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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 A. Lopez, Deputy Clerk

Attorneys for Plaintiff, WILLIAM JAMES MITCHELL

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

WILLIAM JAMES MITCHELL,
 Plaintiff,
 v.
 TWIN GALAXIES, LLC,
 Defendants.

Case No. 19STCV12592

[Hon. Hon. Wendy Chang, Department 36]

**PLAINTIFF'S OPPOSITION TO
 DEFENDANT'S MOTION FOR ISSUE
 SANCTIONS**

Date: November 28, 2023
 Time: 8:30 a.m.
 Dept.: 36

Reservation ID: 858911525963

Action Filed: 4/11/2019

TO THE HONORABLE COURT, THE PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff WILLIAM JAMES MITCHELL ("Plaintiff") hereby submits this Opposition to
 Defendant TWIN GALAXIES, LLC's ("Defendant") Motion For Issue Sanctions.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff was deposed on January 9, 2023. Prior to this deposition on January 5, 2023, Plaintiff produced records from the two operating accounts for Rickey's Hot Sauce as Plaintiff had a claim for damages to the business at that time. Declaration of Kristina Ross ("Ross Decl.") ¶ 3.

During the deposition, Plaintiff was questioned as to whether "he" received any portion of the funds from Walter Day's sale of Twin Galaxies. Plaintiff testified that he directed Walter Day to give about \$6,000.00 to Joel West instead of to Plaintiff himself. Ross Decl. ¶ 4, Ex. A at 308:18-309:11.

In Special Interrogatory, Set Three, Defendant defined "YOU" as Plaintiff, his employees, agents, attorneys. The Special Interrogatories in question therefore asked if Plaintiff himself received payments from the sale of Twin Galaxies or from Walter Day. These interrogatories did not ask if Rickey's Hot Sauce received payments from Walter Day or Twin Galaxies. Ross Decl. ¶ 5, Ex. B.

Walter Day testified that \$33,000.00 of the money from his sale of Twin Galaxies was deposited from Twin Galaxies' account directly into a Rickey's Hot Sauce account and not to Plaintiff himself. Ross Decl. ¶ 6.

As to Defendant's Demand for Inspection, Set One, Request No. 59, Defendant's entire argument in the separate statement states that Defendant needs production of Rickey's Hot Sauce bank records in order to assess Plaintiff's claim for economic damages related to revenue of Rickey's Hot Sauce. The entire meet and confer process and arguments were related to the economic damages and not an issue of payments from Walter Day or Twin Galaxies. As such, pursuant to the Court order, Plaintiff produced the bank statements from 2017-2019 related to Rickey's two operating accounts. Ross Decl. ¶ 7, Ex. C.

This instant motion is a discovery motion and subject to the rules for all discovery motions pursuant to the Civil Discovery Act as well as the local court rules, which require an Informal Discovery Conference after a meet and confer attempt. Defendant failed to meet and confer and failed to provide a declaration confirming the same as required by *California Code of Civil*

1 *Procedure* § 2016.040 in support of this motion and as such the motion is procedurally deficient.
2 Ross Decl. ¶ 8.

3 However, Plaintiff is willing to produce the bank statements from the two remaining
4 Rickey's accounts so long as Plaintiff's account numbers and other personally identifiable
5 information are redacted. Defendant and Defendant's counsel have shown that they do not abide by
6 items being marked as confidential pursuant to the protective order in this matter. The identifiable
7 information is personally sensitive to Plaintiff and his business and need to be protected due to
8 privacy concerns. Ross Decl. ¶ 9.

9 Additionally, Plaintiff has filed a motion to seal Defendant's Exhibits F and G, which
10 Defendant lodged conditionally under seal; however, they should have been lodged as Confidential
11 under seal and without further sealing required pursuant to the protective order. Therefore, Plaintiff
12 has filed a Motion to Seal the records, which is not set to be heard until February 29, 2024, as it was
13 the first available date. Ross Decl. ¶ 10.

14 **II. DEFENDANT FAILED TO MEET AND CONFER PER CODE AND THE**
15 **MOTION IS THEREFORE PROCEDURALLY DEFECTIVE**

16 *Code of Civil Procedure* § 2016.040 states: "A meet and confer declaration in support of a
17 motion shall state facts showing a reasonable and good faith attempt at an informal resolution of
18 *each issue presented* by the motion. *Cal Code Civ. Proc.* § 2016.040 (emphasis added).

19 The basis for this requirement is so that the parties engage in a good faith meet and confer
20 to narrow the issues and attempt resolution prior to wasting judicial resources on a motion to compel.
21 The Code requires the parties to discuss each item of discovery, the merit or lack thereof of any
22 response or objection, and attempt resolution item by item.

23 "[T]he parties must present to each other the merits of their respective positions with the
24 *same candor, specificity, and support during informal negotiations as during the briefing of*
25 *discovery motions*. Only after all the cards have been laid on the table, and a party has meaningfully
26 assessed the relative strengths and weaknesses of its position in light of all available information,
27 can there be a 'sincere effort' to resolve the matter." *Townsend v. Superior Court* (1998) 61 Cal.
28 App. 4th 1431, 1435 (emphasis added).

1 A motion for issue sanction based on a failure to produce documents is a discovery motion,
2 which is shown as Defendant cites the Discovery Act throughout its' motion. As such, Defendant
3 was required to meet and confer prior to the filing of this motion and file a declaration showing that
4 there was a good faith attempt at an informal resolution. Defendant did not meet and confer prior to
5 filing this motion and does not declare that any good faith attempt at an informal resolution was
6 made.

7 Moreover, this Court's local court rules are clear that an Informal Discovery Conference
8 must be held after the parties have met and conferred and prior to the filing of any discovery motions.

9 As such, Defendant's motion is procedurally deficient and should be denied on those
10 grounds.

11 **III. PLAINTIFF WILL PRODUCE REDACTED BANK STATEMENTS**

12 At stake here is Plaintiff's overriding privacy interest. Article I, section 1 of the California
13 includes, among various inalienable rights of "all people," the right to privacy. *H&M Associates v.*
14 *City of El Centro* (1980) 109 Cal.App.3d 399, 411. Legally protected privacy interests are: (1)
15 interests in precluding the dissemination or misuse of sensitive and confidential information; and
16 (2) interests in making personal decisions or conducting personal activities without observation,
17 intrusion or interference. *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35.

18 Plaintiff's business bank statements must be redacted of the account numbers and other
19 personally identifiable or private information. These are business bank statements that are no longer
20 directly related to damages in this matter and therefore should not be provided to Defendant without
21 redactions at the very least to sensitive and private information like the account numbers. There are
22 four separate Rickey's accounts and we can label them one through four for Defendant to
23 differentiate if necessary. There is no legal reason for Defendant to be provided with the account
24 numbers.

25 Further, Defendant and Defendant's counsel have demonstrated that they are willing to
26 violate the protective order in this matter, such that providing unreacted bank statements even
27 marked as Highly Confidential is not feasible to protect Plaintiff's privacy interest.

28 ///

1 **IV. THE COURT SHOULD NOT MAKE AN ORDER ESTABLISHING FACTS THAT**
2 **SHOULD BE LEFT TO THE TRIER OF FACT**

3 Defendant's motion fails to state applicable law for the Court to make an order establishing
4 an alleged fact in this matter. Moreover, the facts are clear and shown in the documents already
5 produced to Defendant that Plaintiff did not personally receive funds from the sale of Twin Galaxies.
6 Further, the documents will speak for themselves to the trier of fact at trial.

7 **V. PLAINTIFF SHOULD NOT BE REQUIRED TO SIT FOR A SECOND SESSION**
8 **OF DEPOSITION**

9 Plaintiff already sat for deposition on January 9, 2023 from 10:00 a.m. until 6:32 p.m. in
10 person, and was approximately seven hours, excluding breaks. During that time, Defendant's
11 counsel questioned Plaintiff on the money he personally received from the sale of Twin Galaxies as
12 well as Plaintiff's claim for economic damages to Rickey's Hot Sauce, which has since been
13 withdrawn. As such, Defendant already had ample time to question Plaintiff on the issues and a
14 second session of deposition is unnecessary as the issue can be ascertained by a special
15 interrogatory.

16 Additionally, this is the second motion Defendant has brought in an attempt to depose
17 Plaintiff for a second time since he was already deposed for the seven hours as permitted by Code.

18 Should the Court be inclined to order Plaintiff to sit for a second session of deposition, it
19 should be allowed to be conducted remotely and narrowly limited to only the issue of the \$33,000.00
20 payment to Rickey's Hot Sauce.

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VI. CONCLUSION

For the foregoing reasons, Defendant’s motion should be denied in whole, but if the Court is inclined to make grant any of the orders requested, Plaintiff should be able to redact any and all personally identifiable information and privacy information from the bank statements and any second session of deposition should be limited and done so remotely.

DATED: November 13, 2023

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

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

DECLARATION OF KRISTINA ROSS

I, KRISTINA ROSS, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California, and am an associate of the law firm of Manning & Kass, Ellrod, Ramirez, Trester, LLP, attorneys of record for Plaintiff WILLIAM JAMES MITCHELL ("Plaintiff").

2. If called upon to testify as to the matters herein related, I could and would competently do so based upon my review of the litigation file herein and my personal participation as one of the attorneys of record herein.

3. Plaintiff was deposed on January 9, 2023. Prior to this deposition on January 5, 2023, Plaintiff produced records from the two operating accounts for Rickey's Hot Sauce as Plaintiff had a claim for damages to the business at that time.

4. During the deposition, Plaintiff was questioned as to whether "he" received any portion of the funds from Walter Day's sale of Twin Galaxies. Plaintiff testified that he directed Walter Day to give about \$6,000.00 to Joel West instead of to Plaintiff himself. A true and correct copy of pertinent portion of Plaintiff's deposition transcript is attached hereto as Exhibit "A".

5. In Special Interrogatory, Set Three, Defendant defined "YOU" as Plaintiff, his employees, agents, attorneys. The Special Interrogatories in question therefore asked if Plaintiff himself received payments from the sale of Twin Galaxies or from Walter Day. These interrogatories did not ask if Rickey's Hot Sauce received payments from Walter Day or Twin Galaxies. A true and correct copy of Defendant's Special Interrogatories, Set Three, to Plaintiff is attached hereto as Exhibit "B".

6. Walter Day testified that \$33,000.00 of the money from his sale of Twin Galaxies was deposited from Twin Galaxies' account directly into a Rickey's Hot Sauce account and not to Plaintiff himself.

7. As to Defendant's Demand for Inspection, Set One, Request No. 59, Defendant's entire argument in the separate statement states that Defendant needs production of Rickey's Hot Sauce bank records in order to assess Plaintiff's claim for economic damages related to revenue of Rickey's Hot Sauce. The entire meet and confer process and arguments were related to the economic

1 damages and not an issue of payments from Walter Day or Twin Galaxies. As such, pursuant to the
2 Court order, Plaintiff produced the bank statements from 2017-2019 related to Rickey's two
3 operating accounts. A true and correct copy of Defendant's Separate Statement in Support of Motion
4 to Compel Further Responses to Demand for Inspection is attached hereto as Exhibit "C".

5 8. This instant motion is a discovery motion and subject to the rules for all discovery
6 motions pursuant to the Civil Discovery Act as well as the local court rules, which require an
7 Informal Discovery Conference after a meet and confer attempt. Defendant failed to meet and confer
8 and failed to provide a declaration confirming the same as required by *California Code of Civil*
9 *Procedure* § 2016.040 in support of this motion and as such the motion is procedurally deficient.

10 9. However, Plaintiff is willing to produce the bank statements from the two remaining
11 Rickey's accounts so long as Plaintiff's account numbers and other personally identifiable
12 information are redacted. Defendant and Defendant's counsel have shown that they do not abide by
13 items being marked as confidential pursuant to the protective order in this matter. The identifiable
14 information is personally sensitive to Plaintiff and his business and need to be protected due to
15 privacy concerns.

16 10. Additionally, Plaintiff has filed a motion to seal Defendant's Exhibits F and G, which
17 Defendant lodged conditionally under seal; however, they should have been lodged as Confidential
18 under seal and without further sealing required pursuant to the protective order. Therefore, Plaintiff
19 has filed a Motion to Seal the records, which is not set to be heard until February 29, 2024, as it was
20 the first available date.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on this 13th of November, 2023, at Los Angeles, California.

24
25 
26 Kristina Ross
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EXHIBIT A

1 kind of removed from the situation that he had, so I
2 was able to say, Hey Jordan, there's somebody here
3 interested, and Jace Hall was happy to have me go there
4 and open the door for communications with Jordan. Once
5 those communications opened, I did nothing.

6 Q. All right. Did you provide Jace Hall with a
7 draft agreement for the purchase of --

8 A. Not a chance, no.

9 Q. Are you sure of that?

10 A. I'm very sure of that.

11 Q. Did you provide him with a copy of the
12 original Pete Bubea (phonetic) contract?

13 A. No, Walter had that.

14 Q. Did you provide Jace Hall a copy of that?

15 A. I don't think so. I can't see why --

16 MR. ELLROD: Yes or no.

17 BY MR. TASHROUDIAN:

18 Q. Were you -- did you receive -- did you receive
19 any portion of the funds that HD Films paid for Twin
20 Galaxies?

21 A. Actually, no.

22 Q. Not at all?

23 A. Not at all.

24 Q. Did you ask Walter why not?

25 A. No, because he offered them.

1 Q. And you refused?

2 A. No. I gave the money, a small amount of
3 money, and I gave it to Joel West and he bought a bunch
4 of material that we began using at shows.

5 Q. How much money was it?

6 A. About 6,000.

7 Q. And it came to you?

8 A. It was offered to me, yes.

9 Q. And then you gave it to -- to Joel West?

10 A. Joel opened up a Twin Galaxies account with
11 it.

12 Q. All right. You a shareholder of Twin
13 Galaxies, LLC?

14 A. Not at all.

15 Q. Never?

16 A. Nope. He knows that.

17 MR. ELLROD: Just answer the questions yes or
18 no if it's a yes or no question, okay?

19 BY MR. TASHROUDIAN:

20 Q. Were you ever involved in the operations of
21 Twin Galaxies, LLC?

22 A. No.

23 Q. Who's Wayne Shirk?

24 A. Wayne Shirk was the chief engineer at
25 Nintendo. He worked there from 1982, I think, until

EXHIBIT B

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

Attorneys for Defendant and
Cross-Complainant Twin Galaxies, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

WILLIAM JAMES MITCHELL,

Plaintiff,

v.

TWIN GALAXIES, LLC; and Does 1-10,

Defendants.

TWIN GALAXIES, LLC,

Cross-Complainant,

v.

WILLIAM JAMES MITCHELL; WALTER
DAY; and Roes 1-25,

Cross-Defendants.

Case No. 19STCV12592

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

**TWIN GALAXIES, LLC'S SPECIAL
INTERROGATORIES, SET THREE TO
WILLIAM JAMES MITCHELL**

Action Filed: 4/11/2019

PROPOUNDING PARTY: TWIN GALAXIES, LLC

RESPONDING PARTY: WILLIAM JAMES MITCHELL

SET NUMBER: THREE

1 Twin Galaxies, LLC hereby propounds these Special Interrogatories, Set three on William
2 James Mitchell.

3 **SPECIAL INTERROGATORIES**

4 **SPECIAL INTERROGATORY NO. 145**

5 Have YOU (“YOU” or “PLAINTIFF” or “YOUR” shall mean Plaintiff WILLIAM
6 JAMES MITCHELL, his employees and agents, including attorneys, or other PERSONS acting on
7 their behalf) asked anyone from the International Video Game Hall of Fame in Ottumwa, Iowa to
8 return to YOU any of the awards that YOU previously donated so that YOU can produce the
9 awards in this litigation?

10 **SPECIAL INTERROGATORY NO. 146**

11 Have YOU asked anyone from the International Video Game Hall of Fame in Ottumwa,
12 Iowa to send YOU pictures any of the awards that YOU previously donated so that YOU can
13 produce the awards in this litigation?

14 **SPECIAL INTERROGATORY NO. 147**

15 State the date of each instance where YOU, or anyone acting on YOUR behalf, asked
16 anyone from the International Video Game Hall of Fame in Ottumwa, Iowa to return YOU any
17 of the awards that YOU previously donated.

18 **SPECIAL INTERROGATORY NO. 148**

19 State the date of each instance where YOU, or anyone acting on YOUR behalf, asked
20 anyone from the International Video Game Hall of Fame in Ottumwa, Iowa to send YOU
21 pictures any of the awards that YOU previously donated.

22 **SPECIAL INTERROGATORY NO. 149**

23 State the manner in which YOU, or anyone acting on YOUR behalf, asked anyone from
24 the International Video Game Hall of Fame in Ottumwa, Iowa to return to YOU any of the
25 awards that YOU previously donated.

26 **SPECIAL INTERROGATORY NO. 150**

27 State the manner in which YOU, or anyone acting on YOUR behalf, asked anyone from
28 the International Video Game Hall of Fame in Ottumwa, Iowa to send YOU pictures any of the

1 awards that YOU previously donated.

2 **SPECIAL INTERROGATORY NO. 151**

3 IDENTIFY ("IDENTIFY" with respect to a natural person shall mean to provide: His or
4 her full name, last known business and residential address (including street name and number,
5 city or town, and state or country), and telephone number, last known employer or place of
6 employment, business address and telephone number of last known employer, and job title)
7 every person who to YOUR knowledge has seen the NAMCO Video Game Player of the
8 Century Award YOU allegedly received from NAMCO.

9 **SPECIAL INTERROGATORY NO. 152**

10 *IDENTIFY* ("IDENTIFY" with respect to a document shall mean to provide: Type of
11 document, (e.g. letter, memo, etc.) the title or name by which it is referred, the date of the
12 document, the identity of its author(s) or the person(s) creating the document, the identity of each
13 person to whom the document was addressed, sent and/or copied, the present location of the
14 original and all copies thereof, the name of the custodian of the document, and a general
15 description of the subject matter) *all DOCUMENTS* ("DOCUMENT" or "DOCUMENTS" shall
16 mean all documents, electronically stored information, and tangible things, including without
17 limitation all writings (as defined in Section 250 of the California Evidence Code) and all other
18 means of recording information, whether written, transcribed, taped, filmed, microfilmed, or in
19 any other way produced, reproduced, or recorded, and including but not limited to: originals,
20 drafts, computer-sorted and computer-retrievable information, copies and duplicates that are
21 marked with any notation or annotation or otherwise differ in any way from the original,
22 correspondence, memoranda, reports, notes, minutes, contracts, agreements, books, records,
23 checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer printouts,
24 computer disks, card files, lists of persons attending meetings or conferences, sketches, diagrams,
25 calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn
26 statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of
27 organizations, charts, graphs, indices, advertisements and promotional materials, audited and
28 unaudited financial statements, trade letters, trade publications, newspapers and newsletters,

1 photographs, emails, electronic or mechanical records, facsimiles, telegrams and telecopies, and
2 audiotapes. Each draft, annotated, or otherwise non-identical copy is a separate DOCUMENT
3 within the meaning of this term. DOCUMENTS shall also include any removable sticky notes,
4 flags, or other attachments affixed to any of the foregoing, as well as the files, folder tabs, and
5 labels appended to or containing any documents. DOCUMENTS expressly include all
6 ELECTRONIC RECORDS. "ELECTRONIC RECORDS" shall mean the original (or identical
7 duplicate when the original is not available) and any non-identical copies (whether non-identical
8 because of notes made on copies or attached comments, annotations, marks, transmission
9 notations, or highlighting of any kind) of writings of every kind and description inscribed by
10 mechanical, facsimile, electronic, magnetic, digital, or other means. ELECTRONIC RECORDS
11 includes, by way of example and not by limitation, computer programs (whether private,
12 commercial, or work-in-progress), programming notes and instructions, activity listings of email
13 transmittals and receipts, output resulting from the use of any software program (including word
14 processing documents, spreadsheets, database files, charts, graphs and outlines), electronic mail,
15 and any and all miscellaneous files and file fragments, regardless of the media on which they
16 reside and regardless of whether said ELECTRONIC RECORDS exists in an active file, deleted
17 file, or file fragment. ELECTRONIC RECORDS includes without limitation any and all items
18 stored on computer memories, hard disks, diskettes and cartridges, network drives, network
19 memory storage, archived tapes and cartridges, backup tapes, floppy disks, CD-ROMs, removable
20 media, magnetic tapes of all types, microfiche, and any other media used for digital data storage
21 or transmittal. ELECTRONIC RECORDS also includes the file, folder tabs, and containers and
22 labels appended to or associated with each original and non-identical copy), *including but not*
23 *limited to all recordings thereof, relating to YOUR 1,047,200 Donkey Kong score performances.*

24 **SPECIAL INTERROGATORY NO. 153**

25 IDENTIFY all DOCUMENTS relating to YOUR 1,050,200 Donkey Kong score
26 performances.

27 **SPECIAL INTERROGATORY NO. 154**

28 IDENTIFY all DOCUMENTS relating to YOUR 1,062,800 Donkey Kong score

performances.

SPECIAL INTERROGATORY NO. 155

IDENTIFY all DOCUMENTS, including but not limited to all videos, YOU received in settlement of your defamation claim against Benjamin Smith.

SPECIAL INTERROGATORY NO. 156

IDENTIFY all DOCUMENTS related to any payment by Walter Day to YOU from 2014 to the present.

SPECIAL INTERROGATORY NO. 157

IDENTIFY all DOCUMENTS related to any payment by Walter Day to YOU from 2014 to the present.

SPECIAL INTERROGATORY NO. 158

IDENTIFY all DOCUMENTS related to any payment by Twin Galaxies, Inc. to YOU from 2014 to the present.

SPECIAL INTERROGATORY NO. 159

IDENTIFY all DOCUMENTS related to any payment by Twin Galaxies, Inc. to YOU from 1999 to 2014.

SPECIAL INTERROGATORY NO. 160

State the amount of every payment made by Walter Day to YOU.

Respectfully submitted,

Dated: April 23, 2023

TASHROUDIAN LAW GROUP, APC

By: /s/ David Tashroudian, Esq.
David Tashroudian, Esq.
Mona Tashroudian, Esq.
Attorneys for Defendant and Cross-
Complainant Twin Galaxies, LLC

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1. I am presently the attorney for Twin Galaxies, LLC a party to this action or proceeding.

3. This set of interrogatories will cause the total number of specially prepared interrogatories propounded to the party to whom they are directed to exceed the number of specially prepared interrogatories permitted by Section 2030.030 of the Code of Civil Procedure.

5. This set of interrogatories contains a total of 16 specially prepared interrogatories.

7. I have personally examined each of the questions in this set of interrogatories.

9. None of the questions in this set of interrogatories is being propounded for any other purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or needless increase in the cost of litigation.


David A. Tashroudian

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., No. 300, Studio City, CA 91604. On April 23, 2023, I served the herein described document(s):

**TWIN GALAXIES, LLC'S SPECIAL INTERROGATORIES, SET THREE TO
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 ndv@manningllp.com and the email addresses below pursuant to an agreement of the parties.

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

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

Anthony J. Ellrod aje@manningllp.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 rpc@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 April 23, 2023 at Los Angeles, California.



David A. Tashroudian

EXHIBIT C

David A. Tashroudian [SBN 266718]
Mona Tashroudian [SBN 272387]
TASHROUDIAN LAW GROUP, APC
12400 Ventura Blvd., No. 300
Studio City, California 91604
Telephone: (818) 561-7381
Facsimile: (818) 561-7381
Email: david@tashlawgroup.com
mona@tashlawgroup.com

Attorneys for Twin Galaxies, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

WILLIAM JAMES MITCHELL,

Plaintiff,

v.

TWIN GALAXIES, LLC; and Does 1-10,

Defendants.

TWIN GALAXIES, LLC,

Cross-Complainant,

v.

WILLIAM JAMES MITCHELL; WALTER
DAY; and Roes 1-25,

Cross-Defendants.

Case No. 19STCV12592

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

**SEPARATE STATEMENT IN SUPPORT
OF MOTION TO COMPEL FURTHER
RESPONSES TO INSPECTION DEMANDS**

[Filed concurrently with Motion to Compel]

Hearing

Date: December 6, 2022

Time: 8:30 a.m.

Place: Department 36

Reservation ID: 409284251619

Action Filed: 4/11/2019

1 **SEPARATE STATEMENT**

2 Defendant and cross-complaint Twin Galaxies, LLC (“Twin Galaxies”) hereby submits
3 this Separate Statement pursuant to Rule 3.1345 of the California Rules of Court in connection
4 with its Motion to Compel a further response to Demand No. 59 of its Demand for Inspection, Set
5 One.

6 **I. Text of Inspection Demand at Issue**

7 Demand for Inspection No. 59: Produce for inspection all non-privileged bank account
8 statements for Rickey's Hot Sauce for every year from January 1, 2015 through the present.

9 **II. Text of Response to Inspection Demand at Issue**

10 Response to Demand for Inspection No. 59: Responding Party objects to this Request on
11 the grounds that it is overbroad, burdensome, oppressive and harassing. Responding Party also
12 objects on the grounds that the Request is overbroad as to time. Responding Party objects to this
13 Request on the grounds that it fails to identify the requested documents with sufficient
14 particularity. Responding Party further objects to this Request to the extent that it seeks
15 documents already in the possession of Responding Party and/or equally, if not more available to
16 them. The Request improperly seeks information protected by Responding Party’s constitutional
17 right of privacy. Cal. Const. Art. I, § 1; *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.
18 3d 652, 656.

19 **III. Statement of Reasons Compelling Further Response**

20 A. Demand for Inspection No. 59 is neither overbroad, burdensome, oppressive, nor
21 harassing.

22 Plaintiff has identified Rickey’s World Famous Hot Sauce Sales by Customer Summary
23 Report for the years 2015 to 2019 as documents that support his claims for economic damages in
24 response to Special Interrogatory No 27. In response to Special Interrogatory No. 25, Plaintiff
25 also claims that his economic damages are calculated by taking the difference between the gross
26 revenue for Rickey’s World Famous Hot Sauce in 2017 and that in 2018 and 2019

27 Twin Galaxies has, through the meet and confer process, and at the hearing of the IDC in
28 this matter, agreed to limit the scope of the bank records requested in Demand for Inspection to

1 2017 through 2019 to comport with Plaintiff's response to Special Interrogatory No. 27. With this
2 limitation, the request is not overboard as to time since Plaintiff put this time frame for the business
3 at issue.

4 Moreover, production of these documents are appropriate because Plaintiff has put the
5 revenue and profits of Rickey's World Famous Hot Sauce at issue. Plaintiff seeks damage based
6 on the financial impact on Rickey's World Famous Hot Sauce from the defamatory statement and
7 he identifies 2017, 2018, and 2019 as the relevant years to determine his damages. Plaintiff must
8 produce the bank statements for Rickey's World Famous Hot Sauce for 2017, 2018, and 2019 to
9 determine the net profit from the years that Plaintiff claims damages for *because lost profit, and*
10 *not lost gross revenue is the appropriate measure of damages.* (See Gerwin v. Southeastern Cal.
11 Assn. of Seventh Day Adventists (1971) 14 Cal.App.3d 209, 222-223 ("To allow plaintiff to
12 recover a judgment based in part on his gross profits would result in his unjust enrichment. If he
13 is entitled to recover at all, because of his loss of profits, such recovery must be confined to his
14 net profits. Net profits are the gains made from sales after deducting the value of the labor,
15 materials, rents, and all expenses, together with the interest of the capital employed"); *see also*
16 Parlour Enterprises, Inc. v. Kirin Group, Inc. (2007) 152 Cal. App.4th 281, 287 ("Damage awards
17 in injury to business cases are based on net profits. Net profits are the gains made from sales after
18 deducting the value of the labor, materials, rents, and all expenses, together with the interest of the
19 capital employed. A plaintiff must show loss of net pecuniary gain, not just loss of gross
20 revenue.")).

21 Twin Galaxies is entitled to Rickey's World Famous Hot Sauce bank statements to recreate
22 Rickey's World Famous Hot Sauce's books for its forensic accounting expert to determine
23 whether the gross and net profit information underlying Plaintiff's damages claim is true. It is
24 Plaintiff's obligation to prove his damages and it is Twin Galaxies' right to defend against those
25 damages claims. The only way to definitively determine Rickey's World Famous Hot Sauce's
26 gross revenue and net profit for the claimed years – 2017, 2018, and 2019 – is to examine the
27 sources of revenue and expenses as they are recorded in the company's bank statements. The bank
28 statements are infallible in the respect that they are not subject to manipulation. From these

1 records, Twin Galaxies will be able to definitively determine if the Sales by Customer Summary
2 reports for 2017, 2018 and 2019 are in-fact reflective of what went into the bank (credits). These
3 statements will also show the debits that went out of the bank account during those years thereby
4 showing exactly what the costs are against revenue to determine net profits. As such, this request
5 is neither burdensome, oppressive, nor harassing.

6 B. Demand for Inspection No. 59 does not invade Plaintiff's privacy.

7 The burden is on “the party asserting a privacy interest to establish its extent and the
8 seriousness of the prospective invasion,” and then the court must “weigh the countervailing
9 interests the opposing party identifies.” (Williams v. Superior Court (2017) 3 Cal.5th 531, 557.)
10 The right of privacy contained in the California Constitution is limited to “people,” meaning
11 natural persons. (*See* Roberts v. Gulf Oil Corp. (1983) 147 Cal. App. 3d 770, 791, 796-797 (“[T]he
12 constitutional provision simply does not apply to corporations.”).) “Although corporations have
13 a lesser right to privacy than human beings and are not entitled to claim a right to privacy in terms
14 of a fundamental right, some right to privacy exists. Privacy rights accorded artificial entities are
15 not stagnant, but depend on the circumstances.” (*Id.* at p. 797.) “[T]he strength of the privacy right
16 being asserted by a nonhuman entity depends on the circumstances. Two critical factors are the
17 strength of the nexus between the artificial entity and human beings and the context in which the
18 controversy arises.” (*Id.*)

19 On balance, the discovery of Rickey's World Famous Hot Sauce records should be
20 compelled considering the circumstances of this case. As a threshold matter, as counsel for
21 Plaintiff admitted at the IDC hearing, Rickey's World Famous Hot Sauce is a corporation and to
22 the extent it enjoys a right to privacy, that right is limited and not protected by the California
23 Constitution.

24 Substantively, the bank records sought in Demand for Inspection No. 59 are directly
25 relevant to Plaintiff's damages claim in this matter. Plaintiff admits in his responses to Special
26 Interrogatories Nos. 25 & 27 that the customer by sales data and revenue data for Rickey's World
27 Famous Hot Sauce for 2017, 2018, and 2019 are documents and information that form the basis
28 for his economic damages claim.

1 In addition to relevance, the nexus between Rickey's World Famous Hot Sauce and
2 Plaintiff and the context in which the controversy arises are militate in favor of discovery.
3 Contextually, Plaintiff alleges in his discovery response that Rickey's World Famous Hot Sauce
4 is his primary business and that he was damaged by his business losing revenue as a result of Twin
5 Galaxies' defamatory statements. The discovery sought goes directly to Plaintiff's damages claim
6 as it relates to Rickey's World Famous Hot Sauce's revenue. Allowing Plaintiff to block this
7 discovery will prevent Twin Galaxies from achieving justice on an issue that Plaintiff sued on
8 directly. On balance, the discovery should be allowed to avoid such an injustice.

9 Moreover, whatever privacy interest Plaintiff may have in Rickey's World Famous Hot
10 Sauce's bank records may be protected by the protective order that this Court entered on October
11 26, 2022. Plaintiff can designate these documents as highly confidential and doing so will achieve
12 the dual goal of allowing for Plaintiff to enjoy privacy in the bank statement information for
13 Rickey's World Famous Hot Sauce while also allowing Twin Galaxies the opportunity to defend
14 against Plaintiff's damages claim thereby promoting justice for all.

15 **IV. Other Requests & Responses**

16 Special Interrogatory No. 25: State all facts that support your claim for economic damages.

17 Response to Special Interrogatory No. 25: Responding party calculates the amount of lost
18 income to his primary business, Rickey's World Famous Hot Sauce, by demonstrating the drop in
19 revenue and loss of customers immediately after the incident. Rickey's World Famous Hot Sauce
20 averaged \$800,216 in revenue from 2013 to 2017. In 2017, it generated \$796,068. As a result of
21 the Twin Galaxies statements, company revenue dropped to \$410,267 in 2018. Monetary damages
22 continued in 2019, resulting in \$364,435 more in damages. Responding party lost \$750,236 in
23 damages to Rickey's World Famous Sauces as a result of the incident. Responding party calculates
24 these numbers by subtracting the 2017 revenue from the 2018 and 2019 revenues, respectively.

25 ***

26 Special Interrogatory No. 27: IDENTIFY all DOCUMENTS that support your claim for
27 economic damages.

Response to Special Interrogatory No. 27: Rickey's Hot Sauce Sales by Customer

Summary Report for the years 2015 to 2019, created by Rickey's Hot Sauce. Responding Party has custody of these documents.

Responding Party's medical records dated from 2017 to 2022, created by Responding Party's health providers. Responding Party's health providers have custody of these documents.

Correspondences between Shawn Jones and videogame conventions and festivals that cancelled scheduled appearances of Responding Party or would no longer work with Responding Party. Mr. Jones has custody of these documents.

Respectfully submitted,

Dated: November 7, 2022

TASHROUDIAN LAW GROUP, APC

By: /s/ David Tashroudian, Esq.

David Tashroudian, Esq.

Mona Tashroudian, Esq.

Attorneys for Defendant and Cross-Complainant 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., No. 300, Studio City, CA 91604. On November 7, 2022, I served the herein described document(s):

NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO DEMAND FOR INSPECTION OF TWIN GALAXIES; DECLARATION FO DAVID A. TASHROUDIAN IN SUPPORT

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 aje@manningllp.com & rwc@robertwcohenlaw.com pursuant to an agreement of the parties.

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

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

Anthony J. Ellrod aje@manningllp.com
MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
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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 7, 2022 at Woodland Hills, California



Mona Tashroudian

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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.

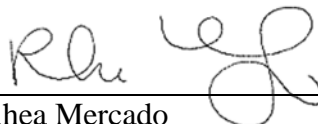
On November 13, 2023, I served true copies of the following document(s) described as **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ISSUE SANCTIONS** on the interested parties in this action as follows:

David Tashroudian, Esq. Mona Tashroudian, Esq. TASHROUDIAN LAW GROUP, APC 12400 Ventura Blvd. Suite 300 Studio City, CA 91604 Telephone: (818) 561-7381 Facsimile: (818) 561-7381 Email: david@tashlawgroup.com Email: mona@tashlawgroup.com Attorney for Defendants, TWIN GALAXIES	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: rwcohenlaw.com Attorneys for Cross-Defendant, WALTER DAY
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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 November 13, 2023, at Los Angeles, California.


Rhea Mercado