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David W. Slayton,
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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.

AND RELATED CROSS-ACTION

Case No. 19STCV12592

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

OPPOSITION OF TWIN GALAXIES, LLC TO PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

[*Filed concurrently with: (1) Declaration of David A. Tashroudian; (2) Declaration of Jason Hall*]

PUBLIC-REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD

Hearing
Date: May 30, 2024
Time: 8:30 a.m.
Place: Department 36

Reservation ID: 184998743012

Action Filed: 4/11/2019

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff and cross-defendant William James Mitchell ("Plaintiff") complains that defendant and cross-complainant Twin Galaxies, LLC ("Twin Galaxes") breached the parties' settlement agreement by stating to the public that Plaintiff was still banned from Twin Galaxies' competitive leaderboards after the parties resolved their dispute. [redacted]

Accordingly, Plaintiff motion should be denied and Twin Galaxies should be awarded its fees.

II. FACTS

A. Brief statement of procedural history.

Plaintiff is a public figure who is known for his videogame world records including world records in the *Donkey Kong* and *Pacman* videogames. Twin Galaxies is intergalactically recognized as the foremost arbiter of videogame scores and maintains a leaderboard for high scores

in *Donkey Kong* and other videogames like *Pacman*. Plaintiff had scores on Twin Galaxies' leaderboards for *Donkey Kong* and *Pacman*. Plaintiff's *Donkey Kong* high score was challenged by Jeremy Young in August 2017. Twin Galaxies determined that Mr. Young's challenge to Plaintiff's score was valid and on April 12, 2018 struck Plaintiff's *Donkey Kong* score and his *Pacman* score form its leaderboards and banned Plaintiff from participating in its competitive leaderboards for all games. [Tashroudian Decl., ¶ 3.]

Plaintiff filed this suit for defamation against Twin Galaxies in April 2019 as his response. Twin Galaxies cross-complained and filed a special motion to strike the complaint which was denied, appealed, and resulted in a published decision. The case was remitted from the appellate court in February 2022 and the parties litigated this case with zeal through January 2024 when the matter settled by virtue of the agreement and statement attached to the declaration of Kristina Ross as Exhibit A (the "Settlement Agreement" and the "Statement"). [Tashroudian Decl., ¶ 4.]

As part of the settlement, Twin Galaxies reinstated Plaintiff's disputed *Donkey Kong* score and the *Pacman* score but to a historical archive on its website. Importantly, none of Plaintiff's scores were restored to any of Twin Galaxies' current and active leaderboards – neither his *Donkey Kong* score nor his *Pacman* score. [redacted]

B. Background to settlement negotiations.

[redacted]

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C. Negotiation of [redacted].

[redacted]

[redacted]

III. ARGUMENT

A. [redacted]

i. Legal Standard to determine the meaning of ambiguous contract terms.

"Although a judge hearing a [CCP] § 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment [citations], nothing in section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon." (Osumi v. Sutton (2007) 151 Cal.App.4th 1355, 1360; *accord* Bowers v. Raymond J. Lucia Companies, Inc. (2012) 206 Cal.App.4th 724, 732.) As such, "[t]he power of the trial court under Code of Civil Procedure section 664.6 ... is extremely limited. [¶] ... The court is powerless to impose on the parties more restrictive or less restrictive or different terms than those contained in their settlement agreement." (Hernandez v. Board of Education (2004) 126 Cal.App.4th 1161, 1176.)

In deciding what terms the parties have agreed upon, the judge may consider extrinsic evidence when the contract language is ambiguous. (*See* Winet v. Price (1992) 4 Cal.App.4th 1159, 1165; *see also* Cal. Code Civ. Proc. §1856(g) (parol evidence admissible to explain an extrinsic ambiguity or otherwise interpret the terms of the agreement).)

"If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it." (Cal. Civ. Code §1649.) The interpretation must give effect to the mutual intention of the parties as it existed at the time of contracting. (Cal. Civ. Code §1636.) "A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates" (Cal. Civ. Code §1647.) "[T]he language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." (Cal. Civ. Code §1654.)

[redacted]

[redacted]

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B. [redacted]

The same facts support the argument that Twin Galaxies did not breach the agreement by telling Karl Jobst that Plaintiff was still banned. Plaintiff admits that the communication with Mr. Jobst was not made until after the Statement was published so there was no premature disclosure to Mr. Jobst. [redacted]

The balance of Plaintiff's argument that Twin Galaxies breached the Settlement Agreement [redacted] relies on pure conjecture. [redacted]

These allegations are unfounded and meant only to incite ire against Twin Galaxies. Plaintiff cannot prove that any confidential information was disclosed so he postulates that it was based on the timing of Mr. Jobst's video and nothing else. Indeed, Twin Galaxies had nothing to do with Mr. Jobst's video. [*See* Hall Decl., ¶¶ 4-5.] This court should disregard Plaintiff's argument as it is supposition and not fact.

C. Plaintiff's argument that Twin Galaxies is selling products referencing cheating is a red-herring and hypocritical.

Plaintiff complains that Twin Galaxies is selling merchandise on its website but does not show how that information is relevant to the instant dispute. The merchandise sold on the website is similar in nature and character to merchandise Plaintiff has been selling for years which reference and relate to the claims in this suit. [Hall Decl., ¶¶ 6-7.] Plaintiff brings this issue up to again incite ire despite its irrelevance and his hypocrisy.

What Plaintiff's complaints about the merchandise show is his insistence to curb Twin Galaxies' right to freedom expression and commerce. Plaintiff takes every opportunity to try to shut down Twin Galaxies speech and this part of his motion is no exception. He needs to stop.

D. Plaintiff's attorney's fees request is defective because his counsel does not lay a foundation to support her hourly rate of $375.00.

The burden is on the party seeking attorney's fees to prove that the fees it seeks are reasonable. (Gorman v. Tassajara Development Corp. (2009) 178 Cal.App.4th 44, 98.) Plaintiff's counsel Kristina Ross has failed to lay a foundation to support her hourly rate.

Ms. Ross testified in her declaration in support of this motion at Paragraph 9 about the 24 hours she spent on the motion and the related motion to seal. But she does not testify to the reasonableness of her rate. That is, she does not state facts about how many years of experience she has, the type of experience she has, nor does she state facts about other fee awards she has received. Without testimony on the reasonableness of her rate, the request is fatally defective and Plaintiff cannot meet his burden to prove the reasonableness of his fees. His fees request must be denied accordingly.

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E. Twin Galaxies should be awarded attorney's fees of $10,000 to oppose this motion.

[redacted] Twin Galaxies respectfully submits that if it is determined to be the prevailing party on this motion, it should be awarded $10,000.00 in fees. [Tashroudian Decl., ¶¶ 15-16.]

IV. CONCLUSION

Twin Galaxies respectfully submits that Plaintiff's motion should be denied based on the foregoing. Twin Galaxies should be reimbursed its fees of $10,000.00 expended to defend against Plaintiff's unnecessary motion.

Respectfully submitted,

Dated: May 16, 2024

TASHROUDIAN LAW GROUP, APC

By: /s/ David Tashroudian, Esq.
David Tashroudian, Esq.
Mona Tashroudian, Esq.
Attorneys for Twin Galaxies, LLC

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 May 16, 2024, I served the herein described document(s):

OPPOSITION OF TWIN GALAXIES, LLC TO PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

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@mannigkass.com & rwc@robertwcohenlaw.com pursuant to an agreement of the parties.

Anthony J. Ellrod *tony.ellrod@mannigkass.com*
MANNING & KASS
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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 May 16, 2024 at Woodland Hills, California.

Mona Tashroudian