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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]

CROSS-COMPLAINT FOR:

- (1) BREACH OF CONTRACT
- (2) DECEIT – INTENTIONAL MISREPRESENTATION
- (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

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PARTIES

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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 Los Angeles, 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.

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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, that the separate personalities of the
4 corporation and the shareholders do not in reality exist; and treating the corporation as a separate
5 entity from the individuals would result in injustice and unfairness to Cross-Complainant because
6 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, Jourdan Adler, and
27 Cross-Complainant.

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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 *Joystik* 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. Cross-Complainant is informed, believes, and based thereon alleges that
14 Walter Day and Billy Mitchell conspired to manufacture a persona for Billy Mitchell as the
15 greatest video game player of all time. The problem was that Billy Mitchell lacked the requisite
16 natural skill or ability to be the greatest video game player of all time. Billy Mitchell, however,
17 always has a plan. The plan was to return Billy Mitchell's prestige with fraudulent scores, so that
18 his association with Old Twin Galaxies would increase interest in Old Twin Galaxies and the Twin
19 Galaxies Score 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 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.

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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 by
17 Tim Sczerby of 879,200 points, which at 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.

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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: February 4, 2021

TASHROUDIAN LAW GROUP, APC

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

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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: February 4, 2021

TASHROUDIAN LAW GROUP, APC

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

EXHIBIT A

PURCHASE AND SALE AGREEMENT

AGREEMENT is made and effective as of **February 13th, 2014**, by and between HDFILMS, INC. (Hall Digital Films Inc.), a Nevada corporation, having its principal place of business at 4000 Davana Rd. in the City of Sherman Oaks and State of California (hereinafter referred to as "Purchaser"), and TWIN GALAXIES, INC., an Iowa corporation, having its principal place of business at 600 North 3rd Street, City of Fairfield and State of Iowa (hereinafter referred to as (hereinafter referred to as "Seller").

WHEREAS, Purchaser desires to purchase certain assets and rights of the seller (hereinafter the "Products"), and

WHEREAS, Seller desires to sell these certain of its rights and assets, and

WHEREAS, the parties have come to an agreement for this sale,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and for good and valuable consideration, the parties agree as follows:

1. Sale of Assets by Seller and description.

1.1 Assets Sold: Seller hereby sells, assigns and transfers to Purchaser, and Purchaser hereby purchases and acquires from Seller certain assets of the Seller more detailed in Exhibit "A" attached hereto and made a part hereof (all of which are collectively referred to herein as the "Products"):

1.2 Scope of the Products: In this agreement, the parties intend the Product to include all worldwide rights, title and interest of Seller in and to the Products including, but not limited to the related data, database(s), statistics, algorithms, formulae, methods and processes, source codes, scripts, HTML versions, and including all website(s) and domain names, and all of the text contained in the Products, the literary content thereof, the intellectual rights related thereto and Seller's copyrights, trademarks, and service marks ownership therein;

1.3 Location of Products: The sale contemplated herein shall include all inventory of the Products owned by Seller or any subsidiary or division of Seller, any masters related to the Products, any public relations and marketing items, if any, related to the Products, and any artwork, subject to any third party agreements and restrictions, related to the Products, including all of Seller's right, title and interest in and to the "Trademarks",

2. Purchase Price.

2.1 Purchase Price. The purchase price for the Assets shall be TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) (the "Purchase Price") which includes NO assumed liabilities, or debt in any form (collectively, the "Total Purchase Price").

2.2 Terms and Method of Payment. Upon execution of this Agreement by the parties and the delivery of the instruments of sale by the Seller, as well as all the items specified in Exhibit "A", Purchaser shall pay to the Seller the established Purchase Price subject to the aforementioned provision in Section 2.1 above which are detailed in Section 4 and Governed by Section 11.10 below.

3. Delivery of Instruments of Sale by Seller.

Simultaneously with the execution and delivery by Seller of this Agreement to Purchaser the Seller shall execute and deliver to the Purchaser the following instruments, in the required form for any recording, duly executed and in a form and reasonably similar to the forms attached hereto as Exhibit "B".

- a. A duly executed Bill of Sale,
- b. A duly executed Assignment of Trademarks,
- c. A duly executed Assignment of Servicemarks,
- d. A duly executed Assignment of Copyrights.

4. Payment of Purchase Price by the Purchaser:

4.1 Purchaser shall make the payment required by Section 2 subject to the credit defined hereinafter through the execution and delivery of a United States bank wire transfer in the amount of SIXTY-EIGHT THOUSAND AND 00/100 (\$68,000.00) DOLLARS as may be reduced for credit taken for payments made by the Purchaser, if any, at the direction of the Seller.

4.2 The REMAINDER OF THE BALANCE of ONE HUNDRED AND THIRTY-TWO THOUSAND DOLLARS (\$132,000) mentioned in subsection 2.2 above shall run for an indefinite period, subsequent to the provision of the Rights Restrictions detailed in Section 11.10. Balance may be remitted by Purchaser and accepted by Seller in one payment or by multiple payments. Seller will relinquish, in writing, all rights to the Rights Restrictions of Section 11.10 upon full tender of \$132,000 balance.

5. Additional Covenants and Agreements of the Parties.

5.1 Use of Twin Galaxies' Name and Logo. Seller grants Purchaser the exclusive right and entitlement to the Twin Galaxies name and logo and Purchaser shall have the right to change / update Twin Galaxies' name and logo from all future printings of the Products.

5.2 Purchaser's Names and Logos: The Seller agrees and recognizes that the Purchaser owns the trademarks to the following names, "Twin Galaxies International", "National Family Fun Day", "U.S. National Video Game Team", "Video Game Festival", "Video Game Film Festival", and that Seller has no rights, titles or interests in the Purchaser's Marks.

5.3 Delivery of Special Advertising and Books. Seller shall provide an inventory of all Advertising Specialties and Books and ship to Purchaser's designated location.

5.4 Consulting by Seller: The parties agrees that for a period of five (5) years after execution of this Agreement and the resulting transfer of certain assets of the Seller to the Purchaser, the Seller will, where possible, make the appropriate personnel available on a timely basis to the Purchaser for any reasonable requests as necessary to understand,

maintain and support the Products. Purchaser shall be responsible for the fees, costs and expenses, if any, that may be associated with such consulting services.

6. Representations and Warranties of Seller.

For the inducement of the Purchaser, the Seller hereby makes the following representations and warranties:

6.1 The Assets being sold, transferred and assigned by Seller to Purchaser are sold, transferred and assigned “AS IS” AND “AS SHOWN”, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

6.2 Seller represents that it is not currently engaged in litigation nor does it have any knowledge of any pending or potential litigation, claim or other. It is expressly understood that Purchaser assumes no liability with respect to any litigation.

6.3 Seller represents and warrants to Purchaser that Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Iowa and has the full corporate power and authority to enter into and perform its obligations under this Agreement.

6.4 The Seller represents and warrants that the execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action of Seller, and this Agreement constitutes the valid and binding obligations of the Seller, enforceable in accordance with its terms.

6.5 Seller represents and warrants that there are no agreements outstanding that affect the right of ownership of the Seller or limits its ability to sell or transfer the assets involved in this agreement.

6.6 Seller represents and warrants to Purchaser that all trademark, patents and copyrights and the Seller’ right to the use and registration of such trademarks, patents and copyrights being transferred as part of this agreement are valid and that the Seller has the full authority to transfer, to its knowledge, no litigation exists regarding the Products.

6.7 The Seller represents and warrants that it has complied, or will comply, with any applicable bulk sales law requirements applicable to the sale of the assets of the Seller.

6.8 No bankruptcy, insolvency, rearrangement or similar action involving the Seller, whether voluntary or involuntary, is pending, threatened or being filed and the Seller has not filed any voluntary petition in bankruptcy.

6.9 No representation or warranty as made by Seller, and no statement or exhibit furnished or to be furnished in connection with the intended transaction contains or will contain any untrue or misleading statement of facts not will the information be presented in a manner as to be misleading.

6.10 The Seller has no pending issue or dispute with respect to any employee, whether full time or part time, nor any dispute with any consultant which is based on failure to pay for the services

7. Representations and Warranties of Purchaser:

The Purchaser makes the following representations and warranties to the Seller:

7.1 Purchaser represents and warrants to Seller that Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada and has the full corporate power and authority to enter into and perform its obligations under this Agreement.

7.2 The execution, delivery and performance of this Agreement by Purchaser has been duly authorized by all necessary corporate action of Purchaser and this Agreement constitutes the valid and binding obligation of the Purchaser, enforceable in accordance with its terms.

8. Indemnification by Seller and Purchaser:

8.1 Seller shall defend, indemnify and hold harmless Purchaser, promptly upon demand at any time and from time to time, against any and all losses, liabilities, claims, suits, actions, damages, and expenses including, without limitation, reasonable attorneys' fees and expenses arising out of or relating to (I) the sale, transfer and assignment of the Assets, or any of them, to Purchaser by Seller; (ii) the production, reproduction, sale and distribution of the Products, or any of them, or any material comprising the Products by Purchaser; (iii) any breach of this Agreement by Seller, where such claims are grounded in the misrepresentations or failure of disclosure by the Seller in this agreement or the failure of the Seller to properly and fully disclose relevant information to Purchaser.

8.2 Purchaser shall defend, indemnify and hold harmless Seller, promptly upon demand at any time and from time to time, against any and all losses, liabilities, claims, suits, actions, damages, and expenses including, without limitation, reasonable attorneys' fees and expenses arising out of the operations of the Purchaser's enterprise and of this operation where such claims are grounded in the operation of the business by the Purchaser following the transfer of the assets described in this agreement unless such transfer was made by the Seller with misrepresentations by the Seller in this agreement or the failure of the Seller to properly and fully disclose relevant information to Purchaser in which case the obligation of the Purchaser to defend and indemnify and hold harmless shall be discharged..

8.3 Notwithstanding this Agreement, Purchaser shall not responsible for any of the liabilities related to any agreements that have not been fully disclosed and shall be fully defended, indemnified or held harmless by Seller from any action, suit or proceeding arising out of or relating to those agreements.

9. Covenant Not To Sue.

Purchaser further agrees never to sue Seller, its parent, or any of its affiliated companies or any of their respective employees, officers, or directors, or participate in any lawsuit or otherwise file or pursue any claim or initiate any proceeding of any sort on the basis of any claim of any type whatsoever in any way, directly or indirectly, arising out of or related to this Agreement, any of the instruments delivered by Seller to Purchaser in connection with this Agreement, any of the transactions contemplated by this Agreement, the Assets, the Trademarks, or the production, reproduction, sale or distribution of the Products, provided however, that the foregoing covenant shall not apply in the event that (i) Seller infringe any copyright, patent or other intellectual property rights applicable to the Products, (ii) Seller fails to discharge any liability retained by it pursuant to this Agreement, or (iii) Seller lacks the full corporate power and authority to enter into and perform its obligations under this Agreement or (iv) this sale was subject to misrepresentations, fraud, deceit or failure to properly disclose by Seller.

10. Survival of warranties and representations of the parties:

The representations and warranties, indemnification and covenant not to sue set forth in this Agreement shall survive this agreement for a period of three (3) years.

11. General Provisions.

11.1 Notices. All notices and other communications to be given by either party to this Agreement to the other party hereto shall be in writing, and shall be given by personal delivery or by depositing such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

If to Seller: Twin Galaxies, Inc.
600 North 3rd Street
Fairfield, IA 52556
Attn: Walter Day

If to Purchaser: HDFILMS INC.
10911 Riverside Dr.
North Hollywood, CA 91602

Any party to whom notices are to be sent pursuant to this Agreement may, from time to time, change its address for future communications hereunder by giving notice in the manner described herein to the other party hereto. Notices shall be deemed given on the date delivered.

11.2 Entire Agreement. This Agreement, the Schedules, and the instruments delivered by Seller to Purchaser referred to in Section 2(a), constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereunder and supersedes all prior agreements, understandings and arrangements, oral or written, between the parties hereto with respect to the transactions contemplated hereunder and all such prior understandings or agreements are considered to have merged within this agreement.

11.3 Expenses. The parties hereto shall pay the fees and expenses of their respective consultants, counsel, accountants and other experts, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

11.4 Amendment and Waiver. The terms of this Agreement may not be amended, modified or eliminated, and the observance or performance of any term, covenant, condition or provision herein may not be waived except by the written consent of both parties. The waiver by any party hereto of a breach of any term or provisions of this Agreement shall not be construed as a waiver of any subsequent breach, even where such subsequent breach is similar to that breach waived before.

11.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

11.6 Severability. If any provision of this Agreement is contrary to, prohibited by or deemed invalid under applicable laws or regulations, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible. If any provision of this Agreement is contrary to, prohibited by or deemed invalid under the laws and regulations of one jurisdiction, said provision is not thereby rendered invalid in any other jurisdiction.

11.7 Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.8 Headings. Section and paragraph headings contained in this agreement is for reference purposes only and shall not be deemed to be part of this Agreement or to affect the meaning or interpretation of this Agreement.

11.9 Governing Law. This Agreement shall be governed by, construed and interpreted according to the laws of the State of Nevada.

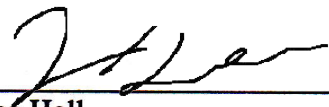
11.10 Right of Assignment. Prior to the completion of all payment obligations as defined in section 4.1, any other provision of this Agreement to the contrary notwithstanding, this Agreement shall not constitute any right to either party to assign any right, duties, obligations or interest to any other party. No assignment may take place by any party without the written consent of the other party which consent shall be totally discretionary and not subject to anticipation. Any unauthorized assignment shall fail and be null and void and may constitute a breach of this agreement. Once completion of all payment obligations as defined in Section 4.1 are complete, HDFILMS will solely have complete duty, interest, asset and obligation assignment rights. Seller shall release rights to this section upon complete payment of balance of \$132,000 *in writing* and in exchange for payment fulfillment.

11.11 No assumption of liability. Notwithstanding any provisions contained in the agreement, or any of its exhibits, the Purchaser is not intended to, and shall not, assume, discharge or be liable for any debts or liabilities of the Seller whether known or unknown by Seller and Purchaser.

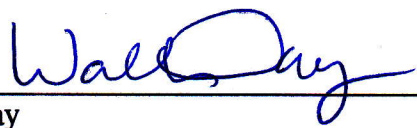
SIGNED AND EXECUTED under seal on this 13th day of February, 2014, intended to be effective upon signature.

HDFILMS, INC.

TWIN GALAXIES, INC.

By: 

Jace Hall
President


By: 

Walter Day
President


SCHEDULE A
TO ASSET PURCHASE AND SALE AGREEMENT

Assets to be transferred from Seller to Purchaser through this agreement:

1. Servers, access to, and surrender of passwords
2. Archives of back issue video game magazines (more than 2,000 back to 1981)
3. Archives of old correspondence at Brien King's home in Arizona.
4. Approximately 10,000 videotapes of scores spread between 15 locations.
5. 20 copies of first TG record book from 1998.
6. Correspondence and business receipts from 1981-present.
7. Archives of posters from past events (1,000s)
8. Twin galaxies Display - about 25 panels.
9. Branded trademarks:
 - i. U.S. National Video Game Team
 - ii. National Family Fun Day
 - iii. Twingalaxies.com
 - iv. Twin Galaxies
10. Twin Galaxies website
11. Twin Galaxies Processes
12. Twin Galaxies Procedures
13. Twin Galaxies Data Base
14. Twin Galaxies Scoreboard
15. List of all Partnerships and Contact names
16. Twin Galaxies statistical algorithms
17. Advertising Specialties & Publications



Initials of Seller 2/13/14



Initials of Purchaser 2/13/14

SCHEDULE “B”
TO ASSET PURCHASE AND SALE AGREEMENT

- a. A duly executed Bill of Sale,
- b. A duly executed Assignment of Trademarks,
- c. A duly executed Assignment of Servicemarks,
- d. A duly executed Assignment of Copyrights.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that TWIN GALAXIES, INC., an Iowa corporation (the "Seller") in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells, assigns and transfers to HDFILMS, INC. a Nevada corporation (the "Purchaser") all of its right, title and interest in and to the Assets, as more particularly defined in that certain Asset Purchase and Sale Agreement of even date between Seller and Purchaser (the "Agreement") which is referred to herein and for the limited purpose of the description of the assets being sold is incorporated herein by reference.

The Assets being sold through this bill of sale are sold, transferred and assigned "AS IS" AND "AS SHOWN", WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

TO HAVE AND TO HOLD THE SAME unto the Purchaser and its successors and assigns forever from the date hereof, upon and subject to the following terms and conditions:

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale this 13th day of February, 2014.

TWIN GALAXIES, INC.

By: Walter Day
Walter Day, President

STATE OF IOWA
COUNTY OF JEFFERSON,

THEREUPON on this 13 day of February, 2014, appeared before me the above-named Walter Day who, as president of Twin Galaxies, Inc. and took oath that the above is the true act and deed of Twin Galaxies, Inc. which he executed as duly authorized Officer of the Corporation for the purposes stated therein.

Before me,
Leslie Strong
Notary Public / Justice of the Peace
My commission expires: July 5, 2015



ASSIGNMENT OF TRADEMARKS

KNOW ALL BY THESE PRESENTS that TWIN GALAXIES, INC. a Iowa corporation, hereinafter "Assignor"), in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells, assigns and transfers to HDFILMS INC., a Nevada corporation, (hereinafter "Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to all trademarks, trademark registrations, trademark applications and trademark interests of every kind and nature, and any and all renewals and extensions thereof that may be secured under all laws now or hereafter in force, together with the business and the goodwill of the business symbolized by such trademarks, and any and all causes of action heretofore accrued in the Assignor's favor for infringement of such trademarks, trademark registrations and trademark interests, which are owned, possessed and controlled by Assignor, including, without limitation, the trademarks listed on Schedule A attached hereto and made a part hereof, throughout the United States, its territories and possessions, and in all such other countries, if any, throughout the world wherein Assignor owns, possesses or controls the rights herein being transferred to Assignee, to the full extent of such rights.

IN WITNESS WHEREOF, the Assignor has caused this Assignment of Trademarks to be signed in its' cooperate name by its duly authorized officers and its corporate seal to be hereunto affixed this 13th day of February, 2014.

TWIN GALAXIES, INC.

By: Walter Day
Walter Day, President

STATE OF IOWA
COUNTY OF JEFFERSON,

THEREUPON on this 13th day of February, 2014, appeared before me the above-named Walter Day who, as president of Twin Galaxies, Inc. and took oath that the above is the true act and deed of Twin Galaxies, Inc. which he executed as duly authorized Officer of the Corporation for the purposes stated therein.

Before me,

Leslie Strong

Notary Public / Justice of the Peace

My commission expires: July 5, 2015



ASSIGNMENT OF SERVICEMARKS

KNOW ALL BY THESE PRESENTS that TWIN GALAXIES, INC. an Iowa corporation, hereinafter "Assignor"), in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells, assigns and transfers to HDFILMS INC., a Nevada corporation, (hereinafter "Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to all servicemarks, servicemark registrations, servicemark applications and servicemark interests of every kind and nature, and any and all renewals and extensions thereof that may be secured under all laws now or hereafter in force, together with the business and the goodwill of the business symbolized by such servicemarks, and any and all causes of action heretofore accrued in the Assignor's favor for infringement of such servicemarks, servicemark registrations and servicemark interests, which are owned, possessed and controlled by Assignor, including, without limitation, the servicemarks listed on Schedule A attached hereto and made a part hereof, throughout the United States, its territories and possessions, and in all such other countries, if any, throughout the world wherein Assignor owns, possesses or controls the rights herein being transferred to Assignee, to the full extent of such rights.

IN WITNESS WHEREOF, the Assignor has caused this Assignment of Servicemarks to be signed in its' cooperate name by its duly authorized officers and its corporate seal to be hereunto affixed this 13th day of February, 2014.

TWIN GALAXIES, INC.

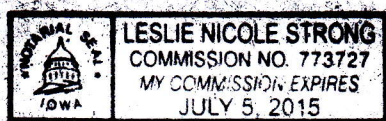
By: Walter Day
Walter Day, President

STATE OF IOWA
COUNTY OF JEFFERSON,

THEREUPON on this 13th day of February, 2014, appeared before me the above-named Walter Day who, as president of Twin Galaxies, Inc. and took oath that the above is the true act and deed of Twin Galaxies, Inc. which he executed as duly authorized Officer of the Corporation for the purposes stated therein.

Before me,

Leslie Strong
Notary Public / Justice of the Peace
My commission expires: July 5, 2015



ASSIGNMENT OF COPYRIGHTS

KNOW ALL BY THESE PRESENTS that TWIN GALAXIES, INC., an Iowa corporation (hereinafter "Assignor"), in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells, assigns and transfers to HDFILMS INC., a Nevada corporation (hereinafter "Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to all copyrights, copyright registrations and copyright interests of every kind and nature, and any and all renewals and extensions thereof that may be secured under all laws now or hereafter in force, and any and all causes of action heretofore accrued in the Assignor's favor for infringement of such copyrights, copyright registrations and copyright interests, which are owned, possessed and controlled by Assignor, including, without limitation, the copyrights listed on Schedule A attached hereto and made a part hereof, throughout the United States, its territories and possessions, and in all such other countries, if any, throughout the world wherein Assignor owns, possesses or controls the rights herein being transferred to Assignee, to the full extent of such rights.

IN WITNESS WHEREOF, the Assignor has caused this Assignment of Copyrights to be signed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed this 13th day of February, 2014.

TWIN GALAXIES, INC.

By: Walter Day
Walter Day, President

STATE OF IOWA
COUNTY OF _____

THEREUPON on this 13th day of February, 2014, appeared before me the above-named Walter Day who, as president of Twin Galaxies, Inc. and took oath that the above is the true act and deed of Twin Galaxies, Inc. which he executed as duly authorized Officer of the Corporation for the purposes stated therein.

Before me, Leslie Strong

Notary Public / Justice of the Peace
My commission expires: July 5, 2015



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 February 4, 2021, I served the herein described document(s):

CROSS-COMPLAINT FOR: (1) BREACH OF CONTRACT; (2) DECEIT – INTENTIONAL MISREPRESENTATION; (3) DECEIT – CONCEALMENT; (4) INDUCING BREACH OF CONTRACT; (5) INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONSHIP; (6) UNFAIR COMPETITION; (7) CIVIL RICO

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, 15th Floor
Los Angeles, California 90017-3012
Telephone: (213) 624-6900
Facsimile: (213) 624-6999

Attorneys for Plaintiff & Cross-Defendant
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 February 4, 2021 at Woodland Hills, California.



Mona Tashroudian