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6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
9

10
11 WILLIAM JAMES MITCHELL,

12 Plaintiff,

13 v.

14 TWIN GALAXIES, LLC,
and DOES 1-200,

15 Defendants.
16
17

Case No. 19STCV12592
[The Hon. GREGORY W. ALARCON DEPT.
36]

FIRST AMENDED COMPLAINT FOR:

- 1. Defamation
- 2. False Light

Action Filed: 4/11/2019

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 Plaintiff WILLIAM JAMES MITCHELL alleges:

2 **GENERAL ALLEGATIONS**

3 1. William "Billy" Mitchell is an individual residing in Florida. Recognized world-
4 wide for his records in a number of video games, including Donkey Kong, Pac-Man, and others,
5 Mitchell rose to national prominence in the 1980's when Life magazine included him in a photo
6 spread of game champions. During the "golden age" of arcade video gaming in the 1980's,
7 Mitchell became the nascent sport's most recognizable figure.

8 2. After a hiatus, Mitchell returned to gaming in the late 1990's. On July 3, 1999,
9 Mitchell achieved the first perfect score of 3,333,360 points on the original Pac-Man. As a result,
10 Pac-Man's manufacturer, Namco, brought Mitchell to Japan for the Tokyo Game Show and named
11 him the "Video Game Player of the Century."

12 3. In the 2000's, Mitchell achieved record-breaking, 1 million-plus scores on Donkey
13 Kong, including performances of 1,047,200 (the King of Kong "tape") and 1,050,200 (the
14 Mortgage Brokers score).

15 4. On June 21, 2006, based on these and other scores, MTV selected Mitchell as one
16 of "The 10 Most Influential Video Gamers of All Time." In 2006, David Ramsey, writing for the
17 Oxford American, described Mitchell as "probably the greatest arcade video game player of all
18 time."

19 5. Mitchell has appeared in several documentaries on competitive gaming, including
20 *Chasing Ghosts: Beyond the Arcade* (2007), *The King of Arcades* (2014), *Man vs Snake: The Long*
21 *and Twisted Tale of Nibbler* (2015); and *The King of Kong: A Fistful of Quarters* (2007).

22 6. In addition to his video game activity, Mitchell is the owner of "Rickey's' Hot
23 Sauce." He painstakingly built the company into a highly-successful business, in part by trading
24 on his fame as a video game record-holder.

25 7. Defendant Twin Galaxies, LLC is a Florida business entity with its headquarters at
26 335 N. Maple Drive, Ste. 380, Beverly Hills CA 90210. It is an organization and social media
27 platform that facilitates interaction, achievement, recognition, and competition among those
28 involved in the culture and activity of video games.

1 8. The predecessor of Twin Galaxies, Twin Galaxies Incorporated, was founded in
2 1981 by Walter Day. Day is widely considered the "godfather" of video-game scorekeeping, and is
3 recognized as the inspiration for "Mr. Litwak," the beloved arcade owner in Disney's Wreck-It
4 Ralph animated film about video gaming. In the early 1980's, Day began recording high scores
5 that he found on games in arcades that he visited, and that same year opened his own arcade in
6 Ottumwa, Iowa, naming it Twin Galaxies. In 1982, Day's database of records was released
7 publicly as the Twin Galaxies National Scoreboard.

8 9. Twin Galaxies subsequently became known as the official video game scoreboard,
9 arranging contests between top players and attracting international media attention for publicizing
10 video-game stars. In the early 1980's, Twin Galaxies' status under Day's stewardship as the official
11 scorekeeper was further enhanced by support from major video game publications, which
12 published full-page high-score charts taken from Twin Galaxies' data.

13 10. In 1983, based on his reputation, Day became the official supplier of verified video
14 game scores to Guinness World Records, the first time that Guinness World Records had ever
15 recognized video games as a valid category. Beginning in 1984, the U.S. edition of Guinness
16 World Records included video game scores certified by Twin Galaxies, with Day functioning as
17 an assistant editor for the Guinness Book in charge of video-game scores. In 1998, Twin Galaxies'
18 Official Video Game & Pinball Book of World Records was published, a 984-page book
19 containing scores compiled since 1981. In 2008, Day's long-time work as a video game
20 adjudicator and eSports pioneer inspired the creation of the Guinness World Records - Gamer's
21 Edition.

22 11. In 2012, Day stepped down from Twin Galaxies, and subsequently sold it to Jace
23 Hall in 2014, who announced himself as the new owner.

24 12. Defendants, Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore
25 sues them by such fictional names and will ask leave of Court to amend this Complaint to show
26 the true names and capacities when they have been ascertained.

1 13. Plaintiff is informed and believes and, based thereon, alleges that each of the
2 Defendants designated as Does 1 through 50, inclusive, are in some way responsible for the
3 injuries and damages sustained by Cross-Complainants herein.

4 14. Plaintiffs are informed and believe and, based thereon, allege that at all times
5 mentioned here, Defendants, and each of them, were the agents, principals, partners, associations,
6 joint venturers, and/or employees of each of the remaining co-Defendants, so that the Defendants,
7 and each of them, were at all times acting within the course, purpose and scope of the agency,
8 partnership, association, conspiracy, joint venture, and/or employment, and that Defendants, and
9 each them, were acting with the authorization, conspiracy, permission and/or consent of the
10 remaining co-Defendants.

11 **VENUE AND JURISDICTION**

12 15. This Court has jurisdiction over the subject matter in this action pursuant to Article
13 VI, Section 10 of the California Constitution, because this case is not given by statute to other trial
14 courts. In addition, the amount in controversy exceeds the minimum for unlimited civil
15 jurisdiction of this Court.

16 16. Venue is proper in this court because Defendant's business headquarters are located
17 in Los Angeles, California, and because the defamatory statements giving rise to this action were
18 made in Los Angeles, California.

19 **THE DEFAMATORY STATEMENTS**

20 17. Prior to 2018, Twin Galaxies had recognized Mitchell as the holder of several
21 records on classic games.

22 18. Under the new ownership of Jace Hall, however, and in effort to generate publicity
23 for Twin Galaxies, that abruptly changed. On April 12th, 2018, Twin Galaxies made a defamatory
24 statement concerning Billy Mitchell's records and legacy, claiming that he cheated to achieve his
25 Donkey Kong scores by not using original, unmodified hardware. Twin Galaxies' statement of that
26 date claimed, in relevant part and with emphasis in the original:

1 . . . Twin Galaxies administrative staff has unanimously decided to remove
2 all of Billy Mitchell's scores as well as ban him from participating in our
3 competitive leaderboards.

4 * * *

5 [Mitchell's] taped Donkey Kong score performances of 1,047,200 (the
6 King of Kong "tape"), 1,050,200 (the Mortgage Brokers score) that were
7 historically used by Twin Galaxies to substantiate those scores and place
8 them in the database were not produced by the direct feed output of an
9 original unmodified Donkey Kong Arcade PCB.

10 * * *

11 From a Twin Galaxies viewpoint, the only important thing to know is
12 whether or not the score performances are from an unmodified original
13 DK arcade PCB as per the competitive rules. **We now believe that they**
14 **are not from an original unmodified DK arcade PCB, and so our**
15 **investigation of the tape content ends with that conclusion and**
16 **assertion.**

17 * * *

18 **With this ruling Twin Galaxies can no longer recognize Billy Mitchell**
19 **as the 1st million point Donkey Kong record holder.**

20 19. The statement is libelous in its face: it asserts that Mitchell did not achieve his
21 record scores legitimately, i.e., through "the competitive rules" applicable to all players. Instead, it
22 asserts that Mitchell achieved his record scores only by impermissibly and secretly shortcutting
23 those rules. That is, Mitchell achieved the scores by "cheating" as Webster's dictionary defines
24 cheating: to "violate rules dishonestly."

25 20. The implication that Mitchell's scores were dishonestly achieved is supported by
26 the fact that Twin Galaxies imposed heavy sanctions on Mitchell, not only stripping him of his
27 Donkey Kong score records, but also in other arcade games, such as Pac-Man, and banning him
28 from ever submitting scores in the future to Twin Galaxies. Such a punishment, according to Twin

1 Galaxies' own rulebook, is warranted for, among other things, "“Deliberate cheating or
2 misrepresentation of any kind.” *See*
3 [https://www.twingalaxies.com/wiki_index.php?title=Policy:Activities-That-Can-Get-You-
4 Banned-For-Life](https://www.twingalaxies.com/wiki_index.php?title=Policy:Activities-That-Can-Get-You-
4 Banned-For-Life).

5 21. That the statement expressly accused Mitchell of cheating is further evidenced by
6 the news commentary that followed. *Variety*, for instance, pulled no punches in describing Twin
7 Galaxies' decision as follows (with emphasis added):

8 Famed high-score gamer Billy Mitchell, best known for his role in “The
9 King of Kong: A Fistful of Quarters” documentary, was officially stripped
10 of his “Donkey Kong” and other video game high scores and banned from
11 submitting scores to the world’s largest tracker of video game world
12 records *following a decision that he cheated*, Twin Galaxies announced
13 today.

14 *See* <https://variety.com/2018/gaming/news/king-of-kong-stripped-of-title-1202751358>.

15 22. In short, the statement accused a professional video game player of not achieving
16 his records through fair means, removing his undisputed records from other games from the
17 scoreboard, and banning him for life.

18 23. But in fact the April 12, 2018 statement was made with knowledge of its falsity or
19 with reckless disregard for its truth. The most cursory, unbiased investigation would have revealed
20 beyond doubt that the record-breaking Donkey Kong scores were *not* played on emulation
21 software in private places, but were actually played on certified arcade boards *in front of hundreds*
22 *of people*. To date, more than 25 of these witnesses have signed sworn affidavits testifying to their
23 observation of Mitchell achieving his scores on arcade software.

24 24. But the investigation was not unbiased; it was pre-ordained. During its
25 "investigation" into Mitchell's scores, Twin Galaxies under its new ownership did not act as an
26 impartial arbiter, but rather as a biased observer intent on generating publicity and internet "clicks"
27 by accusing Mitchell, the most visible of all video gamers, of cheating. Twin Galaxies performed a
28 deliberately one-sided, biased investigation, with the sole goal of convicting Mitchell through its:

1) failing to contact key witnesses; 2) intentional disregarding evidence in favor of Mitchell; 3) deliberately burying evidence in favor of Mitchell; 4) selecting an openly-biased third-party investigator; 5) refusing to provide equal evidentiary access to Mitchell, 6) failing to fact check information; and 7) failing to retract its defamatory statements.

25. In Twin Galaxies' investigation, new owner Jace Hall advised Mitchell that only "scientific" evidence would be considered, rejecting all witness testimony out of hand, no matter how credible. Specifically, Hall stated to Mitchell, "I don't care what anybody says." Even after Mitchell's retraction demand, which provided dozens of sworn witness affidavits, Hall ignored them.

26. In any event, Hall's "scientific evidence only – no witnesses" standard applied solely to testimony favoring Mitchell. Hall actively sought out and embraced any possible witness testimony against Mitchell, including that of former Twin Galaxies referee Robert Mruzec. On information and belief, Mitchell alleges that Mruzec retains high levels of animosity towards Mitchell and Walter Day due to Day's having banned him from the Twin Galaxies community for his unruly conduct.

27. Hall's refusal to consider eyewitness testimony was especially egregious when it came to Day, Twin Galaxies' legendary former owner, because it strongly favored Mitchell. As Day has stated in a sworn declaration:

4. Biased Conduct

During the Twin Galaxies investigation, I had one phone conversation with Jace Hall. In this phone call, Hall's biased and negative nature toward Billy Mitchell was very concerning. My statements based on my knowledge expressed in this letter were disregarded, and he moved forward with no regard for any information that didn't automatically paint Billy as guilty. Meanwhile, he apparently accepted witness testimony from former referees to help legitimize Billy's tape from the questionable source. I find it unexplainable that my testimony as the founder and

1 former owner is disregarded, while others, specifically the ones against
2 Billy, are embraced.

3 28. Thus, Twin Galaxies relied on eyewitness statements from those against Mitchell,
4 but refused to consider eyewitness statements from those who supported Mitchell.

5 29. In addition, despite his professed reliance on "science," Twin Galaxies disregarded
6 hardware certification from the highest engineering authority, the Senior Engineer at Nintendo.
7 Nintendo's Senior Engineer, Wayne Shirk, had certified the board used in the Mortgage Brokers'
8 score as original Nintendo arcade hardware. But Twin Galaxies dismissed that fact as irrelevant,
9 with Hall saying that he "didn't care" about the certification.

10 30. Further, Hall deliberately buried evidence in favor of Mitchell. Specifically, Hall
11 actively worked to hide the videotapes of Mitchell's Pac-man record. Hall constantly claimed he
12 "did not know" who owned the videotape, despite his on-line community continuously
13 acknowledging the videotape as Mitchell's. On April, 11, 2018, Mitchell texted Hall about his
14 videotape, requesting that the investigation review it. Hall denied the request and proceeded to
15 strip the record anyway. Hall also asked Guinness World Records to follow suit and, based on
16 Hall's recommendation, it complied.

17 31. Moreover, Hall chose a biased "third party" investigator, Chris Gleed, to shepherd
18 the investigation. Even before Twin Galaxies initiated its investigation, Gleed had already
19 expressed approval for removing Mitchell's records, commenting that he "wholeheartedly agreed"
20 with conclusions against Mitchell and the removal of his records. Not surprisingly, during the
21 investigation, Gleed made no attempt to contact Mitchell or anyone associated with him, while
22 making inflammatory remarks throughout the investigation, including asking Mitchell to "fess up"
23 to cheating so that Gleed could stop his investigation.

24 **FIRST CAUSE OF ACTION**

25 **(Defamation at Common Law and Civ. Code, § 46 —**

26 **Slander, False and Unprivileged Publications)**

27 32. Mitchell realleges and incorporates paragraphs 1 through 31 as if set forth herein in
28 full.

1 33. In its April 12, 2018, statement, Twin Galaxies called Mitchell a cheater who had
2 established his records under false pretenses, or, at least, implied as much, so that any reasonable
3 reader would understand that Twin Galaxies had called Mitchell a cheater who deserved
4 punishment by stripping him of all his Twin Galaxy records and banning him for life from
5 submitting further records.

6 34. The statement was false. In fact, the records were established on arcade software
7 witnessed by hundreds of people, who have submitted sworn affidavits that they witnessed
8 Mitchell achieve these scores on arcade software.

9 35. Twin Galaxies made its defamatory statement with actual malice—i.e., with
10 knowledge of its falsity, or, alternatively, with a reckless disregard for its falsity, and without
11 privilege or justification.

12 36. Twin Galaxies' defamatory statement directly injured Mitchell by diminishing his
13 reputation in both the video game profession and in his business, which has lessened his income.

14 37. In making its defamatory statement, Twin Galaxies acted with oppression, fraud, or
15 malice as defined by California Civil Code section 3294 and engaged in highly reprehensible and
16 despicable conduct warranting exemplary damages.

17 **SECOND CAUSE OF ACTION**

18 **(False Light)**

19 38. Mitchell realleges and incorporates paragraphs 1 through 37 as if set forth herein in
20 full.

21 39. In its April 12, 2018, defamatory statement, Twin Galaxies accused Mitchell of
22 cheating to establish his records, or, at least, implied as much. Any reasonable reader of the
23 statement would understand that Twin Galaxies had called Mitchell a cheater who deserved
24 punishment by stripping him of all his Twin Galaxy records and banning him for life from
25 submitting further records.

26 40. These statements were false. In fact, the records were established on arcade
27 software witnessed by hundreds of people, who have submitted sworn affidavits that they
28 witnessed these scores achieved on arcade software. The statement placed Mitchell in a false light

1 that would be highly offensive to a reasonable person in Mitchell's position, and Twin Galaxies'
2 statement caused Mitchell damage to his reputation and to his business.

3 41. Twin Galaxies made its April 12, 2018 statement with actual malice—i.e., with
4 knowledge of its falsity, or, alternatively, with a reckless disregard for its falsity, and without
5 privilege or justification.

6 42. Twin Galaxies acted with oppression, fraud, or malice as defined by California
7 Civil Code section 3294 and engaged in highly reprehensible and despicable conduct warranting
8 exemplary damages.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
11 follows:

- 12 1. For compensatory damages in an amount to be proven at trial;
- 13 2. For punitive damages;
- 14 3. For pre-judgment interest;
- 15 4. For costs of suit; and
- 16 5. For such other and further relief as the Court may deem just and proper.

17 **DEMAND FOR TRIAL BY JURY**

18 Plaintiff demands a trial by jury.

19
20 DATED: March 12, 2020

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ELLROD, RAMIREZ, TRESTER LLP

21
22
23 By: _____

James E. Gibbons
Attorneys for Plaintiff WILLIAM JAMES
MITCHELL

1 that would be highly offensive to a reasonable person in Mitchell's position, and Twin Galaxies'
2 statement caused Mitchell damage to his reputation and to his business.

3 41. Twin Galaxies made its April 12, 2018 statement with actual malice—i.e., with
4 knowledge of its falsity, or, alternatively, with a reckless disregard for its falsity, and without
5 privilege or justification.

6 42. Twin Galaxies acted with oppression, fraud, or malice as defined by California
7 Civil Code section 3294 and engaged in highly reprehensible and despicable conduct warranting
8 exemplary damages.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
11 follows:

- 12 1. For compensatory damages in an amount to be proven at trial;
- 13 2. For punitive damages;
- 14 3. For pre-judgment interest;
- 15 4. For costs of suit; and
- 16 5. For such other and further relief as the Court may deem just and proper.

17 **DEMAND FOR TRIAL BY JURY**

18 Plaintiff demands a trial by jury.

19
20 DATED: March 12, 2020

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

21
22
23 By: _____

James E. Gibbons
Attorneys for Plaintiff WILLIAM JAMES
MITCHELL

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and not a party to this action. I am
4 employed in the County of Los Angeles, State of California. My business address is 801 S.
5 Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

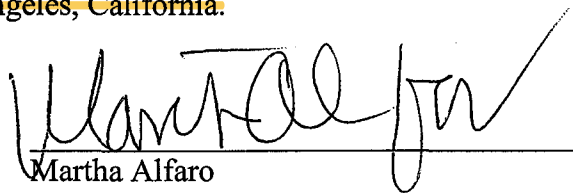
6 On March 12, 2020, I served true copies of the following document(s) described as **FIRST
7 AMENDED COMPLAINT FOR 1. DEFAMATION; 2. FALSE LIGHT** on the interested
8 parties in this action as follows:

<p>7 David A. Tashroudian, Esq. 8 TASH LAW GROUP 9 5900 Canoga Ave., Suite 250 10 Woodland Hills, California 91367 11 Tel: (818) 561-7381</p>	<p>Attorney for Defendants Twin Galaxies</p>
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12 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
13 persons at the addresses listed in the Service List and placed the envelope for collection and
14 mailing, following our ordinary business practices. I am readily familiar with the practice of
15 Manning & Kass, Ellrod, Ramirez, Trester LLP for collecting and processing correspondence for
16 mailing. On the same day that correspondence is placed for collection and mailing, it is deposited
17 in the ordinary course of business with the United States Postal Service, in a sealed envelope with
18 postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The
19 envelope was placed in the mail at Los Angeles, California.

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

22 Executed on March 12, 2020, at Los Angeles, California.

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Martha Alfaro