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 County of Los Angeles
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 David W. Slayton,
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 By S. Bolden, 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 BRIEF RE ORDER TO
 SHOW CAUSE RE POTENTIAL
 DISCIPLINARY REFERRAL OF
 DEFENSE COUNSEL**

Date: January 11, 2024
 Time: 8:30
 Dept.: 36

Action Filed: 04/11/2019
 Trial Date: 04/26/2024

TWIN GALAXIES, LLC,
 Cross-Complainant,
 v.
 WILLIAM JAMES MITCHELL; WALTER
 DAY; Roes 1-25,
 Cross-Defendants.

TO THE HONORABLE COURT, THE PARTIES AND COUNSEL OF RECORD:

Plaintiff WILLIAM JAMES MITCHELL (“Plaintiff”) hereby submits the herein brief for consideration as to the Court’s Order to Show Cause hearing re potential disciplinary referral of defense counsel for violations of the Rules of Professional Conduct.

1 **I. INTRODUCTION**

2 On December 1, 2023, this Court denied Plaintiff's Motion to Disqualify Defendant's
3 counsel, without prejudice, and advised Plaintiff of the ability to request reconsideration on said
4 motion should new violations come to light. In addition, the Court set an "Order to Show Cause Re:
5 Re: Potential Disciplinary Referral of Defense Counsel for Violations Of The Rules Of Professional
6 Conduct" for January 11, 2024

7 Since the hearing on Plaintiff's Motion to Disqualify on December 1, 2023, Plaintiff has
8 discovered that defense counsel, David Tashroudian, misrepresented third party involvement to
9 Plaintiff and the Court in order to improperly withhold communications under the guise of privilege
10 and not comply with the Court's prior Informal Discovery Conference order, prepared and signed a
11 frivolous Cross-Complaint, and aided in Defendant's spoliation of evidence.

12 **II. DEFENSE COUNSEL MISREPRESENTED THIRD PARTY INVOLVEMENT TO**
13 **THE COURT TO IMPROPERLY WITHHOLD COMMUNICATIONS**

14 Plaintiff has propounded numerous document requests for communications between
15 Defendant and/or Defendant's counsel and third parties. After an Informal Discovery Conference
16 on the issue, the Court made it clear to Defendant and Defendant's counsel that any communications
17 between Defendant and/or Defendant's counsel and third party witnesses related to Plaintiff and/or
18 Plaintiff's scores are relevant and must be produced.

19 Notably, Defendant's counsel withheld numerous communications with a third party
20 identified by his username, Ersatz_Cats, on an alleged work-product privilege basis. When
21 confronted with this issue at the Informal Discovery Conference on December 1, 2023, Defendant's
22 counsel claimed that Ersatz_Cats is a "researcher" for the defense and that all communications are
23 protected work product. The Court specifically ordered that Defendant's counsel produce all
24 communications and agreements with Ersatz_Cats, and the other third parties and law firms to which
25 Defendant's counsel is claiming work product protection on December 30, 2023 for in camera
26 review to allow the Court to determine if the work product protection applies. Moreover, the Court
27 made it clear that Defendant's counsel must show proof that Ersatz_Cats was hired to be a researcher
28 for the defense, including but not limited to producing employment records. To Plaintiff's

1 knowledge no such documents have been filed with the Court.

2 On December 19, 2023, Plaintiff took the second session of the deposition of Defendant's
3 person most knowledgeable, Jason Hall. During this deposition, Mr. Hall testified that he considers
4 Ersatz_Cats to be an independent journalist that is separately focused on the truth of the matter of
5 Plaintiff's scores. Mr. Hall further testified that neither he, personally nor on behalf of Defendant,
6 has ever given money to Ersatz_Cats. Further, to his knowledge Defendant's counsel has not given
7 Ersatz_Cats money for any research nor has Ersatz_Cats been retained by Defendant or counsel in
8 any capacity.

9 During this session of deposition, Mr. Hall also testified that he had Ersatz_Cats' phone
10 number and knew him to be named Walter. This contradicts Defendant's response to Special
11 Interrogatories, Set Three, which asked Defendant to identify the owner of perfectpacman.com,
12 including full name, last known business and residential address (including street name and number,
13 city or town, and state or country), and telephone number, last known employer or place of
14 employment, business address and telephone number of last known employer, and job title.
15 Defendant responded to the best of its' knowledge with solely the username Ersatz_Cats. Defendant
16 served said verified further responses to Special Interrogatories, Set Three on April 3, 2023.
17 Therefore, it is now clear that Defendant and Defendant's counsel signed false and misleading
18 discovery responses that only after the recent deposition was Plaintiff able to uncover.

19 Moreover, Mr. Hall testified that he and his counsel, Mr. Tashroudian, met Ersatz_Cats in
20 person on or about January 9, 2023 in Florida while there for Plaintiff's deposition. Thus, Defendant
21 clearly had regular contact with the third party witness and his phone number in order to meet with
22 him in January well before the aforementioned discovery was propounded and responded to.

23 Based upon Defendant's deposition, it is clear that Ersatz_Cats was not retained in any
24 capacity by Defendant or on Defendant's behalf. Thus, there is no basis for Defendant's counsel to
25 have withheld communications with him under the guise of work product. Moreover, Defense
26 counsel's statement in open Court that Ersatz_Cats was retained by Defendant as a researcher was
27 false. This representation was made at the same hearing where counsel's disqualification was being
28 sought because counsel could not avoid acting unethically due to emotional involvement.

As such, Defendant’s counsel’s conduct is in violation of Rules of Professional Conduct, Rule 3.4, which states that a lawyer shall not “unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value.” Rules Prof. Conduct, Rule 3.4(a). Further, it is in violation of Rules 3.4(d), which states that no lawyer shall “fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party.” Rules Prof. Conduct, Rule 3.4(d).

III. DEFENSE COUNSEL PREPARED AND SIGNED A FRIVOLOUS CROSS-COMPLAINT

Code of Civil Procedure § 128.7 states as follows:

“(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.” (CCP § 128.7(b).)

On December 19, 2023, Mr. Hall testified that the damages requested in Defendant’s cross-complaint are in fact not Defendant’s calculated damages. Firstly, Defendant did not have any monetary contracts prior to the lawsuit and instead Defendant claimed damages purportedly based upon an inability to get investments for Defendant. Mr. Hall testified that Defendant never had a consistent source of revenue. Secondly, Defendant could not point to any documents to support the alleged damages. Finally, when confronted Mr. Hall admitted that the dollar amount alleged as general damages was Plaintiff’s perfect Pac-Man score, and that the dollar amount alleged as the special damages was a total of Plaintiff’s three subject Donkey Kong scores at issue in this case. He testified that he chose these numbers to “send a message”.

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1 Surely Defendant's counsel must have known that the damages alleged in the prayer of the
2 Cross-Complaint were not real estimates of damages. Thus, it is clear that defense counsel
3 knowingly prepared and signed a frivolous pleading in violation of California Code of Civil
4 Procedure 128.7.

5 **IV. DEFENDANT IS AND HAS BEEN INTENTIONALLY ENGAGING IN THE**
6 **SPOILIATION OF EVIDENCE**

7 Mr. Hall testified on December 19, 2023, that he communicates with third party witness Karl
8 Jobst, who is also involved in a separate litigation with Plaintiff in Australia, via an application
9 called Signal. A distinct feature of Signal is that the messages can be set to automatically disappear
10 after a certain amount of time. Mr. Hall testified that he originally set his Signal to automatically
11 delete messages with everyone after ten minutes. Mr. Hall also testified that he and Mr. Jobst discuss
12 Plaintiff and their respective cases on Signal. Mr. Hall stated that he did not believe these
13 communications to be relevant, until Plaintiff requested such in discovery.

14 Plaintiff first requested communications between Defendant and Mr. Jobst in February 2022.
15 Plaintiff again requested all communications between Defendant and Mr. Jobst related to Plaintiff
16 in 2023. Defendant served verified responses to those requests on April 3, 2023. However, the only
17 communications produced at that time were a few email strings from 2019. No communications
18 between Defendant and Mr. Jobst, on Signal or otherwise, were produced. A third request for
19 communications between Defendant and Mr. Jobst from April 3, 2023 to present was propounded
20 on August 30, 2023. On October 2, 2023, Defendant served verified responses that all non-
21 privileged documents would be produced to the extent they exist. Then, on December 1, 2023,
22 Defendant produced screenshot portions of Signal conversations with Mr. Jobst. The documents
23 produced did not include the entire message thread, nor the date or time that the messages were sent
24 and received. Even Defendant could not ascertain when the messages were sent and received when
25 reviewed during deposition, but noted that he would have screenshot and sent them to his counsel
26 on the date they were reviewed since the messages were set to disappear.

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1 Mr. Hall admitted that not all Signal communications between him and Mr. Jobst were
2 screenshot or otherwise preserved. It is unknown if Mr. Hall or Defendant's counsel cropped some
3 of the Signal messages such that full message threads were not produced. Mr. Hall also testified that
4 he has been communicating with Mr. Jobst on Signal since approximately 2021 when Plaintiff's
5 lawsuit with Mr. Jobst began, and continues to communicate with him frequently up to the day of
6 the deposition. Therefore, Mr. Hall has been communicating with Mr. Jobst and allowing those
7 messages, messages expressly requested in discovery, to be destroyed for years.

8 Mr. Hall additionally testified that his Signal application is still set for all messages,
9 including those with Mr. Jobst, to automatically delete. Furthermore, Signal records the dates and
10 time of telephone communications as well as when and by whom automatic disappear settings are
11 changed. Mr. Hall testified that he deletes the portion that depicts when any calls were made or
12 received on Signal periodically as well.

13 Based on the foregoing it is clear that evidence has been spoliated by Defendant. Plaintiff's
14 counsel met and conferred with Defendant's counsel as to this issue after Defendant's deposition
15 and Defendant's counsel said he would instruct Mr. Hall to cease destroying evidence. However, it
16 is hard to imagine that Defendant's counsel was not aware of what was going on, including during
17 the time period between the hearing on the motion to disqualify and the deposition.

18 Defendant's counsel's conduct herein is also in violation of Rules of Professional Conduct,
19 Rule 3.4, which states that a lawyer shall not "unlawfully obstruct another party's access to evidence
20 or unlawfully alter, destroy or conceal a document or other material having potential evidentiary
21 value" or counsel or assist another person to do so. Rules Prof. Conduct, Rule 3.4(a). Further, it is
22 in violation of Rules 3.4(d), which states that no lawyer shall "fail to make a reasonably diligent
23 effort to comply with a legally proper discovery request by an opposing party." Rules Prof. Conduct,
24 Rule 3.4(d).

25 **V. CONCLUSION**

26 Based on the foregoing, it is clear that Defendant's counsel's conduct violates the Rules of
27 Professional Conduct and continues to impede this litigation.

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DATED: January 5, 2024

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



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

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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 Orange, State of California. My business address is 695 Town Center Dr., Ste 400, Costa Mesa, CA 92626.

On January 5, 2024, I served true copies of the following document(s) described as **PLAINTIFF’S BRIEF RE ORDER TO SHOW CAUSE RE POTENTIAL DISCIPLINARY REFERRAL OF DEFENSE COUNSEL** on the interested parties in this action as follows:

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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 diane.esparza@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 January 5, 2024, at Foothill Ranch, California.



Diane Esparza