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

11 WILLIAM JAMES MITCHELL,
12 Plaintiff,
13 v.
14 TWIN GALAXIES, LLC,
15 Defendants.

Case No. **19STCV12592**
[Hon. Hon. Wendy Chang, Department 36]

MOTION TO DISQUALIFY DAVID A. TASHROUDIAN AND THE TASHROUDIAN LAW GROUP, APC FROM FURTHER REPRESENTATION OF DEFENDANT TWIN GALAXIES, LLC

Date: November 17, 2023
Time: 8:30 a.m.
Place: Dept. 36

Reservation No.: 298026945777

Action Filed: 04/11/2019
Trial Date: 01/26/2023

21 TO THE COURT AND TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

22 **PLEASE TAKE NOTICE** that on November 17, 2023, at 8:30 a.m., in Department 36 of
23 the above-entitled court, located 111 North Hill Street, Los Angeles, California 90012, Plaintiff
24 WILLIAM JAMES MITCHELL (“Plaintiff”) will move the court for an order that David A.
25 Tashroudian and the Tashroudian Law Group, APC be disqualified from any further representation
26 of Defendant TWIN GALAXIES, LLC (“Defendant”) in this action.

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This motion is made pursuant to Code of Civil Procedure section 128(a)(5) on the ground that defense counsel has engaged in, and continues to engage in, a pattern of improper and unlawful behavior intended to influence and discourage witnesses and prevent the Plaintiff and his attorneys from effectively litigating the Plaintiff’s case against the Defendant.

This motion will be based on this notice; the accompanying memorandum of points and authorities and declaration of Anthony J. Ellrod; all pleadings, papers, and records on file in this action; and on such other matters as may be presented prior to or at the hearing.

DATED: October 24, 2023

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

By: 

Anthony J. Ellrod
Kristina Ross
Attorneys for Plaintiff
WILLIAM JAMES MITCHELL

TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. CALIFORNIA HOLDS ATTORNEYS TO A RIGOROUS ETHICAL STANDARD, AND DISQUALIFICATION IS APPROPRIATE WHEN THAT STANDARD IS VIOLATED5

II. DEFENSE COUNSEL HAS ENGAGED IN, AND CONTINUES TO ENGAGE IN, A PATTERN OF UNLAWFUL AND IMPROPER BEHAVIOR INTENDED TO PREVENT THE PLAINTIFF AND HIS ATTORNEYS FROM EFFECTIVELY LITIGATING THE PLAINTIFF’S CASE AGAINST THE DEFENDANT7

 A. Defense Counsel Has Knowingly Published Confidential Deposition Transcripts Despite Having Faced a Motion for Contempt for Doing Exactly That.7

 B. Defense Counsel Has Harassed Witnesses.....8

 C. Defense Counsel Attempted to Question Witnesses on Inadvertently Disclosed Attorney-Client Privileged Communications.12

 D. Defense Counsel Continued To Badger A Party For Answers After The Party Was Instructed By His Attorney Not To Answer.14

 E. Defense Counsel Violated, and Continues to Violate, California Law By Disseminating Copies Of Deposition Transcripts15

 F. Defense Counsel Has Improperly Instructed Third Party Witnesses During Depositions.....18

 G. Defendant’s Counsel Is Complicit In Withholding Evidence In An Effort To Gain An Advantage In The Litigation.....20

 H. Defense Counsel Has Refused To Produce His Communications With Third Party Witnesses Despite Being Ordered To Do So.....22

 I. Defendant Failed To Produce His Communications With Third Party Witnesses.....23

 J. Defense Counsel Has Lost All Objectivity and Cannot Act As An Officer of the Court.....24

III. CONCLUSION25

TABLE OF AUTHORITIES

Page

CASES

Board of Trustees of California State University v. Superior Court (2005) 132 Cal.App.4th 889 16

Ceramco, Inv. v. Lee Pharms. (2d Cir. 1975) 510 F.2d. 268 6

Chronometrics, Inc. v. Sysgen, Inc. (1980) 110 Cal.App.3d 597..... 7, 25

Chula v. Superior Court (1952) 109 Cal.App.2d 24..... 8

Ellis v. Roshei Corp. (1983) 143 Cal.App.3d 642..... 6, 25

In re Marriage of Murchison (2016) 245 Cal.App.4th 847 6

Munoz v. Davis (1983) 141 Cal.App.3d 420..... 5

Park Magnolia v. Fields (1987) 191 Cal.App.3d Supp. 1 5

People v. Chong (1999) 76 Cal.App.4th 232 5, 8

People v. McKenzie (1983) 34 Cal.3d 616..... 5, 6

Roush v. Seagate Technology, LLC (2007) 150 Cal.App.4th 210 6

State Compensation Ins. Fund v. WPS (1999) 70 Cal.App.4th 644..... 12, 13

STATUTES

Code Civ. Proc., § 128 6

Code Civ. Proc., § 2017.010 22

Code Civ. Proc., § 2025.420 16

Code Civ. Proc., § 2025.570 16

Code Civ. Proc., § 2031.010 22

Government Code § 69954(d)..... 28



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3
4
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6
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MEMORANDUM OF POINTS AND AUTHORITIES

I. CALIFORNIA HOLDS ATTORNEYS TO A RIGOROUS ETHICAL STANDARD, AND DISQUALIFICATION IS APPROPRIATE WHEN THAT STANDARD IS VIOLATED

In this case counsel for Defendant has become so emotionally invested that he is willing to ignore his ethical obligations and indeed the law in his obsessive pursuit of the “truth”. It has become increasingly clear that he can no longer function as counsel in this case, and he must be disqualified in the interests of judicial integrity and justice. While some of the individual acts discussed below might justify disqualification, all of the acts discussed below combined make it crystal clear that Mr. Tashroudian cannot remain as counsel in this case.

It is understood that an “attorney owes his client a zealous representation and the highest duty of care to protect his client’s interests.” (*Munoz v. Davis* (1983) 141 Cal.App.3d 420, 430.) But that duty is owed by the attorney “both to his client *and* to the legal system”. (*People v. McKenzie* (1983) 34 Cal.3d 616, 631; citation and internal quotation marks omitted, emphasis added.) Specifically, the attorney’s duty “is to represent his client zealously *within the bounds of the law.*” (*Ibid.*; citation and internal quotation marks omitted, italics in original.) “Accordingly, an attorney, however zealous in his client’s behalf, has, as an officer of the court, a paramount obligation to the due and orderly administration of justice” (*People v. Chong* (1999) 76 Cal.App.4th 232, 243; citation and internal quotation marks omitted.)

“In other words, it is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law. In order to instill public confidence in the legal profession and our judicial system, an attorney must be an example of lawfulness, not lawlessness.” (*Ibid.*)

“An attorney has an obligation not only to protect his client’s interests *but also to respect legitimate interests of fellow members of the bar, the judiciary, and the administration of justice.* In this case, plaintiff’s attorney ascribes his conduct to zealous advocacy. It is not enough to make this claim and hope that the inquiry ends there. While we do not mean to chill the fervor of zealous counsel, we must recognize the very real fear that irresponsible litigants may abuse their right of access to the judicial system.” (*Park Magnolia v. Fields* (1987) 191 Cal.App.3d Supp. 1, 5; citations and internal quotation marks omitted; emphasis added.)

1 As the Court of Appeal explained in *Ellis v. Roshei Corp.* (1983) 143 Cal.App.3d 642, 648,
 2 “[t]he line between active and aggressive representation of a client on one hand and dilatory,
 3 frivolous and bad faith actions on the other hand may be a fine line, but it is a line which the trial
 4 courts are sometimes obligated to draw.” As will be shown later in this motion, this is one of those
 5 instances.

6 Code of Civil Procedure section 128(a)(5) provides “every court shall have the power to ...
 7 control in the furtherance of justice, the conduct of its ministerial officers, and of all other persons
 8 in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.” It
 9 is under this provision that a trial court derives its authority to disqualify an attorney. (*Roush v.*
 10 *Seagate Technology, LLC* (2007) 150 Cal.App.4th 210, 218.)

11 “Disqualification motions implicate several important interests, among them are the
 12 clients’ right to counsel of their choice, the attorney’s interest in representing a client,
 13 the financial burden of replacing a disqualified attorney, and tactical abuse that may
 14 underlie the motion. The ‘paramount’ concern in determining whether counsel
 15 should be disqualified is ‘the preservation of public trust in the scrupulous
 administration of justice and the integrity of the bar.’ It must be remembered,
 however, that disqualification is a drastic course of action that should not be taken
 simply out of hypersensitivity to ethical nuances or the appearance of impropriety.”
 (*Id.* at 218-219; citations omitted.)

16 “[A] court is limited to exercising [its] inherent authority only when the misconduct
 17 will have a continuing effect on the judicial proceedings. If a court’s purpose is
 18 merely to punish a transgression which has no substantial continuing effect on the
 19 judicial proceedings ... , neither the court’s inherent power to control its proceedings
 nor Code of Civil Procedure section 128 can be stretched to support the
 20 disqualification. Simply stated, the purpose of a disqualification order must be
 prophylactic, not punitive.” (*In re Marriage of Murchison* (2016) 245 Cal.App.4th
 847, 852-853; citations and internal quotation marks omitted.)

21 “The district court was incorrect in its view that the various bar associations
 22 constitute the only proper forum for investigation of a claim of professional
 23 misconduct. On the contrary, the courts have not only the supervisory power but also
 the duty and responsibility to disqualify counsel for unethical conduct prejudicial to
 his adversaries.” (*Ceramco, Inv. v. Lee Pharms.* (2d Cir. 1975) 510 F.2d. 268, 270-
 271).

24 Thus, this Court has the power to disqualify defense counsel from further participating in
 25 this case if the Court finds that counsel has crossed the line between zealous advocacy and abuse of
 26 the system. As will be discussed in the next section, it is clear that defense counsel has crossed that
 27 line and will continue to do so. Accordingly, disqualification is necessary to prevent the “continuing
 28 effect on the judicial proceedings to occur in the future”. (*Chronometrics, Inc. v. Sysgen, Inc.* (1980)

1 110 Cal.App.3d 597, 607.)

2 **II. DEFENSE COUNSEL HAS ENGAGED IN, AND CONTINUES TO ENGAGE IN, A**
3 **PATTERN OF UNLAWFUL AND IMPROPER BEHAVIOR INTENDED TO**
4 **PREVENT THE PLAINTIFF AND HIS ATTORNEYS FROM EFFECTIVELY**
5 **LITIGATING THE PLAINTIFF’S CASE AGAINST THE DEFENDANT**

6 **A. Defense Counsel Has Knowingly Published Confidential Deposition**
7 **Transcripts Despite Having Faced a Motion for Contempt for Doing Exactly**
8 **That.**

9 Mr. Tashroudian filed a motion to compel and a motion for terminating sanctions that were
10 summarily denied. A motion for contempt was filed to be heard the same day based upon Mr.
11 Tashroudian disseminating a deposition transcript, a portion of which was designated confidential
12 pursuant to the protective order. When Mr. Tashroudian filed his Reply in support of the motion for
13 terminating sanctions he attached as an exhibit portions of the deposition of Walter Day, *the entirety*
14 *of which was designated as confidential*. Mr. Tashroudian was aware that the deposition was
15 confidential because he originally attempted to follow protocol for the filing under seal of
16 confidential materials. However, when he became frustrated at his inability to figure out how to file
17 the materials, he simply abandoned his efforts and filed the deposition as a public record. Further in
18 Mr. Tashroudian’s declaration which attaches the portions of the confidential deposition, he states
19 that he met and conferred on August 30, 2023 as to the confidentiality and that Plaintiff failed to
20 identify any specific portion to remain confidential as required by the protective order. However,
21 this is misleading and incorrect. The protective order, which was entered on October 26, 2022,
22 provides clear requirements for the meet and confer when a party disagrees with a confidential
23 designation. While Mr. Tashroudian did meet and confer on August 30, 2023, Plaintiff was not
24 required to file a motion to maintain the confidentiality for 30 days, which expired on September
25 29, 2023, nine (9) days after Mr. Tashroudian filed the confidential material. Further, Plaintiff did
26 respond to Mr. Tashroudian’s meet and confer and advised that he would need to file such
27 confidential material conditionally under seal.

28 ///

1 On October 11, 2023, portions Mr. Day’s deposition were published on the internet website
2 perfectpacman.com in an article entitled “Judge Wendy Chang skips justice day (plus new
3 testimony)”. (Exh. “U”). In that online publication the author (who Defendant has refused to identify
4 in discovery other than by his username and withheld communications with based upon alleged
5 privilege) states “WALTER’S TERRIBLE, HORRIBLE, NO GOOD, VERY BAD DAY . . . Okay,
6 let’s get to what we really want: New evidence!!” He follows this with excerpts of Mr. Day’s
7 deposition testimony and commentary on same.

8 Plaintiff originally believed that the commentator had obtained the document from the
9 court’s website; however, the link on the website to Mr. Tashroudian’s declaration to which the
10 deposition testimony is attached does not include a file stamp. That means that Mr. Tashroudian
11 must have provided his declaration and the attached deposition testimony directly to Ersatz_Cats,
12 the owner of perfectpacman.com. (Exh. “V”)

13 “An Attorney must not willfully disobey a court’s order and must maintain a respectful
14 attitude toward the court.” (*People v. Chong*, supra, at 243, citation and internal quotation marks
15 omitted, citing *Chula v. Superior Court* (1952) 109 Cal.App.2d 24, 39). Here, Mr. Tashroudian has
16 willfully disobeyed the protective order entered by this Court as well as the Court’s standing order
17 for filing documents conditionally under seal.

18 In sum, while facing a motion for contempt for disclosing confidential deposition testimony,
19 Mr. Tashroudian willfully disclosed confidential deposition testimony, which was then used for the
20 online bullying of Mr. Day and the public criticism of this Court. These are not the actions of an
21 attorney fit to represent the Defendant going forward.

22 **B. Defense Counsel Has Harassed Witnesses.**

23 Whether his fanatical belief in his client’s case is real or feigned, Defendant’s counsel David
24 Tashroudian has relentlessly and improperly badgered, intimidated, harassed, and pursued witnesses
25 and parties alike.

26 Independent witness Jerry Lee Byrum was deposed on June 26, 2023. Much of the deposition
27 concerned the discovery and location of awards that Plaintiff received and subsequently donated to
28 the International Video Game Hall of Fame long before Mr. Byrum became associated with it.

1 (Ellrod Decl.) After his deposition, on or about July 20 and 22, 2023, Mr. Tashroudian started texting
2 Mr. Byrum. Copies of these text messages are attached to the Declaration of Mr. Byrum which is
3 attached hereto as Exh. “A”. The following are direct quotes from the exchange between Mr.
4 Tashroudian and this third party witness.

5 “Tashroudian – Isn’t it time someone stood up for the truth?
6 This conspiracy is going to destroy your organization because no one will believe
7 anything that you or anyone from IGVHOF says

8 You have lost all of your credibility sir, it’s a shame”

9 Maybe Billy is lying to you too about the “Treasure Hunt”. Ever thought about that?

10 Have you decided to tell the truth?

11 Byrum – I got a tell ya, you’re an idiot. I’ve never seen any attorney, harass people with
12 unethical practices in my life like you do.

13 Tashroudian – Nothing unethical here.

14 What’s unethical are the lies.

15 Byrum – Keep goin, keep digging a hole deeper. It won’t look good for you in court.

16 Tashroudian – How much money do we have to spend to get the truth? I was hoping yourd
17 [sic] come around. I really feel bad for John Grunwald.

18 John is an honest man

19 Are you ?

20 Byrum – You’re another obsessed Billy Mitchell stalker, you really need to . . .

21 Tashroudian – I’m a lawyer proving my defense

22 Byrum - Are you are a stalker beyond belief, and *you are harassing me on evenings and
23 weekends and this is the last opportunity you get to stop or I will do it legally*

24 Tashroudian - I’m seeking information from a key witness. I was hoping your morals would
25 kick in sometime. I’m still hopeful. Have a good evening sir. I’ll see you soon.

26 Byrum - You have zero grounds to do so, zero! Stop harassing me, and whoever else, you’re
27 probably harassing, read a book on character in ethics because he’s an attorney, you’re
28 supposed to have both

Tashroudian - I hope you’ll tell me the truth next time you’re asked.

Byrum – Stalker!

Tashroudian - Only stalking the truth. Please help me. I implore you

Byrum - You’re an obsessed stalker, I suggest you seek help

1 Tashroudian - Help me please. It'll be lots of good karma for you.

2 I'm here if you change your mind. I'm not mad at you.

3 Tell me. Did triforme find the plaques in your arcade? Did he mail them back to you
4 from Fort Lauderdale on June 26? Do you have them now?

5 That's Billy's story. Don't let him use you like he did John" (Byrum Decl., Exh.
6 "A" (emphasis added).)

7 Clearly the above communications are inappropriate. Mr. Tashroudian is, in the witness's
8 own words, harassing him on the weekends and evenings, and accusing this third party witness of
9 lying. Indeed, Mr. Tashroudian continued to contact him even after the witness accused Mr.
10 Tashroudian of harassing and told him that if he doesn't stop the witness will take legal action.

11 Worse yet, Mr. Tashroudian sent Mr. Byrum a screenshot of the California Penal Code
12 relating to concealing evidence and submitting false evidence. This can only be viewed as a threat
13 of criminal action to get a civil advantage, conduct strictly and expressly prohibited by California
14 Rules of Professional Conduct, Rule 3.10. (Byrum Decl., Exh. "A".)

15 Defendant has made awards Plaintiff received from NAMCO an issue in this case. It is
16 believed that Mr. Byrum is currently in possession of those awards, however he is no longer
17 cooperative and wants nothing to do with the litigation. Indeed, it was all Plaintiff could do to get a
18 declaration from Mr. Byrum authenticating his text correspondence with Mr. Tashroudian. (Byrum
19 Decl., Exh. "A"; Mitchell Decl., Exh. "B".)

20 Mr. Tashroudian hounded other witnesses through email message communications.
21 Attached as Exh. "C" is the declaration of independent third party witness Isaiah "TriForce"
22 Johnson, which includes an email string between Mr. Tashroudian and Mr. Johnson. Mr. Johnson is
23 Rastafarian and lives in Jamaica. Mr. Tashroudian engaged in unsolicited email exchanges with Mr.
24 Johnson which greatly offended Mr. Johnson. Mr. Tashroudian tells Mr. Johnson:

25 "Hi TriForce — I am writing to you because I am hoping that you will tell me the truth. Are
26 you willing to talk? Off the record if you want.

27 Billy's Babylon throne is being held up with lies. You know it. And you know the rasta way.
28 We will win with rasta and there will be no more war. Billy will always have to fight again.
(Johnson Decl., Exh. "C")

He goes on to say:

1 “I really don’t think great men like Haile Sellasie or Marcus Garvey would support fraud.
 2 These great men, and all great men, stand up for the truth. After all, every day the bucket
 goes to the well, one day the bottom will fall out.” (Johnson Decl., Exh. “C”).

3 At one point Mr. Johnson responds:

4 “Those men wouldn’t support fraud and neither do I. *I do not know who you are and why*
 5 *you would send me these emails, but I do not defend Billy because he’s my friend. I defend*
 6 *the truth and he just so happens to be on the side of truth.* Do not mistake this as me having
 some form of idolatry for him, that is not the case. I just know the truth because I’m involved
 7 in it deeply and for my own reasons. I see wrong being done to him and Walter and I will
 not stand by and do nothing. I have a ton of things waiting in the light. When the time comes,
 I will reveal all, and those who are against Billy will, unfortunately, suffer the wrath of the
 8 truth.” (Johnson Decl., Exh. “C”).

9 Mr. Tashroudian then accuses the witness of lying:

10 “The fake plaques are not the truth. You and I both know this.
 The story about you finding the plaques in Jerry’s arcade is not the truth. You and I both
 11 know this.
 The story about you mailing the plaques back to Jerry from the Fort Lauderdale airport is
 12 also not the truth.
 Are you willing to send me the pictures you took on your iPad of the awards in the conference
 13 room at the Bridge View Center with a John Grunwald? That will be the truth.
 Let me know which side of this you stand on.” (Johnson Decl., Exh. “C”).

14
 15 This is nothing less than harassment of third party witnesses, and borders on witness
 16 tampering. As noted in his Declaration, Mr. Johnson will not voluntarily sit for deposition in this
 17 case because he believes that if he does Mr. Tashroudian will provide the transcript and video to
 18 individuals who will post it online and subject him to online attacks and harassment. It is part of a
 19 calculated course of conduct to harass and discourage third party witness testimony.

20 Mr. Tashroudian’s actions during party depositions are no less inappropriate. During the
 21 deposition of Walter Day, Mr. Tashroudian felt compelled to go on a self-described diatribe, giving
 22 the following speech:

23 “Q · It made total sense, and I understand maybe that’s your -- your perception of the
 24 dispute, but I’m not sure if you know this, but our theory of the case is that Mr. Mitchell
 never achieved these scores, that it wasn’t --
 A · What?
 25 Q · Just listen to this. Just listen to this. That there wasn’t a MAME computer inside of,
 you know, the arcade cabinets that he played. Instead, the mortgage brokers score was a
 26 farce.
 A · Oh, you mean it never happened? You’re saying it never happened?
 27 Q · Yes, that it never happened. He put those -- he put those performances on as a show to
 legitimize the score performance, but at all times he had these world record scores ready by
 28 tape. And you haven’t heard the deposition of the mortgage brokers lady when she said that

1 Billy Mitchell achieved his score in 15 or 20 minutes after the -- the event had opened. You
 2 didn't hear the testimony of Josh Ryan, the guy that set it up, saying there was absolutely no
 3 way that any recording performance -- any recording equipment was set up and that any
 4 performance could be recorded out of that machine. You didn't hear that testimony. You
 5 also -- I don't know if you're familiar with the fake board slot video on the Boomers score.
 6 I don't know if you're familiar with the technical evidence regarding the orientation of these
 7 two tapes from 1047 and 1050. I don't know if you're familiar with the significant MAME
 8 girder transitions that show up in Billy Mitchell's tapes. It's not like we are saying that there
 9 was a MAME computer inside of his arcade cabinets. These performances, Walter, they
 10 never happened. He has been lying about it to everybody for 12 or 15 years. It needs to
 11 stop. Somebody needs to tell Billy Mitchell this needs --

MS. ROSS: Objection.
 BY MR. TASHROUDIAN: Q. -- to stop.
 MS. ROSS: Is there a question? This is just counsel testifying on the record at this point to
 facts that are not in evidence.
 MR. TASHROUDIAN: It's my diatribe. Anyhow, that's our position, Mr. Day." (Day
 Depo., Exh. "D", 222:8-224:3.)

10 "Diatribe" is defined by Merriam-Webster's dictionary as "a bitter and abusive speech or
 11 piece of writing." (<https://www.merriam-webster.com/dictionary/diatribe>.) Making a speech like
 12 that is entirely inappropriate during a deposition. Such behavior damages public trust in the
 13 scrupulous administration of justice and the integrity of the bar, and is inconsistent with the level of
 14 professionalism required of judicial officers. This is especially true when Mr. Tashroudian knew
 15 that the world would hear his speech once he unlawfully provided the transcript to others to post
 16 online.

17 Shockingly, when Mr. Tashroudian learned that Mr. Day lacked the financial resources to
 18 attend the mandatory mediation in this matter, Mr. Tashroudian contacted counsel for Mr. Day and
 19 told him that if Mr. Day would testify that Mr. Mitchell was not named "Player of the Century" by
 20 NAMCO (then manufacturer of Pac-Man and other video games) the cross-complaint against Mr.
 21 Day would be dismissed. (Cohen Decl., Exh. "E".)

22 This is of course improper and inappropriate, and illustrates why Mr. Tashroudian can no
 23 longer act as legal counsel for Defendant.

24 **C. Defense Counsel Attempted to Question Witnesses on Inadvertently Disclosed**
 25 **Attorney-Client Privileged Communications.**

26 When a privileged attorney-client communication has been disclosed, there are strict
 27 protocols on how the receiving attorney must proceed. Those protocols are set forth in *State*
 28 *Compensation Ins. Fund v. WPS, Inc.* (1999) 70 Cal.App.4th 644. Under the *WPS* decision, an

1 attorney's obligation after receiving apparently inadvertently produced and potentially privileged
2 documents is as follows:

3 "the lawyer receiving such materials should refrain from examining the materials any more
4 than is essential to ascertain if the materials are privileged, and shall immediately notify the
5 sender that he or she possesses material that appears to be privileged. The parties may then
6 proceed to resolve the situation by agreement or may resort to the court for guidance with
7 the benefit of protective orders and other judicial intervention as may be justified." (*State
8 Compensation Ins. Fund v. WPS, Inc.* (1999) 70 Cal. App. 4th 644, 656 657.)

9 During the deposition of Jerry Byrum, while Plaintiff's counsel was sharing her screen Mr.
10 Tashroudian observed a pop up privileged attorney-client communication from the Plaintiff to
11 Plaintiff's counsel which upon reviewing he believed was inconsistent with the witness's testimony.
12 Instead of following protocol on how to deal with inadvertent disclosure of privileged attorney-
13 client communications, Mr. Tashroudian proceeded to question the witness about the
14 communication.

15 "BY MR. TASHROUDIAN:
16 Q. Mr. Byrum, have you shared any of the text messages that you and I have had with Mr.
17 Mitchell?
18 A. No.
19 Q. Have you told him about the conversations that we've had?
20 A. No.
21 Q. Are you sure about that?
22 A. I'm pretty sure, yeah. He and I don't talk about those things.
23 Q. Well, the reason I asked is, while Ms. Ross was sharing her screen, a message popped
24 up from Billy Mitchell, and that message said that you told me that you've seen pictures of
25 your awards. How would he know that -- of his awards, rather. How --
26 A. I'm sorry. What did it say, exactly?
27 Q. I'm trying to recall exactly. Maybe Ms. Ross will share it with us, but what it says --
28 MS. ROSS: That's not gonna happen.
MR. TASHROUDIAN: That's not gonna happen?
MS. ROSS: No.
MR. TASHROUDIAN: Okay.
BY MR. TASHROUDIAN:
Q. Well, what it appeared to say, Mr. Byrum, is that Mr. Mitchell knew that you had told
me you had seen pictures or copies of his awards?
MS. ROSS: Counsel, object.
MR. ELLROD: Are you testifying as to what you viewed as an attorney-client
communication between Mr. Mitchell and Ms. Ross, and you're communicating that to this
witness? There are rules to deal with inadvertent attorney-client communication. So I just
want to be clear on this record that what you're doing is you're trying to ask this witness
about an attorney-client communication that you observed inadvertently.
MR. TASHROUDIAN: I don't know it was inadvertent.
MS. ROSS: How was it not inadvertent? I was sharing my screen for a document, and an
email popped up. Obviously, that's inadvertent when an email comes in and shows at the
bottom.
MR. ELLROD: We'll deal with inadvertent later. Let me make it clear for the record that

1 that's what you're doing. You're questioning this witness about an attorney-client
 2 communication that you observed.
 3 MR. TASHROUDIAN: Well, the witness is lying to me.
 4 MR. ELLROD: I'm asking you, counsel, are you gonna question this witness about an
 5 attorney-client communication that you observed? I don't care whether you think this
 6 witness is lying or not. The question is your license is on the line here. Is that what you're
 7 doing? Is that what you're doing? You're asking questions about --
 8 MR. TASHROUDIAN: Are you talking about -- are you threatening my license?
 9 MR. ELLROD: I'm asking you a question. I'm meeting and conferring right now. Are you
 10 asking a question about an attorney-client communication that you observed?
 11 MR. TASHROUDIAN: I don't need to. I don't need to. I'm done. Thank you. All right.
 12 We're done." (Ellrod Decl.; Byrum Depo., Exh. "F", 38:8-41:8.)

13 What this illustrates is that Mr. Tashroudian is no longer fit to handle this case. It is
 14 inconceivable that Mr. Tashroudian, an experienced attorney practicing law for almost 15 years,
 15 would believe it is appropriate to question a witness on an inadvertently disclosed attorney-client
 16 communication. Indeed, when confronted his response was "Well, the witness is lying to me" as
 17 though that justified his inappropriate conduct. He is so emotionally invested in this case that he
 18 willing to ignore his ethical obligations. Despite the fact that he knew such questioning was
 19 improper, he pursued it because he felt the witness was lying to him. He clearly believes that in this
 20 case the ends justify the means. Whether that was a conscious disregard of his ethical obligations or
 21 not, he is not fit to represent the Defendant going forward. Indeed, if he is willing to acknowledge
 22 such inappropriate actions on the record, what is he doing in private? The only way to know is for
 23 new, unattached counsel to review the discovery responses to assure that there has been full
 24 disclosure.

**D. Defense Counsel Continued To Badger A Party For Answers After The Party
 Was Instructed By His Attorney Not To Answer.**

25 During the deposition of cross-defendant Walter Day, Mr. Tashroudian continued asking
 26 Mr. Day the same question over and over after Mr. Day was instructed by his counsel not to answer.

27 MR. COHEN: That's sounds to me like a communication.
 28 MR. TASHROUDIAN: It does not sound like a communication.
 MR. COHEN: Well, it does to me. I'm instructing him not to answer.
 BY MR. TASHROUDIAN:
 Q · Do you recall what the award looked like, Mr. Day?
 MR. COHEN: Same objection.
 BY MR. TASHROUDIAN:
 Q · What's the big secret here, Mr. Day?
 MR. COHEN: Same objection.

1 MR. TASHROUDIAN: What’s the big secret, Rob?
MR. COHEN: Same objection.
2 BY MR. TASHROUDIAN:
Q · What are you guys hiding? What are you hiding, Mr. Day?
3 MR. COHEN: Same objection.
MR. ELLROD: Are you serious, David?
4 MR. TASHROUDIAN: Yes.
MR. ELLROD: I call that kind of harassing. I call it a little bit argumentative. And I call it
5 entirely improper.
BY MR. TASHROUDIAN:
6 Q · What did the award that Mr. Mitchell showed you last week look like, Mr. Day?
MR. COHEN: Same objection. Let’s not do this anymore ‘cause it’s getting harassing, so
7 that’s the end of that.
BY MR. TASHROUDIAN:
8 Q · All right. I just want to make sure, though, Mr. Mitchell sent you an award last week
that’s different from --
9 MR. COHEN: Okay. You know what, this is getting too much. It’s really -- you’re moving
into harassing territory and I won’t allow it.
10 MR. TASHROUDIAN: Just let me finish the last question and we will be done.
MR. COHEN: No, I won’t. That’s -- you’ve done it, like, five times, more maybe. We are
11 not doing it anymore. (Day Depo., Exh. “D”, 65:7-66:23)

12 Asking a party a question over and over again after he has been instructed not to answer is
13 entirely inappropriate. Asking a party “what are you guys hiding” is inappropriate. It further
14 illustrates Mr. Tashroudian’s inability to act appropriately in this litigation.

15 **E. Defense Counsel Violated, and Continues to Violate, California Law By**
16 **Disseminating Copies Of Deposition Transcripts**

17 Consistent with this “win at all costs” mentality, Mr. Tashroudian continues to openly and
18 knowingly violate the law by providing deposition transcripts and videos to third parties so that they
19 can be posted online. The result is that third party witnesses will not cooperate.

20 Government Code section 69954(d) provides that “[a]ny court, party, or person who has
21 purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion
22 thereof as an exhibit pursuant to court order or rule, or for internal use, *but shall not otherwise*
23 *provide or sell a copy or copies to any other party or person.*” (emphasis added).

24 Code of Civil Procedure section 2025.570(a) provides that “unless the court issues an order
25 to the contrary, a copy of the transcript of the deposition testimony made by, or at the direction of,
26 any party, or an audio or video recording of the deposition testimony, if still in the possession of the
27 deposition officer, shall be made available *by the deposition officer* to any person requesting a copy,
28 on payment of a reasonable charge set by the deposition officer.” But subdivision (b) of the statute

1 provides that:

2 “If a copy is requested from the deposition officer, the deposition officer shall mail
 3 a notice to all parties attending the deposition and to the deponent at the deponent’s
 4 last known address advising them of all of the following:

- 5 (1) The copy is being sought.
- 6 (2) The name of the person requesting the copy.
- 7 (3) The right to seek a protective order under Section 2025.420.”

8 The combination of these statutes means that a litigant can feel confident that a copy of a
 9 deposition transcript, or an audio or video recording of a deposition, will not be disseminated to
 10 third parties without the litigant’s knowledge, and without the litigant having an opportunity to
 11 prevent or limit that dissemination by obtaining a protective order to that effect. The courts have
 12 recognized this.

13 “In this regard, Code of Civil Procedure section 2025.570 provides as follows: “[U]nless the
 14 court issues an order to the contrary, a copy of the transcript of the deposition testimony
 15 made by, or at the direction of, any party, or an audio or video recording of the deposition
 16 testimony, if still in the possession of the deposition officer, *shall be made available by the
 17 deposition officer to any person requesting a copy, on payment of a reasonable charge set
 18 by the deposition officer.* (b) If a copy is requested from the deposition officer, the deposition
 19 officer shall mail a notice to all parties attending the deposition and to the deponent at the
 20 deponent’s last known address advising them of all of the following: (1) The copy is being
 21 sought. (2) The name of the person requesting the copy. (3) The right to seek a protective
 22 order under Section 2025.420. (c) If a protective order is not served on the deposition officer
 23 within 30 days of the mailing of the notice, the deposition officer shall make the copy
 24 available to the person requesting the copy.” 8 (Italics added.)

25 ***Thus, depositions are ordinarily not documents that the parties would reasonably envision
 26 would not be made available to persons or entities outside the litigation.*** In certain cases a
 27 deposition transcript may be protected under other statutes or law if, for example, the
 28 deposition is transcribed under seal, all or a part of it is deemed confidential or privileged,
 or a protective order is obtained under Code of Civil Procedure section 2025.420.” (*Board
 of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889,
 901-902 (emphasis added.)

Mr. Tashroudian violated both of these statutes when he disseminated copies of the
 Plaintiff’s deposition. Ignoring the fact that portions of the deposition were designated confidential,
 by failing to comply with the statutes the transcripts could be disseminated without Plaintiff having
 the opportunity to seek a protective order. When confronted, he responded:

“Feel free to report my violation of Government *Code* section 69954(d) to the court reporting
 agency if you deem it necessary. We will buy Billy’s deposition testimony twice if required.”
 (Ellrod Decl., Exh. “G”)

Further, Mr. Tashroudian continues to violate these statutes to this very day. Copies of the

1 transcripts of the depositions of at least five other witnesses – Josh Ryan, Valerie Saunders, Jerry
2 Byrum, Brian Cady, John Grunwald, and Steve Wiebe – have been disseminated to third parties.
3 Portions those transcripts were posted on YouTube by Karl Jobst, the same individual to whom Mr.
4 Tashroudian admits he sent the video of the deposition of the Plaintiff. (Ellrod Decl., Exh. “G”.)
5 The dissemination of at least three of these third party witness deposition transcripts necessarily
6 occurred after Mr. Tashroudian was notified that such actions violate the provisions of the California
7 Government Code and Code of Civil Procedure, given that those depositions took place after he was
8 notified of the applicable law and his violation of same with respect to the dissemination of the
9 Mitchell transcript. (Mitchell Decl., Exh. “B”)

10 At the hearing on Plaintiff’s Motion for Finding of Contempt Mr. Tashroudian stated that
11 his forwarding the deposition to Mr. Jobst was important because Mr. Jobst was also being sued by
12 Mr. Mitchell. He seemed to take the position that the violation of a protective order and/or the law
13 was not as important as getting to the “truth” in both the subject litigation and the litigation between
14 Plaintiff and Mr. Jobst. (Ellrod Decl.)

15 The result is that third party witnesses now refuse to cooperate in this litigation. On
16 information and belief Mr. Childs, a Florida resident, refuses to sit for deposition for fear that the
17 deposition will be plastered all over the internet and he will be harassed, humiliated and shamed.
18 (Mitchell Decl., Exh. “B”.) Likewise witness Isaiah Johnson will not voluntarily sit for deposition
19 for the same reasons. (Johnson Decl., Exh. “C”.)

20 California Rules of Professional Code rule 3.4 provides in part that:

21 “A lawyer shall not:

22 (a) unlawfully obstruct another party’s access to evidence, including a
23 witness, or unlawfully alter, destroy or conceal a document or other material having
24 potential evidentiary value. A lawyer shall not counsel or assist another person to do
25 any such act;

26 (b) suppress any evidence that the lawyer or the lawyer’s client has a legal
27 obligation to reveal or to produce;”

28 Here, Mr. Tashroudian has done exactly that. By providing deposition transcripts to third
parties in violation of the law, he is effectively scaring off witnesses that might otherwise cooperate.
Many of these witnesses reside outside of California and cannot be compelled to attend trial.

1 It has become clear that Mr. Tashroudian is willing to do anything, including knowingly
 2 violating California law, for his cause. Even when confronted with improprieties in open court,
 3 instead of denying them he insists that the law should not apply to him because he is seeking the
 4 truth, he is being lied to, or his cause is just. When initially confronted about providing deposition
 5 transcripts in violation of the California Government Code and Code of Civil Procedure, he
 6 responded:

7 "I am not sure what you intend to do but if you want to bring up my actions with the judge
 8 then go ahead. I am confident that I am on the right side here." (Email string, Exh. "G")

9 Such conduct is unacceptable and shows that he is unable to act as a judicial officer in this
 10 case. He is far too emotionally involved.

11 Worse yet, he brazenly continues to do so. He apparently believes "the law be damned, I'm
 12 on a quest for the truth and the law doesn't apply to me". Well it does. An attorney who believes
 13 that the ends justify the means cannot function in our system of justice. Knowingly and continually
 14 violating California law clearly shows that Mr. Tashroudian is unfit to defend this action. Hopefully
 15 this blind fury is limited to this case because he seems to have an unusual obsession with this case
 16 and the Plaintiff. Hopefully he is abiding by the law and protective orders in his other matters. Either
 17 way, he cannot continue to act as defense counsel in this case.

18 **F. Defense Counsel Has Improperly Instructed Third Party Witnesses During**
 19 **Depositions.**

20 At the deposition of Robert Mruczek, the deponent was questioned about his
 21 communications with Mr. Tashroudian. During that questioning Mr. Tashroudian instructed Mr.
 22 Mruczek, a third-party, to not answer the question.

23 Q · Do you remember the first time you spoke with Mr. Tashroudian?
 24 A · No, I do not know. · No, I do not.
 25 Q · Can you tell me --
 26 A · Not the specific date or the specific year.
 27 Q · Can you give me an estimate of what year if this was signed in --
 28 A · Well --
 Q · -- June of --
 A · -- if this was signed in 2000 --
 Q · Robert, wait for the question, please.
 If this was signed in June of 2020, did you talk to him for the first time a month before? · Six
 months before? · A year before? · What do you think?

1 A · There’s no way for me to remember that. It could have been a week before, a month,
2 three months. I just simply don’t know. It’s too long ago. I just don’t remember the
3 specifics. I remember speaking with him obviously before this, but how long exactly, I don’t
4 know.

5 Q · So you remember stuff from 17 years ago about who sent you tapes and exact game
6 play, but you don’t remember from three years ago when you signed a declaration?

7 MR. TASHROUDIAN: Objection. Argumentative. I don’t have to -- you don’t have to
8 answer that. You don’t have to.

9 MS. ROSS: You are not his attorney. He has to answer that.

10 MR. TASHROUDIAN: No, I’m instructing him not to answer. That’s fine.

11 MS. ROSS: You are going to instruct somebody that’s not your client not to answer?

12 MR. TASHROUDIAN: I’m telling him he doesn’t have to answer that argumentative
13 question. So, yeah, he doesn’t have to answer.

14 MR. ELLROD: I just want the record to be straight. You’re instructing this witness not to
15 answer a question.

16 MR. TASHROUDIAN: Yeah. I’m telling him he doesn’t have to answer this question.
17 (Mruczek Depo., Exh. “H”, 144:23-146:14).

18 Also at the deposition of Robert Mruczek, Mr. Tashroudian instructed him, a third party
19 witness, not to voluntarily provide communications between Mr. Mruczek and Jace Hall of Twin
20 Galaxies, or even agree not to delete them.

21 “Q · Do you know if you currently have any text messages between you and Jace Hall?

22 A · I might. I might have an email relating to the upcoming depositions saying, Are you
23 going to be ready for it, can you connect to it, things like that, the most current stuff. The
24 rest of the stuff I junk. I save the ones from David with the email link to this deposition. I
25 saved the one saying, Are you going to be ready for it, yes; can we talk, yes. That’s about
26 it maybe. I have David’s phone number in one of the emails I saved, but I don’t make cross
27 of saving these messages.

28 Q · Okay.

29 A · It’s not that I have to. No reason for me to.

30 Q · If I asked you to not delete any after today until you’ve produced them, could you
31 produce them to us, any that you do have still?

32 MR. TASHROUDIAN: I’m going to object.

33 THE WITNESS: I can --

34 MR. TASHROUDIAN: No one has subpoenaed you to produce any documents. You’re
35 not under any obligation to produce any documents, Robert.

36 MS. ROSS: I’m not asking if he is -- I’m not telling him he is under obligation. I’m asking
37 if he would.

38 MR. TASHROUDIAN: Well, you are under no obligation to produce any documents,
39 Robert, unless you’re subpoenaed.

40 * * *

41 Q · I understand. My question was just that if I asked you to, could you not destroy any
42 further emails, text messages or any messages with Jace Hall and Tashroudian? That way
43 if you want us to get a subpoena for those, we will, and then you can produce them that way.

44 A · I have to defer on David on this one because I don’t have -- you know, I’m not a lawyer
45 myself.

46 Q · Okay.

47 A · I have to defer to David.” (Mruczek Depo., Exh. “H”, 153:4-155:7).

48 It is inappropriate for Mr. Tashroudian to instruct a third party witness not to answer a
49 question, especially when the questioning is about communications between that witness and Mr.

1 Tashroudian. It is even more inappropriate for Mr. Tashroudian to tell the witness that he has no
2 obligation to produce, or more importantly not destroy, communications between the witness and
3 the Defendant, communications that have been requested from Defendant in discovery. Regardless
4 of the substance of the communications, Mr. Tashroudian's actions threaten the public trust in the
5 scrupulous administration of justice and the integrity of the bar. He cannot continue to act as counsel
6 for the Defendant.

7 **G. Defendant's Counsel Is Complicit In Withholding Evidence In An Effort To**
8 **Gain An Advantage In The Litigation.**

9 Numerous instances have been uncovered showing that Defendant and Mr. Tashroudian
10 have provided false discovery responses in an effort to obtain a tactical advantage. To be clear, this
11 is not a discovery motion. However it has now been determined that discovery has been improperly
12 withheld and should new counsel be retained we will request that the prior discovery be reviewed
13 for accuracy. The most compelling is the following.

14 In Plaintiff's Request for Production of Documents Set One ("RQP1"), No. 36, (Exh. "I"¹)
15 Plaintiff requested documents relating to the mortgage brokers convention on July 14, 2007 as
16 discussed in Defendant's Cross-Complaint ("Mortgage Brokers Convention"). Defendant served its
17 responses on April 5, 2022 and no documents were produced relevant to this request. (Exh. "J";
18 Mitchell Decl., Exh. "B"). Then, when Mr. Tashroudian deposed Plaintiff on January 9, 2023, he
19 confronted Plaintiff with photos of him at the Mortgage Brokers Convention.

20 In subsequent discovery produced by Defendant on April 3, 2023, Plaintiff learned that Mr.
21 Tashroudian and the Defendant had possessed these photos since at least October 23, 2020. Attached
22 hereto is a document produced by Defendant wherein Defendant is sending the very same photos
23 from the Mortgage Brokers Convention to Wes Copeland, a former Donkey Kong world record
24 holder, saying:

25 "Please take a look at this picture. (Confidential) It is from the Mortgage Brokers event
26 where Billy claims to have got his 1050. I believe that this photo shows an 8-way joystick

27 ¹ Only those portions of the discovery and responses that are relevant have been included in the
28 exhibits to this motion in order to avoid attaching a significant amount of irrelevant paper.

1 as well as it being a non-original arcade stick. Do you agree?” (Exh. K)

2 Defendant’s failure to produce these photos was intentional and tactical. Karl Jobst – a
3 YouTuber in Australia to whom Mr. Tashroudian admittedly provided a copy of Plaintiff’s
4 deposition – states in a video posted online that Twin Galaxies planned to withhold the photos so
5 that they could spring them on Plaintiff at his deposition. In Mr. Jobst’s July 31, 2023 broadcast he
6 shows video of Plaintiff’s deposition and states as follows:

7 “Well here’s a secret, Twin Galaxies had these photos since 2020, three years before that
8 video was made [January 29, 2023], and yes, even I knew about these photos as well, but
9 the photos were kept secret ensuring that Billy never knew the photos existed. Twin Galaxies
10 was waiting silently, waiting patiently, until the time was right to unleash the photos onto
11 the world. And that time was during Billy Mitchell’s deposition. It was critical that up until
12 his deposition, Billy did not know that Twin Galaxies knew that the joystick was red. This
13 would ensure that Billy would fall into any traps that Twin Galaxies might lay, and lay traps,
14 they did.” (Exh. “L”, <https://youtu.be/9umbsmrFk08?t=51>²)

12 In an apparent effort to cover this up, when Plaintiff requested Defendant’s communications
13 with Karl Jobst, Defendant disclosed only two emails between itself and Jobst. These two emails
14 were from 2019 and irrelevant to both of Mitchell’s lawsuits against Twin Galaxies and Jobst.
15 (Ellrod Decl.; Request for Production of Documents Set Three “RQP3”, Exh. “M”; Response to
16 Request for Production of Documents Set Three “RRQP3”, Exh. “N”; Mitchell Decl., Exh. “B”).
17 The only way that Mr. Jobst could have known “for years” that Twin Galaxies had the photos since
18 2020 and was keeping them secret prior to Plaintiff’s deposition would be through communications
19 with Mr. Tashroudian and/or Twin Galaxies subsequent to 2019; however, no such communications
20 were produced.

21 Faced with this problem, Mr. Tashroudian now defends his behavior by alleging that
22 Defendant was not obligated to produce the Mortgage Brokers photos. Special Interrogatories Nos.
23 189 & 190 asked Defendant to explain why the photos of Plaintiff at the Mortgage Brokers
24 Convention were not produced (Exh. “O”). Defendant responded just days ago stating “Responding
25 Party was not obligated to make such a production. Propounding Party was in possession of these
26

27 ² Only a portion of Mr. Jobst’s broadcast is included so as not to attach the Plaintiff’s deposition
28 to this motion.

1 documents and had equal access to them.” (Responses to Special Interrogatories, Exh. “P”)

2 Failing to produce, or even identify, documents because it is believed that they are already
 3 in the possession of the propounding party does not comply with California law. “Discovery may
 4 be obtained of . . . the existence, description, nature, custody, condition, and location of any
 5 document.” (Code Civ. Proc., § 2017.010.) Thus, a party must identify all responsive documents in
 6 its possession, custody or control, and whether any other responsive documents exist or ever existed,
 7 and why they cannot be produced. (Code Civ. Proc., § 2031.010 et seq.) Therefore even if Mr.
 8 Tashroudian believed Plaintiff already had the documents he would still need to identify and
 9 produce them.

10 Further, Defendant’s response is not credible. There was no basis for Defendant to believe
 11 that Plaintiff was in possession of the Mortgage Brokers documents. Plaintiff did not receive *any*
 12 documents from the Mortgage Brokers Convention until December 2023, when the Florida
 13 Association of Mortgage Brokers complied with a subpoena served by Plaintiff. (Ellrod Decl.)
 14 Indeed, Mr. Tashroudian appeared *surprised* to learn in February 2023 that Plaintiff had subpoenaed
 15 the Mortgage Broker documents because the subpoena went to his prior address. (Ellrod Decl., Exh.
 16 “Q”)

17 Mr. Tashroudian had a moral and ethical obligation to produce the Mortgage Brokers photos.
 18 He chose not to do so in an effort to obtain a tactical advantage by surprising Plaintiff at his
 19 deposition. This plan was apparently communicated to Mr. Jobst years ago. Such tactics show that
 20 Mr. Tashroudian cannot be trusted to represent the Defendant in this matter.

21 **H. Defense Counsel Has Refused To Produce His Communications With Third**
 22 **Party Witnesses Despite Being Ordered To Do So.**

23 At the IDC on March 3, 2023, Mr. Tashroudian took the position that his communications
 24 with third parties (as opposed to his client’s communications) were somehow privileged and/or were
 25 protected work product. The Court informed him in no uncertain terms that this was not the case,
 26 and ordered that all of his communications with third parties responsive to discovery requests be
 27 produced.

28 On April 3, 2023, Defendant served its Further Responses to the Requests for Production of

1 Documents, Set 3 (Exh. “M”), in which Defendant agreed to produce responsive documents for
2 communications with Carlos Pineiro (RQP 16), Steven Kleisath (RQP 58), Robert Mruzcek (RQP
3 26), Chris Glead (RQP 23), and Dwayne Richard (RQP 14). Each of these witnesses submitted
4 declarations in support of Defendant’s anti-SLAPP motion in 2020. Pineiro, Kleisath, and Mruzcek
5 testified in deposition that defense counsel prepared their declarations. (Cumulatively Exh. “R”).
6 Mr. Tashroudian necessarily communicated back and forth with each of these witnesses and
7 prepared and sent them their declarations, yet never produced a single communication between
8 himself and these witnesses. (Mitchell Decl., Exh. “B”). Plaintiff is continuing to learn in
9 depositions of communications between Mr. Tashroudian and witnesses that have not been
10 disclosed in discovery.

11 **I. Defendant Failed To Produce His Communications With Third Party**
12 **Witnesses.**

13 1. Plaintiff’s RQP3 No. 88 requested all communications between Defendant and Paul
14 Dean since January 2015. Defendant replied in its RRQP3, that, “none have ever existed.” (Ellrod
15 Decl.; RQP3, Exh. “M”; RRQP3, Exh. “N”). Plaintiff NOW knows that emails exist between
16 Defendant and Dean, because Dean himself provided some of these communications to Plaintiff on
17 August 2, 2023. (Mitchell Decl., Exh. “B”).

18 2. Plaintiff’s RQP3, No. 106 requested all communications between Defendant and
19 Steve Harris related to Cross-Defendant Walter Day. Defendant replied in its “none have ever
20 existed.” (Ellrod Decl.; RQP3, Exh. “M”; RRQP3, Exh. “N”). However, Plaintiff is in possession of
21 communications between Harris and Defendant dated July 19, 2022 discussing Walter Day that Mr.
22 Harris provided to Plaintiff. (Mitchell Decl., Exh. “B”).

23 3. Plaintiff’s RQP3 No. 26 (Exh. “M”) requested all communications between
24 Defendant and Robert Mruzcek relating to Billy Mitchell or high-scores by Billy Mitchell.
25 Defendant agreed to produce these communications; however, Defendant produced only emails
26 between itself and Mruzcek. (Ellrod Decl.; Mitchell Decl., Exh. “B”). During his deposition Robert
27 Mruzcek testified that he also exchanged text messages on Facebook Messenger with Jace Hall.
28 (Mruzcek Depo., Exh. “H”, 155:8-22). These communications were never produced. It should be

1 noted that this is the witness discussed above that Mr. Tashroudian instructed not to answer a
2 question about communications with Mr. Tashroudian or produce communications.

3 There are further examples of Defendant's failure to produce; however, this is not a
4 discovery motion and Plaintiff does not wish to belabor the point. Instead this is intended to illustrate
5 that Mr. Tashroudian is allowing Twin Galaxies to be less than forthcoming in discovery because
6 he is emotionally invested in the litigation.

7 **J. Defense Counsel Has Lost All Objectivity and Cannot Act As An Officer of the**
8 **Court.**

9 Mr. Tashroudian has clearly digressed from an officer of the court zealously advocating for
10 his client to some sort of crusader with an inability to be objective or behave appropriately. The
11 following are email messages showing that Mr. Tashroudian's obsessive contempt for Mr. Mitchell
12 has impacted his ability to act properly as an attorney in this case. When Plaintiff's counsel asked
13 Mr. Tashroudian to meet and confer on new issues raised in an IDC statement, he responded as
14 follows:

15 "I think I have met and conferred with you on the issues in the IDC statement in great detail
16 and several times -- by phone and by email. My concern is that your guy is just going to
17 make another fake plaque to fix the issues that I have identified with the current fake plaque.
18 Moreover, I am also worried that the plaque will be secreted away somewhere by one of
19 Plaintiff's associates. I do not think this concern is unfounded based on the peculiar facts
20 here where a high school E Sports coach finds Plaintiff's awards 13 years after he donated
21 them to the Hall of Fame inside the building the Hall of Fame was evicted from and then
22 took a picture of the awards in a hotel room with Triforce Johnson -- the same Triforce who
23 Billy has been using to do all of his dirty work -- from the supposed Skype call to Jace, to
24 negotiating a settlement with Apollo Legend and suggesting suicide. See the video here and
25 the screen shot below:

26 https://www.youtube.com/watch?v=z9w6-sTdVvs&t=229s&ab_channel=BillyMitchell It
27 is like a movie. And you know what, I think Billy believes this is a movie and thinks he can
28 make the script up as he goes and he is not going to be caught. But I will catch him and
everyone of his lies. He should know that. Accordingly, there is plenty of time for these
issues to be hashed out in an IDC. Let's continue to meet and confer to see if we can whittle
the issues down. I will not stop until those plaques are produced because that will show me
-- and hopefully you and Tony -- that Billy has been lying about NAMCO naming him the
Video Game Player of the Century." (Ellrod Decl., Exh. "S".)

29 Other emails from Mr. Tashroudian show his extreme and inappropriate emotional
30 involvement in the case. In one, he says:

31 What I mean is that if Mr. Mitchell did not insist on using the legal system to try to legitimize
32 his obviously fabricated scores, none of us would be in this situation. I would not be in a

1 position to uncover every one of the lies that he has propagated over the last 20+ years and
2 Walter Day would likely not have been sued for fraud. You're obviously very smart and
3 savvy and should be able to smell his bullshit from a mile away. I would hope that you
4 would have a come to Jesus moment with him and convince him to stop lying (especially
5 under oath) and drop it. Stop hurting people. Two people have committed suicide over this
6 childish fight of his. Enough is enough. If Lance Armstrong can come clean, so can Billy.
7 We offered a mutual walkaway which will allow him to do that. Let me know if he is willing
8 to take that deal. (Tashroudian email, Exh. "T".)

9 This is not a statement by a rational attorney zealously representing his client. It is the
10 rantings of an individual obsessed with "exposing" Mr. Mitchell and his purported lies – going so
11 far as to blame two suicides on Mr. Mitchell. Mr. Tashroudian has made similar speeches in open
12 court. Such a person cannot be trusted to follow the ethical obligations of an attorney, and assure
13 that his client participates openly, honestly and fairly in the discovery process.

14 **III. CONCLUSION**

15 As the foregoing makes clear, defense counsel has engaged in a pattern of behavior intended
16 to prevent the Plaintiff and his attorneys from effectively litigating the Plaintiff's case against the
17 Defendant, and has been willing to violate court orders and statutory prohibitions to accomplish his
18 goals. As the Court of Appeal made clear in *Ellis, supra*, 43 Cal.App.3d at 648, while "[t]he line
19 between active and aggressive representation of a client on one hand and dilatory, frivolous and bad
20 faith actions on the other hand may be a fine line, but it is a line which the trial courts are sometimes
21 obligated to draw." As has been shown above, this is one of those instances.

22 Under the circumstances, the only line that can be drawn that prevents the "continuing effect
23 on the judicial proceedings to occur in the future" (*Chronometrics, Inc., supra*, 110 Cal.App.3d at
24 607) is to order that defense counsel David A. Tashroudian and the Tashroudian Law Group, APC
25 be disqualified from any further representation of Defendant Twin Galaxies in this action.


26 Again, it is the totality of Mr. Tashroudian in this case that, taken together, justify his
27 disqualification. While some of his improprieties can possibly be addressed by motions in limine
28 and other actions, no one knows whether all of his improprieties are known. Indeed, Defendant has
refused to respond to discovery that would assist in determining this. More importantly, he has
shown without doubt that he cannot be trusted to act ethically or to follow the law, and therefore the
only remedy is disqualification.

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Accordingly, for all these reasons, the Court should grant this motion.

DATED: October 24, 2023

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

By: 

Anthony J. Ellrod
Kristina Ross
Attorneys for Plaintiff
WILLIAM JAMES MITCHELL

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DECLARATION OF ANTHONY J. ELLROD

I, Anthony J. Ellrod, declare that:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California. I am a partner with the law office of Manning & Kass, Ellrod, Ramirez, Trester LLP, the attorneys for plaintiff WILLIAM JAMES MITCHELL in this action. If called upon to do so, I could and would competently testify to the following from my personal knowledge.

2. Independent witness Jerry Lee Byrum was deposed on June 26, 2023. Much of the deposition concerned the discovery and location of awards that Plaintiff received and subsequently donated to the International Video Game Hall of Fame long before Mr. Byrum became associated with it.

3. Copies of the transcripts of the depositions of at least five other witnesses – Josh Ryan, Valerie Saunders, Jerry Byrum, Brian Cady, John Grunwald, and Steve Wiebe – have been disseminated to third parties as I have seen them posted by others online. Portions those transcripts were posted on YouTube by Karl Jobst, the same individual to whom Mr. Tashroudian admits he sent the video of the deposition of the plaintiff. (Exh. “G”.) The dissemination of at least three of these third party witness deposition transcripts necessarily occurred after Mr. Tashroudian was notified that such actions violate the provisions of the California Government Code and Code of Civil Procedure, given that those depositions took place after he was notified of the applicable law and his violation of same with respect to the dissemination of the Mitchell transcript.

4. My recollection is that at the hearing on Plaintiff’s Motion for Finding of Contempt Mr. Tashroudian stated that his forwarding the deposition to counsel for Mr. Jobst was important because Mr. Jobst was also being sued by Mr. Mitchell. He seemed to take the position that the violation of a protective order and/or the law was not as important as getting to the “truth” in both the subject litigation and the litigation between Plaintiff and Mr. Jobst.

5. Attached hereto as Exhibit “D” are true and correct excerpts from the deposition of Walter Day and said portions have been undesignated as confidential.

6. Attached hereto as Exhibit “E” is a true and correct copy of the Declaration of Robert Cohen, counsel for Walter Day in this action.

1 7. Attached hereto as Exhibit “F” are true and correct excerpts from the deposition of
2 Jerry Byrum.

3 8. Attached hereto as Exhibit “G” is the July 14, 2023 email string between me and Mr.
4 Tashroudian where he admitted sending the plaintiff’s deposition to counsel for Carl Jobst, and I
5 informed him that doing so violated Government Code section 69954(d).

6 9. Attached hereto as Exhibit “H” are true and correct excerpts from the deposition of
7 Robert Mruczek.

8 10. Attached hereto as Exhibit “I” is a true and correct copy of portions of Plaintiff’s
9 Request for Production of Documents Set One. Attached hereto as Exhibit “J” is a true and correct
10 copy of portions of Defendant’s Responses to Plaintiff’s Request for Production of Documents Set
11 One.

12 11. Attached hereto as Exhibit “M” is a true and correct copy of portions of Plaintiff’s
13 Request for Production of Documents Set Three. Attached hereto as Exhibit “N” is a true and correct
14 copy of portions of Defendant’s Further Responses to Request for Production of Documents Set
15 Three.

16 12. Attached hereto as Exhibit “O” is a true and correct copy of portions of Plaintiff’s
17 Special Interrogatories, including Nos. 189 & 190. Attached hereto as Exhibit “P” is a true and
18 correct copy of portions of Defendant’s Responses to Plaintiff’s Special Interrogatories.

19 13. Plaintiff did not receive any documents from the Mortgage Brokers Convention until
20 December 2023, when the Florida Association of Mortgage Brokers complied with a subpoena
21 served by Plaintiff. Mr. Tashroudian appeared surprised to learn in February 2023 that Plaintiff had
22 subpoenaed the Mortgage Broker documents because the subpoena went to his prior address.
23 Attached hereto as Exhibit “Q” is a true and correct copy of an email exchange between Mr.
24 Tashroudian and my office regarding the subpoenaed Mortgage Brokers documents.

25 14. Carlos Pineiro, Steven Kleisath, Robert Mruczek, Chris Gleed, and Dwayne Richard
26 all submitted declarations in support of Defendant’s anti-SLAPP motion in 2020. Attached
27 cumulatively hereto as Exhibit “R” are true and correct excerpts from the depositions of Mr. Pineiro
28 and Mr. Mruczek. I attended the deposition of Mr. Kleisath who testified that his declaration was

1 prepared by Mr. Tashroudian.

2 15. Attached hereto as Exhibit “S” is a true and correct copy of an email string between
3 Mr. Tashroudian and plaintiff’s counsel dated July 11, 2023.

4 16. Attached hereto as Exhibit “T” is a true and correct copy of an email string between
5 Mr. Tashroudian and plaintiff’s counsel dated April 12, 2023.

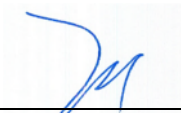
6 17. Attached hereto as Exhibit “U” is a true and correct copy of an article I printed from
7 perfectpacman.com on or about October 11, 2023.

8 18. The article attached as Exhibit “U” includes a link to Mr. Tashroudian’s Reply
9 Declaration. I clicked that link, and attached hereto as Exhibit “V” is a true and correct copy of a
10 screenshot I took of the face page of the Reply Declaration of David A. Tashroudian on or about
11 October 23, 2023. It does not show a court file stamp. It is my understanding that all filed documents
12 obtained off of the Los Angeles Superior Court website include a face page. Therefore, on
13 information and belief, this document must have been sent to the individual that posted it directly
14 by Defendant or it’s counsel as opposed to having been obtained off the Court’s website.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct and that this declaration was executed on October 24, 2023 at Marina del Rey,
17 California.

18 Executed on this 24th day of October, 2023, at Los Angeles, California.

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Anthony J. Ellrod

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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.

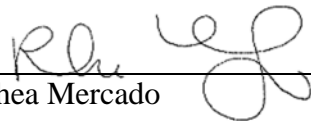
On October 24, 2023, I served true copies of the following document(s) described as **MOTION TO DISQUALIFY DAVID A. TASHROUDIAN AND THE TASHROUDIAN LAW GROUP, APC FROM FURTHER REPRESENTATION OF DEFENDANT TWIN GALAXIES, LLC** on the interested parties in this action as follows:

<p>David Tashroudian, Esq. Mona Tashroudian, Esq. TASHROUDIAN LAW GROUP, APC 12400 Ventura Blvd. Suite 300 Studio City, CA 91604 Telephone: (818) 561-7381 Facsimile: (818) 561-7381 Email: david@tashlawgroup.com Email: mona@tashlawgroup.com</p> <p><i>Attorney for Defendants, TWIN GALAXIES</i></p>	<p>Robert W. Cohen, Esq. Law Offices of Robert W. Cohen 1901 Avenue of The Stars, Suite 1910 Los Angeles, CA 90067 Telephone: (310) 282-7586 Email: rwcohen@robertwcohenlaw.com</p> <p><i>Attorneys for Cross-Defendant, WALTER DAY</i></p>
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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 rhea.mercado@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 October 24, 2023, at Los Angeles, California.



 Rhea Mercado



Journal Technologies Court Portal

Court Reservation Receipt

Reservation	
Reservation ID: 298026945777	Status: RESERVED
Reservation Type: Motion to Disqualify Counsel	Number of Motions: 1
Case Number: 19STCV12592	Case Title: WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC
Filing Party: William James Mitchell (Plaintiff)	Location: Stanley Mosk Courthouse - Department 36
Date/Time: February 6th 2024, 8:30AM	Confirmation Code: CR-UJQGBPWWGPQHBUGEY

Fees			
Description	Fee	Qty	Amount
Motion to Disqualify Counsel	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment	
Amount: \$61.65	Type: MasterCard
Account Number: XXXX8836	Authorization: 047299
Payment Date: 2023-10-06	

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