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County of Los Angeles  
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David W. Slayton,  
Executive Officer/Clerk of Court,  
By E. Mayorga, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

WILLIAM JAMES MITCHELL,

Plaintiff,

v.

TWIN GALAXIES, LLC; and Does 1-10,

Defendants.

AND RELATED CROSS-ACTION

Case No. 19STCV12592

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

**REPLY ISO MOTION FOR ISSUE  
SANCTIONS AGAINST PLAINTIFF  
WILLIAM JAMES MITCHELL**

**Hearing**

Date: November 28, 2023

Time: 8:30 a.m.

Place: Department 36

Reservation ID: 858911525963

Action Filed: 4/11/2019

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiff essentially concedes the fact that he withheld documents despite this Court's order requiring production of the same. The documents – bank statements evidencing payment by Walter Day of proceeds from the sale of the Twin Galaxies' assets to Defendant's predecessor in interest – are material to Defendant's cross-claims. Plaintiff's failure to produce these documents was willful and meant to hide the fact that he received the sales proceeds. His failure to produce the documents has consequences and those consequences are set out in the Code of Civil Procedure. The consequence that should be imposed is an issue sanction establishing the fact that Plaintiff received the sales proceeds.

Plaintiff's argument that Defendant was required to meet and confer in advance of this motion is misplaced. This is not a motion to compel a further response where a meet and confer is required. Instead, the instant motion is to force compliance with this Court's order compelling production and the provision providing for this motion does not contain a meet and confer requirement. This Court therefore should not impose one.

Plaintiff should be required to produce unredacted bank statements for all of Rickey's World Famous Hot Sauce ("Rickey's") bank accounts. It now appears there are four accounts, yet only the records of two of the accounts were produced. Defendant should be allowed to see all the accounts without redaction to determine where the money went. Plaintiff should be required to sit for deposition to explain why the money went to his business and where it went afterward. Interrogatories are insufficient because Plaintiff is willing to give evasive interrogatory responses on this issue as shown in the moving papers.

### **II. ARGUMENT**

#### **A. Defendant was not required to meet and confer in advance of this motion.**

Plaintiff cites to no authority requiring the moving party to meet and confer in advance of moving for issue sanctions because there is no such requirement. Defendant moves for its issue sanctions based on Plaintiff's failure to comply with this Court's December 2022 order compelling production of Rickey's bank statements. Defendant's motion is brought pursuant to California

1 Code of Civil Procedure section 2031.320(c), a provision relating specifically to the consequences  
2 for the failure to obey a court's prior order compelling a further response to an inspection demand.  
3 This provision of the Code of Civil Procedure does not have a meet and confer requirement.

4 In interpreting a statute, courts must presume the legislature intended everything in a  
5 statutory scheme, and should not read a statute to omit expressed language or to include omitted  
6 language. (Tyrone W. v. Superior Court (2007) 151 Cal.App.4th 839, 850.) When "a statute on  
7 a particular subject omits a particular provision, the inclusion of such a provision in another statute  
8 concerning a related matter indicates an intent that the provision is not applicable to the statute  
9 from which it was omitted." (Id., internal citations omitted.) Since the legislature omitted the meet  
10 and confer requirement from California Code of Civil Procedure section 2031.320(c), it is  
11 improper for this Court to impose such a requirement on the Defendant. Moreover, the fact that  
12 the legislature included a meet and confer requirement in California Code of Civil Procedure  
13 section 2031.310(b)(1) for motions to compel a further responses and omits the provision from the  
14 Code of Civil Procedure section 2031.320(c) indicates that the meet and confer requirement is not  
15 applicable to motions for sanctions for the failure to comply with the court's order compelling  
16 further production.

17 Accordingly, Defendant was not required to meet and confer in advance of filing this  
18 motion and its failure to do so is of no consequence.

19 B. Plaintiff's bank account statement should not be redacted & a deposition is required to  
20 trace the funds.

21 Plaintiff for the first time in its opposition admits that there are four (4) bank accounts for  
22 Rickey's. He has only produced statements for two (2) of the accounts in response to this Court's  
23 December 2022 order. Plaintiff should be required to produce all the bank account statements as  
24 ordered so Defendant can see where the money went.

25 Defendant anticipates that Plaintiff will claim he was telling the truth when he said he did  
26 not receive the Twin Galaxies sales proceeds funds because those funds were deposited into his  
27 business account and not his personal account. Defendant needs all of the bank statements to  
28 determine where the money went after it was deposited into Plaintiff's personal account. It very

1 well may be that those funds eventually found there way to Plaintiff's personal account.

2 A deposition is required for Defendant to trace the funds. Plaintiff has already shown that  
3 he is willing to give evasive interrogatory responses on this very issue (those responses were  
4 provided with the moving papers) so he should be required to sit for deposition to explain exactly  
5 why the money was deposited by Walter Day into Plaintiff's business account, and to explain  
6 where the money went after it was deposited. The only way to get straight answers is to depose  
7 Plaintiff – and even then there is no guarantee he will tell the truth.

8 **III. CONCLUSION**

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

13 Respectfully submitted,

14 Dated: November 17, 2023

TASHROUDIAN LAW GROUP, APC

16 By: /s/ David Tashroudian, Esq.  
17 David Tashroudian, Esq.  
18 Mona Tashroudian, Esq.  
19 Attorneys for Twin Galaxies, LLC  
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**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 17, 2023, I served the herein described document(s):

**REPLY ISO 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.

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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 17, 2023 at Woodland Hills, California.



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Mona Tashroudian