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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,  
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16 Defendants.  
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Case No. 19STCV12592

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

**REPLY ISO SPECIAL MOTION TO  
STRIKE OF DEFENDANT TWIN  
GALAXIES, LLC [CCP § 425.16]**

*[Filed concurrently with: (1) Declaration of  
Steven Kleisath; (2) Declaration Chris Glead;  
(3) Declaration of Carlos Pineiro; (4)  
Declaration of Robert Mruczek; (5)  
Declaration of Jason Hall; (6) Declaration of  
Dwayne Richard; and (7) Objections to  
Evidence]*

**Hearing**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Opposition of plaintiff Billy Mitchell cannot support an order in his favor. Plaintiff does  
4 not appreciate that the alleged defamatory statements at issue relate to two specific videotape  
5 recordings of his Donkey Kong high score performances and tries to muddle this issue with  
6 irrelevant, inadmissible, and incompetent evidence about other live performances not at issue. The  
7 dispute claim is that two performances on videotape and used to historically justify Billy Mitchell's  
8 records were not captured and recorded from original hardware.

9 And the public has discovered and confirmed that the videotape recordings used to  
10 substantiate Billy Mitchell's records could not have been created from original Donkey Kong  
11 hardware and have challenged the records. Twin Galaxies and a technical team directed by Billy  
12 Mitchell himself both endeavored to determine the validity of the challenge by engaging in extensive  
13 investigations. Both came to the same conclusion. The conclusion is that the challenge is valid –  
14 the videotapes at issue were not created with original unmodified hardware. Twin Galaxies  
15 published the results of its investigation and is now being sued for defamation.

16 The facts are that Twin Galaxies did not act with the requisite constitutional malice. It acted  
17 in good faith at all times and made the statement to an audience with common interest only after an  
18 appropriate and thorough investigation.

19 The evidence is in favor of Twin Galaxies, and the Motion should be granted as a result.  
20 Plaintiff's evidence, on the other hand is replete with hearsay, lacks foundation, and is mostly  
21 conjecture. Billy Mitchell has not carried his burden to adduce clear and convincing evidence on  
22 this record.

23 **II. ADDITIONAL FACTS ON REPLY**

24 A. Twin Galaxies sources unaltered copies of the videotapes used to evidence the  
25 Mitchell score performances at issue.

26 Billy Mitchell's 1,047,200 (the King of Kong "tape") score performance was entered into  
27 the Twin Galaxies leaderboard database by Robert Mruczek in 2006. [Declaration of Robert  
28 Mruczek ("Mruczek Decl."), ¶ 3.] Mruczek was a Twin Galaxies referee and he adjudicated this

1 performance from videotape. [Id.] Billy Mitchell’s 1,050,200 (the Mortgage Brokers score) score  
2 performance was evidenced at Twin Galaxies by a videotape recording of the performance. [*See*  
3 Reply Declaration of Jason Hall (“Hall Reply Decl.”), ¶ 11.]

4 Twin Galaxies sourced unaltered copies of the videotape recordings of Mr. Mitchell’s  
5 1,047,200 (the King of Kong "tape"), and 1,050,200 (the Mortgage Brokers score) score  
6 performances from Dwayne Richard in Canada. [Declaration of Dwayne Richard (“Richard Decl.”),  
7 ¶¶ 3-5.] Twin Galaxies also obtained a second digital copy of both performances and cross-  
8 referenced the two for fidelity. [Hall Reply Decl. ¶¶ 13-14.] Jason Hall confirmed that the two sets  
9 of tapes were identical and posted them into the Mitchell Score Dispute Claim Thread for the  
10 community to perform its own analysis. [Id.] Additionally, Robert Mruczek confirmed that the  
11 1,047,200 (the King of Kong "tape") performance tape posted in the thread is the same one he  
12 adjudicated. [Mruczek Decl., ¶¶ 4-5.]

13 B. The investigation of Jeremy Young’s dispute claim, and findings.

14 On February 2, 2018, Jeremy Young, a member of the Twin Galaxies community, posted a  
15 claim in the Mitchell Score Dispute Claim Thread alleging that the videotaped recordings of Mr.  
16 Mitchell’s 1,047,200 (the King of Kong "tape"), 1,050,200 (the Mortgage Brokers score), and  
17 1,062,800 (the Boomers score) score performances could not have been captured from an original  
18 unmodified Donkey Kong arcade printed circuit board (PCB). [*see* Hall Reply Decl., ¶¶ 8-10; *see*  
19 *also* Declaration of Carlos Pineiro (“Pineiro Decl.”), ¶¶ 10-12.] One of the more notable assertions  
20 in Jeremy Young’s dispute claim is that Mitchell’s videotaped performances do not draw the  
21 Donkey Kong levels the way in which an original arcade system would do so, by drawing ½ portions  
22 of five (5) girders in the first frame. [Id.] Instead, Mitchell’s videotaped score performances show  
23 the Donkey Kong levels drawn with three (3) girders in the first frame, with the bottom girder having  
24 a protrusion that has since come to be known as the “Girder Finger” which original arcade hardware  
25 cannot draw. [Id.]

26 Twin Galaxies embarked on an extensive investigation to determine the validity of Jeremy  
27 Young’s dispute claim. [*See* Declaration of Jason Hall dated 3/30/2020 (“Hall 3/30/2020 Decl.”),  
28 ¶¶ 28-36; *see also* Hall Reply Decl., ¶¶ 15-23.] The Twin Galaxies investigation revealed that two

1 of Mr. Mitchell's videotaped recordings for the 1,047,200 (the King of Kong "tape"), and the  
2 1,050,200 (the Mortgage Brokers score) score performance drew the levels with three (3) girders,  
3 and with the Girder Finger. [Hall Reply Decl., ¶ 17.] Twin Galaxies' investigation also confirmed  
4 that an original Donkey Kong arcade PCB cannot draw the Donkey Kong levels with three girders  
5 and the Girder Finger. [Id. at ¶ 18.] Based on these findings, Twin Galaxies determined that the  
6 videotaped recordings at issue could not have come from an unmodified Donkey Kong arcade PCB  
7 thereby validating Jeremy Young's dispute claim. [Id. at ¶ 20.] Twin Galaxies did not have enough  
8 evidence to pass judgment on the 1,062,800 (the Boomers score) score performance. [Id.]

9 Mr. Mitchell had his own technical team working to debunk Jeremy Young's claim  
10 beginning in February 2018. [See Declaration of Steven Kleisath ("Kleisath Decl."), ¶¶ 6-17, Exhs.  
11 A & B; *see also* Pineiro Decl., ¶¶ 6-9, 13-18, 26-28, Exhs. A-C.] But Mitchell's technical team  
12 came to the same conclusion as Jeremy Young, and Twin Galaxies. Mitchell's technical team found  
13 that the videotaped recordings of the 1,047,200 (the King of Kong "tape"), and the 1,050,200 (the  
14 Mortgage Brokers score) score performances showed the levels draw with three girders, and the  
15 Girder finger. [Pineiro Decl., ¶ 16.] Mitchell's team also found that an original Donkey Kong  
16 arcade PCB does not draw three girders or the Girder Finger. [Id. at ¶¶ 17-18.] Based on these  
17 findings, Mitchell's team posted in the Mitchell Dispute Claim Thread that the videotaped  
18 recordings of the 1,047,200 (the King of Kong "tape"), and the 1,050,200 (the Mortgage Brokers  
19 score) score performances were not generated from an unmodified Donkey Kong arcade PCB, and  
20 validated Jeremy Young's dispute claim. [Id. at ¶ 19.]

21 C. The alleged defamatory statements relate only to videotaped recordings of two  
22 Donkey Kong score performances.

23 After its investigation, on April 12, 2018, Twin Galaxies' posted a statement on the Twin  
24 Galaxies website with its finding. The language of the statement is clear that the "*taped* Donkey  
25 Kong score performances of 1,047,200 (the King of Kong "tape"), and 1,050,200 (the Mortgage  
26 Brokers score) that were historically used by Twin Galaxies to substantiate those scores and place  
27 them in the database were not produced by the direct feed output of an original unmodified arcade  
28 PCB [emphasis added]." [See Hall 3/30/2020 Decl., ¶ 38, Exh. B at p. 000002.] Twin Galaxies

1 purposely limited its statement to refer only to the taped recordings of these performances that have  
2 been used historically to admit the records onto the leaderboards because that was the scope of the  
3 Jeremy Young dispute. [Hall Reply Decl., ¶ 21.] Twin Galaxies found that there was insufficient  
4 evidence to validate Jeremy Young's dispute with respect to the third score at issue, Billy Mitchell's  
5 1,062,800 (the Boomers score) score and so its statement recited this fact. [Id.]

6 **III. ARGUMENT**

7 A. Billy Mitchell has not met his burden to prove falsity.

8 Mitchell does not dispute the fact that the alleged defamatory statements were made in a  
9 public forum about a matter of public interest. [See Opposition, p. 9, lns. 8-10.] Mitchell also  
10 admits that he is a public figure. [Id. at p. 12, lns. 18-20.] As a matter of law, in cases involving  
11 public figures and matters of public concern, the burden is on the plaintiff to prove falsity in a  
12 defamation action. (See City of Costa Mesa v. D'Alessio Investments, LLC (2013) 214 Cal. App.  
13 4th 358, 378 ("In a defamation action ... by a private person suing over statements of public concern,  
14 however, the First Amendment places the burden of proving falsity on the plaintiff.")) The plaintiff  
15 must make its proof with competent and admissible evidence. (See Hecimovich v. Encinal School  
16 Parent Teacher Organization (2012) 203 Cal. App. 4th 450, 469.)

17 i. Mitchell fails to provide competent and admissible evidence of falsity.

18 The alleged defamation can be broken down into two discrete statements. One statement is:  
19 the videotape recording of Billy Mitchell's 1,047,200 (the King of Kong "tape") that was historically  
20 used by Twin Galaxies to substantiate the score and place it in the score database was not produced  
21 by the direct feed output of an original unmodified arcade PCB. The other statement is: the  
22 videotape recording of Billy Mitchell's 1,050,200 (the Mortgage Brokers score) that was historically  
23 used by Twin Galaxies to substantiate the score and place it in the score database was not produced  
24 by the direct feed output of an original unmodified arcade PCB. It is important to note that these  
25 statements refer to the videotape recordings of the performances – and not live performance.  
26 Accordingly, to prove falsity, Mitchell must show that the videotape recordings of the performances  
27 were from an original unmodified Donkey Kong PCB. He provides no evidence in this respect.

1 Taking the videotape recording of the 1,047,200 (the King of Kong "tape") score  
2 performance first, Mitchell provides absolutely no evidence that the tape recording of this score was  
3 created from gameplay on an unmodified original Donkey Kong PCB. Mitchell's 40 page  
4 declaration, and his 200+ pages of "evidence" do not address the simple question of whether the  
5 videotape of this performance contains gameplay recorded from an original unmodified machine.  
6 Mitchell dances around that question by claiming that he achieved a high-score of 1,047,200 at  
7 Arcade Game Sales on December 28, 2004. [See Declaration of William "Billy" Mitchell ("Mitchell  
8 Decl."), ¶ 9.] But the fact that he achieved that score on that date at that venue does not prove that  
9 the gameplay on the videotape in question was from an unmodified machine because he does not  
10 even allege that his December 28, 2004 performance was recorded. There just is no evidence in the  
11 record to prove Twin Galaxies' statement is false.

12 Similarly, with respect to the videotape recording of the 1,050,200 (the Mortgage Brokers  
13 score) score performance, Mitchell again does not provide any competent or admissible evidence  
14 that the videotape recording at issue contains gameplay from an original unmodified Donkey Kong  
15 arcade PCB. What he does offer is a handful of vague declarations from people swearing that they  
16 saw him playing Donkey Kong at a convention of mortgage brokers in 2007. None of these  
17 eyewitnesses testify to whether the performance recorded on the videotape in question is the  
18 performance they witnessed at the convention. In fact, none of the eyewitnesses even testify that  
19 they have seen what is on the tape. Without that evidence, Mitchell cannot prove falsity.

20 And the purported "expert testimony" of Robbie Lakeman does not change the fact that  
21 Mitchell cannot prove falsity. As an initial matter, Lakeman's declaration attached as Exhibit 21 to  
22 the Mitchell Declaration is inadmissible under California *Evidence Code* section 720 because he  
23 has not laid a foundation that he is an expert in video game programming or hardware interface.  
24 Even if the Court accepts his testimony, it is irrelevant and unhelpful. Lakeman testifies that he  
25 "studied the tapes for several hours one day" and he can "honestly say that this is legitimate  
26 gameplay" of "Billy playing." This is hardly the kind of expert analysis that is helpful, and it has  
27 no tendency to prove or disprove that the videotapes were generated from an original Donkey Kong  
28 PCB – Lakeman does not even testify to that fact which is really the only thing at issue.



1 Similarly, the fact Guinness World Records (“GWR”) reversed its decision to strip Mitchell  
2 of his records is immaterial to whether the tapes at issue contain gameplay for an unmodified  
3 machine. There is no analysis or statement from GWR showing that it has affirmatively determined  
4 that the content on the tapes at issue was created on an unmodified Donkey Kong arcade PCB. What  
5 happened is that GWR capitulated and reinstated Mitchell’s scores to avoid being sued after it was  
6 issued a demand letter by Mitchell’s attorney. [See Mitchell Decl., Exh. 35.] This evidence does  
7 not help Mitchell because it is inadmissible, and because it is not probative of the issues.

8 ii. Twin Galaxies can prove the truth of its statement.

9 Conversely, Twin Galaxies can prove that the videotape recordings of Billy Mitchell’s  
10 1,047,200 (the King of Kong "tape"), and the 1,050,200 (the Mortgage Brokers score) score  
11 performances were not generated from an unmodified Donkey Kong arcade PCB. Proof that the  
12 alleged defamatory statement is true is enough to defeat Mitchell’s claim. (See Campanelli  
13 v. Regents of Univ. of Cal. (1996) 44 Cal. App. 4th 572, 581-582 (“Truth, of course, is an absolute  
14 defense to any libel action”).)

15 First, Twin Galaxies proffers the expert testimony of Jason Hall, its Head Custodian of  
16 Records to prove the truth of its statement. [See Hall Reply Decl., ¶¶ 2-7.] As set forth in his  
17 declaration, Mr. Hall is an expert in the field of computer video game programming and hardware  
18 interface. [Id. at ¶¶ 3 & 7.] Without belaboring the point, Mr. Hall and his team at Twin Galaxies  
19 engaged in an unprecedented investigation that involved detailed hardware and software testing to  
20 determine whether the videotaped performances at issue were created on original Donkey Kong  
21 PCB hardware or not. The result of his investigation and testing is that the videotape recordings of  
22 Mitchell’s 1,047,200 (the King of Kong "tape"), and 1,050,200 (the Mortgage Brokers score) score  
23 performances cannot have come from an unmodified Donkey Kong arcade PCB.

24 Second, and more importantly, Twin Galaxies proffers the expert testimony of Carlos  
25 Pineiro to prove the truth of its statement. [Pineiro Decl., ¶¶ 2-3.] Pineiro was originally part of a  
26 technical team assembled by Billy Mitchell to disprove Jeremy Young’s dispute claim. [Id. at ¶¶ 6-  
27 9, 20, 26-28, Exhs. A-C.] However, after he performed his analysis and testing of the videotape  
28 recordings at issue, Pineiro realized that neither of them were from an original unmodified arcade

1 PCB. [*Id.* at ¶¶ 13-20.] His expert testimony ultimately is that “that Billy Mitchell’s 1,047,200 (the  
2 King of Kong "tape"), and 1,050,200 (the Mortgage Brokers score) score performances as recorded  
3 on videotape were not generated from a genuine Nintendo Donkey Kong PCB.” [Pineiro Decl., ¶  
4 19.]

5 The evidence is irrefutable that the alleged defamatory statements are true. Since truth is an  
6 absolute defense, Mitchell has no probability of success on the merits, and the instant motion should  
7 be granted accordingly.

8 B. Billy Mitchell cannot prove actual malice.

9 i. The legal standard.

10 Plaintiff carries a heavy burden to prove actual malice by clear and convincing evidence.  
11 (*Christian Research Institute v. Alnor* (2007) 148 Cal. App. 4th 71, 84 (where the court found  
12 plaintiff failed to meet the heavy burden of proving actual malice).) “The burden of proof by clear  
13 and convincing evidence requires a finding of high probability. The evidence must be so clear as to  
14 leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of  
15 every reasonable mind. [internal quotations and citation omitted.]” (*Id.*)

16 Billy Mitchell must demonstrate Twin Galaxies either knew its statement was false or  
17 subjectively entertained serious doubt the statement was truthful. (*Bose Corp. v. Consumers Union*  
18 *of U.S., Inc.* (1984) 466 U.S. 485, 511.) The question is not “whether a reasonably prudent man  
19 would have published, or would have investigated before publishing. There must be sufficient  
20 evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth  
21 of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and  
22 demonstrates actual malice.” (*Reader’s Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 256-  
23 257; *see also McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 860.) Thus “mere failure to investigate  
24 the truthfulness of a statement, even when a reasonably prudent person would have done so, is  
25 insufficient” to demonstrate actual malice. (*Christian Research, supra*, 148 Cal. App. 4th 71, 90.)

26 ii. Twin Galaxies’ facts show Mitchell cannot meet the high bar of clear and  
27 convincing evidence of actual malice.  
28

1 Billy Mitchell cannot show by clear and convincing evidence that Twin Galaxies knew the  
2 alleged defamatory statement was false or that it had reckless disregard for the truth because it and  
3 other experts confirmed the statement. The Twin Galaxies' investigation headed by Jason Hall -- a  
4 software and video expert with 35 years of technical experience -- came to the same conclusion as  
5 Jeremy Young. In accord, the investigation lead by Carlos Pineiro, the head of Billy Mitchell's  
6 technical team, also came to the same conclusion as Jeremy Young.

7 These are three independent investigations carried out in fine technical detail by verifiable  
8 experts. They had access to original hardware, and their work carried on for months. The  
9 investigations took countless hour and they all discovered the same truth: the videotape recordings  
10 of Billy Mitchell's score performances were not created from an original unmodified Donkey Kong  
11 arcade PCB. Twin Galaxies publishing the statement in the face of such overwhelming evidence of  
12 truth does not rise to the level of actual malice under the clear and convincing standard.

13 Billy Mitchell attempts to distance himself from this truth by incredulously declaring that  
14 Pineiro was not working on his behalf. [See Mitchell Decl., ¶¶ 72, 116, 118, and 120.] His  
15 declaration flirts with perjury.

- 16 ■ Mitchell declares that the never engaged Carlos Pineiro to help examine the dispute  
17 claim. [Mitchell Decl., ¶ 72.] But there are almost 200 text messages between  
18 Mitchell and Pineiro, and approximately a dozen email communications between the  
19 two from February 2018 through April 12, 2018 discussing details and strategies  
20 about the investigation into the Jeremy Young Dispute claim. [Pineiro Decl., ¶ 27,  
21 Exh. B.] Mitchell even states in a text message to Hall that Pineiro heads up the  
22 technical end of his debunking effort. [Id., ¶ 28, Exh. C, p. 1.]
- 23 ■ Mitchell declares that he did not provide Pineiro equipment. [Mitchell Decl., ¶ 72.]  
24 But on April 4, 2018, Mitchell sends Pineiro a picture of a pink television saying, "I  
25 got a tube TV..." to which Pineiro responds, "Looks funny but it's PERFECT FOR  
26 our testing." [Pineiro Decl., ¶ 27, Exh. B, p. 15.] Mitchell also provided Pineiro all  
27 of the original hardware he claims to have used to achieve the scores for Pineiro to  
28

1 run his tests – including the hardware claimed to be certified by a Nintendo Senior  
2 Engineer as original. [*Id.* at ¶ 13; *see also* Kleisath Decl., ¶14]

- 3 ■ Mitchell declares that he “explicitly denied to Hall” that others spoke on his behalf.  
4 [*Mitchell Decl.*, ¶ 120.] But on April 5, 2018, Mitchell writes to Hall and Pineiro  
5 saying that “Joel has the authority to speak form me and request things as he is the  
6 coordinator of my effort. The technical end is headed up by Carlos.” [*Pineiro Decl.*,  
7 ¶ 28, Exh. C; *see also* Hall Reply Decl. ¶ 24, Exh. B.]

8 In light of these facts, how could there be any doubt in Jason Hall’s mind when the man who  
9 Billy Mitchell told him is heading up the technical debunking effort actually finds that the  
10 videotaped performances at issue do not show original hardware gameplay? No reasonable mind  
11 could hesitate to find that Jason Hall had any doubt about the truth considering Pineiro’s findings  
12 and apparent authority.

13 Other acts by Twin Galaxies show that Twin Galaxies acted in good faith without actual  
14 malice. For example, Twin Galaxies gave extra time for Mitchell and his team to complete their  
15 investigation. [*See* Hall Reply Decl. ¶ 25; Pineiro Decl., ¶ 21; Kleisath Decl., ¶ 10.] The fact that  
16 Twin Galaxies did not rush to judge the Boomers score performance shows that investigation was  
17 thoughtful, precise, and deliberate not reckless. [Hall Reply Decl. ¶ 20.] Lastly, Jason Hall was in  
18 direct contact by telephone and text message with Billy Mitchell explaining to him the scope of the  
19 investigation, and asking Mitchell to instruct his technical lead Pineiro to resolve issue that would  
20 help exonerate Mitchell if resolved. [*Id.* at ¶ 26; Exh. C., pp. 19-20 & 22-24.] At all times Hall was  
21 seeking the truth.

22 iii. Billy Mitchell’s facts do not show actual malice.

23 As an initial matter, Plaintiff’s reliance on, Widener v. Pacific Gas & Elec. Co. (1977) 75  
24 Cal. App. 3d 415, is misplaced. There, the PG&E executives failed to investigate the truthfulness  
25 of their employee’s statement when a cursory review of would have showed the statement to be  
26 false. [*Id.* at p. 435]. Here Twin Galaxies’ investigation was more than cursory, it was thorough  
27 and thoughtful. The facts are not the same for the holding to apply.

1 Plaintiff claims that Twin Galaxies' should have interviewed the eyewitnesses to Billy  
2 Mitchell's score performances and because it did not, it has recklessly disregarded the truth. But  
3 the failure to do so does not indicate malice. As an initial matter, there is no evidence that there was  
4 any eyewitness to the Billy Mitchell's 1,047,200 (the King of Kong "tape") so there cannot be a  
5 failure to investigate that allegedly defamatory statement. Next, the eyewitness testimony relating  
6 to the live performance of the 1,050,200 (the Mortgage Brokers score) score performance has no  
7 bearing on the specific question of the whether the *videotape* records of the score performances  
8 show artifacts like the Girder Finger that do not show up on original PCB hardware. Neither the  
9 testimony of the TG referee who witnessed the performance in 2007, nor that of the mortgage broker  
10 who was in the other room when Mitchell hit the "target score," is helpful in determining the  
11 technical aspects of Jeremy Young's dispute. [See Hall Reply Decl., ¶¶ 22-23.] And interviewing  
12 the Boomer's Arcade manager does not indicate actual malice because Twin Galaxies ultimately  
13 did not pass judgment over the 1,062,800 (the Boomers score) score performance. Twin Galaxies  
14 respectfully submits that the failure to interview these people is not indicative of the actual  
15 constitutional malice required to take free speech about a video game score outside the loving arms  
16 of First Amendment protection.

17 It is important to note that Twin Galaxies could not unilaterally interview witnesses as part  
18 of its investigation regardless because the rules of the dispute claim process bar it from doing so.  
19 The dispute claim rules dictate that "Only evidence that is specifically provided and documented  
20 within the public dispute claim discussion thread will be considered toward any decision." [See Hall  
21 Reply Decl., ¶ 23.] Accordingly, even accepting Mitchell's dubious claim that Jason Hall was told  
22 the names of eyewitnesses as true, refusing to accepting that evidence privately outside the public  
23 thread is not a departure from the rules and Mitchell was being treated fairly thereby negating any  
24 inference of actual malice.

25 Twin Galaxies' ultimate validation of the Jeremy Young's dispute despite a Senior  
26 Engineer's 2007 certification of the hardware used to achieve the 1,050,200 (the Mortgage Brokers)  
27 score does not show actual malice. Carlos Pineiro used that exact same Nintendo certified board  
28

1 (PCB) to perform his tests, yet he still found the videotape recording at issue was not created on  
2 original hardware. [Pineiro Decl., ¶13.]

3 Billy Mitchell seems to argue that Twin Galaxies was reckless in its investigation because  
4 its statements were based solely on an analysis of two videotapes of Mitchell's gameplay when it  
5 did not have the original performance videotapes. [See Opposition, p. 6:24-7:1.] But the truth is  
6 that Twin Galaxies sourced unaltered copies of the videotapes from Canada to perform its  
7 investigation. [Richard Decl., ¶¶ 3-5.] Twin Galaxies also obtained a second digital copy of both  
8 performances and cross-referenced the two for fidelity. [Hall Reply Decl. ¶¶ 13-14.] These facts  
9 show a more than adequate investigation to defeat an actual malice charge.

10 Billy Mitchell also makes the unsubstantiated claim that Twin Galaxies hired a biased "third-  
11 party investigator" Chris Gleed and this is indicia of actual malice. But Chris Gleed declares that  
12 he was not working as an investigator for Twin Galaxies, but he was instead investigating Jeremy  
13 Young's claim for himself because the issue is so fascinating, and because he felt obliged to do it  
14 for the community as a whole. [See Declaration of Chris Gleed, ¶¶ 1-8.]

15 Billy Mitchell then goes on to make trivial allegations in Section 1(A)(6)(f) of his Opposition  
16 brief that are not indicia of malice because the allegations are unsupported by competent or  
17 admissible evidence. [See Objections to Evidence, *filed concurrently herewith.*] This last grasp at  
18 straws also fails.

19 Finally, Plaintiff cites to a 1968 decision from Minnesota that the failure to retract a  
20 defamatory statement is indicative of actual malice. But the decision is not binding. And applying  
21 Minnesota law to punish Twin Galaxies for not retracting its statement on matters of public interest  
22 about a public figure with the indicia of truth as we have here will have a chilling effect free speech  
23 in California.

24 C. Billy Mitchell cannot prove special damages.

25 Billy Mitchell has not provided competent or admissible evidence to support the claim that  
26 he has suffered special damages. [See Objections to Evidence, *filed concurrently herewith.*] The  
27 so-called evidence set forth in his Declaration at Paragraphs 123-129 is replete with hearsay, lacks  
28

1 foundation, and is speculative. The Court should find that this element of Plaintiff's claim is not  
2 met.

3 D. The Common Interest Privilege does apply.

4 Plaintiff's reliance on Brown v. Kelly Broadcasting Co. (1989) 48 Cal.3d 711, is misplaced.  
5 In Brown, the court decided the narrow issue of whether the news media can assert the Common  
6 Interest Privilege where the challenged statement is about a *private* citizen. [Id. at 719.] The  
7 California Supreme Court noted the important distinction between private citizens and public figures  
8 for the application of the Common Interest Privilege in coming to its decision. [Id. at 731.] Nowhere  
9 does the court extend its decisions to public figures, and Mr. Mitchell admits he is a public figure.  
10 The Brown holding is therefore inapposite to the facts here.

11 E. There is good cause to excuse the page limit of California Rules of Court 3.1113(d).

12 Twin Galaxies respectfully submits that there is good cause to excuse the page limit of  
13 California Rules of Court 3.1113(d) for reply briefs, because Twin Galaxies cannot respond to the  
14 enormity of information set forth in Billy Mitchell's Opposition in 10 pages. The issues are complex  
15 and the facts are numerous. A few more pages is all that is needed.

16 **IV. CONCLUSION**

17 For these reasons, and for those set forth in its special motion, Twin Galaxies respectfully  
18 submits that the complaint of Billy Mitchell should be stricken and freedom of speech should  
19 prevail.

20 Respectfully submitted,

21 Dated: June 26, 2020

TASHROUDIAN LAW GROUP, APC

22  
23 By: /s/ David Tashroudian, Esq.

24 David Tashroudian, Esq.

25 Mona Tashroudian, Esq.

26 Attorneys for Defendant Twin Galaxies,  
27 LLC  
28

**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 June 26, 2020, I served the herein described document(s):

**REPLY IN SUPPORT OF SPECIAL MOTION TO STRIKE [CCP § 425.16]**

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](mailto: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)  
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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 June 26, 2020 at Woodland Hills, California.



\_\_\_\_\_  
Mona Tashroudian