 Q You go on to say here: However, to my
7 surprise, Hall did not seek my testimony; is that true?

8 A That we had a long -- we had long conversations
9 about it.

10 Q So this sentence is not true, right, however,
11 to my surprise Hall did not seek my testimony? You'd
12 agree with me that sentence is not true?

13 A I think that's just a mistake.

14 Q And if you had written this, you would have
15 caught that mistake; right?

16 A I would have not -- I would have not written
17 that.

18 Q All right. So it's fair to say that Billy's
19 son wrote that; correct?

20 A Could be.

21 Q All right. Well, who else could it be aside
22 from you and Billy's son?

23 A Maybe you wrote it.

24 Q I don't think I knew you then.

25 A Okay.

1 Q So I am doubtful it was me.

2 Could it have been anyone else?

3 A Not that I can think of.

4 Q All right. It goes on to say here: To the
5 contrary, he asked me how will you feel when I announce
6 that Billy Mitchell cheated.

7 Do you see that sentence there?

8 A Yeah.

9 Q Did you write that?

10 A I don't know.

11 Q Is that what happened? Did Mr. Hall ask you
12 how you will feel when he announces that Billy Mitchell
13 cheated?

14 A If the wording is -- I'm not sure if the
15 wording is completely correct, but that's what he asked
16 me. He asked me how it would affect me if Billy was
17 determined to have cheated.

18 Q That's a little bit different, right, than --

19 A Maybe. Maybe. But the essence is the same.

20 Q Well, you put here in quotes, meaning a direct
21 ascription.

22 A Yeah. That does seem to imply that that's
23 direct.

24 Q Well, that's not direct.

25 A You know how things can be when making --

1 when --

2 MR. COHEN: Walter -- sorry to interrupt. What
3 you need to do is answer his questions, not make other
4 comments. Okay?

5 THE WITNESS: Okay.

6 BY MR. TASHROUDIAN:

7 Q All right. So you're saying -- yeah, you had
8 made a comment here: I know things -- how things can be
9 when I'm -- when you're making up what?

10 A When you're trying to rehash old memories.

11 Q So is it fair to say that this sentence here,
12 to the contrary, he asked me how will you feel when I
13 announce that Billy Mitchell cheated is not true?

14 A I think it's closer to being true than not
15 being true.

16 Q I want to ask you this: Did Mr. Hall say these
17 words: How will you feel when I announce that Billy
18 Mitchell cheated? Is that what he said?

19 MR. COHEN: Objection. Asked and answered.
20 Objection. Asked and answered.

21 THE WITNESS: Whatever he said it was so close
22 that it resembled that.

23 BY MR. TASHROUDIAN:

24 Q I really want to ask you, though, is that what
25 he said exactly, those quotes?

1 A I don't know.

2 MR. COHEN: He already answered that question.

3 We can move on now. Okay?

4 MR. ELLROD: I think that's asked and answered.

5 He said that that's essentially what he said.

6 MR. TASHROUDIAN: No. That's not my question

7 though.

8 BY MR. TASHROUDIAN:

9 Q My question is as phrased here exactly, how

10 will you feel when I announce that Billy Mitchell

11 cheated in quotes, did Jace Hall tell you that?

12 MR. ELLROD: And he answered, yes, he told him

13 essentially that.

14 MR. TASHROUDIAN: Tony, please don't testify on

15 the witness's behalf.

16 BY MR. TASHROUDIAN:

17 Q Mr. Mitchell -- Mr. Day, can you please answer

18 the question? Did Jace Hall --

19 MR. COHEN: He already answered that question.

20 MR. TASHROUDIAN: He did not answer the

21 question. Then just allow him to answer this question

22 nice and clear for the record. Okay? Let me ask my

23 question, make your objections, and then allow him to

24 answer, please.

25 ///

1 BY MR. TASHROUDIAN:

2 Q The question is --

3 A I think this -- I think this quote is not quite
4 accurate. I think it would have been worded
5 differently.

6 Q Got it. Is there a reason, then, that you
7 included this quote in this declaration if it was not
8 accurate?

9 A Well, because -- 'cause it captured the exact
10 essence of what had happened.

11 Q You --

12 A Except the exact wording is debatable.

13 Q Well, you didn't write this quote, did you?

14 MR. COHEN: Objection. Asked and answered.

15 THE WITNESS: What do I do?

16 MR. COHEN: We move on 'cause you've already
17 answered that question.

18 BY MR. TASHROUDIAN:

19 Q Did Billy Mitchell's son write this quote?

20 A I don't --

21 MR. COHEN: Objection. Asked and answered.

22 We've asked and answered it, like, five times.

23 BY MR. TASHROUDIAN:

24 Q Mr. Day, did Billy Mitchell's son write this
25 quote: How will you feel when I announce that Billy

1 Mitchell cheated?

2 A I think he did, but it was based on what I said
3 to him.

4 Q Let me ask this then. What exactly did
5 Mr. Hall tell you on this conversation?

6 A Well, every time I brought up -- every time I
7 brought up a reason why Billy would not be guilty of
8 cheating -- cheating, Jace would say, Oh, yes, he could.
9 Oh, yes, he could.

10 And I came to the conclusion that Jace had
11 already decided that Billy was guilty, even though I
12 presented different ideas to him of how Billy -- you
13 know, like, for instance, he had verified the mortgage
14 brokers thing, he had -- I don't know. There's a whole
15 letter on it.

16 Q So what else did you ask -- did you ask
17 Mr. Mitchell to investigate any other aspect of Billy
18 Mitchell's score performances on this March 13, 2018
19 call?

20 A I don't remember.

21 Q You don't remember?

22 A I don't remember.

23 Q What do you remember about that call?

24 A I don't remember.

25 Q You don't remember much about that call; is

1 scores in your autobiography?

2 A I don't think so.

3 Q What about the 1047 score and "The King of
4 Kong" movie?

5 A No. None of that stuff -- none of that stuff
6 is in my autobiography. This is about me, not Billy
7 Mitchell.

8 Q How long have you known Jerry Byrum?

9 A He was a youngster coming into Twin Galaxies
10 back in 1981.

11 Q And then did you start the International Video
12 Game Hall of Fame with him?

13 A No. I started it, then later on when health
14 problems began to plague me, I began to retire and he
15 stepped forward and became the president.

16 Q When did you start the International Video Game
17 Hall of Fame?

18 A 2009.

19 Q When did you step away from the International
20 Video Game Hall of Fame?

21 A I think by 2011 or 2012.

22 Q So in 2010, were you the -- did you operate the
23 International Video Game Hall of Fame?

24 A No. I was one of -- I was one of a group of
25 people.

1 Q Who else -- were you the director?

2 A No, I wasn't. I wasn't an officer. I wasn't
3 an officer.

4 Q You were an officer in 2010?

5 A No, I wasn't an officer.

6 Q But you started the organization just a year --

7 A I started it -- I started it, but the city --

8 the city illuminati gathered around it. They had a

9 board and they had leadership. Like, the mayor was on

10 the board, the city manager was on the board, someone

11 from the local college was on the board. There were ten

12 people on the board and I was one of them, but I --

13 Q You were --

14 A But I was not an officer. I did not --

15 (Stenographer clarification)

16 THE WITNESS: I was on the board, but I was not

17 an officer. I did not lead the hall of fame. I just

18 was the person who inspired its creation.

19 BY MR. TASHROUDIAN:

20 Q And that's in 2010; correct?

21 A 2009.

22 Q What about 2010, were you still on board in

23 2010?

24 A Yeah, I was still on the board.

25 Q Were you on the board at the time of the big

1 Bang event in August of 2010?

2 A Yes, I was.

3 Q Did you visit or were you there personally
4 present at the Big Bang event?

5 A Yes, I was.

6 Q Were you there for Billy Mitchell's
7 announcement of his Boomers score? I think it was
8 1062800.

9 A Yes, I was.

10 Q Do you recall Billy Mitchell donating any of
11 his awards to the International Video Game Hall of Fame
12 in 2010?

13 A I don't have a firsthand memory of that, but
14 I've heard that over the years, that he did do that.

15 Q And who did you hear that from?

16 A I can't remember. At least from Billy, if not
17 from other people. Maybe I heard it from Jerry Byrum.
18 I don't know. But I'm not certain. That's the answer.

19 Q Did you see any of the awards that Billy
20 Mitchell donated to the International Video Game Hall of
21 Fame while you were there?

22 A I believe that he donated his trophy for being
23 inducted into the hall of fame.

24 Q Did he donate --

25 A I believe that he donated other things too, but

1 decision-making, I'd have to say that I'm commonly not
2 included.

3 Q When did you submit your resignation letter?

4 A Couple years ago.

5 Q Do you know who's currently a part of the
6 International Video Game Hall of Fame board of
7 directors?

8 A Julie Barwick, Wyatt Barwick, Jeff Peters,
9 Lonnie McDonald, Billy Hoffman, Jerry Byrum, someone
10 else.

11 Q What about Billy Mitchell?

12 A Oh, yeah. He's on the board.

13 Q How long has he been on the board of directors?

14 A Maybe since -- maybe since 2010.

15 Q Since 2010; is that correct?

16 A Or 2011.

17 Q Or 2009; is that right?

18 A I don't know.

19 MS. ROSS: Objection. Misstates testimony.

20 BY MR. TASHROUDIAN:

21 Q You mentioned in one of your declarations that
22 you were surprised that Jace Hall didn't seek your input
23 until he called you in March of 2018 about the Mitchell
24 dispute.

25 Do you recall that testimony?

1 STATE OF CALIFORNIA)

2) ss

3 COUNTY OF LOS ANGELES)

4

5 I, Deborah L. Heskett, a Certified Shorthand
6 Reporter, do hereby certify:

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

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

14 I further certify that I am neither counsel for,
15 nor related to, any party to said proceedings, nor in
16 any way interested in the outcome thereof.

17 In witness whereof, I have hereunto subscribed my
18 name.

19

20 Dated: July 19, 2023

21

22

DEBORAH L. HESKETT
CSR No. 11797

24

25

1 U.S. Legal Support, Inc. July 20, 2023

2 15303 Ventura Boulevard
3 Suite 900
4 Sherman Oaks, California 91403

5 Walter Day
6 C/O Robert W. Cohen
7 Law Offices of Robert W. Cohen, APC
8 1901 Avenue of the Stars, Suite 1910
9 Los Angeles, California 90067
10 rwc@robertwcohenlaw.com

11 Re: Mitchell vs. Twin Galaxies, LLC

12 Date of Deposition: June 26, 2023

13 Dear Walter Day,

14 The original transcript of your deposition taken in
15 the above-referenced matter is available at this office
16 for your review. If it is more convenient to read a
17 copy of the transcript and waive signature of the
18 original transcript, please notify our office by letter
19 sent certified or registered mail of any changes made,
20 with copies sent to all counsel.

21 In the event you have not read, corrected and
22 signed your deposition within thirty (30) days of
23 receipt of this letter, it may be used with the full
24 force and effect as though it had been read, corrected
25 and signed.

26 If you wish to arrange an appointment to review the
27 original transcript, please contact this office at (800)
28 993-4464.

29

30 Sincerely,

31 U.S. Legal Support
32 Production Department

33

34 Cc: All counsel present

35

36 Original: Original transcript

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 20, 2023, I served the herein described document(s):

DECLARATION OF DAVID A. TASHROUDIAN

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

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

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

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

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

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

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 20, 2023 at Woodland Hills, California.



Mona Tashroudian