

**FILED**  
Superior Court of California  
County of Los Angeles

**DEC 12 2023**

*Superior Court of California*  
*County of Los Angeles*  
*Department 36*

David W. Slayton, Executive Officer/Clerk of Court  
By: A. Rodriguez, Deputy

WILLIAM MITCHELL,  
Plaintiff,

v.

TWIN GALAXIES, LLC,  
and DOES 1-200  
Defendants.

Case No.: 19STCV12592

Hearing Date: 12/01/2023

**RULING RE:**

**1. PLAINTIFF'S MOTION TO SEAL**

**2. PLAINTIFF'S REQUEST FOR  
JUDICIAL NOTICE**

**3. OSC WHY: COURT SHOULD NOT  
EXTEND PROTECTIVE ORDER AS TO  
ALL DISCOVERY**

**4. DEFENDANT TWIN GALAXIES'  
MOTION FOR ISSUE SANCTIONS**

**5. INFORMAL DISCOVERY  
CONFERENCE**

**Date: December 1, 2023**

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12/13/2023

1 **I. FACTUAL SUMMARY**

2 Plaintiff William James Mitchell (Plaintiff or Mitchell) is a long-time celebrity in the  
3 video gaming community. Defendant Twin Galaxies (Twin Galaxies or Defendant) has  
4 maintained public lists of record score holders in vintage video games since the 1980s.  
5 Defendant recognized Plaintiff for long periods between 1999 and 2018 as the world record  
6 holder for high scores in the arcade game “Donkey Kong.”

7 In February 2018, Defendant publicly declared its determination that Mitchell obtained  
8 his record scores by cheating. It removed Mitchell’s scores from its record lists and banned him  
9 from participating in its competitive leaderboards.

10 Plaintiff sued Defendant on April 11, 2019. He filed his operative first amended  
11 complaint (FAC) on March 12, 2020. His operative FAC alleges causes of action for (1)  
12 defamation and (2) false light.

13 On December 1, 2023, the Court informally conferred with the parties regarding their  
14 ongoing discovery disputes, and the Court heard the following matters: (1) Plaintiff’s motion to  
15 seal lodged exhibits; (2) an order to show cause why the parties’ stipulated protective order  
16 should not be extended to all materials produced in discovery; (3) Defendant’s motion for the  
17 Court to impose issue sanctions against Plaintiff based on alleged discovery abuses; and (4)  
18 Plaintiff’s motion to disqualify Defendant’s counsel based on alleged discovery abuses and  
19 professional misconduct.

20 A separate written ruling of this same date discusses Plaintiff’s motion to disqualify  
21 Defendant’s counsel and related issues.

22 The instant ruling addresses (1) Plaintiff’s motion to seal lodged exhibits, (2) Plaintiff’s  
23 request for judicial notice filed November 27, 2023, (3) an order to show cause why the parties’  
24 stipulated protective order should not be extended to all materials produced in discovery, and (4)  
25 Defendant’s motion for issue sanctions. The Court also formalizes its rulings from the parties’  
26 informal discovery conference, according to the parties’ in-court stipulation on December 1,  
27 2023.

1 **II. PLAINTIFF'S MOTION TO SEAL EXHIBITS**

2 Plaintiff has filed an unopposed motion to seal Exhibits F and G accompanying  
3 Defendant's motion for issue sanctions. Plaintiff's counsel attests that Defendant's counsel  
4 stipulated to sealing the exhibits, and that their sealing comports with the parties' stipulated  
5 protective order and Rule of Court 2.551. (11-13-2-23 Ross Decl., ¶¶ 7-10 and 11 and Ex. A.)

6 The Court GRANTS Plaintiff's motion to seal Exhibits F and G, conditionally lodged in  
7 support of Defendant's Motion for Issue Sanctions.

8 **III. REQUEST FOR JUDICIAL NOTICE**

9 On November 27, 2023, Plaintiff filed a request for judicial notice of the proposed fact  
10 that "when a person has Facebook messages with another Facebook user, said message [*sic*] are  
11 not automatically deleted upon the user unfriending the person on Facebook." (P.RJN, 1:26-28.)

12 Plaintiff cites Evidence Code section 452 (h) in support of his request, characterizing his  
13 proposed fact as one "that [is] not reasonably subject to dispute and [is] capable of immediate  
14 and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid.  
15 Code, § 452(h).)

16 The Court disagrees that Plaintiff's proposed fact is capable of immediate and accurate  
17 determination and that it can be determined by sources of reasonably indisputable accuracy.  
18 Plaintiff has also not "[f]urnished the court with sufficient information to enable it to take  
19 judicial notice of the matter." (*Id.*, § 453(b).)

20 The Court DENIES Plaintiff's request for judicial notice filed November 27, 2023.

21 **IV. OSC RE: EXTENSION OF PROTECTIVE ORDER**

22 "The state has two substantial interests in regulating pretrial discovery. The first is to  
23 facilitate the search for truth and promote justice. The second is to protect the legitimate privacy  
24 interests of the litigants and third parties. [Citation.] The interest in truth and justice is promoted  
25 by allowing liberal discovery of information in the possession of the opposing party. [Citation.]  
26 The interest in privacy is promoted by restricting the procurement or dissemination of  
27 information from the opposing party upon a showing of 'good cause.' [Citations.]" (*Stadish v.*  
28 *Superior Court* (1999) 71 Cal.App.4th 1130, 1145.)

1 The United States Supreme Court has recognized that the potential “dissemination of . . .  
2 information [that] would result in annoyance, embarrassment and even oppression” is sufficient  
3 grounds for the entry of a protective order. (*Seattle Times Co. v. Rhinehart* (1984) 467 U.S. 20,  
4 37, internal quotes omitted.) More recently, courts have granted protective orders to prohibit  
5 litigants from disseminating discovery on the internet. (See, e.g., *Heitkoetter v. Domm* (E.D. Cal.  
6 Jan. 6, 2023) 2023 U.S. Dist. LEXIS 2570 at \*18 [“The Court grants the request for a protective  
7 order to prohibit disseminating or publishing information disclosed through the discovery process  
8 on the Internet.”].) However, good cause is not established merely by the prospect of negative  
9 publicity to the proponent of the protective order. (*Dep’t of Econ. Dev. v. Arthur Andersen & Co.*  
10 (*U.S.A.*) (S.D.N.Y. 1996) 924 F. Supp. 449, 487.)

11 “As in all civil litigation, petitioners gained the information they wish to disseminate only  
12 by virtue of the trial court’s discovery processes. As the Rules authorizing discovery were adopted  
13 by the state legislature, the processes thereunder are a matter of legislative grace. A litigant has no  
14 First Amendment right of access to information made available only for purposes of trying his  
15 suit....Thus, continued court control over the discovered information does not raise the same  
16 specter of government censorship that such control might suggest in other situations.” (*Seattle*  
17 *Times Co., supra*, 467 U.S. at p. 32.)

18 “Moreover, pretrial depositions and interrogatories are not public components of a civil  
19 trial. Such proceedings were not open to the public at common law, [citation], and, in general, they  
20 are conducted in private as a matter of modern practice. [Citations.] Much of the information that  
21 surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying  
22 cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are  
23 not a restriction on a traditionally public source of information.” (*Seattle Times Co., supra*, 467  
24 U.S. at p. 33.)

25 “Because of the liberality of pretrial discovery...it is necessary for the trial court to have  
26 the authority to issue protective orders...It is clear from experience that pretrial discovery by  
27 depositions and interrogatories has a significant potential for abuse...There is an opportunity,  
28 therefore, for litigants to obtain—incidentally or purposefully—information that not only is

1 irrelevant but if publicly released could be damaging to reputation and privacy. The government  
2 clearly has a substantial interest in preventing this sort of abuse of its processes.” (*Seattle Times*  
3 *Co.*, *supra*, 467 U.S. at p. 34-35.)

4 California courts also recognize that “the First Amendment does not compel public access  
5 to discovery materials that are neither used at trial nor submitted as a basis for adjudication.” (*NBC*  
6 *Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal. 4th 1178, 1208 n.25, citing *Seattle*  
7 *Times Co.*, *supra*, 467 U.S. at p. 32.)

8 The parties stipulated to a form protective order on October 26, 2022 (SPO). Since the  
9 stipulation, Plaintiff has levied a host of allegations that Defendant’s counsel has mishandled  
10 evidence and distributed it to third parties in bad faith. (See Plaintiff’s Mot. to Disqualify  
11 Counsel, 7:9-27; Plaintiff’s Opp. to Motion for Sanctions, 3:3-8.)

12 The parties’ disputes over improper disclosures are discussed at further length in the  
13 Court’s concurrent order on Plaintiff’s Motion to Disqualify Defendant’s counsel. For the  
14 purposes of this protective order, the Court simply notes that based upon the information  
15 addressed in that concurrent ruling, the Court is persuaded that information obtained from  
16 discovery in this case has been disseminated to non-litigants, that such information has been  
17 placed online with the result that certain witnesses have been discouraged from cooperating with  
18 discovery and investigation of the Plaintiff in this case, potentially impacting a fair trial of this  
19 matter on the merits.

20 The Court finds that extending the SPO to all discovery is necessary to protect the  
21 integrity of this litigation, and protect the privacy and other rights of all parties, as well as non-  
22 party witnesses. The Court finds good cause to extend the parties’ stipulated protected order to  
23 all materials produced in discovery, as follows:

24 All discovery in this case, regardless of their production before or following the date of  
25 this order, are designated “Confidential” as defined at SPO 2:1-4, without any further  
26 designation.

27 The parties must abide by the labeling practices outlined at SPO 3:7-4:2 with all filings.  
28 Failure to do so not waive or abrogate the Confidential designation ordered by the Court.

1 Parties retain the right to designate materials Highly Confidential pursuant to the terms of  
2 the SPO.

3 All materials remain Confidential or Highly Confidential until otherwise ordered by the  
4 Court.

5 All provisions of the SPO not directly inconsistent with the instant order remain in full  
6 force and effect.

7 **V. MOTION FOR ISSUE SANCTIONS**

8 **1. Legal Standard**

9 Among the tools available to remedy discovery misconduct, the court may impose issue  
10 sanctions “ordering that designated facts shall be taken as established in the action in accordance  
11 with the claim of the party adversely affected by the misuse of the discovery process,” or  
12 “prohibiting any party engaging in the misuse of the discovery process from supporting or  
13 opposing designated claims or defenses.” (Code Civ. Proc., § 2023.030, subs. (b) & (c).)

14 In opposing issue sanctions, the court should also consider whether the discovery  
15 misconduct was “willful” and whether the requesting party was prejudiced by the other’s failure  
16 to comply. (*Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7  
17 Cal.App.4th 27, 37.) The law prefers an incremental approach to sanctions, such that evidentiary  
18 sanctions should only be imposed where monetary sanctions are ineffective, issue sanctions when  
19 evidentiary sanctions are not, and terminating sanctions imposed only as a last resort. (See  
20 *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 191-192.)

21 “Imposition of sanctions for misuse of discovery lies within the trial court’s  
22 discretion, and is reviewed only for abuse.” (*Doppes v. Bentley Motors, Inc.* (2009) 174  
23 Cal.App.4th 967, 991.) “The trial court should consider both the conduct being sanctioned  
24 and its effect on the party seeking discovery[.]” (*Id.* at 992.)

25 “The sanctions the court may impose are such as are suitable and necessary to  
26 enable the party seeking discovery to obtain the objects of the discovery he seeks but the  
27 court may not impose sanctions which are designed not to accomplish the objects of the  
28

1 discovery but to impose punishment.” (*Caryl Richards, Inc. v. Superior Court In and For*  
2 *Los Angeles County* (1961) 188 Cal.App.2d 300, 304.)

3 **2. Discussion**

4 a. Meet and Confer

5 Plaintiff points out Defendant did not meet and confer before bringing its sanctions motion.  
6 (Opp. 2:25-3:2; Ross Decl., ¶ 8.) Defendant admits it did not, but its motion is brought under Civil  
7 Code section 2031.320, which does not require it to meet and confer. (Reply, 2:25-26.)

8 Defendant is correct that section 2031.320 has no meet and confer requirement. If the Court  
9 construes its motion as a motion under section 2031.320(c), it had no requirement to meet and  
10 confer. If, on the other hand, the Court construes Defendant’s motion as a motion under section  
11 2031.310(c), Defendant was required to meet and confer and it admits it did not.

12 The Court finds that the meet and confer issue is unclear in context, and thus, is not  
13 dispositive to the outcome this motion. This motion is based upon the Court’s order dated  
14 December 6, 2022. (Mot., 6:4-5.) The December 6, 2022 minute order states that “”The Motion to  
15 Compel Further Discovery Responses filed by Twin Galaxies, LLC on 11/02/2022 is Granted.”  
16 The motion itself was entitled “Motion to Compel Further Responses to Demand for Inspection.”  
17 (11/7/2022 Motion to Compel) and consistent with that title, the body of the motion referred only  
18 to Code of Civil procedure section 2031.310. (*Ibid.*) Defendant never suggested it brought a motion  
19 to compel production or inspection under section 2031.320. Thus, technically, what Defendant  
20 obtained in December 2022 was *not* an “order compelling inspection,” as described in Code of  
21 Civil Procedure section 2031.320(a). It was an “order compelling further response” as described  
22 in section 2031.310(a).

23 The Court notes that Plaintiff does not oppose the motion on the basis that the underlying  
24 motion was a motion to compel further responses, as opposed to a motion to compel production.  
25 The opposition analyzes issues relating to actual production. Plaintiff’s position is consistent with  
26 the discussions that occurred at the Informal Discovery Conference (IDC) held on October 26,  
27 2022 preceding the motion to compel, where all parties, and the Court, addressed the issue  
28 involving RFP 59 as one involving both the further response, as well the actual production.

1 However, in light of the discrepancy between the December 6, 2022 minute order and the  
2 understanding of the Court and the parties, the Court cannot find as a matter of law that a meet and  
3 confer was required. Thus, Defendant's failure to meet and confer is not a basis to deny the motion.

4 b. Issue Sanctions for Failure to Produce Responsive Documents Cannot Be Ordered  
5 Given That the Actual Scope of the December 6, 2022 Order Did Not Order an  
6 Actual Production of Responsive Documents.

7 Issue sanctions are second level sanctions and considered to be severe sanctions under the  
8 law. As a result, the procedural requirements underlying them are strict:

9 "The statutory requirement that there must be a failure to obey an order compelling  
10 discovery before the court may impose a nonmonetary sanction for misuse of the  
11 discovery process provides some assurance that such a potentially severe sanction  
12 will be reserved for those circumstances where the party's discovery obligation is  
13 clear and the failure to comply with that obligation is clearly apparent."

14 (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1423.)

15 Here, the language of the December 6, 2022 minute order identified further responses only.  
16 ("The Motion to Compel Further Discovery Responses filed by Twin Galaxies, LLC on  
17 11/02/2022 is Granted.") The Court cannot order issue sanctions for the failure to produce  
18 responsive documents, as production was never actually ordered, notwithstanding the  
19 understanding of the Parties, and the Court, otherwise. (*Ibid.*) There is no clear prior court order  
20 in place. The motion procedurally fails.

21 c. Issue sanctions are not proportionate to the conduct alleged.

22 The motion also fails on the merits. Defendant admits that after Walter Day's testimony  
23 on June 26, 2023, it propounded further discovery and as a result, on October 18, 2023, it  
24 received what it is calling the "Second March 2018 Bank Statement." (Moving Papers at pp. 6-  
25 7.) Defendant makes much of what it terms the 10-month delay in production. But while it  
26 speculates that there may be other documents out there, Defendant admits that the Second March  
27 2018 Bank Statement is the proof that it needs for the issues it refers to in its sanctions motion.  
28 The purpose of issue sanction is to account for information a litigant has been prevented, by  
abuse, from obtaining. Defendant has obtained what it needs. An issue sanction would only  
punish Plaintiff for the delay, not further the object of Defendant's discovery. The Court may not



1 issue a nonmonetary discovery sanction as a form of punishment. (*Caryl Richards,, supra.*, 188  
2 Cal.App.2d 300, 304.)

3 c. *The Court In Its Discretion Amends the December 6, 2022 Order From This Date*  
4 *Forward.*

5 The Court does not make light of the fact that it appears no further responses were provided  
6 after the December 6, 2022 order either – but that is not Defendant’s motion before the Court. The  
7 Court does not find Plaintiff’s explanation for its unilateral decision to apply an issues limitation  
8 to the December 6, 2022 order (i.e. economic damages, see Opp. at pg 2) to be justified or well  
9 taken. The December 6, 2022 order said what it said, and mandated compliance. There is no room  
10 for a party to superimpose its own understanding of issues over it so as to rewrite the order.

11 Plaintiff asserts that he will produce two more of Rickey’s bank account statements for  
12 the years 2017 to 2019, subject to certain requested redactions. This is the object of the discovery  
13 at hand. To be clear to all parties, the Court is not accepting Plaintiff’s two account limitation.  
14 The order is for the production of *all of Rickey’s bank account statements* for the years 2017 to  
15 2019.

16 So that there is no further misunderstanding, the Court exercises its discretion to amend  
17 the December 6, 2022 order, *effective from today*, to require Plaintiff to provide Code-compliant  
18 further responses and further responsive document production, in response to Defendant’s request  
19 for production number 59, for the years 2017-2019 (which are the years that the Parties agreed to  
20 at the October 26, 2022 IDC. See October 26, 2022 Minute Order.)

21 Again , to be clear, this order is for *ALL* of Rickey’s Hot Sauce (“Rickey’s”) bank accounts  
22 for 2017-2019. Verified further responses and actual document production shall be due within 15  
23 days of December 1, 2023, to be served via email and US Mail.

24 While the Court may not grant nonmonetary sanctions in this context, the Court will  
25 consider a request for further monetary sanctions from Defendant in the form of the fees incurred  
26 by Defendant in an effort to address this issue. The Court authorizes that motion to be heard the  
27 first day of trial.

1 Finally, the Court turns to Plaintiff's request to be able to redact the bank statements. The  
2 Court GRANTS the request in part. On the further production, Rickey's bank account numbers  
3 may be redacted with the exception of the last 4 digits which will be produced unredacted, which  
4 will permit Defendant to be able to differentiate between accounts. All prior productions that  
5 contain a broader redaction must be re-produced with a corrected redaction as noted herein. The  
6 produced statements will identify the name(s) of the account holder(s), but may redact all contact  
7 information. Again, as ordered above, further production will occur within 15 days of December  
8 1, 2023, to be served via email and US Mail.

9 **VI. DISCOVERY MEET AND CONFER CONFERENCE AND STIPULATED ORDER**

10 On December 1, 2023, the Parties also appeared on a discovery meet and confer  
11 conference. The parties stipulated to the following orders and requested a written ruling:

12 As to Plaintiff's RFAs 52 through 54, no further response is necessary at this time.

13 As to Plaintiff's Form Interrogatory 17.1, Defendant will revise and/or supplement its  
14 responses, particularly as to RFAs 46 and 48, as necessary, and accompany these responses with  
15 a code compliance a certification that it has answered as completely and straightforwardly as  
16 possible, to the extent possible, and that it has made a reasonable and good faith effort to obtain  
17 information necessary to respond by inquiry to other natural persons or organizations. (See Code  
18 Civ. Proc., § 2030.220.)

19 As to Plaintiff's RPDs 230, 254, and 301, Defendant will produce all responsive  
20 documents which it claims are protected by privilege or work product to the Court, and the Court  
21 will conduct an *in camera* review and determine further production, if any.

22 As to Plaintiff's Special Interrogatories number 176-178, no response will be necessary  
23 given the Court's *in camera* review of purportedly privileged materials.

24 As to Plaintiff's RPDs Nos. 217 and 234, the parties will meet and confer to facilitate  
25 production of all responsive documents directly from the documents' custodian – in this case,  
26 Facebook.

27 As to Defendant's RPD No. 363, Plaintiff will produce all responsive documents from  
28 within the requested time frame, but limited to documents related to Plaintiff's Player of the

1 Century award allegedly awarded to him on September 17, 1999, with Defendant's response  
2 certified as complete per Code.

3 As to Defendant's RPDs Nos. 365, 366, 375, 376, and 378, the parties will meet and  
4 confer to facilitate production of all responsive documents directly from the documents'  
5 custodian – in this case, Verizon.

6 The parties represent that all other matters referred to in their joint statement have been,  
7 or will shortly be, resolved.

8 **VII. RULINGS**

9 The Court orders as follows:

- 10 1. Plaintiff's motion to seal set for February 29, 2024, is ADVANCED to this date and  
11 GRANTED.
- 12 2. Plaintiff's request for judicial notice is DENIED.
- 13 3. The Court orders the parties' Stipulated Protected Order extended to all materials  
14 produced in discovery, according to the terms set forth above.
- 15 4. Defendant's motion for issue sanctions is DENIED.
- 16 5. The December 6, 2022 order is amended, effective from December 1, 2023, to require  
17 Plaintiff to provide Code-compliant further responses and further responsive document  
18 production, in response to Defendant's request for production number 59, for the years  
19 2017-2019 (which are the years that the Parties agreed to at the October 26, 2022 IDC.  
20 See October 26, 2022 Minute Order.)
- 21 6. Plaintiff will provide a Supplemental Production of Rickey's bank account statements  
22 for the years 2017-2019. The account numbers may be redacted with the exception  
23 of the last 4 digits which will be produced unredacted. All prior productions that  
24 contain a broader redaction must be re-produced with a corrected redaction as noted  
25 herein. The produced statements will identify the name(s) of the account holder(s),  
26 but may redact all contact information. Further production will occur within 15 days  
27 of December 1, 2023, to be served via email and US Mail.
- 28 7. The Court orders the parties to abide by their agreement during the discovery meet

and confer conference as reflected herein.

**IT IS SO ORDERED.**

DATED: December 11, 2023



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Hon. Wendy Chang  
Los Angeles Superior Court