

1 Anthony J. Ellrod (State Bar No. 136574)
2 *tony.ellrod@manningkass.com*
3 **MANNING & KASS**
4 **ELLROD, RAMIREZ, TRESTER LLP**
5 801 S. Figueroa St, 15th Floor
6 Los Angeles, California 90017-3012
7 Telephone: (213) 624-6900
8 Facsimile: (213) 624-6999

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David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

6 Attorneys for Plaintiff, WILLIAM JAMES MITCHELL

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10 WILLIAM JAMES MITCHELL,
11 Plaintiff,
12 v.
13 TWIN GALAXIES, LLC,
14 Defendants.

Case No. 19STCV12592
[Hon. Hon. Wendy Chang, Department 36]

**EX PARTE APPLICATION AND NOTICE
OF MOTION AND MOTION TO SEAL
RE PLAINTIFF’S MOTION TO
ENFORCE SETTLEMENT AGREEMENT
PURSUANT TO C.C.P. SECTION 664.6;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
ANTHONY ELLROD**

[Filed concurrently with [PROPOSED] Order,
Plaintiff’s Motion to Enforce Settlement
Agreement; Notice of Lodging; [PROPOSED]
Order re Motion to Enforce]

Date: September 13, 2024
Time: 8:30 a.m.
Dept.: 36

23 TO THE COURT, THE PARTIES AND THEIR ATTORNEYS OF RECORD:
24 PLEASE TAKE NOTICE THAT on September 13, 2024 or as soon thereafter as counsel
25 may be heard, at 8:30 a.m. in Department 36 of the above-captioned Court, located at 111 N. Hill
26 Street, Los Angeles, CA 90012, Plaintiff WILLIAM JAMES MITCHELL (“Plaintiff”) will appear
27 and apply *ex parte* to move the Court for an Order to seal: (1) the unredacted version of Plaintiff’s
28

1 Motion to Enforce Settlement Agreement Pursuant to Code of Civil Procedure (“C.C.P.”) Section
2 664.6 (“Motion to Enforce”); (2) the unredacted version of the Declaration of Anthony J. Ellrod in
3 support of Plaintiff’s Motion to Enforce; and (3) the unredacted Exhibits in support of the portions
4 of Plaintiff’s Motion to Enforce.

5 This motion is made pursuant to California Rules of Court (“CRC”), Rules 2.550 and 2.551
6 on the grounds that Plaintiff’s Motion to Enforce the Settlement Agreement concerns the settlement
7 agreement (“Settlement Agreement”) in the above-entitled and for reasons set forth fully in the
8 concurrent Motion to Enforce the portions redacted should be sealed. Plaintiff’s Motion to Enforce
9 cannot properly be brought without making references to the terms of Settlement Agreement,
10 thereby requiring that it be filed under seal. If the portions of the Motion to Enforce the Settlement
11 Agreement and exhibits filed conditionally under seal are not sealed, there is a substantial
12 probability that the parties overriding interest in maintaining the settlement terms will be prejudiced
13 as noted in the concurrently filed Motion to Enforce.

14 This Motion is also brought on the grounds that an overriding interest in protecting the terms
15 of the Settlement Agreement overcomes the right of public access to this record, the proposed
16 sealing is narrowly tailored to the terms of the Settlement Agreement and other issues that are
17 protected under the protective order in this matter, and there is no less restrictive means that exist to
18 achieve this overriding interest.

19 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
20 Authorities, the supporting Declaration of Anthony J. Ellrod, the concurrently filed Motion to
21 Enforce, all of the pleadings, files, and records in this proceeding, all other matters of which the
22 Court may take judicial notice, and any argument or evidence that may be presented at or before
23 hearing on this Motion.

24 This application is brought pursuant to *Code of Civil Procedure* §128 and the Court’s
25 inherent powers to make any orders, and to control its proceedings, as necessitated in the interests
26 of justice. Good cause exists the address this matter through *ex parte* application pursuant to
27 California Rules of Court (CRC) Rule 3.1200 *et seq.* because absent an immediate order of this
28 Court Plaintiff will suffer irreparable harm as more fully discussed below.

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DATED: September 11, 2024

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

By: 

Anthony J. Ellrod
Attorneys for Plaintiff
WILLIAM JAMES MITCHELL

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

This case arises from defamatory statements made by Defendant regarding Plaintiff’s achievement of certain world records in video gaming. On April 11, 2019, Plaintiff filed this lawsuit against Defendant, and subsequently filed a First Amended Complaint on March 12, 2020, setting out two causes of action: (1) Defamation; and (2) False Light. At the center of the action are public statements made by Twin Galaxies on April 12, 2018, that Plaintiff had achieved his long-standing world record video game scores by cheating. Based on these allegations Defendant stripped Plaintiff of those records and forever banned him from submitting further records as of April 2018. Declaration of Anthony J. Ellrod (“Ellrod Decl.”)

On January 10, 2024, the parties entered into a written settlement agreement (“Settlement Agreement”) and counsel of record for the parties appeared in Court on January 11, 2024 and advised the Court of the settlement. The parties and counsel filed a stipulation for the Court to retain jurisdiction to enforce that settlement under C.C.P. §664.6 on January 11, 2024. Ellrod Decl.

Plaintiff has filed concurrently a Motion to Enforce the Settlement Agreement (“Motion to Enforce”) as Defendant has breached the Settlement Agreement as set forth more fully in the concurrently filed Motion to Enforce. As the entire basis of the Motion to Enforce is predicated on the terms of the Settlement Agreement, the Motion to Enforce cannot be properly brought without referring and citing to the terms of the Settlement Agreement and without attaching the Settlement Agreement as an exhibit. Ellrod Decl.

Thus, Plaintiff brings the instant Motion and respectfully requests the Court seal the requested portions of Plaintiff’s Motion to Enforce, as well as corresponding declarations, exhibits, and proposed orders in support of that motion.

II. ARGUMENT

A. The Court Has Authority to Seal the Redacted Portions of the Motion to Enforce

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. C.R.C

1 2.551(b)(1); *See Nixon v. Warner Comm’n Inc.* (1978) 435 U.S. 589, 598 (“Every court has a
2 supervisory power over its own records and files, and access has been denied where court files might
3 become a vehicle for improper purpose.”)

4 Following a hearing, the Court can enter an order directing the sealing of documents that
5 contain material which needs to be placed under seal. The Court may order that a record be filed
6 under seal if it finds facts that establish:

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

14 Cal. Rules of Court, rule 2.550(d); see also *In re Providian Credit Card Cases* (2002) 96
15 Cal.App.4th 292, 299-301; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th
16 1178, 1211. Additionally, a Court has discretion in whether to seal court documents. *People v.*
17 *Jackson* (2005) 128 Cal.App.4th 1009, 1019.

18 In this matter, the interests served by sealing the redacted portions of Plaintiff’s Motion to
19 Enforce and supporting documents that were lodged conditionally under seal override the right of
20 public access to that information as detailed more thoroughly in the Motion to Enforce and below.

21 **B. The Parties’ Interest in the Redacted Portions of the Motion to Enforce Being**
22 **Sealed Overcomes the Public’s Right of Access to the Records and Supports**
23 **the Court’s Order to Seal**

24 The right of public access to court records is not an absolute right, and the decision as to
25 access “is one best left to the sound discretion of the trial court . . . in light of the relevant facts and
26 circumstances of the particular case.” *See Nixon*, supra, 435 U.S. at 98. Considering the relevant
27 facts and circumstances of this case, there are multiple overriding interests that would overcome a
28 right of public access to the settlement terms: (1) overriding public policy promoting settlements,
(2) concerns for the protection and privacy of the parties and witnesses related to this case, and (3)

1 concerns regarding the parties' privacy.

2 Firstly, it is a well-established principle that settlements of litigation are favored and should
3 be encouraged. *See Villa v. Cole* (1992) 4 Cal.App.4th 1327, 1338; *Fisher v. Superior Court* (1980)
4 103 Cal.App.3d 434, 440.

5 Secondly, this Court is already aware of the substantial interest in this case and
6 corresponding aggressive and fanatical behavior by members of the public. Indeed, based upon
7 evidence of party and witness harassment this Court issued its own protective order that all discovery
8 in the case is confidential.

9 Thirdly, a party's financial privacy concerns, alone, can be an overriding interest that
10 overcomes right of public access. *See Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259, 268
11 (holding that the protection of one's financial affairs against public disclosure is justified under the
12 Fourth Amendment.).

13 Here, the parties entered into a Settlement Agreement, the terms of which are detailed in the
14 Motion to Enforce. There is an overriding interest in the sealing the redacted portions of Plaintiff's
15 Motion to Enforce and supporting documents that were lodged conditionally under seal as it would
16 be contrary to California law to not seal the requested portions of the Motion to Enforce and contrary
17 to the parties intentions. *See Hinshaw, Winkler, Draa, Marsh & Still v. Superior Court* (1986) 51
18 Cal.App.4th 233, 241; *NBC, 20 Cal.4th at 1222; Publicker Ind., Inc. v. Cohen* (1984) 733 F.2d 1059,
19 1073.

20 As this Court is well aware this case has garnered notoriety and many aspects have been
21 made public such that a full protective order was in place over any and all discovery in the matter.
22 The public has no legitimate interest in the information detailed in the Motion to Enforce regarding
23 the Settlement Agreement that outweighs the privacy concerns in this matter.

24 Finally, the proposed sealing is narrowly tailored to only sealing the portions of the Motion
25 to Enforce that detail or reference the terms of the Settlement Agreement and the corresponding
26 declarations and exhibits, as well as any reference to discovery in this matter due to the prior
27 protective order issued. Due to the Motion to Enforce being based upon the Settlement Agreement
28 itself, there is no less restrictive means for Plaintiff to properly bring the motion and allow the Court

1 to properly rule on it.

2 The parties explicitly agreed to the terms of the Settlement Agreement and the Court should
3 grant this Motion and order the redacted portions of Plaintiff’s Motion to Enforce sealed.

4 **C. The Redacted Portions of the Motion to Enforce Should Not be Revealed in**
5 **Open Court**

6 Plaintiff additionally respectfully requests to seal any and all references to the redacted
7 portions of the Motion to Enforce in any court transcript or other papers and requests that said
8 portions therefore only be discussed *in camera* such that they are not revealed in open court. In the
9 alternative, Plaintiff requests that any non-involved persons, excluding court staff, be asked to leave
10 the courtroom during any hearings where the redacted portions of the Motion to Enforce will be
11 revealed and discussed, and that the Court order all parties present to keep such information
12 confidential. This will allow the Court to be fully informed of the issues and the parties to argue
13 their points without jeopardizing the parties’ rights.

14 Plaintiff believes this to be necessary as at prior court hearings reporters have been present
15 in the audience and requested comment from Plaintiff and counsel and as noted this case has
16 garnered notoriety and any information revealed is likely to end up widely disseminated on the
17 internet.

18 **III. CONCLUSION**

19 Based upon the foregoing, Plaintiff respectfully requests that this Motion be granted and that
20 the Court order the following as sealed: (1) the unredacted version of Plaintiff’s Motion to Enforce
21 Settlement Agreement Pursuant to Code of Civil Procedure (“C.C.P.”) Section 664.6 (“Motion to
22 Enforce”); (2) the unredacted version of the Declaration of Anthony J. Ellrod in support of Plaintiff’s
23 Motion to Enforce; and (3) the unredacted Exhibits in support of the portions of Plaintiff’s Motion
24 to Enforce.

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Additionally, that the Court order the hearing on this matter as to discussion of the redacted portions of the Motion to Enforce be conducted *in camera*, or in the alternative, without any non-involved persons aside from court staff to leave the courtroom and any parties present to keep the information confidential.

DATED: September 11, 2024

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

By: 

Anthony J. Ellrod
Attorneys for Plaintiff
WILLIAM JAMES MITCHELL

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DECLARATION OF ANTHONY J. ELLROD

I, ANTHONY J. ELLROD, 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 a partner in 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. This case arises from defamatory statements made by Defendant regarding Plaintiff’s achievement of certain world records in video gaming. On April 11, 2019, Plaintiff filed this lawsuit against Defendant, and subsequently filed a First Amended Complaint on March 12, 2020, setting out two causes of action: (1) Defamation; and (2) False Light. At the center of the action are public statements made by Twin Galaxies on April 12, 2018, that Plaintiff had achieved his long-standing world record video game scores by cheating. Based on these allegations Defendant stripped Plaintiff of those records and forever banned him from submitting further records as of April 2018.

4. On January 10, 2024, the parties entered into a written settlement agreement (“Settlement Agreement”) and counsel of record for the parties appeared in Court on January 11, 2024 and advised the Court of the settlement. The parties and counsel filed a stipulation for the Court to retain jurisdiction to enforce that settlement under C.C.P. §664.6 on January 11, 2024

5. Plaintiff has filed concurrently a Motion to Enforce the Settlement Agreement (“Motion to Enforce”) as Defendant has breached the Settlement Agreement as set forth more fully in the concurrently filed Motion to Enforce. As the entire basis of the Motion to Enforce is predicated on the terms of the Settlement Agreement, the Motion to Enforce cannot be properly brought without referring and citing to the terms of the Settlement Agreement and without attaching the Settlement Agreement as an exhibit.

6. Before 10:00 a.m. on September 12, 2024, I gave Defendant’s counsel of record notice of this *ex parte* via telephone and email. I advised counsel that Plaintiff would seek the instant *ex parte* relief on September 13, 2024 at 8:30 a.m. in department 36 of the Los Angeles Superior

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Court, located at 111 N. Hill Street, Los Angeles, CA 90012, to ask the Court to issue an order sealing portions of the Motion to Enforce Settlement and supporting documents and exhibits.

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

Executed on this September 11, 2024, at Los Angeles, California.



Anthony J. Ellrod