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Electronically FILED by
 Superior Court of California,
 County of Los Angeles
 1/10/2024 9:54 AM
 David W. Slayton,
 Executive Officer/Clerk of Court,
 By R. Perez, 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 NOTICE OF EX PARTE
 AND EX PARTE APPLICATION FOR AN
 ORDER SEALING PLAINTIFF'S OSC
 BRIEF FILED ON JANUARY 5, 2024;
 DECLARATION OF KRISTINA ROSS**

Date: January 11, 2024
 Time: 8:30 a.m.
 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.

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

PLEASE TAKE NOTICE THAT on January 11, 2024 at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department 36 of the Los Angeles Superior Court, Plaintiff WILLIAM JAMES MITCHELL (“Plaintiff”) will appear *ex parte* to seek an Order from this Court to seal Plaintiff’s brief re Order to Show Cause filed on January 5, 2024.


This application is brought pursuant to *Code of Civil Procedure* §128 and the Court’s inherent powers to make any orders, and to control its proceedings, as necessitated in the interests of justice. This application is also brought pursuant to California *Rules of Court* (“CRC”), Rules 2.550 and 2.551, and is based on the grounds that Plaintiff’s brief regarding the Order to Show cause hearing, or at least portions thereof, should have been filed under seal pursuant to the protective order. Good cause exists to grant Plaintiff’s *ex parte* application as the soonest hearing date as evidenced by Defendant’s motion to strike is not until March 14, 2024.

Notice of this *ex parte* application was provided via telephone and e-mail transmission to Opposing Counsel on January 9, 2024 as set forth in the Declaration of Kristina Ross filed concurrently herewith.

This Application is based on this Notice, the attached Memorandum of Points and Authorities, the declarations filed concurrently herewith, all of the pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial notice, and any argument or evidence that may be presented to or considered by the Court prior to its ruling.

DATED: January 10, 2024

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

By: 

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 26, 2022, the Court entered the Parties stipulated protective order. (Declaration of Kristina Ross (“Ross Decl.”) ¶ 3.) On December 1, 2023, the Court made all discovery material in this matter subject to the protective order. (Ross Decl. ¶ 4.)

On January 5, 2024, Plaintiff filed a brief regarding the Order to Show Cause (“OSC”) hearing set for January 11, 2024. The brief should have been filed under seal due to the portions regarding Defendant’s deposition testimony. Upon further review of the protective order, the information obtained in the depositions should have also been filed under seal as the protective order applies to information not just the actual deposition transcript or discovery responses. This was an inadvertent breach by Plaintiff. (Ross Decl. ¶ 5.)

On January 9, 2024, I gave Defendant’s counsel notice of this *ex parte* via telephone and email. I advised that Plaintiff would seek the instant *ex parte* relief on January 11, 2024 at 8:30 a.m. in Department 36 of this Court for an order to seal Plaintiff’s OSC brief filed on January 5, 2023. (Ross Decl. ¶ 7.)

Based on the foregoing and pursuant to the law set forth below, Plaintiff hereby respectfully requests that the Court grant this application and seal the brief filed by Plaintiff on January 5, 2024.

II. LEGAL STANDARD

“The courts have inherent and implied power to control judicial proceedings in order to insure the orderly administration of justice.” *People v. Sidener* (1962) 58 Cal.2d 645, 656. Thus, *California Code of Civil Procedure* §128 represents a statutory confirmation of the court’s power “[t]o provide for the orderly conduct of proceedings before it, or its officers,” of power “[t]o compel obedience to its judgments, orders, and process,” and power “[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it” *California Code of Civil Procedure* §128(a)(3)-(5). This authority has been amplified by court decision. *See Cooper v. Superior Court* (1961) 55 Cal.2d 291, 301; *People v. Merkouris* (1956) 46 Cal.2d 540, 556; *People v. Smith* (1970) 13 Cal.App.3d 897, 907; *Rosato v. Superior Court* (1975) 51 Cal. App. 3d 190, 206-207.

California Rules of Court, Rule 2.551 provides that a party may request that a record be filed under seal by filing a noticed motion or **application** for an order sealing that record. (Cal. Rules of Court, rule 2.551(b)(1).) Following a hearing, the Court can enter an order directing the sealing of documents that contain material which needs to be placed under seal. The Court may order that a record be filed under seal if it finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(Cal. Rules of Court, rule 2.551(d); see also *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 299-301.)

III. GOOD CAUSE EXISTS FOR AN ORDER SEALING PLAINTIFF'S OSC BRIEF

Pursuant to *Code of Civil Procedure* §128, subdivision (a), this Court has the authority to issue orders “[t]o provide for the orderly conduct of proceedings before it . . . [and] To amend and control its process and orders so as to make them conform to law and justice.”

Good cause exists here for the Court to seal Plaintiff's re order to show cause hearing filed on January 5, 2024 as the parties cannot have a properly noticed motion heard until in or about March 2024 and California Rules of Court 2.551(b)(1) allow for a party to file an application for an order to seal a record.

As noted above, Plaintiff's breach of the protective order by not filing the brief or the portions thereof regarding Defendant's testimony under seal was inadvertent. Upon further review of the protective order, the information ascertained in the deposition and discovery, not just the documents such as the deposition transcript and discovery responses, are to be filed under seal. Therefore, there is an overriding interest in sealing Plaintiff's brief and this request is narrowly tailored. Should the Court require Plaintiff can refile the brief with the portions regarding Defendant's testimony redacted.

The parties will have no recourse until on or about March 2024 to seal the record absent this application for ex parte relief.

In light of the foregoing, good cause exists for the Court to Order Plaintiff's OSC brief filed on January 5, 2024 sealed.

IV. CONCLUSION

Based on the aforementioned, Plaintiff respectfully requests that the Court grant the instant *ex parte* application and issue an Order sealing Plaintiff's OSC brief filed on January 5, 2024.

DATED: January 10, 2024

**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. On October 26, 2022, the Court entered the Parties stipulated protective order.

4. On December 1, 2023, the Court made all discovery material in this matter subject to the protective order.

5. On January 5, 2024, I filed a brief regarding the Order to Show Cause (“OSC”) hearing set for January 11, 2024. The brief should have been filed under seal due to the portions regarding Defendant’s deposition testimony. Upon further review of the protective order, the information obtained in the depositions should have also been filed under seal as the protective order applies to information not just the actual deposition transcript or discovery responses. This was an inadvertent breach due to my oversight on the intricacies of the protective order and I apologize to the Court and to Defendant and Defendant’s counsel.

6. Good cause exists for the Court to seal Plaintiff’s OSC brief as it should have been filed under seal pursuant to the protective order and a noticed motion cannot be heard until March 2024.

7. On January 9, 2024, I gave Defendant’s counsel notice of this ex parte via telephone and email. I advised that Plaintiff would seek the instant *ex parte* relief on January 11, 2024 at 8:30 a.m. in Department 36 of this Court for an order to seal Plaintiff’s OSC brief filed on January 5, 2023. Attached hereto as Exhibit 1 is a true and correct copy of my written notice.

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

Executed on this January 10, 2024, at Los Angeles, California.



Kristina Ross

EXHIBIT 1

From: David Tashroudian <david@tashlawgroup.com>
Sent: Tuesday, January 9, 2024 10:56 AM
To: Kristina Ross <Kristina.Ross@manningkass.com>
Subject: Re: You Called?

Yes, got it.

David A. Tashroudian, Esq.
TASH LAW GROUP
12400 Ventura Blvd., Suite 300
Studio City, California 91604
(818) 561-7381

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On Tue, Jan 9, 2024 at 10:48 AM Kristina Ross <Kristina.Ross@manningkass.com> wrote:

Hi David,

Confirming our ex parte notice for Thursday, January 11, 2024, to move to seal Plaintiff's OSC brief filed on January 5, 2024.

Thanks,

Kristina

Kristina Ross

Associate



801 S. Figueroa St., 15th Floor
Los Angeles, CA 90017
Main: (213) 624-6900 | Ext.: 2642
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Kristina.Ross@manningkass.com | manningkass.com

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From: David Tashroudian <david@tashlawgroup.com>

Sent: Tuesday, January 9, 2024 10:31 AM

To: Kristina Ross <Kristina.Ross@manningkass.com>

Subject: You Called?

Hey -- I saw that you called but I must have missed it. Try me back.

David A. Tashroudian, Esq.

TASH LAW GROUP

12400 Ventura Blvd., Suite 300

Studio City, California 91604

(818) 561-7381

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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 January 10, 2024, I served true copies of the following document(s) described as **PLAINTIFF'S NOTICE OF EX PARTE AND EX PARTE APPLICATION FOR AN ORDER SEALING PLAINTIFF'S OSC BRIEF** on the interested parties in this action as follows:

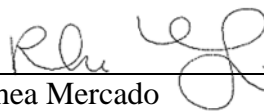
David Tashroudian, Esq.
Mona Tashroudian, Esq.
TASHROUDIAN LAW GROUP, APC
12400 Ventura Boulevard, Suite 300
Studio City, CA 91604
T: (818) 561-7381
F: (818) 561-7381
Email: david@tashlawgroup.com
mona@tashlawgroup.com

*Attorney for Defendants,
TWIN GALAXIES*

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 January 10, 2024, at Los Angeles, California.



Rhea Mercado