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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By K. Hung, Deputy Clerk

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

13 WILLIAM JAMES MITCHELL,

14 Plaintiff,

15 v.

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

17 Defendants.

18 AND RELATED CROSS-ACTION

Case No. 19STCV12592

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

**NOTICE OF MOTION AND MOTION
FOR ISSUE SANCTIONS AGAINST
PLAINTIFF WILLIAM JAMES
MITCHELL**

[CCP §§ 2031.320(c) & 2023.030(b)]

*[Filed concurrently with: (1) Declaration of
David A. Tashroudian; and (2) Separate
Statement]*

Hearing

Date: November 28, 2023

Time: 8:30 a.m.

Place: Department 36

Reservation ID: 858911525963

Action Filed: 4/11/2019

1 NOTICE OF MOTION

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

3 PLEASE TAKE NOTICE that on November 28, 2023 at 8:30 a.m. in Department 36 of
4 the Los Angeles Superior Court located at 111 N. Hill Street, Los Angeles, CA 90012, defendant
5 and cross-complainant Twin Galaxies, LLC (“Defendant”) will and hereby does move, pursuant
6 to California Code of Civil Procedure sections 2031.320(c), 2023.030(b), 2023.010(g), and
7 2025.610(b) for: (1) an issue sanction against plaintiff William James Mitchell (“Plaintiff”) in the
8 form of an order ordering that the fact that Plaintiff received \$33,000 from the sale of Twin
9 Galaxies, Inc.’s assets by Walter Day to Defendant’s predecessor in interest HDFilms, Inc. be
10 taken as established; (2) an order that is just and which requires Plaintiff to sit for deposition to be
11 examined on bank statements that were ordered to be produced pursuant to this Court’s December
12 6, 2022 discovery motion order but that were not produced until October 18, 2023; and (3) an
13 order requiring Plaintiff to produce unredacted copies of all documents and bank statements he
14 was ordered to produce by this Court on December 6, 2022. Defendant does not seek monetary
15 sanctions against Plaintiff or his counsel.

16 The grounds for the requested issue sanction is that Plaintiff has willfully and in bad faith
17 engaged in the misuse of the discovery process by failing to produce documents – bank statements
18 – despite this Court’s order to do so and that has prejudiced Defendant. Further, the grounds for
19 the requested order requiring Plaintiff to sit for second deposition session are that this Court has
20 the authority to issue just orders under California Code of Civil Procedure section 2031.320(c) in
21 connection with Plaintiff’s failure to comply with the Court’s discovery order. It is just to require
22 Plaintiff to sit for deposition again since he failed to produce bank statements prior to his
23 deposition despite this Court’s order to do so thereby precluding Defendant from questioning him
24 on the same.

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This motion is based on this notice of motion; the attached memorandum of authorities; the declaration of David A. Tashroudian; the separate statement filed herewith, upon this Court’s records and files of this action; upon the oral argument of counsel; and upon all evidence the Court may receive at or before the hearing of the motion.

Respectfully submitted,
TASHROUDIAN LAW GROUP, APC

Dated: November 1, 2023

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff has willfully withheld bank statements that he was ordered to produce because
4 those bank statements prove that Plaintiff lied under oath. Plaintiff was ordered by this Court to
5 produce bank statements for his Rickey's World Famous Hot Sauce business in January 2023.
6 Plaintiff did produce some of the bank statements he was ordered to produce but he did not produce
7 all bank statements as Defendant found out in October 2023. Instead, Plaintiff withheld until
8 October 18, 2023, the most important bank statement which shows that he received proceeds from
9 the sale of Twin Galaxies assets to Defendants' predecessor in interest – a fact that he
10 incredulously denied in sworn deposition testimony and in his discovery responses.

11 Defendant seeks issue sanctions for Plaintiff's failure to comply with the Court's order
12 requiring him to produce the bank statements. The issue sanction that Defendant seeks is an order
13 establishing the fact that Plaintiff received \$33,000 from the sale of Twin Galaxies assets to
14 Defendant's predecessor in interest. The issue sanction is no more than a fact that would have
15 been established if Plaintiff complied with the Court's order and produced the withheld bank
16 statement in advance of his deposition. The sanctions is appropriate in light of the dereliction.

17 Defendant also seeks an order that Plaintiff be required to sit for deposition to be examined
18 on the contents of the withheld bank statement. Such an order is just and supported by good cause
19 because Defendant was not given a chance to question Plaintiff about the contents of the withheld
20 bank statement even though he was ordered to produce the statement prior to his deposition. This
21 withholding of evidence was willful on Plaintiff's part and prevented Defendant from fully
22 examining the witness on key issues.

23 Finally, the withheld statements that were produced on October 18, 2023 are from March
24 2018 but different from another March 2018 bank statement Plaintiff already produced. Plaintiff
25 has obscured the account number on both March 2018 statements to prevent Plaintiff from
26 determining whether all ordered documents have been produced. Plaintiff should be further
27 ordered to produce all the bank statements previously ordered to be produced but with the account
28 number unobscured so that Defendant can ensure that everything is produced and nothing is

1 withheld again – or more importantly that none of the evidence is falsified.

2 **II. FACTS**

3 A. Walter Day sells Twin Galaxies assets to Defendant’s predecessor in interests.

4 Cross-defendant Walter Day is the president of Twin Galaxies, Inc. and on February 13,
5 2014, he executed an agreement on behalf of Twin Galaxies, Inc. to sell certain assets of the
6 corporation – which included the Twin Galaxies International Video Game Scoreboard – to
7 HDFilms, Inc., Defendant’s predecessor in interest. [Tashroudian Decl., ¶ 2; *see also* Cross-
8 Complaint, Exh. A.] Defendant’s predecessor paid \$200,000.00 for the assets.

9 B. Plaintiff denies being paid any of the funds received by Walter Day in connection with
10 the sale of Twin Galaxies assets to Defendant’s predecessor. Walter Day testifies
11 otherwise.

12 Plaintiff was deposed in his home state of Florida on January 9, 2023. At deposition,
13 Plaintiff denied that he received any of the \$200,000 that Defendant’s predecessor in interest paid
14 to Walter Day in connection with the purchase of the Twin Galaxies assets. [Tashroudian Decl.,
15 ¶ 3, Exh. A (Mitchell Depo., 308:18-23).]

16 Plaintiff’s June 9, 2023 discovery responses told a similar story where he denied that there
17 are any documents evidencing payment to him by Walter Day from the Twin Galaxies asset sales
18 proceeds. [Tashroudian Decl., ¶ 4, Exh. B (Special Interrogatory Responses).]

19 Walter Day testified differently at his June 26, 2023 deposition. He testified that he paid
20 Defendant \$33,000.00 of the sale proceeds by wire transfer and Defendant asked him to keep the
21 payment a secret. [Tashroudian Decl., ¶ 5.]

22 C. Plaintiff is ordered to produce all bank account statements for his hot sauce business
23 Rickey’s World Famous Hot Sauce on December 6, 2022.

24 Plaintiff owns and operates Rickey’s World Famous Hot Sauce (“Rickey’s”). At the outset
25 of this matter, Defendant sought production of all Rickey’s bank statements from 2015 through
26 the present in Request No. 59 of its Demand for Inspection, Set One. Plaintiff objected to the
27 request. [Tashroudian Decl., ¶ 6.]

28 The parties and the Court conducted an informal discovery conference on October 26, 2022

1 regarding, among other issues, Plaintiff's objection to Demand for Inspection No. 59. This Court
2 issued an order after the IDC permitting Defendant to file a motion to compel Plaintiff to produce
3 documents in response to its Demand for Inspection No. 59. [Tashroudian Decl., ¶ 7, Exh. C.]

4 Defendant filed its motion to compel on November 7, 2022. On December 6, 2022, the
5 Court heard and granted Defendant's motion to compel production of Rickey's bank statements
6 as requested in Demand for Inspection No. 59. Plaintiff was ordered to produce the bank
7 statements within 30 days of the date of the hearing. [Tashroudian Decl., ¶ 8, Exhs. D (Motion to
8 Compel) & E (Order on Motion to Compel).]

9 On January 5, 2023, Plaintiff produced bank account statements for Rickey's for the years
10 2017 through 2019 pursuant to the Court's order. The statements were from a Wells Fargo
11 Business Choice Checking account and from a Wells Fargo Business Rate Savings account.
12 Plaintiff produced a nine page account statement from a Wells Fargo Business Choice Checking
13 account for the period of March 1, 2018 through March 31, 2018 which was identified by Bates
14 stamp numbers MITCHELL 007066-007074 (the "First March 2018 Bank Statement"). The
15 account number on the First March 2018 Bank Statement was redacted. [Tashroudian Decl., ¶ 9,
16 Exh. F.]

17 D. On October 18, 2023, Plaintiff for the first time produced a two page bank account
18 statement for Rickey's for the period March 1, 2018 through March 31, 2018.

19 After Walter Day testified on June 26, 2023 that he paid Plaintiff \$33,000 from the asset
20 sales proceeds, Defendant issued two document requests to Plaintiff asking Plaintiff to produce all
21 documents evidencing any payment by Walter Day or Twin Galaxies to him or to any business he
22 owns. In response to these requests, on October 18, 2023, Plaintiff produced a 2 page account
23 statement for Rickey's World Famous Hot Sauce from a Wells Fargo Business Choice Checking
24 account for the period of March 1, 2018 through March 31, 2018 and marked the document with
25 Bates stamp numbers MITCHELL 007859-007860 (the "Second March 2018 Bank Statement").
26 The Second March 2018 Bank Statement was not produced on January 5, 2023 pursuant to the
27 Court's December 6, 2022 order. The Second March 2018 Bank Statement is consistent with
28 Walter Day's testimony regarding payment of the Twin Galaxies asset sales proceeds to Plaintiff.

1 The account number on the Second March 2018 Bank Statement was redacted. [Tashroudian
2 Decl., ¶ 10, Exh. G.]

3 **III. ARGUMENT**

4 A. Legal standard.

5 If a party fails to obey an order compelling production of documents, this Court is
6 empowered to impose, among others, issue sanctions against the offending party. (Cal. Code Civ.
7 Proc., § 2031.320(c).) In addition, this Court may issue any other order that it deems just to
8 ameliorate the failure to obey. (Id.)

9 This Court may also impose issue sanctions for the misuse of discovery. (Cal. Code Civ.
10 Proc., § 2023.030(b).) To be certain, disobeying a court order to provide discovery responses is a
11 misuse of the discovery process. (Cal. Code Civ. Proc., § 2023.010(g).) An issue sanction may
12 take the form of this Court ordering that designated facts shall be taken as established in the action
13 in accordance with the claim of the party adversely affected by the misuse of the discovery process.
14 (Cal. Code Civ. Proc., § 2023.030(b).)

15 Courts are given wide latitude on which sanction to issue in the case of a failure to obey.
16 The “sanction should be appropriate to the dereliction, and should not exceed that which is
17 required to protect the interests of the party entitled to but denied discovery.” (Deyo v. Kilbourne
18 (1978) 84 Cal. App.3d 771, 793.) In determining which sanction to issue, the Court should
19 consider, among other factors: (1) the time that has elapsed; (2) the existence of prior orders
20 compelling discovery and the answering party's response thereto; (3) whether the answering party
21 has acted in good faith, and with reasonable diligence; and, (4) whether the withheld information
22 is material to a particular claim. (Id., at 796-797.)

23 Here, Plaintiff failed to obey this Court’s discovery order to produce all of Rickey’s bank
24 statements and thereby misused the discovery process. Instead, he secreted away the Second
25 March 2018 Bank Statement and only produced it ten (10) months after his deposition to thwart
26 Defendant’s discovery of the truth. Defendant is prejudiced by Plaintiff’s malfeasance and the
27 only remedy is an issue sanction, and the just order of requiring Plaintiff to sit for deposition again
28 to be examined about the recently produced bank statement.

1 B. Issue sanctions are warranted because Plaintiff has willfully and in bad faith disobeyed
2 this Court's prior order by failing to produce the Second March 2018 Bank Statement
3 all to Defendant's detriment.

4 Issue sanctions are warranted because Plaintiff failed to obey this Court's December 6,
5 2022 order to produce all of Rickey's bank account statements. He produced the First March 2018
6 Bank Statement on January 5, 2023 but he willfully withheld the Second March 2018 Bank
7 Statement until October 18, 2023 to hide the fact that he was paid proceeds from the sale of Twin
8 Galaxies assets to Defendant's predecessor. The ten month delay in producing the Second March
9 2018 Bank Statement has prejudiced Defendant since trial is now approaching in only a couple of
10 months and discovery is closing sooner than that.

11 Issue sanctions are also warranted because Plaintiff's bad faith failure to produce the
12 Second March 2018 Bank Statement deprived Defendant of fair opportunity to examine Plaintiff
13 at his deposition regarding his receipt of the Twin Galaxies asset sales proceeds. Plaintiff testified
14 at his deposition in January 2023 that he did not receive any funds from the sale of Twin Galaxies
15 assets by Walter Day to Defendant's predecessor. His discovery response also claimed there were
16 not documents evidencing the any payment to him. But the real facts as told by Walter Day at his
17 June 2023 deposition are that he wired \$33,000 from the sale proceeds to Plaintiff. Walter Day's
18 testimony and the Second March 2018 Bank Statements directly contradict Plaintiff's sworn
19 testimony and his discovery responses that he did not receive any of the sales proceeds. Defendant
20 was robbed of the opportunity to question and impeach Plaintiff with the Second March 2018 Bank
21 Statement as a result of Plaintiff's willful failure to obey this Court's order to produce the
22 document in advance of his deposition. Put another way, Defendant did not have the discovery
23 and documents it was entitled to and Plaintiff was able to give evasive deposition testimony as a
24 result.

25 Issue sanctions are warranted for the additional reason that Plaintiff's bad faith failure to
26 produce the Second March 2018 Bank Statement prejudiced Defendant because Defendant was
27 precluded from questioning Plaintiff about details of the transactions as reflected in that statement
28 The description of the payment shown on the Second March 2018 Bank Statement does not match

1 the description of the payment Walter Day testified he made to Plaintiff but Defendant was not
2 given an opportunity to explore those inconsistencies. Defendant was also prevented from
3 questioning Plaintiff about other 2018 statements from the same account as the Second March
4 2018 Bank Statement which could show transfers out of the Rickey's account and into Plaintiff's
5 personal account thereby providing evidence that Plaintiff did lie under oath. Indeed, Plaintiff
6 redacted the account numbers from the First March 2018 Bank Statement and from the Second
7 March 2018 Bank Statement so Defendant cannot determine if these statements are from the same
8 account or from a different account. If the two March 2018 statements are from different accounts,
9 Plaintiff should be ordered to produce all statements from which the Second March 2018 Bank
10 Statement derives because those statements were not produced on January 5, 2023 as ordered by
11 the Court. And if the two statements are from the same account, Plaintiff must explain why there
12 are two different March 2018 statements for the same account. Something smells fishy.

13 Lastly, issue sanctions are warranted because the information withheld from production
14 despite the Court's order is material to Defendant's *alter-ego* claim. Defendant alleges in
15 Paragraph 8(A) of its Cross-Complaint that Defendant co-mingled funds with Twin Galaxies, Inc.
16 and that he diverted funds that were earned by the corporation for his personal use such that there
17 is a unity of interests between him and corporation. Evidence regarding the fact that Plaintiff
18 received \$33,000 of the sales proceeds directly supports this *alter-ego* allegation, and in turn
19 Defendant's breach of contract and fraud causes of action against Plaintiff. Plaintiff attempted to
20 hide the Second March 2018 Bank Statement and lied about \$33,000 payment from the sales
21 proceeds to frustrate Defendant's ability to prove-up its key *alter-ego* allegations. His
22 transgression should not be condoned and issue sanctions are appropriate.

23 C. The issue sanction should take the form of an order establishing the fact that Plaintiff
24 received \$33,000 from the sale of Twin Galaxies assets.

25 Plaintiff lied at deposition about the fact that he received \$33,000 from the sale of the Twin
26 Galaxies assets to Defendant's predecessor in interest. Not only did he lie about this fact, but he
27 attempted to cover-up his lie by willfully failing to produce corroborating Rickey's bank
28 statements despite the Court's order that he produce the statements. Accordingly, the issue

1 sanction which is appropriate under these circumstances is that an order should issue designating
2 the fact that Plaintiff received \$33,000 from the sale of Twin Galaxies assets as established. This
3 issue sanction is appropriately measured considering that Defendant would have established this
4 fact had Plaintiff timely produced the ordered documents in advance of the deposition.

5 D. This Court should issue an order requiring Plaintiff to sit for a second session of his
6 deposition so that he can be examined about the Second March 2018 Bank Statement
7 and any other withheld documents.

8 This Court should order Plaintiff to sit for deposition to explain the Second March 2018
9 Bank Statement. Such an order is just and permissible pursuant to California Code of Civil
10 Procedure section 2031.320(c). An order requiring Plaintiff to sit for deposition and be examined
11 about the Second March 2018 Bank Statement is just because Defendant should have had this bank
12 statement in advance of Plaintiff's January 9, 2023 deposition. The statement should have been
13 produced to Defendant on January 5, 2023 pursuant to this Court's December 6, 2022 order but it
14 was not. Plaintiff failed to produce the document purposefully so that he would not be examined
15 on its contents at deposition. He should now be ordered to sit for deposition so that Defendant
16 would be in the same position and have the same opportunity to fully examine him on the issue
17 had Plaintiff complied with the order in the first instance.

18 Not only is the requested order just pursuant to California Code of Civil Procedure section
19 2031.320(c), there is also good cause to require Plaintiff to sit for deposition pursuant to California
20 Code of Civil Procedure section 2025.610(b). The good cause is that Plaintiff failed to produce
21 the Second March 2018 Bank Statement prior to his first deposition despite a court order to do so.
22 Plaintiff thereby deprived Defendant from the opportunity to question him on the document.
23 Defendant should be given the opportunity to depose Plaintiff on the withheld documents so that
24 it has a fair opportunity to present evidence at trial.

25 E. This Court should issue an order requiring Plaintiff to produce all Rickey's bank
26 account statements pursuant to its prior order.

27 Defendant cannot determine what account is associated with the Second March 2018 Bank
28 Statement. The First March 2018 Bank Statement is nine pages in length and looks different from

1 the two page Second March 2018 Bank Statement. The two statements look different but are from
2 the same month and same year so it logically follows that they are from different accounts.
3 Although the statements appear to be from different accounts, Defendant cannot determine that
4 fact because the account numbers are redacted. The only way for Defendant to ensure all
5 documents were produced pursuant to the Court's order is to have Plaintiff produce all bank
6 statements with their account number unobscured and to certify that the production is full and
7 complete. The documents should be produced without redaction so Defendant can follow the
8 paper trail to see where the proceeds from the asset sale went.

9 **IV. CONCLUSION**

10 Defendant respectfully submits that Plaintiff has willfully failed to comply with this
11 Court's order to produce documents and thus issue sanctions are appropriate. Not only are issue
12 sanctions appropriate but an order granting leave to depose Plaintiff on the improperly withheld
13 documents is just under the circumstances.

14 Respectfully submitted,

15 Dated: November 1, 2023

TASHROUDIAN LAW GROUP, APC

17 By: /s/ David Tashroudian, Esq.

18 David Tashroudian, Esq.

19 Mona Tashroudian, Esq.

20 Attorneys for Twin Galaxies, LLC

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 November 1, 2023, I served the herein described document(s):

NOTICE OF MOTION AND MOTION FOR ISSUE SANCTIONS AGAINST PLAINTIFF WILLIAM JAMES MITCHELL

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 in lieu of personal service.

Anthony J. Ellrod tony.ellrod@manningkass.com
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MANNING & KASS
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WALTER DAY

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 1, 2023 at Woodland Hills, California.



Mona Tashroudian



Court Reservation Receipt

Reservation	
Reservation ID: 858911525963	Status: RESERVED
Reservation Type: Motion for Sanctions	Number of Motions: 1
Case Number: 19STCV12592	Case Title: WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC
Filing Party: Twin Galaxies, LLC (Cross-Complainant)	Location: Stanley Mosk Courthouse - Department 36
Date/Time: November 28th 2023, 8:30AM	Confirmation Code: CR-HKALBDXPOPMS7BQ4H

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

Payment	
Amount: \$61.65	Type: Visa
Account Number: XXXX2725	Authorization: 09360D
Payment Date: 2023-09-28	

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