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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]

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

[Filed concurrently with Separate Statement]

Hearing

Date: December 6, 2022

Time: 8:30 a.m.

Place: Department 36

Reservation ID: 409284251619

Action Filed: 4/11/2019

1 **NOTICE OF MOTION**

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

4 **PLEASE TAKE NOTICE** that on December 6, 2022 at 8:30 a.m., in Department 36 of
5 the above entitled court located at 111 N. Hill Street, Los Angeles, California 90012, defendant
6 and cross-complaint Twin Galaxies, LLC (“Twin Galaxies”) will and hereby does move this Court
7 for an order compelling plaintiff and cross-defendant William James Mitchell (“Plaintiff”) to
8 produce documents and provide a further response to Demand No. 59 of Twin Galaxies’ Demand
9 for Inspection, Set One pursuant to California Code of Civil Procedure section 2031.310. Twin
10 Galaxies does not seek sanctions against Plaintiff or his counsel.

11 This motion is made on the ground that good cause exists for production of the documents
12 demanded and that Demand for Inspection No. 59 is relevant to the subject matter of the action; is
13 not overboard, burdensome, or harassing; and, on balance, does not invade Plaintiff’s right to
14 privacy. The motion will be based upon this Notice, the memorandum in support, the declaration
15 of David A. Tashroudian, the separate statement filed concurrently herewith, the arguments of
16 counsel, and the records and files in this action.

17 Respectfully submitted,

18 Dated: November 7, 2022

TASHROUDIAN LAW GROUP, APC

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20 By: /s/ David Tashroudian, Esq.

David Tashroudian, Esq.

21 Mona Tashroudian, Esq.

22 Attorneys for Defendant and Cross-
23 Complainant Twin Galaxies, LLC
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Twin Galaxies respectfully moves this Court for an order after IDC compelling Plaintiff to produce bank statements for the corporation Rickey's World Famous Hot Sauce for the years 2017, 2018, and 2019 pursuant to Twin Galaxies' Demand for Inspection (Set One) No. 59 as revised during the parties' meet and confer efforts. An order compelling production is appropriate under the circumstances because Plaintiff has put the financial condition of the corporation at issue in this case as he seeks damages for loss of the corporation's revenue.

Plaintiff has asserted a privacy objection to the bank statements sought by Twin Galaxies but the objection, on balance, is not meritorious and should be overruled. To the extent the Court finds that Plaintiff does enjoy a privacy interest in the requested information, the information should be produced regardless pursuant to the parties' stipulated protective order thereby allowing Twin Galaxies to achieve substantial justice.

II. FACTS

A. Twin Galaxies serves its first set of written discovery requests on June 8, 2022.

On June 8, 2022, Twin Galaxies served its first set of discovery requests on Plaintiff. [See Declaration of David A. Tashroudian ("Tashroudian Decl."), ¶ 2.] The first set of discovery requests consisted of: (1) Inspection Demands, Set One; (2) Special Interrogatories, Set One; (3) Form Interrogatories, Set One; (4) Form Interrogatories, Set Two; and, (5) Requests for Admission, Set One. [Id.]

On June 27, 2022, Plaintiff requested an extension of time to respond to the discovery to August 8, 2022 and Twin Galaxies agreed to the request. [Tashroudian Decl. ¶ 3.] On August 3, 2022, Plaintiff requested another extension of time to respond to August 24, 2022 and Twin Galaxies again agreed to the request. [Id.] Plaintiff ultimately responded to the first set of discovery requests on August 24, 2022. [Id.]

In his first set of special interrogatory responses, Plaintiff identified Rickey's World Famous Hot Sauce Sales by Customer Summary Reports for the years 2015 to 2019 as documents that support his claim for economic damages. [Tashroudian Decl. ¶ 4; *see also* Separate Statement,

1 4:26-5:8 (SROG No. 27).] Mitchell also in his special interrogatory responses stated that his
2 economic damages are calculated by the amount of lost income to his primary business, Rickey's
3 World Famous Hot Sauce as measured by gross revenue declines in 2018 and 2019 as compared
4 to the gross revenue in 2017. [Tashroudian Decl. ¶ 4; *see also* Separate Statement, 4:16-24
5 (SROG No. 25).]

6 Twin Galaxies sought production of Rickey's World Famous Hot Sauce bank statements
7 from 2015 through the present in Request No. 59 of its Demand for Inspection, Set One.
8 [Tashroudian Decl. ¶ 5; *see also* Separate Statement, 1:6-18 (RFPD No. 59).] Plaintiff objected
9 to the requests on the grounds that it is overboard, burdensome, oppressive, harassing, and that it
10 seeks information protected by his right to privacy. [Id.]

11 B. The Parties' meet and confer efforts.

12 On August 28, 2022, Twin Galaxies issued a written meet and confer letter to Plaintiff with
13 respect to Plaintiff's responses to the first set of discovery requests. [Tashroudian Decl., ¶ 6.] On
14 September 14, 2022, counsel for the parties met and conferred by telephone regarding the issues
15 raised in Twin Galaxies' meet and confer letter. [Id.] On September 22, 2022, Plaintiff provided
16 a written response to Twin Galaxies' August 28, 2022 meet and confer letter. [Id..]

17 On October 3, 2022, Twin Galaxies further met and conferred in writing with Mitchell
18 about his responses to first set of discovery requests. [Tashroudian Decl., ¶ 7.] Plaintiff responded
19 to this correspondence on October 17, 2022. [Id.] As of October 17, 2022, Plaintiff maintained
20 his refusal to produce documents in response to Demand for Inspection No. 59. [Id.]

21 The parties and the Court conducted an informal discovery conference on October 26, 2022
22 whereupon Twin Galaxies agreed to narrow its request for bank records to the years 2017, 2018,
23 and 2019 to correspond with Plaintiff's response to Special Interrogatory No. 25. [Tashroudian
24 Decl., ¶ 8.] At the conference, the Court directed Twin Galaxies to file a motion to compel Plaintiff
25 to produce documents in response to its Demand for Inspection No. 59, with such motion to be
26 heard on December 6, 2022. [Id.]

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1 **III. ARGUMENT**

2 A. Demand for Inspection No. 59 is neither overbroad, burdensome, oppressive, nor
3 harassing.

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

9 Twin Galaxies has, through the meet and confer process, and at the hearing of the IDC in
10 this matter, agreed to limit the scope of the bank records requested in Demand for Inspection No.
11 59 to 2017 through 2019 to comport with Plaintiff’s response to Special Interrogatory No. 27.
12 With this limitation, the request is not overboard as to time since Plaintiff put this time frame for
13 the business revenue at issue.

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

1 interest of the capital employed. A plaintiff must show loss of net pecuniary gain, not just loss of
2 gross revenue.”).

3 Twin Galaxies is entitled to Rickey’s World Famous Hot Sauce bank statements to recreate
4 Rickey’s World Famous Hot Sauce’s books for its forensic accounting expert to determine
5 whether the gross and net profit information underlying Plaintiff’s damages claim is true. It is
6 Plaintiff’s obligation to prove his damages and it is Twin Galaxies’ right to defend against those
7 damages claims. The only way to definitively determine Rickey’s World Famous Hot Sauce’s
8 gross revenue and net profit for the claimed years – 2017, 2018, and 2019 – is to examine the
9 sources of revenue and expenses as they are recorded in the company’s bank statements. The bank
10 statements are infallible in the respect that they are not subject to manipulation. From these
11 records, Twin Galaxies will be able to definitively determine if the Sales by Customer Summary
12 reports for 2017, 2018 and 2019 are in-fact reflective of what went into the bank (credits). These
13 statements will also show the debits that went out of the bank account during those years thereby
14 showing exactly what the costs are against revenue to determine net profits. As such, this request
15 is neither burdensome, oppressive, nor harassing.

16 B. Demand for Inspection No. 59 does not invade Plaintiff’s privacy.

17 The burden is on “the party asserting a privacy interest to establish its extent and the
18 seriousness of the prospective invasion,” and then the court must “weigh the countervailing
19 interests the opposing party identifies.” (Williams v. Superior Court (2017) 3 Cal.5th 531, 557.)

20 The right of privacy contained in the California Constitution is limited to “people,”
21 meaning natural persons. (See Roberts v. Gulf Oil Corp. (1983) 147 Cal. App. 3d 770, 791, 796-
22 797 (“[T]he constitutional provision simply does not apply to corporations.”).) “Although
23 corporations have a lesser right to privacy than human beings and are not entitled to claim a right
24 to privacy in terms of a fundamental right, some right to privacy exists. Privacy rights accorded
25 artificial entities are not stagnant, but depend on the circumstances.” (Id. at p. 797.) “[T]he strength
26 of the privacy right being asserted by a nonhuman entity depends on the circumstances. Two
27 critical factors are the strength of the nexus between the artificial entity and human beings and the
28 context in which the controversy arises.” (Id.)

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

6 Substantively, the bank records sought in Demand for Inspection No. 59 are directly
7 relevant to Plaintiff's damages claim in this matter. Plaintiff admits in his responses to Special
8 Interrogatories Nos. 25 & 27 that the customer by sales data and revenue data for Rickey's World
9 Famous Hot Sauce for 2017, 2018, and 2019 are documents and information that form the basis
10 for his economic damages claim. The bank records sought will substantiate or defeat Plaintiff's
11 damages claims.

12 In addition to relevance, the nexus between Rickey's World Famous Hot Sauce and
13 Plaintiff and the context in which the controversy arises militate in favor of discovery.
14 Contextually, Plaintiff alleges in his discovery responses that Rickey's World Famous Hot Sauce
15 is his primary business and that he was damaged by his business losing revenue as a result of Twin
16 Galaxies' defamatory statements. The discovery sought goes directly to Plaintiff's damages claim
17 as it relates to Rickey's World Famous Hot Sauce's revenue. Allowing Plaintiff to block this
18 discovery will prevent Twin Galaxies from achieving justice on an issue that Plaintiff sued on
19 directly. On balance, the discovery should be allowed to avoid such an injustice.

20 Moreover, whatever privacy interest Plaintiff may have in Rickey's World Famous Hot
21 Sauce's bank records may be protected by the protective order that this Court entered on October
22 26, 2022. Plaintiff can designate these documents as highly confidential and doing so will achieve
23 the dual goal of allowing for Plaintiff to enjoy privacy in the bank statement information for
24 Rickey's World Famous Hot Sauce while also allowing Twin Galaxies the opportunity to defend
25 against Plaintiff's damages claim thereby promoting justice for all.

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1 **IV. CONCLUSION**

2 Twin Galaxies respectfully submits that Plaintiff should be compelled to provide Twin
3 Galaxies with a further response to Demand for Inspection No. 59 and to produce the requested
4 bank statements forthwith.

5 Respectfully submitted,

6 Dated: November 7, 2022

TASHROUDIAN LAW GROUP, APC

7
8 By: /s/ David Tashroudian, Esq.

9 David Tashroudian, Esq.

10 Mona Tashroudian, Esq.

11 Attorneys for Defendant and Cross-
12 Complainant Twin Galaxies, LLC
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DECLARATION OF DAVID TASHROUDIAN

I, David Tashroudian, declare that:

1. I am an attorney duly licensed to practice law in this Court. I make this declaration in support of Twin Galaxies' motion to compel further responses to its demand for inspection no. 59. I make this declaration based on facts known to me personally to be true and if called as a witness to testify to these facts, I could and would do so.

2. On June 8, 2022, Twin Galaxies served its first set of discovery requests on Plaintiff. The first set of discovery requests consisted of: (1) Inspection Demands, Set One; (2) Special Interrogatories, Set One; (3) Form Interrogatories, Set One; (4) Form Interrogatories, Set Two; and, (5) Requests for Admission, Set One.

3. On June 27, 2022, Plaintiff requested an extension of time to respond to the discovery requests to August 8, 2022 and Twin Galaxies agreed to the request. On August 3, 2022, Plaintiff requested another extension of time to respond to August 24, 2022 and Twin Galaxies again agreed to the request. Plaintiff ultimately responded to the first set of discovery requested on August 24, 2022.

4. In his first set of special interrogatory responses, Plaintiff identified Rickey's World Famous Hot Sauce Sales by Customer Summary Reports for the years 2015 to 2019 as documents that support his claim for economic damages. Mitchell also in his special interrogatory responses stated that his economic damages are calculated by the amount of lost income to his primary business, Rickey's World Famous Hot Sauce as measured by gross revenue declines in 2018 and 2019 as compared to the gross revenue in 2017.

5. Twin Galaxies originally sought production of Rickey's World Famous Hot Sauce bank statements from 2015 through the present in Request No. 59 of its Demand for Inspection, Set One. Plaintiff objected to the requests on the grounds that it is overboard, burdensome, oppressive, harassing, and that it seeks information protected by his right to privacy.

6. On August 28, 2022, Twin Galaxies issued a written meet and confer letter to Plaintiff with respect to Plaintiff's responses to the first set of discovery requests. On September 14, 2022, counsel for the parties met and conferred by telephone regarding the issues raised in

1 Twin Galaxies' meet and confer letter. On September 22, 2022, Plaintiff provided a written
2 response to Twin Galaxies' August 28, 2022 meet and confer letter.

3 7. On October 3, 2022, Twin Galaxies further met and conferred in writing with
4 Mitchell about his responses to first set of discovery requests. Plaintiff responded to this
5 correspondence on October 17, 2022. As of October 17, 2022, Plaintiff maintained his refusal to
6 produce documents in response to Demand for Inspection No. 59.

7 8. The parties and the Court conducted an informal discovery conference on October
8 26, 2022 whereupon Twin Galaxies agreed to narrow its request for bank records to the years
9 2017, 2018, and 2019 to correspond with Plaintiff's response to Special Interrogatory No. 25. At
10 the conference, the Court directed Twin Galaxies to file a motion to compel Plaintiff to produce
11 documents in response to its Demand for Inspection No. 59, with such motion to be heard on
12 December 6, 2022.

13 I declare, under penalty of perjury of the laws of the State of California, that the foregoing
14 is true and correct. Executed this 7th day of November, 2022 at Los Angeles, California.

15 /s/ David Tashroudian, Esq.
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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., 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 OF 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
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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



Make a Reservation

WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC

Case Number: 19STCV12592 Case Type: Civil Unlimited Category: Defamation (slander/libel)

Date Filed: 2019-04-11 Location: Stanley Mosk Courthouse - Department 36

Reservation

Case Name: WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC	Case Number: 19STCV12592
Type: Motion to Compel Further Discovery Responses	Status: RESERVED
Filing Party: Twin Galaxies, LLC (Defendant)	Location: Stanley Mosk Courthouse - Department 36
Date/Time: 11/15/2022 8:30 AM	Number of Motions: 1
Reservation ID: 409284251619	Confirmation Code: CR-NTBIYPSW4PMBOFSXQ

Fees

Description	Fee	Qty	Amount
Motion to Compel Further Discovery Responses	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX7361	Authorization: 011922

Print Receipt

[Reserve Another Hearing](#)