

1 David A. Tashroudian [SBN 266718]
2 Mona Tashroudian [SBN 272387]
3 TASHROUDIAN LAW GROUP, APC
4 12400 Ventura Blvd., Suite 300
5 Studio City, California 91604
6 Telephone: (818) 561-7381
7 Facsimile: (818) 561-7381
8 Email: david@tashlawgroup.com
9 mona@tashlawgroup.com

Electronically FILED by
Superior Court of California,
County of Los Angeles
11/03/2023 11:28 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Mayorga, Deputy Clerk

6 Attorneys for Twin Galaxies, LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 WILLIAM JAMES MITCHELL,

12 Plaintiff,

13 v.

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

15 Defendants.

18 AND RELATED CROSS-ACTION

Case No. 19STCV12592

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

**OPPOSITION TO MOTION TO
DISQUALIFY OF TWIN GALAXIES, LLC**

*[Filed concurrently with: (1) Declaration of
David A. Tashroudian; (2) Declaration of Karl
Jobst; and (3) Objections to Evidence]*

Hearing

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

Reservation ID: 298026945777

Action Filed: 4/11/2019

TABLE OF CONTENTS

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. INTRODUCTION 4

II. ARGUMENT 5

 A. Walter Day’s deposition transcript was not marked confidential pursuant to the protective order. 5

 B. Plaintiff misconstrues Mr. Tashroudian’s search for the truth from his accomplices as harassment..... 6

 1. Who is Isaiah TriForce Johnson and why has Mr. Tashroudian contacted him?..... 6

 2. Who is Jerry Byrum and why has Mr. Tashroudian contacted him? 10

 C. Mr. Tashroudian did not question a witness on inadvertently disclosed attorney-client communications..... 12

 D. Mr. Tashroudian’s cross-examination of cross-defendant Walter Day at deposition cannot support a motion to disqualify counsel..... 14

 E. Plaintiff has no standing to complain that Mr. Tashroudian violated California law with respect to dissemination of any deposition transcripts. 15

 F. Plaintiff’ mischaracterizes Mr. Tashroudian’s instructions to Robert Mruzec at his deposition..... 17

 G. Defendant is wrong that Plaintiff was required to produce pictures of Plaintiff at the Mortgage Brokers convention from July 13, 2007..... 17

 H. Defendant and Mr. Tashroudian produced all documents ordered to be produced after the April 2023 IDC..... 18

 I. Plaintiff improperly ascribes Defendant’s alleged failure to provide documents in discovery to Mr. Tashroudian..... 19

 J. Plaintiff’s claims that his witnesses are unwilling to support him because of Mr. Tashroudian’s actions is unsupported contradicted by the statements of those witnesses. 19

III. CONCLUSION 20

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 Adolph v. Uber Technologies, Inc. (2023) 14 Cal.5th 1104..... 16

4 Assembly Committee on Judiciary Comment; HLC Properties, Ltd. v. Sup.Ct.

5 (MCA Records, Inc.) (2005) 35 Cal.4th 54 12

6 County of Sacramento v. Workers' Comp. Appeals Bd. (2000) 77 Cal. App.4th

7 1114..... 5

8 David S. Karton, a Law Corp. v. Musick, Peeler Garrett LLP (2022) 83 Cal. App.

9 5th 1027..... 13

10 Delaney v. Superior Court (1990) 50 Cal.3d 785 15

11 **STATUTES**

12 Cal. Civ. Code, § 1643 5

13 Cal. Code Civ. Proc., § 1005(b)..... 13

14 Cal. Code Civ. Proc., § 2025.270(a-c)..... 15

15 Cal. Code Civ. Proc., § 367..... 16

16 Cal. Evid. Code, § 405 12

17 Cal. Evid. Code, §§ 1152 & 1154 15

18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff William James Mitchell (“Plaintiff”) makes this ill-supported motion to disqualify
4 David A. Tashroudian and the Tashroudian Law Group, APC from further representation of Twin
5 Galaxies, LLC (“Defendant”) to gain a tactical advantage in his case only two months from trial.
6 He is willing to lie under oath in his declaration supporting this motion to gain such an advantage.

7 Not only has he lied under oath to support this motion, his counsel has embellished the
8 record to paint Mr. Tashroudian as some sort of fanatic who is obsessed with Mr. Mitchell. That
9 is not the case. What Mr. Tashroudian has done is zealously advocate for his client to prove that
10 it did not act maliciously when it correctly determined after consideration of technical evidence
11 and Plaintiff’s own expert that Plaintiff cheated at *Donkey Kong* fifteen years ago. He has also
12 advocated to prevent fraud on this Court.

13 Plaintiff tries to convince this Court that Mr. Tashroudian’s advocacy has crossed an
14 ethical line such that the public’s trust in the orderly administration of justice is compromised.
15 That is just a distraction. It is a distraction from the fact that Plaintiff and his friends are colluding
16 with each other to commit fraud on this Court and they are all afraid that Mr. Tashroudian will
17 expose that fraud at trial. In determining this motion, this Court should consider the fact that all
18 of the alleged transgressions committed by Mr. Tashroudian stem from Plaintiff’s fabrication of
19 evidence and the subsequent deception that has been carried out by his attorneys and his clique.
20 Every single issue raised in Plaintiff’s motion from the alleged harassment of Isaiah TriForce
21 Johnson and Jerry Byrum to the hard cross-examination of Walter Day stem from the alleged
22 discovery and now disappearance of falsified evidence that Plaintiff has refused to produce in this
23 matter.

24 Defendant respectfully requests that this Court to consider the evidence it presents in this
25 motion and to consider the lack of evidentiary support from Plaintiff in its moving papers in
26 determining whether to deprive Defendant of its counsel of choice. All things considered,
27 Plaintiff’s motion is unmeritorious and should be denied.

28 ///

1 **II. ARGUMENT**

2 A. Walter Day’s deposition transcript was not marked confidential pursuant to the
3 protective order.

4 A stipulation is a an agreement between the parties. (County of Sacramento v. Workers'
5 Comp. Appeals Bd. (2000) 77 Cal. App.4th 1114, 1118 (“A stipulation is `[a]n agreement between
6 opposing counsel ... ordinarily entered into for the purpose of avoiding delay, trouble, or expense
7 in the conduct of the action...”).) As such, a stipulated protective order should be given an
8 interpretation that will make it lawful, operative, definite and reasonable. (*See* Cal. Civ. Code, §
9 1643.)

10 The parties stipulated to the Los Angeles Superior Court’s model protective order, which
11 was entered by this Court on October 26, 2022. [Tashroudian Decl., ¶ 2, Exh. A (Protective
12 Order).] The stipulated protective order limits the designation of testimony as confidential to
13 circumstances where the designating parties believes in good faith that the testimony is entitled to
14 confidential treatment under applicable law. [Id., at 2:1-3.] For testimony to be confidential, the
15 designating party may either: (i) specifically identify on the record before the close of deposition
16 all portions of the testimony that qualify as confidential; or (ii) designate the entirety of the
17 testimony as confidential with the right to identify more specific portions of the testimony as to
18 which protection is sought within 30 days following receipt of the deposition transcript. [Id., at
19 3:14-21.]

20 Plaintiff counsel did mark the entirety of Walter Day’s deposition testimony as confidential
21 at the deposition. Mr. Day’s transcript was completed and received by the parties on July 20,
22 2023. [Tashroudian Decl., ¶ 3.] Plaintiff, however, failed to identify any more specific portions
23 of the testimony as to which protection was sought within 30 days following the receipt of the
24 transcript. [Id.] Accordingly, the deposition was not marked confidential pursuant to the terms of
25 the protective order and any subsequent publication by Mr. Tashroudian did not violate the court’s
26 order.

27 A reasonable interpretation of the stipulated protective order is that Plaintiff’s wholesale
28 marking of the deposition transcript is insufficient to maintain confidentiality of the testimony

1 absent further, more specific designations within 30 days of receipt of the transcript. Allowing a
2 party to simply mark the entirety of deposition as confidential would circumvent the limitation of
3 reserving the confidential designation for material that in good faith is confidential under
4 applicable law. Otherwise, a party would be able to mark even the most mundane portions of
5 deposition testimony – such as the admonishments – as confidential where there is obviously no
6 good faith basis to do so thereby rendering the good faith requirement inoperative.

7 Plaintiff’s derivative argument that Mr. Tashroudian should be censured and removed as
8 Defendant’s counsel in this case because he provided Mr. Day’s testimony to the journalist
9 operating the website www.perfectpacman.com rests on pure conjecture. Mr. Tashroudian
10 testifies in connection with Defendant’s opposition to this motion that he did not provide Walter
11 Day’s deposition transcript to the journalist. [Tashroudian Decl., ¶ 4.] His testimony, as an officer
12 of the court sworn to respect the duty of candor, is sufficient to defeat this claim.

13 B. Plaintiff misconstrues Mr. Tashroudian’s search for the truth from his accomplices
14 as harassment.

15 To understand whether, as Plaintiff puts it, Mr. Tashroudian’s “fanatical belief in his
16 client’s case is real or feigned” it is important to understand who the witnesses Mr. Tashroudian
17 has “improperly badgered, intimidated, harassed, and pursued” are. It is also important to
18 understand the context in which these witnesses were allegedly harassed.

19 1. Who is Isaiah TriForce Johnson and why has Mr. Tashroudian contacted
20 him?

21 Isaiah TriForce Johnson (“TriForce”) is Billy Mitchell’s friend and longtime shill.
22 TriForce operates the YouTube channel *EmpireArcadia*. His channel’s banner prominently
23 displays a picture of cross-defendant Walter Day. TriForce’s channel is a veritable shrine to Billy
24 Mitchell where he has published dozens of videos supporting Billy Mitchell with millions of
25 views in the aggregate. His videos describe Billy Mitchell as a “legend,” an “OG,” and an “Elder
26 God.” TriForce is featured prominently with Billy Mitchell and Walter Day in many of the videos
27 with some of the videos being published 12 years ago. [See Tashroudian Decl., ¶¶ 5-6.] TriForce
28 has been an integral part of “Team Billy,” a rag-tag crew of Plaintiff’s friends who, from the very

1 moment Jeremy Young made his dispute against Plaintiff's scores, have staunchly defended
2 Plaintiff in public. His fingerprints are all over the case.

3 Indeed, TriForce moderated an hour long panel in March 2018 in Banning, California
4 where he, Plaintiff, Walter Day, and Carlos Pineiro defended Plaintiff and discussed Team Billy's
5 technical efforts to exonerate the accused cheater. TriForce later submitted a declaration in
6 opposition to Defendant's anti-SLAPP motion calling Mr. Pineiro a liar for claiming that he shared
7 a hotel room with Plaintiff during the trip. [See Tashroudian Decl., ¶ 7.]

8 TriForce also negotiated the settlement of a defamation claim by Plaintiff against Benjamin
9 Smith, also known as Apollo Legend. Plaintiff posted a video to his YouTube channel with
10 screenshots of TriForce's July 4, 2020 negotiations with Mr. Smith where TriForce says "you're
11 not the target and I'll get Billy's stubborn ass to move forward with this agreement," "I hear that
12 you're depressed," and he goes on to callously suggest suicide by saying "don't go killing yourself
13 now." [See Compendium of Evidence, Exh. S.] Mr. Smith tragically took his own life in
14 December 2020. Mr. Smith is not the only person who committed suicide after Mr. Mitchell sued
15 for defamation. Jeff Harrist, the moderator of the *Donkey Kong* Forum website took his own life
16 after being sued for defamation for removing Plaintiff's scores from the site's high score list. [See
17 Tashroudian Decl., ¶ 8.]

18 Plaintiff also used TriForce in this case in an attempt to temper evidence against him. One
19 of the strongest pieces of evidence Defendant has in this case to negate actual malice is an April
20 5, 2018 text message from Plaintiff to Jace Hall (Defendant's Head Custodian of Records) where
21 Plaintiff explicitly tells Mr. Hall that Carlos Pineiro is Plaintiff's technical lead and he asks
22 Defendant for more time for Mr. Pineiro to complete his investigation. Defendant submitted that
23 text message in support of its anti-SLAPP motion to show that it did not have actual malice when
24 it determined that Plaintiff's *Donkey Kong* score performances at issue were not from original
25 arcade hardware. The argument is that Defendant relied on Plaintiff's expert Carlos Pineiro and
26 his ultimate findings that the scores were not legitimate. Defendant even cited Carlos Pineiro's
27 conclusion in the statement it is being sued for. Realizing how damning the text message was to
28 his case, Plaintiff made the spurious claim in his declaration in opposition to the anti-SLAPP

1 motion that he “called” Jace Hall later on the day of April 5, 2018 and told him the text message
2 was sent in error. Plaintiff was asked in discovery to produce his telephone records to substantiate
3 that call but could not because the call never happened. So what did he do? He changed his story
4 to claim that he made an untraceable three-way call to Jace Hall from TriForce’s Skype account
5 with TriForce secretly on the line. [See Tashroudian Decl., ¶ 9.] Unbelievable. It is like this case
6 is unfolding in one of Plaintiff’s movies – which to some extent it is.

7 TriForce again appears in this case during plaintiff January 9, 2023 deposition. Plaintiff
8 produced documents in this matter showing he was in communication with Mr. Johnson during
9 his deposition on January 9, 2023 – likely to make sure the pair keep their stories straight. This
10 begs the question of what they were talking about during his deposition. [See Tashroudian Decl.,
11 ¶ 10.]

12 But the most important and suspicious aspect of TriForce’s involvement in this case
13 concerns his planting and fabrication of evidence. Let there be no doubt or confusion – TriForce
14 and Billy Mitchell plotted to and did plant fake evidence at the Bridge View Center in Ottumwa,
15 Iowa. This whole fiasco is documented in Defendant’s motion for terminating sanctions which
16 was summarily denied without prejudice by this Court on September 28, 2023. But the essential
17 facts are as follows. On June 23, 2023, TriForce is caught on security camera entering the Bridge
18 View Center with a trash bag full of Plaintiff’s awards – the same awards Plaintiff claims he
19 donated to either Brian Cady or Jerry Byrum in 2010 and that he has refused to produce in this
20 case. TriForce is then caught on security camera going into a back room with a high school E-
21 sports coach named John Grunwald where the two lay the awards on the floor and take pictures of
22 the awards with Plaintiff on speakerphone. Plaintiff refuses to produce these pictures. TriForce
23 then returned to his hotel room at the AmricInn in Ottumwa, Iowa and proceeded to take photos
24 of the awards on a desk in his room. He then sends Mr. Grunwald a message on Facebook
25 Messenger stating that Plaintiff wants him to send the hotel room picture of the awards to the
26 general manager for the Bridge View Center stating that the awards were found. Grunwald did so
27 to further Plaintiff’s deception. [See Tashroudian Decl., ¶ 11.]

28 ///

1 Plaintiff produced the hotel room picture to Defendant on June 26, 2023. This picture of
2 Plaintiff's awards taken by TriForce in his hotel room is the only picture that Plaintiff has produced
3 in this matter of any of his video game awards and it shows awards that are different from the only
4 one award in the public domain. When Plaintiff produced the picture to Defendant, he and his
5 attorneys misrepresented the location of the awards and the provenance of the picture. Defendant's
6 counsel astutely determined that TriForce took the picture of the awards by linking a YouTube
7 video appearing on a laptop in the picture to TriForce. Defendant's counsel then prepared an *ex*
8 *parte* application to force production of the awards because it was concerned that TriForce would
9 secrete the awards away to Jamaica. Defendant gave notice of the application to Plaintiff's counsel
10 on July 5, 2023 and the parties met and conferred about the location of the awards and this is where
11 Plaintiff's counsel misled Defendant's counsel. On July 6, 2023, Plaintiff's counsel
12 misrepresented to Mr. Tashroudian that the "plaques are at the Bridgeview Center in Iowa" and
13 that "Mr. Grunwald was the one that located and took the picture of the plaques." [*See*
14 Tashroudian Decl., ¶ 12.]

15 Plaintiff's counsel should have known on July 6, 2023 that her statement was untrue. If
16 she believed the statement was true it is because her client Mr. Mitchell lied to her. Mr. Mitchell
17 knew as of June 23, 2023 that the plaques were not found by Mr. Grunwald – he was on the phone
18 when TriForce took the plaques to Grunwald and the pair took pictures of the plaques. He also
19 knew as of June 26, 2023 that the plaques and awards were not at the Bridge View Center, because
20 the story goes that TriForce took the plaques with him on a plane to Plaintiff's hometown in Fort
21 Lauderdale, Florida on June 26, 2023 with the intention of delivering the awards to Mr. Mitchell,
22 but he could not do so because he arrived too late and Mr. Mitchell could not meet him at the
23 airport despite the fact that TriForce's flight to Jamaica left from Fort Lauderdale at 10 a.m. The
24 story gets even more suspicious when Plaintiff's counsel represented to this Court in a July 20,
25 2023 IDC statement that the awards were mailed by TriForce across the country to Jerry Byrum
26 in Iowa. The story makes little sense considering Plaintiff, the intended recipient, lives only miles
27 away from Fort Lauderdale and the awards were not sent to him. Plaintiff's counsel knew or
28 should have known all of this because it happened two weeks before she made her

1 misrepresentations on July 6, 2023. If she did not know it is because her client lied to her about
2 the whole series of events. [See Tashroudian Decl., ¶ 13.]

3 This is why Defendant’s counsel reached out and “harassed” TriForce. Defendant’s
4 counsel was searching for the truth from a percipient witness who is so intimately tied to Plaintiff
5 that he would participate in fraud on this Court. That is what is going on here in no uncertain
6 terms. Plaintiff and TriForce are committing fraud on this court by staging the discovery of the
7 plaques and secreting them away and keeping Defendant from examining the same to prove that
8 the plaques are different from the only one ever displayed in public by Plaintiff. If Defense counsel
9 cannot zealously advocate for his client by contacting an unrepresented witness to ensure that his
10 client has a fair trial without the fear of being disqualified, justice will never be achieved.

11 2. Who is Jerry Byrum and why has Mr. Tashroudian contacted him?

12 Jerry Byrum is Plaintiff’s long-time business associate, friend, and fellow member of the
13 International Video Game Hall of Fame. In the mid-1980s, Jerry Byrum was the manager of the
14 Twin Galaxies arcade owned by Plaintiff. [See Tashroudian Decl., ¶ 14, Exh. B.] And although
15 Mr. Byrum denied it at deposition, Mr. Byrum and Plaintiff organized a business on March 14,
16 1996 in Iowa called North American Amusement Auction, LLC. [Id. at ¶ 15.] Continuing with
17 the theme of denial of provable facts, Plaintiff denied that he is a director of the International
18 Video Game Hall of Fame but the facts developed in discovery show that he is currently a director
19 of the organization and has been since 2010 and Jerry Byrum is the president. [Id. at ¶ 16.] It
20 should be noted that Walter Day is the founder of the organization. [Id.]

21 Defendant’s counsel’s “harassment” of Jerry Byrum is not for amusement. It is to uncover
22 the truth in the incestuous marsh that Plaintiff and Jerry Byrum wade in. To start, Jerry Byrum
23 has referred to Mr. Tashroudian as a “snake,” an “idiot,” an “obsessed stalker,” and most flattering
24 of all a “piece of shit.” He even published Mr. Tashroudian’s personal cell phone number in his
25 declaration supporting this motion. [See Tashroudian Decl., ¶ 17.] He has also been a hostile
26 witness. Mr. Byrum appeared at deposition pursuant to subpoena but flippantly refused to produce
27 any documents although he was commanded to do so. He testified at deposition that he was never
28 given any awards by Billy Mitchell and that the organization does not have any of Mr. Mitchell’s

1 awards despite the fact that Plaintiff swore in his discovery responses that he donated his awards
2 to Mr. Byrum and the International Video Game Hall of Fame. [*Id.* at ¶ 18.]

3 Plaintiff's story about the location of the awards changed after Mr. Grunwald's July 20,
4 2023 deposition where Mr. Grunwald categorically denied finding the plaques and testified that
5 the awards were brought to him by TriForce. The story changed from John Grunwald finding the
6 awards to TriForce finding the awards at Jerry Byrum's arcade and mailing them back to Mr.
7 Byrum from Florida when Plaintiff could not pick TriForce up from the airport. The CCTV
8 footage from the Bridge View Center shows that TriForce never left the Bridge View Center to go
9 to Mr. Byrum's arcade to find the awards. But Plaintiff and his camp had to invent the story and
10 they did. [*See* Tashroudian Decl., ¶ 19.]

11 After the story was invented and conveyed to Defendant's counsel for the first time in
12 Plaintiff's July 20, 2023 IDC statement that the awards were found in Jerry Byrum's arcade and
13 mailed to Mr. Byrum from Florida, Defendant's counsel did what any good lawyer would do and
14 contacted the hostile witness to learn the truth. Counsel did so because Mr. Byrum was served
15 previously with a subpoena to produce the awards which he claimed he did not have. Now that
16 he allegedly had the awards, it was only good practice for Mr. Tashroudian to contact the witness
17 to determine if he would comply with the subpoena in the interests of justice. Mr. Byrum of course
18 refused because the whole story is nonsensical and never happened. [*See* Tashroudian Decl., ¶
19 20.] To date, no one, not even Mr. Byrum, has provided any testimony about the location or
20 discovery of the plaques. That is because such testimony would be perjurious. Even Plaintiff
21 hedges his testimony in this case by declaring that Mr. Byrum is "believed to have the plaques."
22 What does that mean? Shouldn't Plaintiff know where the awards are? Plaintiff is hiding the
23 location of the plaques and the truth from the Court and Defendant to further his fraud.

24 The contact that Mr. Tashroudian had with Mr. Byrum does not rise to the level of
25 harassment. Mr. Tashroudian contacted Mr. Byrum – a percipient witness – about the location of
26 the falsified evidence. Mr. Tashroudian contacted Mr. Byrum by text message on July 20, 2023,
27 the day he learned of the story that Mr. Byrum was in possession of the plaques. Their text
28 message conversation on July 20, 2023 lasted 5 minutes from 7:44 p.m. to 7:49 p.m. The next

1 contact Mr. Tashroudian had with Mr. Byrum was on July 22, 2023 and that text message
2 conversation lasted for 56 minutes from 3:11 p.m. to 4:07 p.m. The next contact Mr. Tashroudian
3 had with Mr. Byrum was on July 23, 2023 which lasted 12 minutes from 2:10 p.m. to 2:22 p.m.
4 The final contact Mr. Tashroudian had with Mr. Byrum was on September 7, 2023 where he sent
5 Mr. Byrum Defendant’s motion for terminating sanctions which incorporated much of Mr.
6 Byrum’s deposition testimony. [See Tashroudian Decl., ¶ 21.] In all, Mr. Tashroudian contacted
7 Mr. Byrum for 77 minutes by text message from July 20 through September 7 – hardly harassment
8 particularly considering the suspicious nature of the events Mr. Tashroudian sought clarification
9 on – that is, the mysterious case of the disappearing, reappearing, and again disappearing awards.

10 Plaintiff makes much ado about Mr. Tashroudian advising Mr. Byrum regarding the law
11 in California about secreting and falsifying evidence and claims that Mr. Tashroudian was
12 threatening the witness in violation of the Rules of Professional Conduct. Plaintiff has
13 misrepresented to the Court the nature of the communications with Mr. Byrum. At no time did
14 Mr. Tashroudian threaten Mr. Byrum. To the contrary, Mr. Tashroudian clearly tells Mr. Byrum
15 that: “I am an ethical person and am not threatening you with prosecution. I just hope that knowing
16 this will compel you to do the right thing and comply with the subpoena in the interests of Justice.”
17 [See Compendium of Evidence, Exh. S.] Plaintiff’s characterization is unfair and meant to incite
18 this Court’s ire so that his foe’s attorney can be disqualified. This Court should, hopefully, see
19 through Plaintiff’s gamesmanship.

20 C. Mr. Tashroudian did not question a witness on inadvertently disclosed attorney-
21 client communications.

22 Plaintiff has the burden of establishing that a communication is privileged. (See Cal. Evid.
23 Code, § 405; see also Assembly Committee on Judiciary Comment; HLC Properties, Ltd. v.
24 Sup.Ct. (MCA Records, Inc.) (2005) 35 Cal.4th 54, 59-60.) As an initial matter, Plaintiff provides
25 absolutely no evidence with his moving papers in the form of a declaration from Plaintiff or from
26 Ms. Ross, Plaintiff’s counsel, that any inadvertently disclosed communication at deposition was
27 between Plaintiff himself and Ms. Ross. Ms. Ross could have, but did not, swear under oath that
28 the communication that was disclosed by her open and notorious display of her computer screen

1 at deposition was from Mr. Mitchell and not his son who shares the exact same name. Similarly,
2 Plaintiff could have declared to this fact but he did not. Plaintiff's failure to provide evidentiary
3 support for this point with his moving papers is fatal and this point should not be considered by
4 the Court on this motion to disqualify. (*See* Cal. Code Civ. Proc., § 1005(b); *see also* David S.
5 Karton, a Law Corp. v. Musick, Peeler Garrett LLP (2022) 83 Cal. App. 5th 1027, 1048 (“The
6 original or copies of all evidence that will be presented to the court at the motion hearing must be
7 served along with the notice of motion and points and authorities”).)

8 Plaintiff mischaracterizes Mr. Tashroudian's questioning of Mr. Byrum at his deposition
9 to somehow insinuate that Mr. Tashroudian questioned the witness about inadvertently disclosed
10 attorney-client privileged information. To start, Plaintiff has had his son sit in on almost every
11 single one of the dozen remote depositions that have taken place in this case. His son is ostensibly
12 a Manning & Kass law clerk but there is absolutely no evidence in the record of this supposed
13 fact. That aside, the son never identifies himself at deposition and instead appears remotely as
14 “Billy Mitchell” with his camera turned off. Plaintiff, the father, also appears as “Billy Mitchell”
15 with his camera turned off during the majority of the deposition. Mr. Tashroudian routinely asks
16 Plaintiff's counsel who it is that is appearing as “Billy Mitchell” and Plaintiff's counsel refuses to
17 identify the participants on the record. They do this to give the appearance that the son is the
18 father so the son can sit in and gather evidence for his dad. [*See* Tashroudian Decl., ¶ 22.]

19 Plaintiff appeared at Mr. Byrum's deposition from his car and it appeared that he was
20 driving. Mr. Byrum denied at deposition sharing text messages between him and Mr. Tashroudian
21 with Plaintiff and his son. However, during the deposition, and while Plaintiff's counsel Ms. Ross
22 was obviously sharing her entire screen, a message popped up from “Billy Mitchell” stating that
23 Mr. Byrum had told Mr. Tashroudian that he had seen Plaintiff's awards. The only way for “Billy
24 Mitchell” to know that is for Mr. Byrum to have told him. [Tashroudian Decl., ¶ 23.]

25 Mr. Tashroudian did nothing untoward. It is clear that Mr. Byrum was lying to Mr.
26 Tashroudian about sharing their communications with Plaintiff and his son as exposed by the
27 communication that appeared on the screen. How was Mr. Tashroudian supposed to forget he saw
28 the message and ignore that fact? In addition, Mr. Tashroudian had a reasonable basis to believe

1 the message was not an attorney-client communication from the Plaintiff but was rather from the
2 son who is also referred to as Billy Mitchell and by extension Mr. Mitchell. The reasonable belief
3 is grounded in the fact that the son has been spearheading Plaintiff's prosecution of his dad's claim
4 by being actively involved in almost every facet of this case. The reasonable belief is also based
5 on the fact that the father was in his car. The reasonable belief is further buttressed by the fact that
6 the communication appeared to be cogent and grammatically correct indicating that it came from
7 the college educated son, and not from the father whose communications produced in this case are
8 often incomprehensible and unintelligible. [See Tashroudian Decl., ¶ 24.] Lastly, the
9 communication was not inquired into, it was the fact that Mr. Byrum lied that was inquired into.

10 D. Mr. Tashroudian's cross-examination of cross-defendant Walter Day at deposition
11 cannot support a motion to disqualify counsel.

12 Walter Day testified at his deposition on June 26, 2023 that Billy Mitchell showed him a
13 picture of the NAMCO awards the week prior. Mr. Tashroudian questioned Mr. Day about what
14 the awards looked like and at that point Mr. Day's attorney improperly instructed his client not to
15 answer. There was no basis to instruct the client not to answer and the instruction was given to
16 frustrate Defendant's discovery into the origins of the picture and what the awards looked like.

17 It is important to note that this was the first time any picture of Mr. Mitchell's NAMCO
18 awards was even acknowledged to exist in this litigation. Prior to Mr. Day's deposition, Mr.
19 Mitchell had refused to produce any pictures of the awards claiming that none existed and he
20 refused to produce the award itself swearing that he donated it to his buddy Jerry Byrum. And
21 when Mr. Day testified that a picture did exist, Mr. Tashroudian aggressively questioned Mr. Day
22 about the award but his questions were blocked. [See Tashroudian Decl., ¶ 25.] One may ask why
23 the questions were blocked. The answer is simple – the questions were blocked because Plaintiff
24 and Walter Day were hiding the fact that the awards in the picture are fake and replicas of the one
25 original. The replica was created by Plaintiff to defraud the Court and he is now using Mr.
26 Tashroudian's aggressive and zealous search to uncover the fraud as an instrument to deprive
27 Defendant of its chosen counsel. This court should not allow Plaintiff to misuse the legal process
28 in such a manner.

1 There also was nothing improper about Mr. Tashroudian explaining his client’s theory of
2 the case to Walter Day at deposition. Mr. Day was represented by counsel at the deposition and
3 to the extent this line of questioning, or even the line of questioning regarding the picture of the
4 awards was improper, Mr. Day’s counsel could have suspended the deposition and sought a
5 protective order against the alleged abuse. Mr. Day did not do so and Plaintiff certainly cannot
6 now cry foul when Mr. Day did not think the questioning was improper to the point where a
7 protective order was required.

8 Lastly, Plaintiff makes the unsubstantiated claim that once Defendant discovered that Mr.
9 Day lacked financial resources to go to mediation Mr. Tashroudian attempted a *quid pro quo* to
10 have Mr. Day testify truthfully in exchange for dismissal. That is not true. Defendant is of course
11 the master of its claim. Defendant may settle its claim against Mr. Day on any terms it deems just
12 and appropriate so long as Mr. Day agrees. If Defendant believes that Mr. Day’s truthful testimony
13 is worth more than a judgement against Mr. Day, there is nothing wrong with settling in exchange
14 for that truthful testimony. Plaintiff has not provided any authority to the contrary. Therefore,
15 Plaintiff cannot use the settlement overture as basis for liability or disqualification. (*See, i.e.*,
16 Cal. Evid. Code, §§ 1152 & 1154.)

17 E. Plaintiff has no standing to complain that Mr. Tashroudian violated California law
18 with respect to dissemination of any deposition transcripts.

19 Plaintiff has not shown that California Code of Civil Procedure section 2025.270 applies
20 to Defendant, a party to this case. Subsections (a), (b), and (c) specifically relate to the obligations
21 of a deposition officer at the time “any person” requests a copy of a party’s deposition testimony.
22 (Cal. Code Civ. Proc., § 2025.270(a-c).) The statute makes no mention of a party’s obligation to
23 give notice of a request by “any person” for a copy of a deposition transcript from the case. Plaintiff
24 cannot and has not explained how this statute somehow applies to Defendant. The tenants of
25 statutory interpretation prevent Plaintiff from doing so.

26 The first step of statutory interpretation is to look at the words of the statute themselves.
27 (Delaney v. Superior Court (1990) 50 Cal.3d 785, 798 (noting that to determine intent, the court
28 first turns to the words themselves for the answer).) The inquiry ends there if the language is

1 clear and unambiguous. (Id.) Here, the language of California Code of Civil Procedure section
2 2025.270 is clear and unambiguous that it applies only to the deposition officer. There is no
3 mention of a party's obligation under the same circumstance. It follows that the statute does not a
4 apply to Defendant so Plaintiff's contention otherwise is without merit. This should end the
5 inquiry.

6 Plaintiff seems to think that he has some right to complain about Defendant's dissemination
7 of deposition transcripts pursuant to a statute aimed at protecting the court reporter's right to
8 collect a fee when a party provides or sells a copy of the deposition transcript to another. The
9 provisions of California Government Code section 69954(d) do not inure any benefit or
10 substantive right to Plaintiff for relief.

11 "Every action must be prosecuted in the name of the real party in interest, except as
12 otherwise provided by statute." (Cal. Code Civ. Proc., § 367.) Where a cause of action is based
13 on a state statute, standing is a matter of statutory interpretation. (*See Adolph v. Uber*
14 *Technologies, Inc.* (2023) 14 Cal.5th 1104, 1120.) When considering the words of the statute, it
15 is clear that the real party in interest in an action for violation of California Government Code
16 section 69954(d) is the court reporter, not the party or the witness. Because Plaintiff cannot
17 maintain an action against Defendant pursuant to the statute, he should not be heard to complain
18 about Defendant's violation of the same. His argument on this point is without merit and should
19 be disregarded.

20 Plaintiff has previously made these arguments in its motion to hold Defendant in contempt.
21 The Court rejected Plaintiff's arguments then and should do the same now. In any event, Mr.
22 Tashroudian provided only three of the dozen-plus depositions to third party Karl Jobst – an
23 Australian that Plaintiff is also suing for defamation. Mr. Tashroudian provided Mr. Jobst with
24 Plaintiff's deposition and the depositions of Valerie Saunders and Josh Ryan. [*See Tashroudian*
25 *Decl.*, ¶ 26, *see also Declaration of Karl Jobst*, ¶ 9.] Plaintiff's deposition is rife with verifiable
26 untruths and is thus helpful in attacking credibility in the Australia matter. Mr. Ryan's and Ms.
27 Saunders' depositions are helpful to show that Plaintiff lied under oath about recording the 2007
28 Mortgage Brokers convention performance. Mr. Ryan testified that he did not install any

1 recording equipment like Plaintiff has previously claimed and Ms. Saunders testified that Mr.
2 Mitchell achieved the world record score in 15-20 minutes which is consistent with Defendant's
3 theory that Plaintiff did not play the game at the convention on July 14, 2007 but that he had a tape
4 prepared and feigned the entire thing. That is what happened and allowing the public access to
5 this information is key since Plaintiff is trying to legitimize his scores to the detriment of all other
6 *Donkey Kong* players who actually achieved their high scores without cheating.

7 F. Plaintiff mischaracterizes Mr. Tashroudian's instructions to Robert Mruczek at his
8 deposition.

9 Plaintiff blatantly and in bad faith mischaracterizes Mr. Tashroudian's instructions to Mr.
10 Mruczek at his deposition. Mr. Tashroudian advised Mr. Mruczek at his deposition that he did
11 not have to answer Plaintiff's counsel improper question. The question was: "So you remember
12 stuff from 17 years ago about who sent you tapes and exact game play, but you don't remember
13 from three years ago when you signed a declaration?" The question was clearly improper in form
14 and argumentative. Mr. Mruczek was not required to answer it accordingly.

15 Similarly, the fact that Mr. Tashroudian advised Mr. Mruczek that he was not required to
16 produce documents without a subpoena is not improper. Mr. Mruczek appeared at deposition
17 voluntarily and pursuant to Defendant's notice. He was not subpoenaed by Plaintiff and had no
18 obligation to produce any documents to Plaintiff. The fact that Mr. Tashroudian advised him of
19 his rights in this context is not improper and certainly not a basis for disqualification. What Mr.
20 Tashroudian did not do is he did not tell the witness that could disregard counsel's instruction not
21 to destroy evidence. That is not in the record and Plaintiff imagined it.

22 G. Defendant is wrong that Plaintiff was required to produce pictures of Plaintiff at
23 the Mortgage Brokers convention from July 13, 2007.

24 Plaintiff complains that he was shown a picture of himself at the 2007 Florida Association
25 of Mortgage Brokers convention without that picture first being produced in discovery. There are
26 two problems with Plaintiff's argument. One is that there is no request for production of
27 documents that the picture is responsive to. The second is that Plaintiff had the pictures weeks
28 before his deposition pursuant to a subpoena he failed to serve on Defendant.

1 As Plaintiff admits in his moving papers, he served a document request seeking documents
2 related to Plaintiff's July 14, 2007 appearance at the Mortgage Brokers convention where he
3 claims he achieved a world record *Donkey Kong* score. The picture which was allegedly withheld
4 was not taken on July 14, 2007 – the day of the world record performance. Instead, the picture
5 that was allegedly withheld was taken on July 13, 2007 the night before at the convention's 80's
6 Arcade Night event. The picture was therefore not responsive and Defendant was not required to
7 produce it. [See Tashroudian Decl., ¶ 27.]

8 What is more is that Plaintiff actually had possession of the picture on December 22, 2022
9 – weeks prior to his January 9, 2023 deposition. Plaintiff served the Florida Association of
10 Mortgage Professionals with a subpoena for pictures of himself at the convention and they were
11 produced to him on December 22, 2022. This subpoena was never served on Defendant. He
12 should not have been surprised by the picture at his deposition since it was in his possession weeks
13 earlier. [See Tashroudian Decl., ¶ 28.]

14 H. Defendant and Mr. Tashroudian produced all documents ordered to be produced
15 after the April 2023 IDC.

16 Plaintiff has no qualms with lying under oath and he does it again in connection with this
17 motion. Plaintiff declares in paragraph 11 of his supporting declaration that “I have reviewed all
18 of the documents produced by Defendant in this action. In response to the requests to produce
19 communications with Carlos Pineiro, Steven Kleisath, Robert Mruzec, Chris Gleed, and Dwayne
20 Richard, no communications between Mr. Tashroudian and these individuals were produced.”
21 This simply is not true and is yet another example of Plaintiff misrepresenting facts to this Court.

22 Mr. Tashroudian produced his communications with all of these witnesses to Plaintiff's
23 counsel on May 22, 2023 after he was ordered to do so at the parties' informal discovery
24 conference. He produced communications with Carlos Pineiro (RQP 16) and marked those
25 documents with Bates stamp numbers 7443-7468. He produced communications with Steven
26 Kleisath (RQP 58) and marked those documents with Bates stamp numbers 7877-7884. He
27 produced communications with Robert Mruzec (RQP 26) and marked those documents with
28 Bates stamp numbers 6261-6315. He produced communications with Chris Gleed (RQP 23) and

1 marked those documents with Bates stamp numbers 7526-7539. And lastly, he produced
2 communications with Dwayne Richard (RQP 14) and marked those documents with Bates stamp
3 numbers 7433-7442. [See Tashroudian Decl., ¶ 29.] Mr. Tashroudian has complied with this
4 Court's orders and his discovery obligation at all times.

5 I. Plaintiff improperly ascribes Defendant's alleged failure to provide documents in
6 discovery to Mr. Tashroudian.

7 Plaintiff claims that Defendant willfully withheld documents related to Dean Preston and
8 Steve Harris. He asserts in his declaration that that there are communications between these
9 individuals and Jace Hall that should have been produced. He fails to attach those documents to
10 his moving papers so it is impossible to determine whether those documents should have been
11 produced. He has not carried his burden on this point accordingly and he really has not shown
12 that Mr. Tashroudian purposefully withheld those documents. Similarly Plaintiff has not shown
13 that he has been prejudiced which he cannot because Dean Preston and Steve Harris are in no way
14 connected to this case – they are not witnesses that any of the parties identified in discovery as
15 having knowledge of any claims or defenses. [See Tashroudian Decl., ¶ 30.] Plaintiff is just
16 nitpicking at this point and is desperate to have Mr. Tashroudian expelled from this case.

17 Plaintiff also assumes there are more communications between Defendant and Karl Jobst
18 and Robert Mruzec that were not produced. There is no evidence that more documents than the
19 ones already produced exist and Plaintiff's argument to the contrary is pure speculation. Assuming
20 *arguendo* that there are responsive documents that were not produced, this does not mean that Mr.
21 Tashroudian purposefully withheld those documents. Plaintiff makes that logical leap without a
22 foundation to do so.

23 J. Plaintiff's claims that his witnesses are unwilling to support him because of Mr.
24 Tashroudian's actions is unsupported contradicted by the statements of those
25 witnesses.

26 Plaintiff claims that his best friend Robert Childs is unwilling to be his witness in this case
27 because of Mr. Tashroudian's actions. Plaintiff does not provide any admissible evidence to this
28 effect. All he provides is his own testimony which is hearsay. The truth is that Mr. Childs is

1 willing to appear at his deposition in this case and he is willing to fly to California and incur the
2 expenses to do so – his lawyer told Mr. Tashroudian about his willingness to be deposed in June
3 2023. [See Tashroudian Decl., ¶ 31, Exh. C.]

4 Now let’s talk about TriForce. TriForce has dozens of videos with millions of view relating
5 to Billy Mitchell on his YouTube channel. It is hard to believe that he is unwilling to testify
6 because Mr. Tashroudian shared three depositions with the lawyers for someone Plaintiff is suing
7 for defamation. Moreover, as recently as July 31, 2023, TriForce asked on his Twitter page “Why
8 would it be hard to depose me?” [See Tashroudian Decl., ¶ 31, Exh. D.] He would love the
9 attention because this is what he does for a living – he makes videos about Billy Mitchell. His
10 deposition would be the ultimate Billy Mitchell video.

11 **III. CONCLUSION**

12 Defendant respectfully requests that this Court deny Plaintiff’s motion to disqualify based
13 on the foregoing.

14 Respectfully submitted,

15 Dated: November 3, 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 3, 2023, I served the herein described document(s):

OPPOSITION TO MOTION TO DISQUALIFY OF TWIN GALAXIES, LLC

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.

Anthony J. Ellrod *tony.ellrod@manningkass.com*
MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
801 S. Figueroa St, 15th Floor
Los Angeles, California 90017-3012

Attorneys for Plaintiff
WILLIAM JAMES MITCHELL

Robert W. Cohen *rwc@robertwcohenlaw.com*
Law Offices of Robert W. Cohen, APC
1901 Avenue of the Stars, Suite 1910
Los Angeles, CA 90067

Attorneys for Cross-Defendant
WALTER DAY

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 3, 2023 at Woodland Hills, California.



Mona Tashroudian