

1 David A. Tashroudian [SBN 266718]  
Mona Tashroudian [SBN 272387]  
2 TASHROUDIAN LAW GROUP, APC  
12400 Ventura Blvd., Suite 300  
3 Studio City, California 91604  
Telephone: (818) 561-7381  
4 Facsimile: (818) 561-7381  
Email: [david@tashlawgroup.com](mailto:david@tashlawgroup.com)  
5 [mona@tashlawgroup.com](mailto:mona@tashlawgroup.com)

6 Attorneys for Defendant Twin Galaxies, LLC

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

11 WILLIAM JAMES MITCHELL,

12 Plaintiff,

13 v.

14 TWIN GALAXIES, LLC; and Does 1-10,

15 Defendants.

Case No. 19STCV12592

Assigned to: Hon. Gregory W. Alarcon  
[Dept. 36]

**DEFENDANT TWIN GALAXIES, LLC'S  
MOTION FOR LEAVE TO FILE CROSS-  
COMPLAINT; DECLARATION OF  
DAVID A. TASHROUDIAN IN SUPPORT  
[CCP § 426.50]**

*[Filed concurrently with [Proposed] Order]*

**Hearing**

Date: December 11, 2020

Time: 8:30 a.m.

Place: Department 36

RESERVATION ID: 487165978456

Action Filed: 4/11/2019

1 **NOTICE OF MOTION AND MOTION**

2 **TO THE HONORABLE COURT, AND TO ALL ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on December 11, 2020 at 8:30 a.m., or as soon thereafter  
4 as the matter may be heard in Department 36 of the above entitled court, located at 111 N. Hill  
5 Street, Los Angeles, California 90012, defendant Twin Galaxies, LLC ( "Defendant") will and  
6 hereby does move, pursuant to the provisions of the California *Code of Civil Procedure* section  
7 426.50 for leave to file its cross-complaint against William James Mitchell ("Plaintiff"), and  
8 Walter Day. A true and correct copy of Defendant's proposed cross-complaint is attached to the  
9 Declaration of David A. Tashroudian at Paragraph 2 as Exhibit A.

10 Defendant makes this motion on the ground that it is in the interests of justice to permit the  
11 filing of Defendant's proposed cross-complaint. This motion will be based upon this notice of  
12 motion; the attached memorandum of points and authorities in support; the declaration of David  
13 A. Tashroudian; the matters which the Court may take judicial notice of; the pleadings and other  
14 records in this action; and any further evidence or argument that the Court may receive at or before  
15 the hearing.

16 Respectfully submitted,

17 Dated: November 4, 2020

TASHROUDIAN LAW GROUP, APC

19 By: /s/ David Tashroudian, Esq.

David Tashroudian, Esq.

Mona Tashroudian, Esq.

Attorneys for Defendant

Twin Galaxies, LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant respectfully submits that this Court is compelled pursuant to the provisions of  
4 the California *Code of Civil Procedure* to permit the filing of its proposed cross-complaint.  
5 Defendant’s claims in the proposed cross-complaint arise from the same transaction and  
6 occurrence that support Plaintiff’s defamation claim, making Defendant’s claims compulsory.  
7 Under the statute and established caselaw, Defendant must be allowed leave to plead its cross-  
8 complaint because it makes this Motion in good faith. Defendant’s good faith is evidenced by the  
9 timing of this Motion, and by the fact that it brings its claims only because it is required to continue  
10 defending against Plaintiff’s claims after denial of its special motion to strike. For these reasons,  
11 as set forth below, this Motion should be granted.

12 **II. FACTS**

13 Plaintiff filed his complaint for defamation against Defendant on April 11, 2019. Plaintiff  
14 served his complaint on Defendant on January 31, 2020. Plaintiff amended his complaint on  
15 March 13, 2020. Defendant filed a special a motion to strike Plaintiff’s first amended complaint  
16 on March 30, 2020 on the ground that it was a strategic lawsuit against public participation (“anti-  
17 SLAPP Motion”). Defendant answered Plaintiff’s first amended complaint on April 20, 2020.  
18 Defendant’s anti-SLAPP Motion was heard on October 15, 2020 after extensive briefing. This  
19 Court denied the anti-SLAPP Motion by order dated October 26, 2020. Less than two weeks  
20 later, Defendant makes this instant motion to file its cross-complaint which is attached to the  
21 accompanying declaration of David A. Tashroudian as Exhibit A.

22 **III. ARGUMENT**

23 Pursuant to California *Code of Civil Procedure* section 426.30, a party is required to plead  
24 its compulsory cross-claims against its adversary at the time of its answer, otherwise those claims  
25 are waived. There is a mandatory failsafe for a party that does not plead its cross-claims at the  
26 time of its answer. The California *Code of Civil Procedure* requires a court to grant a motion for  
27 leave to file a compulsory cross-complaint if the party who failed to plead the cause acted in good  
28

1 faith. (Code Civ. Proc., § 426.50.)<sup>1</sup> The statute must be liberally construed to achieve the  
2 legislative mandate of avoiding forfeiture of a party’s causes of action. (See Silver Organizations  
3 Ltd. v. Frank (1990) 217 Cal. App. 3d 94, 98-99 (finding no substantial evidence of bad faith  
4 where record lacks suggestion of “dishonest purpose, moral obliquity, sinister motive, furtive  
5 design or ill will”).)

6 A court must grant a motion for leave to file a cross complaint, unless the “bad faith of the  
7 moving party is demonstrated where forfeiture would otherwise result.” (Id. at p. 99.) Not even  
8 oversight, inadvertence, neglect, or mistake are sufficient grounds to deny such a motion absent  
9 bad faith. (Id.) The Silver Organizations Ltd. v. Frank decision is particularly persuasive, and its  
10 holding controls.

11 In Silver, the reviewing court over-turned the trial court’s order denying appellant’s motion  
12 for leave to file a cross-complaint under California *Code of Civil Procedure* 426.50. (Id. at p. 98.)  
13 The reviewing court held that absent a showing of bad faith by substantial evidence, the trial court  
14 was required to allow the appellant leave to file a cross-complaint – even if the request was made  
15 one day before trial, and even if the appellant’s neglect, inadvertence or oversight caused delay.  
16 (Id. at pp. 99-102.)

17 Here, Defendant has not acted in bad faith in seeking leave to file its cross-complaint.  
18 Foremost, Defendant files this motion only eleven days after its anti-SLAPP Motion was denied,  
19 and before any discovery has been conducted by the parties. The timing of this Motion alone  
20 shows good faith and a desire for Defendant to protect its interests.

21 Moreover, Defendant fully expected to prevail on its anti-SLAPP Motion considering the  
22 fact that it published the alleged defamatory statement without the heightened constitutional  
23 malice Plaintiff was required to prove by clear and convincing evidence. Defendant did not intend

---

24  
25 <sup>1</sup> California *Code of Civil Procedure* section 426.50 reads:

26 A party who fails to plead a cause of action subject to the requirements of this article, whether through  
27 oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his  
28 pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The  
court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to  
amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the  
cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of  
action.

1 to litigate against Plaintiff if its motion was granted, and Plaintiff’s complaint was dismissed.  
2 However, things – as they sometimes do – panned-out differently than expected by Defendant,  
3 and now Defendant is required to defend against Plaintiff’s claims through trial or summary  
4 judgment. Plaintiff has, in a sense, forced Defendant’s hand to pursue these claims.

5 And the claims Defendant is forced to pursue are compulsory claims that arise out of the  
6 same transaction, occurrence and series of transactions that Plaintiff alleges caused his injury in  
7 his first amended complaint. Plaintiff’s first amended complaint alleges that Defendant defamed  
8 him by making the false statement that Plaintiff cheated to achieve certain of his video game  
9 scores. Defendant’s first cause of action for breach of contract, second and third causes of action  
10 for deceit, fourth and fifth causes of action for tortious interference, and seventh cause of action  
11 for civil RICO violations – as alleged in the proposed cross-complaint – all pertain to Plaintiff’s  
12 video game scores, and the conspiracy to fake them. In this regard, the claims in the proposed  
13 cross-complaint must be allowed against Plaintiff by virtue of this motion in the interests of justice,  
14 otherwise they are forfeited.

15 In addition, Defendant’s counsel David A. Tashroudian attests to his mistake,  
16 inadvertence, and neglect in failing to plead the counter-claims against Plaintiff at the time the  
17 answer was filed. At the time the answer was filed, the case was in its infancy. [*See* Declaration  
18 of David A. Tashroudian (“Tashroudian Decl.”), ¶¶ 3-4.] However, during the investigation  
19 conducted in connection with prosecuting the anti-SLAPP motion, it became apparent that  
20 Defendant had good claims against Plaintiff as set forth in the proposed cross-complaint  
21 accompanying this Motion. [*Id.*] These facts were unknown to Defendant’s counsel at the time  
22 the answer was filed. [*Id.*] After the facts were developed, and after the anti-SLAPP Motion was  
23 denied, Defendant moved expeditiously to protect its right to bring these claims.

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. CONCLUSION**

Defendant respectfully submits that, based on the foregoing, the instant motion should be granted and the proposed cross-complaint attached to the declaration of David A. Tashroudian as Exhibit A should be deemed filed as of the date of this Motion.

Respectfully submitted,  
TASHROUDIAN LAW GROUP, APC

Dated: November 4, 2020

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

**DECLARATION OF DAVID A. TASHROUDIAN**

I, David A. Tashroudian, declare that:

1. I am the attorney of record for Defendant and I make this declaration in support of Defendant’s motion for leave to file a cross-complaint. I make this declaration based on facts known to me personally to be true, and if called as a witness to testify to them, I could and would do so.

2. Attached to this declaration as Exhibit A, and incorporated herein by this reference, is a true and correct copy of Defendant’s proposed cross-complaint for: (1) breach of contract; (2) deceit – intentional misrepresentation; (3) deceit – concealment; (4) inducing breach of contract; (5) intentional interference with contractual relationship; (6) unfair competition; and, (7) civil RICO violation.

3. At the time that Defendant filed its answer to Plaintiff’s first amended complaint on April 20, 2020, this matter was still in its infancy. Plaintiff had initially filed its complaint *in pro per*, and it lacked detail. The first amended complaint filed on March 13, 2020 had more detail as it was prepared by counsel. I began my investigation upon the filing of the first amended complaint and in anticipation of filing Defendant’s anti-SLAPP Motion on March 30, 2020. I could not have imagined how much information there was for me to investigate. There were thousands of pages of documents, scores of witnesses to talk to, hours of videos on YouTube to watch, and a trove of information on the Internet to parse through. It is amazing the amount of information that is in the public domain about Billy Mitchell, Walter Day, and Twin Galaxies.

4. At the time of filing Defendant’s answer to the first amended complaint on April 20, 2020, I had not completed my investigation. But, as this matter dragged on through the anti-SLAPP Motion, I discovered from my review of all the material that Defendant had good claims against the Plaintiff. It was my mistake, inadvertence, and neglect not to bring these claims at the time of filing the answer -- but I just did not know of the claims then. I respectfully submit that this Motion is being made now in good faith to avoid forfeiture.

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I swear, under penalty of perjury of the laws of the State of California, that the foregoing is true and correct. Executed this 4<sup>th</sup> day of November, 2020 at Los Angeles, California.

/s/ David A. Tashroudian



# **EXHIBIT A**

1 David A. Tashroudian [SBN 266718]  
Mona Tashroudian [SBN 272387]  
2 TASHROUDIAN LAW GROUP, APC  
12400 Ventura Blvd., Suite 300  
3 Studio City, California 91604  
Telephone: (818) 561-7381  
4 Facsimile: (818) 561-7381  
Email: [david@tashlawgroup.com](mailto:david@tashlawgroup.com)  
5 [mona@tashlawgroup.com](mailto:mona@tashlawgroup.com)

6 Attorneys for Defendant and  
Cross-Complainant Twin Galaxies, LLC  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES  
10

11 WILLIAM JAMES MITCHELL,

12 Plaintiff,

13 v.

14 TWIN GALAXIES, LLC; and Does 1-10,

15 Defendants.  
16

17  
18 TWIN GALAXIES, LLC,

19 Cross-Complainant,

20 v.

21  
22 WILLIAM JAMES MITCHELL; WALTER  
DAY; and Roes 1-25,

23 Cross-Defendants.  
24

Case No. 19STCV12592

Assigned to: Hon. Gregory W. Alarcon  
[Dept. 36]

**[PROPOSED] CROSS-COMPLAINT FOR:**

- 25 **(1) BREACH OF CONTRACT**
- 26 **(2) DECEIT – INTENTIONAL**
- 27 **MISREPRESENTATION**
- 28 **(3) DECEIT – CONCEALMENT**
- (4) INDUCING BREACH OF CONTRACT**
- (5) INTENTIONAL INTERFERENCE**
- WITH ECONOMIC RELATIONSHIP**
- (6) UNFAIR COMPETITION**
- (7) CIVIL RICO**

**DEMAND FOR JURY TRIAL**

Action Filed: 4/11/2019

1 PARTIES

2 1. Cross-Complainant Twin Galaxies, LLC (“Cross-Complainant”) is a limited  
3 liability company organized under the laws of the State of Florida, with its principal place of  
4 business located in Beverly Hills, California.

5 2. Cross-Defendant Twin Galaxies, Inc. (“Old Twin Galaxies”) is a corporation  
6 organized under the laws of the State of Iowa, with its principal place of business located in  
7 Fairfield, Iowa.

8 3. Cross-Defendant William James Mitchell (“Billy Mitchell”) is the Plaintiff in this  
9 action. He is an individual domiciled in the State of Florida. Cross-Complainant is informed and  
10 believes, and based thereon alleges, that Billy Mitchell was, at all times relevant herein, a  
11 shareholder, director, and officer of Old Twin Galaxies.

12 4. Cross-Defendant Walter Day is an individual domiciled in the State of Iowa.  
13 Cross-Complainant is informed and believes, and based thereon alleges, that Walter Day was, at  
14 all times relevant herein, a shareholder, director, and officer of Old Twin Galaxies.

15 5. Old Twin Galaxies, Billy Mitchell, and Walter Day shall be collectively referred to  
16 herein as the “Cross-Defendants.”

17 6. In doing the things hereinafter alleged, Cross-Defendants, and each of them, acted  
18 as the agents, servants, employees, co-conspirators, and alter egos of their co-defendants; acted  
19 within the course and scope of said agency and employment, with the knowledge, consent and  
20 approval of their co-defendants; and their conduct was ratified by their co-defendants.

21 7. Cross-Complainant is ignorant of the true names and capacities of cross-defendants  
22 sued herein as Roes 1 to 25 inclusive, and therefore sues these cross-defendants by such fictitious  
23 names. Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to identify  
24 said cross-defendants when their identities are ascertained. Cross-Complainant is informed and  
25 believes, and based thereon alleges that each of the fictitiously named cross-defendants was in  
26 some fashion or manner liable and legally responsible for the damages and injuries set forth herein.

27 ///

28 ///

1 ALTER EGO ALLEGATIONS

2 8. There is such a unity of interest and ownership between Old Twin Galaxies on the  
3 one hand, and Billy Mitchell and Walter Day on the other, such that the separate personalities of  
4 the corporation and the shareholders do not in reality exist; and treating the corporation as a  
5 separate entity from the individuals would result in injustice and unfairness to Cross-Complainant  
6 because Old Twin Galaxies is no longer a going concern and judgment against the entity will be  
7 uncollectable. The unity of interest and ownership alleged herein is evidenced by the following  
8 facts which are alleged on information and belief:

9 A. Billy Mitchell and Walter Day comingled the funds of Old Twin Galaxies  
10 with their own. Any funds that were earned by Old Twin Galaxies were  
11 immediately distributed to Billy Mitchell and Walter Day without regard to debt  
12 payments due to the corporation's creditors. Billy Mitchell and Walter Day failed  
13 to segregate the funds of the corporation from their own. The pair would take funds  
14 that were otherwise payable to the corporation and would deposit those funds into  
15 their personal accounts, for their personal use.

16 B. Billy Mitchell and Walter Day treated the assets of the corporation as their  
17 own by paying personal debts with the corporation's funds. One of the main assets  
18 of the corporation was the Twin Galaxies Score Database, defined *infra*. Billy  
19 Mitchell particularly treated the scoreboard as his own asset by forcefully, over  
20 objection, including his fake video game scores in the database to fraudulently  
21 represent the scores as world records.

22 C. Billy Mitchell and Walter Day failed to obtain authority from the  
23 corporation to issue stock. The pair would promise stock to individuals in exchange  
24 for services that would benefit themselves personally. The two knew they would  
25 not honor their promise to issue the stock, but made the promises with the intent of  
26 inducing reliance and converting the hard work of others for their own personal  
27 gain under the auspices of having the work performed for the corporation.  
28

1 D. Billy Mitchell and Walter Day promised they would personally satisfy debt  
2 the corporation owed to individuals – including but not limited to Patrick Scott  
3 Patterson, and Catherine DeSpira – even though they never had the intent to satisfy  
4 those debts. Billy Mitchell and Walter Day made these promises to induce reliance  
5 and to convert the hard work of others for their own personal gain.

6 E. Old Twin Galaxies failed to follow corporate technicalities, such as  
7 maintaining records, and holding board or shareholder meetings.

8 F. Old Twin Galaxies was inadequately capitalized from the inception, and  
9 always thereafter. Rather than capitalizing the corporation, Billy Mitchell and  
10 Walter Day incurred debts in the name of the corporation without any intent to pay  
11 those debts.

12 G. Billy Mitchell and Walter Day used the corporation as a shell and  
13 instrumentality for a single venture to secure contracts that personally benefitted  
14 the two. For example, the two used Old Twin Galaxies and the Twin Galaxies  
15 Score Database to further their own fame in documentary movies by fabricating  
16 high scores for Billy Mitchell. They also used the corporation to enter into  
17 contracts with Guinness World Records so that Billy Mitchell could have his  
18 fraudulent video game high scores recognized by Guinness World Records as  
19 world records. The pair also used the corporation to earn appearance fees for  
20 themselves.

21 H. Billy Mitchell and Walter Day used of the corporate entity to procure labor,  
22 services, and merchandise for themselves.

23 I. Billy Mitchell and Walter Day used of the corporate entity as a subterfuge  
24 for illegal transactions where the two of them profited directly. For example, Billy  
25 Mitchell and Walter Day sold the assets of the corporation under false pretenses  
26 multiple times to multiple people/entities such as Peter Bouvier, and Jourdan Adler,  
27 and Cross-Complainant.

28 ///

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2 9. The story goes that in mid-1981, Walter Day visited more than 100 video game  
3 arcades and recorded the high scores he found on each game. After collecting the arcade video  
4 game high scores, Walter Day organized Old Twin Galaxies and opened the Twin Galaxies arcade  
5 in Ottumwa, Iowa on November 10, 1981 (the "Twin Galaxies Arcade"). Old Twin Galaxies  
6 publicly released Walter Day's score database compilation on February 9, 1982 as the Twin  
7 Galaxies National Database (the "Twin Galaxies Score Database").

8 10. With the publication of the Twin Galaxies Score Database, the Twin Galaxies  
9 Arcade skyrocketed in popularity. The Twin Galaxies Score Database became the official  
10 scoreboard for video game achievement at the time. Walter Day, under the Twin Galaxies name,  
11 arranged for video game competitions between individuals and teams at the Twin Galaxies Arcade  
12 and throughout the United States between 1982 and 1984. Old Twin Galaxies, through Walter  
13 Day, recorded and published these live competition scores in the Twin Galaxies Score Database.

14 11. The status of the Twin Galaxies Score Database as the official repository for video  
15 game score achievement was further enhanced by the endorsement of the major video game  
16 publications of the early 1980s. In 1982, *Video Games* magazine and *Joystick* magazine began  
17 publishing full-page high-score charts taken from the Twin Galaxies Score Database. Additional  
18 high-score charts also appeared in *Videogiochi* (Milan, Italy), *Computer Games*, *Video Game*  
19 *Player*, and *Electronic Fun* magazines. Most notably, beginning in 1983, Guinness World  
20 Records for the first time recognized video game scores as a new category, and Old Twin Galaxies  
21 became the official supplier of verified scores as they were published in the Twin Galaxies Score  
22 Database. The Twin Galaxies Score Database also appeared in *USA Today* on April 22, 1983.

23 12. The Twin Galaxies Arcade and the Twin Galaxies Score Database were featured  
24 prominently in popular culture in the early 1980s. Old Twin Galaxies assembled sixteen of the  
25 top video game players of the time on November 7, 1982 for a photograph session by *Life*  
26 magazine. This session is the subject of a documentary film, *Chasing Ghosts: Beyond the Arcade*,  
27 which was screened at the 2007 Sundance Film Festival. Billy Mitchell was one of the sixteen  
28 players featured by *Life*. In 1983, Old Twin Galaxies organized the first significant video-game

1 competition to crown a world champion. This event was filmed in Ottumwa, Iowa by ABC-TV's  
2 *That's Incredible!* and was aired in primetime.

3 13. However, by 1984 the Old Twin Galaxies business began to fail. And on  
4 November 20, 1984, Old Twin Galaxies ceased operations until it was revived in 1997. Walter  
5 Day privately maintained the Twin Galaxies Score Database during this hiatus.

6 14. In 1997, Walter Day and Billy Mitchell together revived Old Twin Galaxies, and  
7 created a publicly accessible website to publish the Twin Galaxies Score Database. But the Old  
8 Twin Galaxies reputation had waned in the meanwhile and the Twin Galaxies Score Database was  
9 no longer the preeminent record of video game achievement. Other video game score databases  
10 had eclipsed Old Twin Galaxies in stature amongst video game hobbyist by the return.

11 15. Beginning in 1997, Walter Day and Billy Mitchell conspired and agreed to commit  
12 fraud to restore Old Twin Galaxies to prominence and increase the value of the business assets for  
13 potential future suitors. Plaintiff is informed, believes, and based thereon alleges that Walter Day  
14 and Billy Mitchell conspired to manufacture a persona for Billy Mitchell as the greatest video  
15 game player of all time. The problem was that Billy Mitchell lacked the requisite natural skill or  
16 ability to be the greatest video game player of all time. Billy Mitchell, however, always has a  
17 plan. The plan was to return Billy Mitchell's prestige with fraudulent scores, so that his association  
18 with Old Twin Galaxies would increase interest in Old Twin Galaxies and the Twin Galaxies Score  
19 Database and thereby increase the value of the company and its assets.

20 16. To fabricate the lore of Billy Mitchell as a great video game player, Walter Day  
21 purged other peoples' scores in the Twin Galaxies Score Database when it was republished in  
22 1997. Scores of Billy Mitchell that were not world records previously, suddenly became world  
23 records. For example, Billy Mitchell was installed as the world record holder for the Donkey  
24 Kong Jr. video game when in-fact another player's score was removed by Walter Day upon  
25 republication. Similarly, Walter Day and Billy Mitchell rejected claims from other players – Bill  
26 Bastable being one – that they had achieved a perfect score on the Pac-Man video game, but  
27 accepted the claim of Billy Mitchell to recognize him as the first player to ever achieve such a  
28 perfect score. And Walter Day fraudulently suppressed the 2000 Donkey Kong score performance

1 by Tim Sczerby of 879,200 points, which at the time of performance was a world record, in order  
2 to ensure Billy Mitchell's then long-standing world record would not fall.

3 17. In 1999, Billy Mitchell and Walter Day worked to suppress earlier perfect Pac-Man  
4 scores of other players, and altered the competitive rules to allow for Billy Mitchell to be crowned  
5 by Old Twin Galaxies as the first person to achieve a perfect Pac-Man score when in fact he was  
6 not. To further their deception, Billy Mitchell and Walter Day created an award with the title of  
7 "Video Game Player of the Century" specifically for Billy Mitchell, and successfully developed  
8 the false narrative that NAMCO, the creator of the Pac-man game, had directly given or endorsed  
9 Billy Mitchell with that title. This lie was expressly intended to help legitimize and support the  
10 fraudulent, larger narrative that Walter Day and Billy Mitchell perpetuated around Billy Mitchell's  
11 gaming achievements, which has been repeated by Walter Day and Billy Mitchell so pervasively  
12 that it is now mistakenly represented as fact in numerous places, including on Billy Mitchell's  
13 public Wikipedia page.

14 18. Billy Mitchell being crowned the Video Game Player of the Century reimposed  
15 Old Twin Galaxies' eminence as the world's most important videogame score database. But that  
16 was not enough to increase the value of Old Twin Galaxies. Billy Mitchell had to remain a video  
17 game world record holder to retain Old Twin Galaxies' recognition.

18 19. On June 30, 2003, Steve Wiebe achieved a score of 947,200 points on the Donkey  
19 Kong arcade videogame, besting Billy Mitchell's long-standing world record high score of  
20 874,300 points for the game. This score performance became the new world record as recorded  
21 in the Twin Galaxies Score Database.

22 20. Billy Mitchell's world record would not be outdone by Steve Wiebe. On or about  
23 May 7, 2004, Billy Mitchell allegedly achieved a Donkey Kong score of 933,900 points. The  
24 score was witnessed and adjudicated by Walter Day. Billy Mitchell's May 2004 score  
25 performance was insufficient to unseat Steve Wiebe's 2003 record – but Walter Day and Billy  
26 Mitchell found a way to ensure Billy Mitchell came out on top.

27 21. Old Twin Galaxies, at the direction of Walter Day and Billy Mitchell, refused to  
28 recognize Steve Wiebe's 2003 world record. The two had the record removed from the Twin



1 Galaxies Score Database because it was submitted by video. In addition, Walter Day and Billy  
2 Mitchell removed three other of Steve Wiebe's Donkey Kong world-record score performances  
3 from the Twin Galaxies Score Database because they were submitted by video – including a July  
4 4, 2004 score performance of 1,006,600 which was the first one million point achievement in the  
5 game's history. Billy Mitchell regained the Donkey Kong world record with his 933,900 point  
6 score after Steve Wiebe's records were disqualified.

7 22. Billy Mitchell and Walter Day saw the rivalry with Steve Wiebe as a public  
8 relations opportunity to further increase Old Twin Galaxies' recognition and value. The two  
9 arranged for a documentary film to be created about the Donkey Kong world record battle titled  
10 *The King of Kong: A Fistful of Quarters* (2007). The film chronicles Steve Wiebe's attempt to  
11 break Billy Mitchell's Donkey Kong world record.

12 23. The film climaxed when Steve Wiebe again beat Billy Mitchell's Donkey Kong  
13 world record on July 3, 2005 with a 985,600 point score performance achieved live at the Funspot  
14 arcade with *The King of Kong* movie crew filming the event. But while Steve Wiebe was in the  
15 middle of achieving this live score performance, Billy Mitchell had his own taped score  
16 performance submitted for adjudication. This taped submission showed a score of 1,047,200  
17 points – and is known as the 1,047,200 (King of Kong “tape”) score performance.

18 24. Billy's taped submission was reviewed by Walter Day and other members of the  
19 Old Twin Galaxies referee staff at Funspot while Steve Wiebe was still performing live. After  
20 Wiebe's performance ended and he officially set a new world record, his performances was one-  
21 upped by Billy Mitchell as only minutes later Walter Day announced that Billy Mitchell had  
22 regained the world-record by virtue of the 1,047,200 (King of Kong “tape”) taped score  
23 performance – which Old Twin Galaxies called the first one million point Donkey Kong score.

24 25. Steve Wiebe, for his part, set a new Donkey Kong world-record on August 3, 2006,  
25 with a score of 1,049,100 points. Not to be outdone, Billy Mitchell arranged for a live performance  
26 at a convention of mortgage brokers where on July 14, 2007, he allegedly set a new Donkey Kong  
27 world record with a 1,050,200 score – known as the 1,050,200 (Mortgage Brokers) performance.  
28

1           26.     Billy Mitchell’s 1,050,200 (Mortgage Brokers) score performance remained as the  
2 world record for nearly three years. Then, on February 26, 2010, Dr. Hank Chien entered the  
3 scene and set a new world record with a 1,061,700 point score performance to become the new  
4 world champion. But Billy Mitchell never surrenders. On July 31, 2010 he allegedly achieved a  
5 1,062,800 score at a Boomer’s arcade in Florida to retake the world record from Dr. Chien – this  
6 performance is known as the 1,062,800 (Boomers) score.

7           27.     The back and forth between Billy Mitchell and others for the Donkey Kong world  
8 record further renewed interest in Old Twin Galaxies and the Twin Galaxies Score Database. The  
9 interest attracted the attention of filmmakers and several other documentaries were made about  
10 Walter Day, Billy Mitchell, and Old Twin Galaxies where the Twin Galaxies Score Database was  
11 prominently featured, including: *Man vs Snake: The Long and Twisted Tale of Nibbler* (2014);  
12 *The King of Arcades* (2013); *Meet the New Kings of Kong* (2013); *The Video Craze* (2012); *The*  
13 *Perfect Fraudman* (2012); *King of Con!* (2012); *Frag* (2008); and, *Chasing Ghosts: Beyond the*  
14 *Arcade* (2007).

15           28.     Billy Mitchell and Walter Day were able to capitalize on the renewed interest in  
16 Old Twin Galaxies and the Twin Galaxies Score Database just as they had planned. In 2008, the  
17 two sold the Twin Galaxies Score Database to Peter Bouvier for \$200,000.00. Later, in or about  
18 2012, Billy Mitchell and Walter Day took control of the Twin Galaxies Score Database from Peter  
19 Bouvier by exercising undue influence over him while he was incapacitated with Alzheimer’s  
20 disease, and transferred it to Jourdan Adler. And finally, the pair forcibly reclaimed the Twin  
21 Galaxies Score Database from Jourdan Adler and sold it Cross-Complainant, and pocketed the  
22 proceeds.

23           29.     Billy Mitchell and Walter Day engaged in a decades-long fraud to manufacture  
24 value for Old Twin Galaxies and the Twin Galaxies Score Database. The fraudulent scheme  
25 included Old Twin Galaxies recognizing fake score performances by Billy Mitchell. Billy  
26 Mitchell’s 1,047,200 (King of Kong “tape”) world record score performance was fake – a  
27 manufactured score performance recognized by Old Twin Galaxies to increase the value of the  
28 company and of the Twin Galaxies Score Database. Billy Mitchell’s 1,050,200 (Mortgage

1 Brokers) score performance was also fake and manufactured to increase the value of Old Twin  
2 Galaxies and the score database. So too was Billy Mitchell’s 1,062,800 (Boomers) score  
3 performance – it was fake. None of these three scores were legitimate, and should never have  
4 been included on the Twin Galaxies Score Database because they were not made from an original  
5 Donkey Kong arcade machine. Both Billy Mitchell and Walter Day knew that these score  
6 performances were fake, but still included the scores on the Twin Galaxies Score Database because  
7 of their need for self-aggrandization, their avarice, and their desire to create perceived value for  
8 the database so that they could one day sell Twin Galaxies and the Twin Galaxies Score Database  
9 and take the money for themselves.

10 **FIRST CAUSE OF ACTION**

11 Breach of Written Contract

12 (Against All Cross-Defendants)

13 30. Cross-Complainant incorporates by reference all allegations of this Cross-  
14 Complaint as if those allegations were set forth herein in-full.

15 31. On, or about, February 13, 2014, Cross-Defendants entered into a written contract  
16 with HD Films, Inc., the predecessor-in-interest to Cross-Complainant, for the purchase and sale  
17 of the assets of Old Twin Galaxies, including but not limited to the Twin Galaxies Score Database  
18 (“Purchase Agreement”). A true and correct copy of the Purchase Agreement is attached to this  
19 Cross-Complaint as Exhibit A, and is incorporated herein by this reference.

20 32. Cross-Complainant did all of the significant things that the Purchase Agreement  
21 required of it. Billy Mitchell and Walter Day received the benefit of Cross-Complainant’s  
22 performance.

23 33. Cross-Defendants represented and warranted in the Purchase Agreement that the  
24 Twin Galaxies Score Database does not contain any untrue, or misleading statements of fact. But  
25 the Twin Galaxies Score Database did contain untrue and misleading statements of fact. The  
26 untrue and misleading statement of facts are at least: (1) that the 1,047,200 (King of Kong “tape”)  
27 score performance appearing in the Twin Galaxies Score Database was from an original Donkey  
28 Kong arcade machine; (2) that the 1,050,200 (Mortgage Brokers) score performance appearing in

1 the Twin Galaxies Score Database was performed live on an original Donkey Kong arcade  
2 machine; (3) that the 1,062,800 (Boomers) score appearing in the Twin Galaxies Score Database  
3 was performed live on an original Donkey Kong arcade machine; and (4) that Billy Mitchell was  
4 the first person to achieve a perfect score in the Pac-Man arcade video game.

5 34. Cross-Defendants breached the Purchase Agreement by making untrue  
6 representations and warranties to Cross-Complainant.

7 35. Cross-Complainant did not discover the breach of the Purchase Agreement until  
8 April 12, 2018 when it determined the validity of Jeremy Young’s challenge to the achievement  
9 records relating to Billy Mitchell’s 1,047,200 (King of Kong “tape”) point, and 1,050,200  
10 (Mortgage Brokers) point Donkey Kong score performances.

11 36. Cross-Defendants actively engaged in a scheme to hide the breach of the  
12 representation and warranties concerning the truth of the statements of fact contained in the Twin  
13 Galaxies Score Database, particularly those relating to Billy Mitchell’s video game score  
14 performances. Cross-Defendants continued to promote the untrue statements of fact after the  
15 Purchase Agreement was executed. Cross-Complainant was unable to make earlier discovery of  
16 the breach because of Cross-Defendant’s active and concerted effort to hide the fact that Billy  
17 Mitchell’s achievements in the Twin Galaxies Score Database were untrue and misleading.

18 37. Cross-Complainant was harmed by Cross-Defendants’ breach of the  
19 representations and warranties in the Purchase Agreement; and Cross-Defendants’ actions were a  
20 substantial factor and the proximate cause of that harm.

21 **SECOND CAUSE OF ACTION**

22 Deceit – Intentional Misrepresentation

23 (Against All Cross-Defendants)

24 38. Cross-Complainant incorporates by reference all allegations of this Cross-  
25 Complaint as if those allegations were set forth herein in-full.

26 39. Cross-Complainant’s principal Jason Hall began negotiating with Billy Mitchell  
27 and Walter Day to purchase the assets of Old Twin Galaxies in December 2013. Walter Day  
28 instructed Jason Hall to negotiate the terms of the Purchase Agreement with Billy Mitchell directly

1 on or about December 13, 2013. At all times relevant to this cause of action, Billy Mitchell and  
2 Walter Day were acting in their individual capacity, as well as in their capacity as an employee,  
3 agent, shareholder, director, and officer of Old Twin Galaxies.

4 40. From December 13, 2013, through February 13, 2014, Billy Mitchell and Jason  
5 Hall negotiated the terms of the Purchase Agreement. As part of the negotiations, Billy Mitchell  
6 provided Jason Hall with an initial draft of the agreement, and instructed Jason Hall to keep the  
7 draft secret. The initial draft of the Purchase Agreement that Billy Mitchell provided to Jason Hall  
8 contained a representation and warranty that the Twin Galaxies Score Database did not contain  
9 any untrue or misleading statement of fact.

10 41. From December 13, 2013, through February 13, 2014, Billy Mitchell and Jason  
11 Hall had numerous telephone calls and email correspondences with each other about the terms of  
12 the Purchase Agreement. In the telephone calls, Billy Mitchell made the following representations  
13 of fact to Jason Hall: (1) that the Twin Galaxies Score Database did not contain any untrue or  
14 misleading statements of fact; and, (2) that the records of achievement by Billy Mitchell as they  
15 appeared in the Twin Galaxies Score Database were true and correct. Walter Day acknowledged  
16 and adopted these representations in contemporaneous telephone calls he had with Jason Hall. He  
17 also reiterated the statements to Jason Hall in those calls. Billy Mitchell and Walter Day, as the  
18 shareholders, officers, and directors of Old Twin Galaxies were the only parties that had  
19 knowledge of the truth or falsity of these statements.

20 42. Cross-Defendants made the intentional misrepresentations of fact to Jason Hall to  
21 induce him, and to consummate the sale contemplated by the Purchase Agreement because those  
22 funds would be siphoned from the corporation to the pair.

23 43. The statements by Cross-Defendants about the truth of the facts reflected in the  
24 Twin Galaxies Score Database were false, and were known by both Walter Day and Billy Mitchell  
25 to be false when the statements were made. Indeed, Billy Mitchell and Walter Day had for years  
26 engaged in a scheme to disseminate a false narrative about Billy Mitchell's score performances to  
27 increase the value of Old Twin Galaxies so that one day the assets held by the company could be  
28 sold for a handsome profit.

1           44.     Cross-Defendants intended that Cross-Complainant rely on their false statements,  
2 and Cross-Complainant did so reasonably rely.

3           45.     Cross-Complainant was harmed by Cross-Defendants' intentional  
4 misrepresentations of fact. The harm manifested in a loss of value of the assets purchased from  
5 Old Twin Galaxies, particularly a loss of value in the Twin Galaxies Score Database because of  
6 the association with fraudulent scores.

7           46.     Cross-Complainant's reasonable reliance on Cross-Defendants' intentional  
8 misrepresentations was a substantial factor in causing its harm.

9           47.     Cross-Complainant did not discover the falsity of Cross-Defendants' statements  
10 until April 12, 2018 when it determined the validity of Jeremy Young's challenge to the  
11 achievement records relating to Billy Mitchell's 1,047,200 (King of Kong "tape") point, and  
12 1,050,200 (Mortgage Brokers) point Donkey Kong score performances.

13           48.     Cross-Defendants actively engaged in a scheme to hide the falsity of their  
14 statements. Cross-Defendants continued to promote the untrue statements of fact after the  
15 Purchase Agreement was executed. Cross-Complainant was unable to make earlier discovery of  
16 the intentional misrepresentations because of Cross-Defendant's active and concerted effort to  
17 hide the fact that Billy Mitchell's achievements in the Twin Galaxies Score Database were untrue  
18 and misleading.

19           49.     The intentional misrepresentations of Billy Mitchell and Walter Day in their  
20 personal capacity and as agents of Old Twin Galaxies to Cross-Complainant were made with  
21 malice, fraud, and oppression. Cross-Defendants made the intentional misrepresentations to  
22 Cross-Complainant with willful and knowing disregard of Cross-Complainant's rights – hoping  
23 that Cross-Complainant would be harmed and they would be unjustly enriched. Their conduct  
24 was despicable, and subjected Cross-Complainant to unjust hardship in conscious disregard of  
25 Cross-Complainant's rights. This despicable conduct is so vile, base and contemptible that it  
26 would be looked down on and despised by a reasonable person. An award of punitive damages is  
27 appropriate to punish Cross-Defendants and to discourage this sort of conduct in the future.

28 ///

1 **THIRD CAUSE OF ACTION**

2 Deceit – Concealment

3 (Against All Cross-Defendants)

4 50. Cross-Complainant incorporates by reference all allegations of this Cross-  
5 Complaint as if those allegations were set forth herein in-full.

6 51. Cross-Defendants, and each of them, made representations to Cross-Complainant  
7 during the course of negotiating the Purchase Agreement, including but not limited to the  
8 representation that the statements contained in the Twin Galaxies Score Database were true, and  
9 not misleading. Cross-Defendants, however, failed to disclose facts which materially qualify the  
10 disclosed facts. That is, Cross-Defendants failed to disclose that Billy Mitchell’s score  
11 performances recorded in the database were fraudulent. These true facts were accessible only to  
12 Cross-Defendants, and they actively concealed discovery of the truth by Cross-Complainant.

13 52. Cross-Defendants, and each of them, also concealed the fact that the decades-long  
14 pattern of abuse, impropriety, nepotism, and fraud they had perpetrated against the video game  
15 record achievement community had negatively impacted the value of the Twin Galaxies brand.  
16 At the time of the making of the Purchase Agreement, the reputation of Twin Galaxies was marred  
17 by scandals relating to favoritism toward Billy Mitchell; failure to pay debts to referees; failure to  
18 maintain a fair and unbiased score database; and the use and strong-arm tactics to force recognition  
19 of questionable video game scores performed by Billy Mitchell. None of this was disclosed to  
20 Cross-Complainant, and Cross-Complainant had no way of determining these facts for its own.

21 53. Cross-Defendants, and each of them, also concealed the fact that the decades-long  
22 score fraud and unfair exclusionary behavior had ostracized large parts of the video game record  
23 community, such as those focused on the area of speedrun achievement. This community’s  
24 acceptance of Twin Galaxies and the Twin Galaxies Score Database gives value to the  
25 database. However, the fraud perpetrated by Billy Mitchell and Walter Day fomented distrust in  
26 many of these important communities toward Twin Galaxies, thereby diminishing its value. None  
27 of this was disclosed to Cross-Complainant, and Cross-Complainant had no way of discovering  
28 these facts for its own.

1           54.     Cross-Defendants, and each of them, also concealed the fact that Old Twin  
2 Galaxies associated with convicted felons and pedophiles, and in some cases gave awards to felons  
3 and pedophiles after they were convicted of their crimes. The association with such people was  
4 never disclosed to Cross-Complainant, and the association has affected Cross-Complainant's  
5 business and reputation as a safe place for family fun and achievement.

6           55.     Cross-Complainant did not know of the concealed facts.

7           56.     Cross-Defendants intended to deceive Cross-Complainant by concealing the facts.

8           57.     Had the omitted information been disclosed, Cross-Complainant would have  
9 behaved differently and not have entered into the Purchase Agreement.

10          58.     Cross-Complainant was harmed, and Cross-Defendants' concealment was a  
11 substantial factor in that harm.

12          59.     Cross-Complainant did not discover Cross-Defendants' fraudulent concealment  
13 until April 12, 2018 when it determined the validity of Jeremy Young's challenge to the  
14 achievement records relating to Billy Mitchell's 1,047,200 (King of Kong "tape") point, and  
15 1,050,200 (Mortgage Brokers) point Donkey Kong score performances.

16          60.     Cross-Defendants actively engaged in a scheme to hide their fraudulent  
17 concealment. Cross-Defendants continued to promote untrue statements of fact regarding Billy  
18 Mitchell's score performances even after the Purchase Agreement was executed. Cross-  
19 Complainant was unable to make earlier discovery of the concealment because of Cross-  
20 Defendant's active and concerted effort to hide the fact that Billy Mitchell's achievements in the  
21 Twin Galaxies Score Database were untrue and misleading.

22          61.     The concealment of material facts by Billy Mitchell and Walter Day in their  
23 personal capacity and as agents of Old Twin Galaxies to Cross-Complainant was made with  
24 malice, fraud, and oppression. Cross-Defendants concealed material facts from Cross-  
25 Complainant with willful and knowing disregard of Cross-Complainant's rights – hoping that  
26 Cross-Complainant would be harmed and they would be unjustly enriched. Their conduct was  
27 despicable, and subjected Cross-Complainant to unjust hardship in conscious disregard of Cross-  
28 Complainant's rights. This despicable conduct is so vile, base and contemptible that it would be



1 looked down on and despised by a reasonable person. An award of punitive damages is  
2 appropriate to punish Cross-Defendants and to discourage this sort of conduct in the future.

3 **FOURTH CAUSE OF ACTION**

4 Inducing Breach of Contract

5 (Against Billy Mitchell and Walter Day)

6 62. Cross-Complainant incorporates by reference all allegations of this Cross-  
7 Complaint as if those allegations were set forth herein in-full.

8 63. Cross-Complainant had a contractual relationship with Guinness World Records to  
9 provide video game records of achievement to the publication for recognition as world records.

10 64. Billy Mitchell and Walter Day knew of the contractual relationship between Cross-  
11 Complainant and Guinness World Records.

12 65. In, or about September 2019, Billy Mitchell and Walter Day performed the act of  
13 submitting false and misleading evidence to Guinness World Record regarding Billy Mitchell's  
14 video game score performances and related records. Billy Mitchell and Walter Day submitted the  
15 false declarations and evidence to Guinness World Records with the specific intent to undermine  
16 Cross-Complainant's credibility such that Guinness World Records would terminate its contract  
17 with Cross-Complainant.

18 66. The actions of Billy Mitchell and Walter Day caused Guinness World Records to  
19 terminate its contract with Cross-Complainant.

20 67. Cross-Complainant was harmed; and the conduct of Billy Mitchell and Walter Day  
21 was a substantial factor in causing the harm.

22 68. The actions of Billy Mitchell and Walter Day were done with malice, fraud, and  
23 oppression. Billy Mitchell and Walter Day induced Guinness World Records to breach its contract  
24 with Cross-Complainant with willful and knowing disregard of Cross-Complainant's rights –  
25 hoping that Cross-Complainant would be harmed for their own personal amusement. Their  
26 conduct was despicable, and subjected Cross-Complainant to unjust hardship in conscious  
27 disregard of Cross-Complainant's rights. This despicable conduct is so vile, base and  
28 contemptible that it would be looked down on and despised by a reasonable person. An award of

1 punitive damages is appropriate to punish Cross-Defendants and to discourage this sort of conduct  
2 in the future.

3 **FIFTH CAUSE OF ACTION**

4 Intentional Interference with Prospective Economic Relationship

5 (Against Billy Mitchell and Walter Day)

6 69. Cross-Complainant incorporates by reference all allegations of this Cross-  
7 Complaint as if those allegations were set forth herein in-full.

8 70. Cross-Complainant and Guinness World Records were in an economic relationship  
9 that probably would have resulted in an economic benefit to Cross-Complainant.

10 71. Billy Mitchell and Walter Day knew of the relationship.

11 72. In, or about September 2019, Billy Mitchell and Walter Day performed the act of  
12 submitting false and misleading evidence to Guinness World Record regarding Billy Mitchell's  
13 video game score performances and related records. Billy Mitchell and Walter Day submitted the  
14 false declarations and evidence to Guinness World Records to undermine Cross-Complainant's  
15 credibility; and with the specific intent to disrupt the relationship between Cross-Complainant's  
16 and Guinness World Records.

17 73. The act of submitting false and misleading evidence was wrongful, and injurious  
18 to Cross-Complainant's reputation with Guinness World Records. Billy Mitchell and Walter day  
19 knew that by doing so, interference with the relationship between Cross-Complainant and  
20 Guinness World Records was certain, or substantially certain, to occur as a result of their actions.

21 74. The relationship between Cross-Complainant and Guinness World Records was  
22 disrupted by the actions of Billy Mitchell and Walter Day.

23 75. Cross-Complainant was harmed; and the conduct of Billy Mitchell and Walter Day  
24 was a substantial factor in causing the harm.

25 76. The actions of Billy Mitchell and Walter Day were done with malice, fraud, and  
26 oppression. Billy Mitchell and Walter Day interfered with the contract between Guinness World  
27 Records and Cross-Complainant with willful and knowing disregard of Cross-Complainant's  
28 rights – hoping that Cross-Complainant would be harmed for their own personal amusement.

1 Their conduct was despicable, and subjected Cross-Complainant to unjust hardship in conscious  
2 disregard of Cross-Complainant's rights. This despicable conduct is so vile, base and  
3 contemptible that it would be looked down on and despised by a reasonable person. An award of  
4 punitive damages is appropriate to punish Cross-Defendants and to discourage this sort of conduct  
5 in the future.

6 **SIXTH CAUSE OF ACTION**

7 Unfair Competition

8 (Against Old Twin Galaxies)

9 77. Cross-Complainant incorporates by reference all allegations of this Cross-  
10 Complaint as if those allegations were set forth herein in-full.

11 78. Old Twin Galaxies violation of California *Civil Code* section 1709 and the deceit  
12 it has engaged in as set forth in this Cross-Complainant constitutes unlawful, unfair, and fraudulent  
13 business acts and practices in violation of California's Unfair Competition Law. Old Twin  
14 Galaxies' unlawful, unfair, and fraudulent business acts and practices have allowed it to unfairly  
15 compete in the market. Old Twin Galaxies should be enjoined from further acts of unfair  
16 competition.

17 **SEVENTH CAUSE OF ACTION**

18 Civil RICO Violation – 18 U.S.C. § 1962(c)

19 (Against Billy Mitchell and Walter Day)

20 79. Cross-Complainant incorporates by reference all allegations of this Cross-  
21 Complaint as if those allegations were set forth herein in-full.

22 80. Old Twin Galaxies is an enterprise engaged in, and whose activities affect,  
23 interstate commerce. Billy Mitchell and Walter Day are employed by or associated with the  
24 enterprise, but are separate and distinct from the enterprise for purposes of this cause of action.

25 81. Billy Mitchell and Walter Day agreed to and did conduct and participate in the  
26 enterprise's affairs through a pattern of related and continuous racketeering activity and for the  
27 unlawful purpose of defrauding Cross-Complainant by artificially inflating the value of Old Twin  
28

1 Galaxies and the Twin Galaxies Score Databases in the manner and for the reasons set forth in this  
2 Cross-Complaint. Specifically:

3 A. In 1999, Billy Mitchell and Walter Day suppressed earlier perfect Pac-Man  
4 scores of other players, and altered the competitive rules to allow for Billy Mitchell  
5 to be crowned by Old Twin Galaxies as the first person to achieve a perfect Pac-  
6 Man score when in fact he was not. To further their deception, Billy Mitchell and  
7 Walter Day flew to Japan and convinced Namco, the creator the Pac-Man video  
8 game, to award Billy Mitchell a placard for his achievement thereby seemingly  
9 legitimizing the fraud. Billy Mitchell and Walter Day used the event to promote  
10 Old Twin Galaxies and the Twin Galaxies Score Database to ultimately increase  
11 the perceived value of the corporation and its assets in anticipation for a future sale.  
12 Billy Mitchell and Walter Day caused Old Twin Galaxies and other media outlets  
13 to disseminate news of this fraud through use of interstate wires, including but not  
14 limited to radio, television, phone, and Internet.

15 B. During the filming of the *King of Kong*, Billy Mitchell and Walter Day  
16 worked to diminish and obfuscate the 2000 Donkey Kong score performance of by  
17 Time Sczerby of 879,200 points, which wat the time of performance was a world  
18 record, in order perpetuate the false narrative of Billy Mitchell's prominence as the  
19 top achieving competitive figure.

20 C. On or about July 3, 2005, Billy Mitchell and Walter Day created a fake  
21 Donkey Kong score performance of 1,047,200 points and submitted it to defeat the  
22 legitimate world record of Steve Wiebe with the intent of fraudulently inflating the  
23 value of Old Twin Galaxies and its assets in anticipation of a future sale of the  
24 company or its assets. The fraud was technical in nature and the two enlisted the  
25 help of Billy Mitchell's long-time friend Robert Childs in the commission of the  
26 fraud. The fraudulent performance was disseminated through the use of interstate  
27 wires, including but not limited to radio, television, phone, Internet, and video on  
28 demand transmitted through interstate wires. This fraudulent score was included

1 on the Twin Galaxies Score Database that was published on the Internet for the  
2 public to access.

3 D. On or about July 14, 2007, Billy Mitchell and Walter Day created a fake  
4 Donkey Kong score performance of 1,050,200 points and submitted it to defeat the  
5 legitimate world record of Steve Wiebe with the intent of fraudulently inflating the  
6 value of Old Twin Galaxies and its assets in anticipation of a future sale of the  
7 company or its assets. The fraud was technical in nature and the two enlisted the  
8 help of Billy Mitchell's long-time friends Robert Childs, Todd Rogers, and  
9 Kimberly Morningdove Mahoney in the commission of the fraud. The fraudulent  
10 performance was disseminated through the use of interstate wires, including but  
11 not limited to radio, television, phone, and Internet. This fraudulent score was  
12 included on the Twin Galaxies Score Database that was published on the Internet  
13 for the public to access.

14 E. On or about July 31, 2010, Billy Mitchell and Walter Day created a fake  
15 Donkey Kong score performance of 1,062,800 points and submitted it to defeat the  
16 legitimate world record of Dr. Hank Chien with the intent of fraudulently inflating  
17 the value of Old Twin Galaxies and its assets in anticipation of a future sale of the  
18 company or its assets. The fraud was technical in nature and the two enlisted the  
19 help of Billy Mitchell's long-time friends Robert Childs, Todd Rogers, and  
20 Kimberly Morningdove Mahoney in the commission of the fraud. In connection  
21 with the fraud, and in furtherance thereof, Robert Childs created false and  
22 misleading videos of the score performance and posted them on the Internet via the  
23 website YouTube. Billy Mitchell and Walter Day, for their part, promoted the  
24 fraudulent performance at the Big Bang gaming convention in August 2010 in Iowa  
25 where Billy Mitchell held a press conference and gave interviews about the fake  
26 score performance that were broadcast on the Internet. The fraudulent performance  
27 and the subsequent interview were disseminated through the use of interstate wires,  
28 including but not limited to radio, television, phone, and Internet. This fraudulent

1 score was included on the Twin Galaxies Score Database that was published on the  
2 Internet for the public to access.

3 F. In or about 2008, Billy Mitchell and Walter Day cashed-in on the perceived  
4 value of Old Twin Galaxies by organizing the sale of the enterprise to Peter  
5 Bouvier. When Peter Bouvier fell ill and became incapacitated as a result of being  
6 afflicted with Alzheimer's disease, Billy Mitchell went to his house, exercised  
7 undue influence, and took the company and the assets previously sold back for his  
8 and Walter Day's exclusive use.

9 G. In or about 2012, Billy Mitchell in Florida, and Walter Day in Iowa made  
10 use of interstate wires (phone and wires) to fraudulently induce Jourdan Adler in  
11 Colorado to purchase the assets of Old Twin Galaxies. After the asset purchase  
12 was consummated, the pair enjoyed appearance fees, free travel, and free meals  
13 paid for by Jourdan Adler in connection with the pair's appearance at Old Twin  
14 Galaxies events. When Billy Mitchell and Walter Day found another suitor for the  
15 Old Twin Galaxies assets, they forced Jourdan Adler to part with the assets. The  
16 two fraudulently claimed that Jourdan Adler did not own the assets of Old Twin  
17 Galaxies despite the fact he had paid for them with good and valuable  
18 consideration. Billy Mitchell also used traditional strong-arm tactics and at one  
19 point flew to Denver, Colorado, and visited Jourdan Adler uninvited to pressure  
20 him with threats of legal action into relinquishing control of Old Twin Galaxies  
21 assets he had rightfully acquired. Billy Mitchell and Walter Day used the phone  
22 and Internet across state lines to defraud Jourdan Adler and to pressure him to give  
23 up the Old Twin Galaxies assets he had rightfully purchased so that Billy Mitchell  
24 and Walter Day could resell those assets to Cross-Complainant, and reap the  
25 benefits of the sale for themselves.

26 H. From December 13, 2013 through February 13, 2014, Billy Mitchell in  
27 Florida, and Walter Day in Iowa made use of interstate wires (phone and Internet)  
28 to fraudulently induce Cross-Complainant in California to purchase the assets of

1 Old Twin Galaxies. Billy Mitchell and Walter Day defrauded Cross-Complainant  
2 by making false statements of fact, and by concealing material facts, over the phone  
3 and by email. The purpose of the fraud was to make money for themselves. Cross-  
4 Complainant's fraud had come full-circle and the entire weight of their related and  
5 continuous pattern of racketeering which lasted decades was finally leveled upon  
6 Cross-Complainant.

7 82. The acts set forth above constitute a pattern of racketeering activity pursuant to 18  
8 U.S.C. § 1961(5).

9 83. Billy Mitchell and Walter Day directly and indirectly conducted and participated  
10 in the conduct of the enterprise's affairs through the pattern of racketeering and activity described  
11 above, in violation of 18 U.S.C. § 1962(c).

12 84. Pursuant to and in furtherance of their fraudulent scheme, Billy Mitchell and Walter  
13 Day committed multiple related acts of wire fraud in violation of 18 U.S.C. §1343.

14 85. Cross-Complainant reasonably relied on the fraudulent statements made by Billy  
15 Mitchell and Walter Day in furtherance of their fraudulent scheme to its detriment.

16 86. As a direct and proximate result of the racketeering activities of Billy Mitchell and  
17 Walter Day, and violations of 18 U.S.C. § 1962(c), Cross-Complainant has been injured in its  
18 business and property in that the value of the Twin Galaxies Score Database has decreased.

19 87. Cross-Complainant did not discover the racketeering activities of Billy Mitchell  
20 and Walter Day until April 12, 2018 when it determined the validity of Jeremy Young's challenge  
21 to the achievement records relating to Billy Mitchell's 1,047,200 (King of Kong "tape") point, and  
22 1,050,200 (Mortgage Brokers) point Donkey Kong score performances.

23 88. Billy Mitchell and Walter Day actively engaged in a scheme to hide their  
24 racketeering activities. Billy Mitchell and Walter Day continued to promote untrue statements of  
25 fact regarding Billy Mitchell's score performances even after the Purchase Agreement was  
26 executed. Cross-Complainant was unable to make earlier discovery of the racketeering activities  
27 because of the active and concerted effort of Billy Mitchell and Walter Day to hide the fact that  
28 Billy Mitchell's achievements in the Twin Galaxies Score Database were untrue and misleading.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WHEREFORE**, Cross-Complainant prays for judgment as follows:

- A. For general damages of at least \$3,333,360.00;
- B. For special damages of at least \$3,160,200.00;
- C. For punitive and exemplary damages;
- D. For treble damages;
- E. For injunctive relief;
- F. For interest, including prejudgment interest, at the legal rate;
- G. For attorney’s fees;
- H. For costs of suit incurred herein; and,
- I. For such other and further relief the Court deems just and proper.

Respectfully submitted,

Dated: November 4, 2020

TASHROUDIAN LAW GROUP, APC

By:           /s/ David Tashroudian, Esq.            
David Tashroudian, Esq.  
Mona Tashroudian, Esq.  
Attorneys for Defendant and Cross-Complainant Twin Galaxies, LLC



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Pursuant to California *Code of Civil Procedure* section 631, Cross-Complainant Twin Galaxies, LLC hereby requests a jury trial for all claims and issues so triable.

Respectfully submitted,

Dated: November 4, 2020

TASHROUDIAN LAW GROUP, APC

By: /s/ David Tashroudian, Esq.  
David Tashroudian, Esq.  
Mona Tashroudian, Esq.  
Attorneys for Defendant and Cross-Complainant 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 5900 Canoga Ave, Suite 250, Woodland Hills, CA 91367-5017. On November 4, 2020, I served the herein described document(s):

**DEFENDANT TWIN GALAXIES, LLC'S MOTION FOR LEAVE TO FILE CROSS-COMPLAINT; DECLARATION OF DAVID A. TASHROUDIAN IN SUPPORT [CCP § 426.50]**

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 jeg@manningllp.com pursuant to an agreement of the parties.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

by overnight courier of the document(s) listed above to the person(s) at the address(es) set forth below.

James E. Gibbons (State Bar No. 130631)  
jeg@manningllp.com  
**MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP**  
801 S. Figueroa St, 15<sup>th</sup> Floor  
Los Angeles, California 90017-3012  
Telephone: (213) 624-6900  
Facsimile: (213) 624-6999

Attorneys for Plaintiff  
WILLIAM JAMES MITCHELL

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 November 4, 2020 at Woodland Hills, California.





## Make a Reservation

WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC

Case Number: 19STCV12592 Case Type: Civil Unlimited Category: Defamation (slander/libel)

Date Filed: 2019-04-11 Location: Stanley Mosk Courthouse - Department 36

### Reservation

Case Name: WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC	Case Number: 19STCV12592
Type: Motion for Leave to File a Cross-Complaint	Status: RESERVED
Filing Party: Twin Galaxies, LLC (Defendant)	Location: Stanley Mosk Courthouse - Department 36
Date/Time: 12/11/2020 8:30 AM	Number of Motions: 1
Reservation ID: 487165978456	Confirmation Code: CR-GLBQTQSSJC6ERESU

### Fees

Description	Fee	Qty	Amount
Motion for Leave to File a Cross-Complaint	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
<b>TOTAL</b>			<b>\$61.65</b>

### Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX7361	Authorization: 005341

[Print Receipt](#)

[+ Reserve Another Hearing](#)