

1 Mark Mao (SBN 236165)
BOIES SCHILLER FLEXNER LLP
2 44 Montgomery Street, 41st Floor
San Francisco, CA 94104
3 Telephone: (415) 293-6800
Facsimile: (415) 293-6899
4 mmao@bsflp.com

5 Michael Lipman (SBN 66605)
Karen L. Alexander (SBN 265926)
6 DUANE MORRIS LLP
750 B Street, Suite 2900
7 San Diego, CA 92101-4681
Telephone: (619) 744-2200
8 Facsimile: (619) 744-2201
mllipman@duanemorris.com
9 klalexander@duanemorris.com

10 Heather U. Guerena (SBN 238122)
7727 Herschel Avenue
11 La Jolla, CA 92037
Telephone: (858) 866-1020
12 Facsimile: (858) 551-4388
huguerena@elevationca.com
13

14 *Attorneys for Defendant*
15 *King's Casino, LLC*

16 UNITED STATES DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA

18 VERONICA BRILL; KASEY LYN
19 MILLS; MARC GOONE; NAVROOP
20 SHERGILL; JASON SCOTT; AZAAN
NAGRA; ELI JAMES; PHUONG PHAN;
21 JEFFREY SLUZINSKI; HARLAN
KARNOFSKY; NATHAN PELKEY;
22 MATT HOLTZCLAW; JON TUROVITZ;
ROBERT YOUNG; BLAKE
23 ALEXANDER KRAFT; JAMAN YONN
BURTON; MICHAEL ROJAS;
24 HAWNLAY SWEN; THOMAS MORRIS
25 III; PAUL LOPEZ; ROLANDO CAO;
BENJAMIN JACKSON; HUNG SAM;
26 COREY CASPERS; ADAM DUONG,

27 *Plaintiffs,*

28 v.

Case No. 2:19-cv-02027-MCE-AC

**DEFENDANT KING'S CASINO, LLC'S
NOTICE OF MOTION AND MOTION TO
DISMISS PLAINTIFFS' COMPLAINT**

Date: April 16, 2020
Time: 2:00 p.m.
Dept.: Courtroom 7
Judge: Hon. Morrison C. England, Jr.

Complaint Filed: October 8, 2019

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MICHAEL L. POSTLE; KING'S
CASINO, LLC D/B/A STONES
GAMBLING HALL; JUSTIN F.
KURAITIS; JOHN DOES 1-10; JANE
DOES 1-10,

Defendants.

NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 16, 2020 at 2:00 p.m., or as soon thereafter as this matter may be heard before the Honorable Morrison C. England, Jr., U.S. District Judge of the Eastern District of California, located at Courtroom 7, 14th Floor, Robert T. Matsui Federal Courthouse, 501 I Street, Sacramento, CA 95814, Defendant King's Casino, LLC dba Stones Gambling Hall ("Stones"), by and through its undersigned counsel, will and hereby does move this Court for an order dismissing the claims against Stones in Plaintiffs Veronica Brill, et al.'s Complaint for failure to state a claim upon which relief may be granted and failure to allege claims of fraud and misrepresentation with the required particularity. Fed. R. Civ. P. 8, 9(b), 12(b)(6); 28 U.S.C. § 1367.

For the reasons set forth below, Stones respectfully requests that this Court grant its Motion to Dismiss. This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, and such other further matters that may be presented at the hearing thereof.

Respectfully submitted,

Dated: March 4, 2020

By: /s/ Mark Mao
Mark Mao
BOIES SCHILLER FLEXNER LLP
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Telephone: (415) 293-6800
Facsimile: (415) 293-6899
mmao@bsfillp.com

Michael Lipman
Karen L. Alexander
DUANE MORRIS LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: (619) 744-2200
Facsimile: (619) 744-2201
mlipman@duanemorris.com
klalexander@duanemorris.com

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Heather U. Guerena
7727 Herschel Avenue
La Jolla, CA 92037
Telephone: (858) 866-1020
Facsimile: (858) 551-4388
huguerena@elevationca.com

Attorneys for Defendant
King's Casino, LLC

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This lawsuit reflects the oldest complaint of gamblers—that their lack of success
4 means they were cheated. Plaintiffs ask this Court to hold King’s Casino, LLC, dba
5 Stones Gambling Hall (“Stones”) liable because Defendant Michael Postle won too many
6 hands of poker from them. Yet Plaintiffs make no credible allegations of wrongdoing by
7 Stones, and longstanding California law forecloses their theories of liability.

8 Plaintiffs sued Stones on the premise that they told some employees of their
9 suspicions that Mr. Postle was cheating at poker, and those employees failed to confirm
10 Plaintiffs’ fears. Plaintiffs do not allege that Stones benefitted from Mr. Postle’s alleged
11 cheating. No ill-gotten profits or sinister motivations are imputed to Stones. Plaintiffs even
12 tacitly concede that cheating by players harms Stones’ business and reputation. It is
13 confounding that Plaintiffs now sue Stones rather than seeking its assistance in their
14 shared goal of preventing cheating in poker.

15 Plaintiffs’ Complaint includes hasty conclusions and speculation but no facts to
16 support their claims. The Court should dismiss the claims against Stones. *First*, Plaintiffs’
17 fraud and negligence claims—four of the five claims against Stones—all fail because
18 gambling losses are not cognizable as damages under California law and public policy.

19 *Second*, the negligence claim fails because it alleges purely economic losses.
20 Plaintiffs can point to no precedents suggesting that Stones breached a duty of care under
21 such attenuated circumstances, especially because Stones admittedly had no motivation
22 to promote cheating.

23 *Third*, the three fraud or misrepresentation claims against Stones—for fraud,
24 constructive fraud, and negligent misrepresentation—fall short of Federal Rules of Civil
25 Procedure Rule (“Rule”) 8 and 9(b)’s pleading standards. The Complaint is devoid of
26 information about when each Plaintiff spoke with Stones, how they were misled, what they
27 were told, and how they were harmed by unpled statements. Plaintiffs do not get to keep
28 Stones in their litigation merely by saying that Mr. Postle’s winnings are statistically

1 improbable and it was therefore Stones' fault that each Plaintiff chose to fold a particular
2 hand. Indeed, Plaintiffs concede that they continued to play with Mr. Postle despite their
3 own beliefs about what was allegedly going on, suggesting that even Plaintiffs thought that
4 Mr. Postle could have just been playing excellent poker.

5 *Finally*, Plaintiff Veronica Brill's libel claim against Stones fails because the alleged
6 statement did not refer to her expressly or by clear implication and she fails to plead the
7 required economic damages for the type of libel that she alleges.

8 Stones respectfully requests that this Court dismiss Counts III, VI, VII, VIII, and IX.

9 **II. PLAINTIFFS' FACTUAL ALLEGATIONS**

10 Below are the facts as pled by Plaintiffs in the Complaint:

11 Stones owns and operates a casino in Citrus Heights, California which includes
12 gaming space for playing poker. Compl. ¶ 38. One of the poker tables in the casino is
13 equipped with radio-frequency identification ("RFID") capabilities and video cameras. *Id.*
14 ¶¶ 39-40, 44. The RFID readers transmit the hole cards to the control room, which then
15 broadcasts the subject poker game to the public on a delayed feed. *Id.* ¶¶ 39-46. In 2016,
16 Stones began broadcasting poker games at the RFID-enabled table on the internet under
17 the name "Stones Live Poker." *Id.* ¶¶ 44, 47. Stones employs and invites guests to act as
18 commentators on the Stones Live program to provide thoughts and opinions about the
19 game and players. *Id.* ¶ 45. The commentators and the public do not see any of the
20 game live but instead view it on a delayed feed. *Id.* ¶ 46. Since 2018, Defendant Justin
21 Kuraitis, a Stones employee, has been the director of Stones Live Poker. *Id.* ¶ 49.

22 Defendant Michael Postle was a regular participant in the Stones Live Poker games
23 in 2018 and 2019. *Id.* ¶ 50. Plaintiffs make the conclusory allegation that Mr. Postle
24 cheated in the Stones Live Poker games on at least 68 dates. *Id.* ¶ 100. Plaintiffs also
25 allege that, while playing in Stones Live Poker, "Mr. Postle has won more money than any
26 other participant" and was often "the winningest player on the show." *Id.* ¶ 51. Plaintiffs'
27 evidence of cheating is that Mr. Postle: profited more than \$250,000 from his play on
28 Stones Live Poker (*id.* ¶ 83); made the optimal decision for each hand, resulting in a more

1 than ninety-four percent win rate (*id.* ¶ 54); and had an average profit of more than 60 “big
2 blinds per hour,” which is six times more than an “exceptional” poker player (*id.* ¶ 55).

3 Plaintiffs conclude that Mr. Postle was “able to achieve these results by engaging in
4 a pattern and practice of using one or more wire communication mechanisms to defraud
5 his opponents by gaining knowledge of their Hole Cards during the play of poker hands.”
6 *Id.* ¶ 61. Mr. Postle purportedly had one or more unnamed confederates who provided
7 information to Mr. Postle. *Id.* ¶ 62. Plaintiffs allege that the scheme involved “Mr. Postle’s
8 cellular telephone being grasped by his left hand while concealed under the poker table
9 and/or Mr. Postle’s baseball cap being imbedded with a communications device creating
10 an artificial bulge in its lining (that is notably absent in photographs of the same baseball
11 cap on Mr. Postle when he is not playing on Stones Live Poker).” *Id.* ¶ 63. Plaintiffs
12 conclude that their allegations are “based on a statistical analysis of his results and
13 analytical review of the manner in which he played.” *Id.* ¶ 64.

14 Plaintiffs allege the cards as read automatically by the table with an RFID reader
15 would sometimes change partway through a particular hand. *Id.* ¶¶ 69-72. Plaintiffs
16 allege that the change in cards read by the table is a sign that cheating was occurring but
17 being covered up. *Id.* ¶ 61.

18 Plaintiffs are poker players who allege they suffered gambling losses or were
19 deprived of the chance to maximize their gambling winnings due to Mr. Postle cheating in
20 one or more of the Stones Live Poker games between 2018 and 2019. *Id.* ¶¶ 85-87.

21 Plaintiffs allege that beginning at least as early as March 13, 2019, “numerous
22 individuals”¹ told Mr. Kuraitis that “the play of Mr. Postle on Stones Live Poker can only be
23 attributed to cheating or, at a minimum, is strongly indicative of the presence of cheating.”
24 *Id.* ¶ 73. Plaintiffs allege that Mr. Kuraitis “repeatedly told multiple persons Mr. Postle was
25 not cheating but, to the contrary, Mr. Postle’s play is simply ‘on a different level’ or he is
26

27 _____
28 ¹ The Complaint does not specify whether these “numerous individuals” are Plaintiffs or
other people nor any other factual information about the individuals involved or the timing
and content of the conversations.

1 ‘just on a heater’ and his play is not something that can be explained.” *Id.* ¶ 74. They
2 allege that “Mr. Kuraitis told multiple persons that Stones conducted a thorough
3 investigation into the matter and such did not reveal the presence of cheating.” *Id.* ¶ 75.
4 Plaintiffs also allege that Stones later stated on Twitter that “We conducted a full
5 investigation & found no evidence that any cheating had occurred.” *Id.* ¶ 76.

6 Based on these allegations, Plaintiffs assert four causes of action against Stones
7 for negligent misrepresentation (Count III), negligence (Count VI), constructive fraud
8 (Count VII), and fraud (Count VIII).

9 Finally, Plaintiffs allege that, on an unspecified date, Plaintiff Veronica Brill
10 publicized her suspicions that Mr. Postle was cheating on the Stones Live Poker
11 broadcast. *Id.* ¶ 154. While nothing links Stones’ Twitter comment to Ms. Brill, Plaintiffs
12 allege that Stones “responded” to Ms. Brill’s assertions by commenting on Twitter, “The
13 recent allegations are completely fabricated.” *Id.* Based on these last allegations, Ms. Brill
14 individually asserts a cause of action against Stones for libel (Count IX). *Id.* ¶ 158. She
15 alleges no economic harm from the purported libel. *Id.*

16 **III. LEGAL STANDARD**

17 A complaint must be dismissed for “failure to state a claim upon which relief can be
18 granted.” Fed. R. Civ. P. 12(b)(6). A court begins “by identifying pleadings that, because
19 they are no more than conclusions, are not entitled to the assumption of truth.” *Ashcroft v.*
20 *Iqbal*, 556 U.S. 662, 679 (2009); see *Alvarez v. Chevron Corp.*, 656 F.3d 925, 930 (9th Cir.
21 2011). Taking well-pleaded factual allegations as true, Plaintiffs’ “allegations must be
22 enough to raise a right to relief above the speculative level” and must have “enough facts
23 to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S.
24 544, 555, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual
25 content that allows the court to draw the reasonable inference that the defendant is liable
26 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “[A]llegations that are merely
27 conclusory, unwarranted deductions of fact, or unreasonable inferences” do not withstand
28

1 a motion to dismiss. *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)
2 (citation omitted).

3 Under Rule 9(b), allegations sounding in fraud must be “specific enough to give
4 defendants notice of the particular misconduct . . . so that they can defend against the
5 charge and not just deny that they have done anything wrong.” *Vess v. Ciba-Geigy Corp.*
6 *USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (citation omitted). A fraud allegation must set
7 forth “the who, what, when, where, and how” of the alleged fraud. *Id.* (citation omitted).

8 Without converting a motion to dismiss into a motion for summary judgment, a court
9 may take judicial notice of a fact that is not subject to reasonable dispute because it: (1) is
10 generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and
11 readily determined from sources whose accuracy cannot reasonably be questioned. Fed.
12 R. Evid. 201; see *Daniels-Hall v. National Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010)
13 (taking judicial notice of information made publicly available by a government entity).

14 **IV. ARGUMENT**

15 Plaintiffs allege five causes of action against Stones: (1) negligence (Count VI),
16 (2) fraud (Count VIII), (3) constructive fraud (Count VII), (4) negligent misrepresentation
17 (Count III), and (5) libel (Count IX). Each claim should be dismissed for failing to state a
18 cognizable claim under California law, consistent with the relevant pleading standards.

19 **A. Plaintiffs’ Claims Relating to Their Gambling Losses All Fail Because** 20 **Such Claims Are Not Cognizable under California Law.**

21 Plaintiffs’ claims for negligence, fraud, constructive fraud, and negligent
22 misrepresentation all purport to seek recovery of purported gambling losses or foregone
23 winnings while playing poker. California law forecloses damages for gambling losses or
24 gains on two independent bases: (1) the lack of proximate causation and (2) public policy.

25 **1. Plaintiffs’ Claims Fail Because Their Damages Are Speculative** 26 **and Therefore Unrecoverable.**

27 Plaintiffs cannot establish the required causation for damages because gambling
28 losses are too speculative. The California Court of Appeal addressed this issue in *Vu v.*

1 *California Commerce Club, Inc.*, 58 Cal. App. 4th 229 (1997). In *Vu*, the plaintiffs sued a
2 cardroom for negligence, breach of implied contract or covenant, and conversion
3 regarding gambling losses that they argued were attributable to cheating. *Id.* at 232, 235.
4 The alleged cheating scheme involved players signaling their hands to each other and
5 betting accordingly, vocal and hand signals from a game manager, and the use of marked
6 cards in poker games. *Id.* at 231-32. The plaintiffs' "allegations and theory were that the
7 club's failure to fulfill its implied promises of security from cheating enabled the plaintiffs'
8 competitors to cheat, which in turn caused the plaintiffs' losses," but the court held that this
9 "premise . . . was untenable as a matter of law." *Id.* at 233. The court observed:

10 Causation of damages in contract cases, as in tort cases, requires
11 that the damages be proximately caused by the defendant's breach,
12 and that their causal occurrence be at least reasonably certain. No
13 such certainty or probability appertains with respect to plaintiffs'
14 gambling losses, assertedly the result of cheating. Assuming
15 arguendo that an adequate causal connection could be established
16 between the club's alleged breach of security obligations and the
17 cheating that plaintiffs allegedly encountered, no such relationship
18 appears between the cheating and plaintiffs' losses. That is because
19 winning or losing at card games is inherently the product of other
20 factors, namely individual skill and fortune or luck. It simply cannot
21 be said with reasonable certainty that the intervention of cheating
22 such as here alleged was the cause of a losing hand, and certainly
23 not of two weeks' or two years' net losses

18 *Id.* (citations omitted).

19 *Vu* relied on an earlier decision by the California Supreme Court in *Youst v. Longo*,
20 43 Cal. 3d 64 (1987), which affirmed a sustained demurrer on tort claims by the owner of
21 one horse against the driver of another horse for interference by the other horse and its
22 driver during a race. Even though the plaintiff had alleged that the interference caused his
23 horse to lose the race, and specific facts about the interference, *id.* at 67-68, the court held
24 that the plaintiff had no right to tort damages, *id.* at 83.

25 As in *Vu* and *Youst*, Plaintiffs here do not and cannot allege facts to establish how
26 Mr. Postle's alleged cheating caused their damages. Many factors go into winning a hand
27 of poker, to say nothing of winning games over time. Plaintiffs fail to discuss how every
28 one of them would have won the hands in which they individually suffered losses, but for

1 Mr. Postle's supposed scheme. Nor can they plausibly plead such losses because of their
2 individual decision to fold as opposed to continue to play. And the causal connection of
3 Stones to any losses is even more attenuated. Plaintiffs do not even try to explain the "but
4 for" causal connection to Stones, simply asserting that Stones is liable to them for the
5 money that Mr. Postle won, without accounting for what money they lost to him rather than
6 other players, Compl. ¶¶ 125, 138, 145, 152.

7 Plaintiffs' requests for future winnings and punitive damages do not make
8 cognizable their negligence, misrepresentation, and fraud claims. Plaintiffs purport to seek
9 future winnings, but such damages are even more speculative than past losses. Plaintiffs
10 would need to prove they would have played poker and won. *Vu* forecloses the latter
11 inference. Nor are Plaintiffs' claims rescued by their unsupported request for punitive
12 damages, which falls with their request for gambling losses because, "actual damages are
13 an absolute predicate for an award of exemplary or punitive damages." *Kizer v. Cty. of*
14 *San Mateo*, 53 Cal. 3d 139, 147 (1991).

15 **2. California Public Policy Bars These Claims.**

16 Plaintiffs' gambling loss damages claims are independently barred by California's
17 public policy against judicial resolution of civil claims arising out of gambling contracts or
18 transactions. See *Jamgotchian v. Sci. Games Corp.*, 371 F. App'x 812, 813 (9th Cir.
19 2010). A "suit to be placed in the *ex ante* position after losing a bet is" a suit to recover
20 gambling losses and is barred by California public policy. *Id.* (citing *Kelly v. First Astri*
21 *Corp.*, 72 Cal. App. 4th 462, 490 (1999)). And "California's public policy against judicial
22 resolution of civil claims arising out of gambling contracts or transactions absent a
23 statutory right to bring such claims, applies to all forms of gambling." *Id.* (quoting *Kelly*, 84
24 Cal. App. 4th at 490). Because Plaintiffs seek to recover gambling losses, their claims are
25 barred by California public policy. See *id.* This bar extends to seeking damages against
26 third parties such as Stones. See *Alves v. Players Edge, Inc.*, No. 05CV1654 WQH
27 (CAB), 2007 WL 6004919, at *14 (S.D. Cal. Aug. 8, 2007) ("any purchasing of tips was
28 part of the 'gambling' transactions which Plaintiffs conducted with Defendants" and so

1 recovery was barred by California public policy).

2 Thus, Plaintiffs' claims for negligence, fraud, constructive fraud, and negligent
3 misrepresentation all fail as a matter of law.

4 **B. The Negligence Claim Additionally Fails for Want of an Actionable Duty.**

5 Plaintiffs contend that Stones owed a duty to them to prevent Mr. Postle from
6 cheating. No such duty exists. "The elements of a cause of action for negligence are (1) a
7 legal duty to use reasonable care, (2) breach of that duty, and (3) proximate cause
8 between the breach and (4) the plaintiff's injury." *Mendoza v. City of Los Angeles*, 66
9 Cal. App. 4th 1333, 1339 (1998).

10 As discussed above, Plaintiffs do not plausibly allege proximate causation for any
11 damages based on Stones' alleged negligence. The negligence claim also fails to allege
12 facts to meet the required element of a duty.

13 "The existence of a duty of care owed by a defendant to a plaintiff is a prerequisite
14 to establishing a claim for negligence." *Nymark v. Heart Fed. Sav. & Loan Ass'n*, 231
15 Cal. App. 3d 1089, 1095 (1991). "[A]bsent a duty, the defendant's care, or lack of care, is
16 irrelevant." *Software Design & Application, Ltd. v. Hoefer & Arnett, Inc.*, 49 Cal. App. 4th
17 472, 482 (1996). "Whether this essential prerequisite to a negligence cause of action has
18 been satisfied in a particular case is a question of law to be resolved by the court."
19 *Quelimane Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26, 57 (1998). Plaintiffs contend
20 that Stones had a duty to protect them from gambling losses to Mr. Postle because of
21 cheating, but they do not explain the basis for such a duty. Plaintiffs' proposed duty is
22 barred by the economic loss rule.

23 The California Supreme Court recently reaffirmed the general rule that, outside of
24 narrow exceptions, a defendant owes no tort duty to guard against negligently causing
25 "purely economic losses" to others. *S. California Gas Leak Cases*, 7 Cal. 5th 391, 398
26 (2019). This rule reflects "the need to safeguard the efficacy of tort law by setting
27 meaningful limits on liability." *Id.* at 401. In *Southern California Gas Leak Cases*, local
28 businesses sued a natural gas company for lost income and other financial harms from a

1 months-long gas leak. *Id.* at 394. While acknowledging that the natural gas company had
2 legal and practical reasons to avoid causing *any* injury to members of the public, the court
3 declined to impose tort liability for the businesses' lost income and other purely economic
4 losses, because doing so would "create intractable line-drawing problems for courts." *Id.*
5 at 395.

6 Here, as in *Southern California Gas Leak Cases*, Plaintiffs seek recovery of only
7 economic losses from Stones. They do not allege any personal injury or property damage.
8 Plaintiffs therefore cannot proceed with their negligence claim unless they fall within one of
9 the narrow exceptions to the economic loss rule. For the reasons explained below, they
10 do not.

11 The primary exception to the general rule against recovery of purely economic
12 damages in negligence is when the plaintiff and the defendant have a "special
13 relationship" because "the plaintiff was an intended beneficiary of a particular transaction
14 but was harmed by the defendant's negligence in carrying it out." *Id.* at 400 (citing *J'Aire*
15 *Corp. v. Gregory*, 24 Cal. 3d 799, 804 (1979)). The California Supreme Court has
16 enumerated factors for courts to consider in deciding whether a defendant had a special
17 relationship with a plaintiff so that the defendant owed a duty of care to the plaintiff despite
18 the purely economic nature of the alleged loss, including "(1) the extent to which the
19 transaction was intended to affect the plaintiff, (2) the foreseeability of harm to the plaintiff,
20 (3) the degree of certainty that the plaintiff suffered injury, (4) the closeness of the
21 connection between the defendant's conduct and the injury suffered, (5) the moral blame
22 attached to the defendant's conduct and (6) the policy of preventing future harm." *J'Aire*,
23 24 Cal. 3d at 804. "[I]t is only in a limited number of cases where such a duty will be
24 found." *Adelman v. Associated Int'l Ins. Co.*, 90 Cal. App. 4th 352, 365 (2001) (no duty
25 existed between an insurer for a condo association and homeowners in the association).

26 Plaintiffs do not allege any special relationship between themselves and Stones.
27 No such relationship exists. The California Supreme Court's decision in *Bily v. Arthur*
28

1 *Young & Co.*, 3 Cal. 4th 370 (1992), is illustrative. In *Bily*, the plaintiffs sued the auditors
2 of a company contending that they relied on a negligently prepared auditor's report in
3 investing. The court rejected the argument that auditors owed a duty of care to investors,
4 despite the foreseeability of the injury. The court in *Bily* raised three primary concerns with
5 imposing a duty: (1) the tenuous causal relationship between an auditor's reports and
6 economic losses from investment and credit decisions could expose an auditor to
7 "potential liability far out of proportion to its fault," (2) the sophisticated parties could
8 "control and adjust the relevant risks through 'private ordering,'" and (3) a finding of a duty
9 would cause an adverse impact on the type of defendant at issue. *Id.* at 398. Each of
10 these grounds equally applies to the relationship between Stones and the players.
11 Plaintiffs do not and cannot allege that any relationship with Stones was directed at their
12 making money playing poker. The Complaint asserts that Plaintiffs played at Stones and
13 won or lost money from other players. There is only an attenuated connection between
14 Stones' alleged actions and the injury Plaintiffs contend that they suffered. There are no
15 allegations that Stones impacted Plaintiffs' ability to win or lose money in a given hand of
16 poker because Stones is not a player in the game. Nor are there any allegations that
17 Stones received any benefit if one player won more often than any other player. To the
18 contrary, the injury Plaintiffs assert they suffered is "part of [poker players'] ordinary
19 business risk." *J'Aire*, 24 Cal. 3d at 808 (identifying that as a consideration in holding that
20 no duty applied).² Stones Live Poker players were sophisticated poker players, aware of
21 the various risks involved in poker gambling. Recognizing a duty in this context would also
22 have a strongly negative effect on casinos like Stones.

23 _____
24 ² Little moral blame should be attributed to Stones' alleged conduct, and the policy of
25 preventing future harm does little work, given Plaintiffs' affirmative allegation that this was
26 an exceptional cheating scheme by Mr. Postle, the preexisting non-tort incentives Plaintiffs
27 allege for casinos to prevent cheating, and the lack of allegations regarding Stones'
28 knowledge of actual cheating (rather than allegations of cheating). See, e.g., Compl. ¶¶ 4,
43; *Burns v. Neiman Marcus Grp., Inc.*, 173 Cal. App. 4th 479, 490 (2009) ("[T]he person
deserving of moral blame is [the person who forged checks], not Neiman Marcus [that
accepted forged checks]. There is no allegation that Neiman Marcus actively participated
in [the check forger's] alleged embezzlement of funds from plaintiff.").

1 The California Supreme Court has likewise “decline[d] to recognize a duty to avoid
2 business decisions that may affect the financial interests of third parties, or to use due
3 care in deciding whether to enter into contractual relations with another.” *Quelimane*, 19
4 Cal. 4th at 58. The plaintiffs in *Quelimane* asserted that a title insurance company had a
5 duty to “issue [title] insurance . . . without discrimination” and “to use known and accepted
6 legal, actuarial, and statutory criteria to determine the legal status of parcels of land to be
7 insured.” *Id.* at 36. The defendant title insurance companies’ “failure to insure any title to
8 land purchased at a tax sale regardless of the merits of the chain of title” had vastly
9 increased the price of purchasing property for the plaintiffs. *Id.* The California Supreme
10 Court nevertheless declined to recognize a duty by the title insurance company to potential
11 purchasers. The relationship between Stones’ conduct and the Plaintiffs is even more
12 attenuated than the relationship analyzed in *Quelimane*. Plaintiffs argue that they lost
13 money when Stones negligently permitted a cheater to join them at the poker table, then
14 employed less than “prevailing industry standards for security” to thwart his alleged
15 scheme. Compl. ¶ 136. As in *Quelimane*, these allegations merely reflect business
16 decisions by Stones that allegedly affected Plaintiffs as third parties and Stones allegedly
17 exercising less than due care in letting Mr. Postle play poker with Plaintiffs. Imposing a
18 duty on Stones here would be unprecedented under California law.

19 To the extent Plaintiffs rely on a premises liability theory for negligence, relief
20 remains unavailable. If Stones owed any duty to Plaintiffs as proprietor, that duty was to
21 protect them from foreseeable physical assaults and violence—not from their own
22 gambling losses. California courts apply the doctrine of premises liability almost
23 exclusively to cases involving physical harm or violence and require that a proprietor take
24 reasonable steps to protect its customers against foreseeable third-party “criminal acts.”
25 *Delgado v. Trax Bar & Grill*, 36 Cal. 4th 224, 235 (2005). In the related context of
26 commercial landlords and tenants, courts have refused to impose a duty on landlords to
27 protect a tenant’s property from third-party theft or burglary. See *Royal Neckwear Co. v.*
28 *Century City, Inc.*, 205 Cal. App. 3d 1146, 1151 (1988) (dismissing shopping-center

1 tenant's negligence claim against a landlord to recover for merchandise lost in two
2 burglaries because the landlord did not owe a duty to safeguard tenant property); *Tyson v.*
3 *W. Residential, Inc.*, No. B263967, 2016 WL 3679501, at *3 (Cal. Ct. App. July 5, 2016)
4 (“*Royal Neckwear* establishes that a commercial landlord does not owe its tenants a duty
5 to safeguard the tenants’ property from reasonably foreseeable criminal activity by third
6 parties.”). The doctrine of premises liability cannot cure Plaintiffs’ failure to allege a duty.

7 With respect to a duty, Stones is similarly situated to the boxing organizers and
8 broadcaster sued in *In re Pacquiao-Mayweather Boxing Match Pay-Per-View Litigation*,
9 942 F.3d 1160, 1169-70 (9th Cir. 2019). In *Pacquiao-Mayweather*, spectators to a high-
10 profile boxing match sued when they found out that one of the fighters had been injured
11 and the defendants, including the organizers and broadcaster of the match, knew about
12 the injury. The Ninth Circuit held that the defendants were not liable for claims over the
13 quality of the match. The plaintiffs had paid to see a boxing match, and they saw a boxing
14 match. The allegation that the defendants knew and hid from the public the boxer’s injury
15 and the likelihood of a less high-quality match did not support liability. *Id.* Here, poker
16 players including Plaintiffs paid Stones for a seat at the poker table in the form of a
17 collection rate schedule approved by the Bureau of Gambling Control.³ Stones had no
18 stake in who won money or lost money in the poker games. All Stones did was to provide
19 a venue for the poker game. Plaintiffs decided whether they wanted to play, for how long,
20 how much to bet, and in which hands to participate. *Pacquiao-Mayweather*, and the
21 precedent it relies on, advise against making casinos like Stones liable for cheating by
22 players when the casino is not alleged to have engaged in the cheating—or to have played
23 in the games—but is merely alleged to have made a poker game available.

24 Plaintiffs do not sufficiently plead the essential elements of a duty or proximate
25

26 ³ The Court may take judicial notice of the publicly available document attached as Exhibit
27 B, which is an excerpt of the relevant pages (pages 1-2, 97-102, 120-29) of approved rules
28 and rates schedules (available on the California Attorney General’s website at
https://oag.ca.gov/sites/all/files/agweb/pdfs/gambling/saloon_stonegambling.pdf) showing
that collections by Stones do not depend on who wins. See *Daniels-Hall*, 629 F.3d at 998.

1 causation. Thus, their negligence claim fails.

2 **C. Plaintiffs' Claims for Fraud and Misrepresentation Fail to Plead**
3 **Allegations with the Required Specificity.**

4 Plaintiffs bring three claims against Stones based on alleged misrepresentations or
5 fraud by the casino—fraud (Count VIII), constructive fraud (Count VII), and negligent
6 misrepresentation (Count III). Claims sounding in fraud or mistake must allege “the
7 circumstances constituting fraud or mistake” with particularity under Rule 9(b), except that
8 “[m]alice, intent, knowledge, and other conditions of a person’s mind may be alleged
9 generally.” The heightened pleading standard provides defendants with a meaningful
10 opportunity to respond to and rebut fraud allegations by plaintiffs. None of Plaintiffs’ fraud
11 or misrepresentation-based claims satisfy either the usual Rule 8 pleading standard or
12 provide the heightened specificity required by Rule 9(b).

13 There are 25 individual Plaintiffs, but the Complaint is silent about what each of
14 them heard, from whom they heard it, where and when they heard it, how or when they
15 relied on it to continue to play poker, or resulting damage. Each Plaintiff must specifically
16 plead the who, what, when, where, and how of the alleged fraud to meet the pleading
17 standard. They do not and cannot.

18 **1. The Complaint Fails to Plead Facts to Establish Any Fraudulent**
19 **Misrepresentation by Stones.**

20 Ms. Brill, Ms. Mills, and Mr. Goone (but not other Plaintiffs) allege a fraud claim
21 (Count VIII) against Stones. Compl. ¶¶ 146-52. “The elements of fraud are (a) a
22 misrepresentation (false representation, concealment, or nondisclosure); (b) scienter or
23 knowledge of its falsity; (c) intent to induce reliance; (d) justifiable reliance; and
24 (e) resulting damage.” *Hinesley v. Oakshade Town Ctr.*, 135 Cal. App. 4th 289, 294
25 (2005) (citing *Lazar v. Superior Court*, 12 Cal. 4th 631, 638 (1996)). “To properly plead
26 fraud with particularity under Rule 9(b), ‘a pleading must identify the who, what, when,
27 where, and how of the misconduct charged, as well as *what is false or misleading* about
28 the purportedly fraudulent statement, and *why it is false.*” *Scott v. Bluegreen Vacations*

1 Corp., No. 1:18-CV-649 AWI EPG, 2018 WL 6111664, at *5 (E.D. Cal. Nov. 21, 2018)
2 (emphasis added). “The requirement of specificity in a fraud action against a corporation
3 requires the plaintiff to allege the names of the persons who made the allegedly fraudulent
4 representations, their authority to speak, to whom they spoke, what they said or wrote, and
5 when it was said or written.” *Tarmann v. State Farm Mut. Auto. Ins. Co.*, 2 Cal. App. 4th
6 153, 157 (1991).

7 The only part that is met by the Complaint is the “who”—Justin Kuraitis; Plaintiffs
8 satisfy none of the other requirements. Ms. Brill, Ms. Mills, and Mr. Goone allege
9 Mr. Kuraitis made a statement that there was no cheating but then contradict what was
10 said. Compl. ¶ 117. They plead elsewhere that Mr. Kuraitis stated that “an investigation of
11 such cheating allegations had occurred or would be occurring.” *Id.* ¶ 148. There is no
12 reference to time, and the pleading makes clear that Plaintiffs are not even sure if they
13 were told that an investigation had occurred or that one would be undertaken. If the
14 statement is that an investigation would be undertaken, then they could not rely on the fact
15 that an investigation had not yet occurred as grounds that they were told that there was no
16 cheating. To the extent that Plaintiffs rely on allegations regarding representations about
17 an investigation having occurred, even Plaintiffs appear to concede that such
18 representations were not objectively false, instead characterizing them as “normative[ly]”
19 false. *Id.* ¶ 78. Plaintiffs do not link any allegedly fraudulent representation to their
20 assertion that one or more “agents” of Stones acted as confederates of Mr. Postle in some
21 unknown capacity and circumstance. *Id.* ¶ 122. It is also unclear if any of those Plaintiffs
22 were together when Mr. Kuraitis made alleged representations and when these Plaintiffs
23 played poker with Mr. Postle in relation to when they allege that they heard any
24 representations from Mr. Kuraitis. Further, there is no reference to when the statements
25 were made. To the extent that the representations were made after September 28, 2019,
26 they could not support any reliance because all the games occurred before that date.
27 Without that information, it is impossible for Stones to “prepare an adequate answer from
28

1 the allegations.” *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir.
2 1989). The fraud claim must therefore be dismissed.

3 **2. The Constructive Fraud Claim Also Fails Because Plaintiffs**
4 **Allege No Fiduciary or Confidential Relationship.**

5 Plaintiffs allege a constructive fraud claim (Count VII), which fails because Stones
6 was not in a confidential or fiduciary relationship with Plaintiffs and the allegations do not
7 satisfy Rule 9(b). To assert a constructive fraud claim, Plaintiffs must allege “(1) a
8 fiduciary or confidential relationship; (2) an act, omission or concealment involving a
9 breach of that duty; (3) reliance; and (4) resulting damage.” *Dealertrack, Inc. v. Huber*,
10 460 F. Supp. 2d 1177, 1183 (C.D. Cal. 2006); see Cal. Civ. Code § 1573. “Constructive
11 fraud is a unique species of fraud applicable only to a fiduciary or confidential relationship.”
12 *In re Harmon*, 250 F.3d 1240, 1249 n.10 (9th Cir. 2001) (quoting *Assilzadeh v. California*
13 *Fed. Bank*, 82 Cal. App. 4th 399, 415 (2000)). Plaintiffs do not allege that they were in a
14 fiduciary or confidential relationship with Stones. Indeed, they allege no formal
15 relationship with Stones, because they cannot. See *Schauer v. Mandarin Gems of Cal.,*
16 *Inc.*, 125 Cal. App. 4th 949, 960 (2005) (affirming grant of demurrer on constructive fraud
17 claim when the plaintiff had “fail[ed] to plead facts establishing the requisite fiduciary or
18 special confidential relationship between plaintiff and defendant.”); *Wilson v. Zorb*, 15
19 Cal. App. 2d 526, 532 (1936) (“It takes something more than friendship or confidence in
20 the professional skill and in the integrity and truthfulness of another to establish a fiduciary
21 relationship.”).

22 Further, Plaintiffs’ constructive fraud claim must satisfy Rule 9(b). See *Sacramento*
23 *E.D.M., Inc. v. Hynes Aviation Indus., Inc.*, 965 F. Supp. 2d 1141, 1152 (E.D. Cal. 2013)
24 (England, J.). Given that they plead no fiduciary or confidential relationship, Plaintiffs
25 necessarily do not allege such a relationship with the particularity required by Rule 9(b).
26 Nor does any Plaintiff identify with specificity “an act or omission” by Stones or reliance on
27 that “act or omission.” Cal. Civ. Code § 1573. Each Plaintiff must do so, along with
28 alleging a confidential or fiduciary relationship with Stones.

1 **3. Plaintiffs Allege Only Non-Specific, Non-Actionable Implied**
2 **Negligent Misrepresentations to Them and Allege No Duty.**

3 Plaintiffs' negligent misrepresentation claim (Count III) likewise fails because they
4 allege only non-actionable implied negligent misrepresentations. The Complaint also fails
5 to sufficiently allege a duty owed to Plaintiffs by Stones, and does not describe Stones'
6 alleged misrepresentations with sufficient particularity. To prevail on a claim of negligent
7 misrepresentation, Plaintiffs must prove: (1) "[m]isrepresentation of a past or existing
8 material fact," (2) "without reasonable ground for believing it to be true," and (3) "with
9 intent to induce another's reliance on the fact misrepresented"; as well as (4) "ignorance
10 of the truth" and (5) "justifiable reliance on the misrepresentation by the party to whom it
11 was directed"; and (6) "resulting damage." *Hydro-Mill Co. v. Hayward, Tilton & Rolapp*
12 *Ins. Assocs., Inc.*, 115 Cal. App. 4th 1145, 1154 (2004) (citation omitted).

13 First, the negligent misrepresentation claim must be dismissed because "[a]n
14 'IMPLIED' assertion or representation is not enough" to state a claim for negligent
15 misrepresentation. See *Diediker v. Peelle Fin. Corp.*, 60 Cal. App. 4th 288, 299 (1997)
16 (quoting *Wilson v. Century 21 Great W. Realty*, 15 Cal. App. 4th 298, 306 (1993)); *Huber,*
17 *Hunt & Nichols, Inc. v. Moore*, 67 Cal. App. 3d 278, 304 (1977). The Complaint itself
18 identifies some of Stones' alleged representations as implied rather than express. Compl.
19 ¶¶ 115, 118. The mere fact that Stones Live Poker was played cannot in itself be enough
20 to support a negligent misrepresentation claim.

21 The Complaint also purports to allege some express misrepresentations. *Id.* ¶ 117.
22 But those representations are either not alleged to be untrue or are not actionable
23 misstatements. See *Mueller v. San Diego Entm't Partners, LLC*, 260 F. Supp. 3d 1283,
24 1296 (S.D. Cal. 2017) (dismissing negligent misrepresentation claim for lack of a
25 misrepresentation as to a past or existing material fact). Some of those allegations even
26 relate to conduct after Ms. Brill made her statement public, at which point Plaintiffs cannot
27 have possibly been deceived. Instead, these are better understood as implied assertions
28 that Mr. Postle was not cheating. The Complaint confirms that understanding. See

1 Compl. ¶ 119 (“These representations were untrue, as Mr. Postle was cheating in the
2 Stones Live Poker games.”). Further, the Complaint does not state that all Plaintiffs heard
3 or understood any of the proffered express statements. The Complaint states that
4 “numerous individuals” spoke with Stones but does not identify those individuals. *Id.* ¶ 73.
5 Only one Plaintiff may have been told that Stones undertakes quarterly security audits, *id.*
6 ¶ 117, and there is no timeframe for when that statement was made. The other 24
7 Plaintiffs could not have relied on a representation that was not made to them. Stones
8 asserts that the Complaint is silent or vague on these facts because they do not exist.

9 *Second*, Plaintiffs do not sufficiently allege how Stones knew or should have known
10 about Mr. Postle’s cheating to turn any statements into misrepresentations. Plaintiffs
11 provide no detail about the asserted confederate and agent of Stones who they allege as a
12 basis for Stones’ knowledge. Compl. ¶ 122. They do not allege facts regarding purported
13 “prevailing industry norms and standards” for live streaming poker. *Id.* ¶¶ 41-45, 93. Nor
14 do they allege facts to establish a way that they can prove whether Mr. Postle was
15 cheating. And they do not identify how allegedly lax securities measures, *id.* ¶ 121, should
16 have tipped Stones off that Mr. Postle was cheating (which is, in itself, a conclusion).
17 Plaintiffs do not allege they provided any facts to Stones regarding why and how they
18 thought Mr. Postle was cheating. Indeed, Plaintiffs concede they cannot explain even
19 today how Mr. Postle cheated. *Id.* ¶ 98.

20 *Third*, the claim independently fails for lack of a duty. “As is true of negligence,
21 responsibility for negligent misrepresentation rests upon the existence of a legal duty,
22 imposed by contract, statute or otherwise.” *Eddy v. Sharp*, 199 Cal. App. 3d 858, 864
23 (1988). California law imposed no duty on Stones to prevent Plaintiffs from suffering
24 economic losses for the reasons described above in the context of the negligence claim,
25 *see supra* Section IV.B.

26 *Finally*, the claim falls short of Rule 9(b)’s particularity standards. Plaintiffs must
27 comply with Rule 9(b) for their negligent misrepresentation claim because the claim is
28 grounded in alleged fraud—that Stones deceived Plaintiffs about whether Mr. Postle was

1 cheating. See *Vess*, 317 F.3d at 1103 (claims grounded in fraud must satisfy Rule 9(b)).
2 Courts have generally held plaintiffs must allege negligent misrepresentation claims with
3 particularity. *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1141 (C.D. Cal.
4 2003) (“It is well-established in the Ninth Circuit that both claims for fraud and negligent
5 misrepresentation must meet Rule 9(b)’s particularity requirements.”); see also *Small v.*
6 *Fritz Cos., Inc.*, 30 Cal. 4th 167, 184 (2003) (“Because of the potential for false claims, we
7 hold that a complaint for negligent misrepresentation in a holder’s action should be pled
8 with the same specificity required in a holder’s action for fraud.”).

9 Plaintiffs’ claim fails to allege with the required particularity, for any individual
10 Plaintiff or even for Plaintiffs collectively, the sequence of their reliance on any
11 misrepresentation: the timing of the misrepresentation, the circumstances of the
12 misrepresentations allegedly made to them, their reliance on those representations, and
13 their damages from that reliance. Plaintiffs must each plead and prove actual reliance on
14 a misstatement. See *Cal. Pub. Employees’ Ret. Sys. v. Moody’s Inv’rs Serv., Inc.*, 226
15 Cal. App. 4th 643, 670 (2014). There is no allegation of which Plaintiff heard any
16 affirmative misrepresentation or when that misrepresentation was heard, further
17 undermining any assertion of negligent misrepresentation.

18 **D. Ms. Brill’s Libel Claim Fails Because the Allegedly Defamatory**
19 **Statement Does Not Refer to Her Expressly or by Clear Implication and**
20 **She Alleges No Special Damages.**

21 Finally, Ms. Brill brings an individual libel claim against Stones related to a
22 statement that it made on Twitter in September 2019, addressing allegations of cheating in
23 Stones Live Poker. To plead a libel claim, a plaintiff must allege “(a) a publication that is
24 (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure
25 or that causes special damage.” *Taus v. Loftus*, 40 Cal. 4th 683, 720 (2007) (quoting 5
26 Bernard Earnest Witkin, Summary of Cal. Law Torts § 529 (10th ed. 2005)). To state a
27 claim for libel, a plaintiff must also plead that the allegedly defamatory statement was “of
28 and concerning” the plaintiff, by name or by “clear implication.” *Blatty v. New York Times*
Co., 42 Cal. 3d 1033, 1044 & n.1 (1986). California recognizes two types of libel: “libel per

1 se” and “libel *per quod*.” See Cal. Civ. Code § 45a. “If a defamatory meaning appears
2 from the language itself without the necessity of explanation or the pleading of extrinsic
3 facts, there is libel *per se*,” however, if “the defamatory meaning would appear only to
4 readers who might be able to recognize it through some knowledge of specific facts . . .
5 not discernable from the face of the publication, . . . then the libel cannot be libel *per se* but
6 will be libel *per quod*.” *Palm Springs Tennis Club v. Rangel*, 73 Cal. App. 4th 1, 5 (1999)
7 (citation omitted). Ms. Brill’s libel claim fails because she does not link the allegedly
8 offending tweet to her except in a conclusory fashion and because she fails to allege
9 special damages required for libel *per quod*.

10 Ms. Brill does not sufficiently allege that the tweet by Stones specifically referred to
11 her or was “of and concerning” her. *Blatty*, 42 Cal. 3d at 1044 & n.1. The tweet did not
12 mention Ms. Brill by name. See Ex. A.⁴ Nor did the statement that “[t]he recent
13 allegations are completely fabricated,” refer to Ms. Brill by clear implication. See *Yow v.*
14 *National Enquirer, Inc.*, 550 F. Supp. 2d 1179, 1183 (E.D. Cal. 2008). This is so not least
15 because it refers to plural “allegations.” Instead, the tweet is linked to Ms. Brill only by
16 Plaintiffs’ conclusory say-so. Compl. ¶ 154. That is not enough. See *Williams v.*
17 *Salvation Army*, No. 2:14-CV-06138-ODW, 2014 WL 6879936, at *2 (C.D. Cal. Dec. 4,
18 2014) (dismissing plaintiff’s allegation that defamatory statement referred to her for failure
19 to plead supporting facts); *Art of Living Found. v. Does*, No. 10-CV-05022-LHK, 2011 WL
20 2441898, at *7 (N.D. Cal. June 15, 2011) (dismissing a defamation claim about “Art of
21 Living” for failure to satisfy the “of and concerning” requirement because there were many
22 chapters of the Art of Living organization).

23 Ms. Brill’s libel claim also fails because she does not allege “special damages”
24 required for libel *per quod*. At most, Ms. Brill alleges libel *per quod* because, if the tweet
25 has any defamatory meaning related to Ms. Brill, that meaning requires information
26

27 _____
28 ⁴ The tweet is incorporated by reference in the Complaint and attached as Exhibit A. See
United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). The Complaint describes the
tweet, and Ms. Brill’s claim depends on the tweet’s contents.

1 extrinsic to the tweet. See *Todd v. Lovecruft*, No. 19-CV-01751-DMR, 2020 WL 60199, at
2 *16 (N.D. Cal. Jan. 6, 2020) (holding that requiring reference to other tweets to derive
3 defamatory connection to plaintiff meant that a statement was not libel per se). Claims for
4 libel per quod require a plaintiff to plead that she suffered “special damages.” Cal. Civ.
5 Code § 45a. “[S]pecial damages are defined narrowly to encompass only economic loss.”
6 *Gomes v. Fried*, 136 Cal. App. 3d 924, 939 (1982); see Cal. Civ. Code § 48a (defining
7 special damages). In California, “special damages must be pled and proved precisely.”
8 *Gomes*, 136 Cal. App. 3d at 940; see also Fed. R. Civ. P. 9(g). Ms. Brill pleads no special
9 damages, which again requires specific allegations of economic harm. As a result, her
10 libel claim must be dismissed on this ground as well.

11 **V. CONCLUSION**

12 For the foregoing reasons, the Court should dismiss the claims against Stones.

13 Respectfully submitted,

14 Dated: March 4, 2020

By: /s/ Mark Mao

Mark Mao

BOIES SCHILLER FLEXNER LLP

44 Montgomery Street, 41st Floor

San Francisco, CA 94104

Phone: (415) 293-6800; Fax: (415) 293-6899

mmao@bsfllp.com

Michael Lipman

Karen L. Alexander

DUANE MORRIS LLP

750 B Street, Suite 2900

San Diego, CA 92101-4681

Phone: (619) 744-2200; Fax: (619) 744-2201

mllipman@duanemorris.com

klalexander@duanemorris.com

Heather U. Guerena

7727 Herschel Avenue

La Jolla, CA 92037

Phone: (858) 866-1020; Fax: (858) 551-4388

huguerena@elevationca.com

Attorneys for Defendant King's Casino, LLC

PROOF OF SERVICE

I, Vicky L. Ayala, declare:

I am a citizen of the United States and employed in the City and County of San Francisco, CA. I am over the age of 18 and not a party to the within action; my business address is 44 Montgomery St., 41st Floor, San Francisco, CA 94104.

On March 04, 2020, I served the following document(s) described as:

DEFENDANT KING'S CASINO, LLC'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' COMPLAINT

- BY FACSIMILE TRANSMISSION:** As follows: The papers have been transmitted to a facsimile machine by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The copy of the notice or other paper served by facsimile transmission shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice of other paper was transmitted to the addressee(s).
- BY MAIL:** As follows: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, CA, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY OVERNIGHT MAIL:** As follows: I am readily familiar with the firm's practice of collection and processing correspondence for overnight mailing. Under that practice, it would be deposited with overnight mail on that same day prepaid at San Francisco, CA in the ordinary course of business.
- BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from vicky.ayala@troutman.com on December 05, 2017, by transmitting a PDF format copy of such document(s) to each such person at the e-mail address(es) listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

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Michael L. Postle 3724 Deer Walk Way Antelope, CA. 95843	<i>Pro Se</i>
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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 04, 2020, at San Francisco, CA.

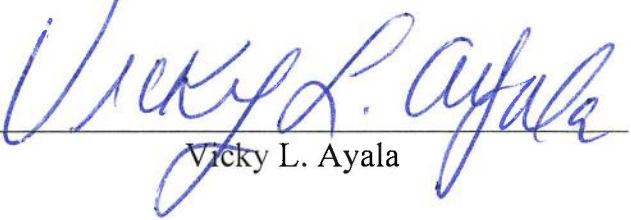

Vicky L. Ayala

EXHIBIT A



StonesLivePoker

@StonesLivePoker



Earlier this year an accusation was made that a player was cheating in our game

We conducted a full investigation & found no evidence that any cheating had occurred

Stones Live stream remains a secure poker streaming platform

The recent allegations are completely fabricated

♡ 95 10:15 AM - Sep 29, 2019



💬 135 people are talking about this



EXHIBIT B

This Exhibit is Excerpted for Length

Lucky Derby Casino

Poker Games

Texas Hold Em

The best possible five-card poker hand, using any combination of personal cards and community cards, wins the pot. In Hold Em, all players receive two down cards as their personal hand, after which there is a round of betting. Three board cards are turned simultaneously (called the "flop") face up and another round of betting occurs. The next two board cards are turned one at a time face up, with a round of betting after each card. The board cards are community cards, and after the final round of betting, a player may use any five-card combination from among the board and personal cards. A player may even use all of the board cards and no personal cards to form a hand. This is called "playing the board." Hold Em uses a standard 52-card deck and a flat disk called a dealer button to indicate the player who is in the dealer position for that hand (even though a non-playing casino employee actually deals). The dealer button rotates clockwise. The player with the dealer button is last to receive cards on the initial deal and has the right of last action after the first betting round.

Omaha Hi/Lo Split (8 Or Better)

Similar to Hold Em, however each player is dealt four hole cards face down. Five community cards are then dealt face up in the center of the table (as in Hold Em) to be used by all players. Players must use exactly two cards from their four personal cards and three community cards to make the best five-card poker hand. The best high hand and the best low hand, using a qualifier of eight or better, split the pot. If no one has an eight or better for low, the high hand wins the entire pot. Players use one combination of cards to make a high hand and the same or another combination to make a low hand, as long as each hand uses exactly two personal cards and three community cards. Betting is done as in Hold Em. Ace can be used as High or Low. The best possible low is A-2-3-4-5 (wheel). No wrap around straights.

Ranking Of Hands

- 1) **STRAIGHT FLUSH** – Five cards of the same suit in sequence. An ace-high straight flush is called a "Royal Flush."
- 2) **FOUR OF A KIND** – Four cards of the same rank.
- 3) **FULL HOUSE** – Three cards of the same rank and two cards of the same rank.
- 4) **FLUSH** – Five cards of the same suit.
- 5) **STRAIGHT** – Five cards in sequence.
- 6) **THREE OF A KIND** – Three cards of the same rank.
- 7) **TWO PAIR** – Two cards of the same rank and two other cards of the same rank.
- 8) **ONE PAIR** – Two cards of the same rank.
- 9) **HIGH CARD** – The highest-ranking card in the hand.

moves MORE THAN 2 players away from the blind, they can either post the big blind or wait as many hands as players they skipped after 2 players. In the 8x16 limits or above all blinds must be taken if a player busts out or leaves in the middle of the blinds. A player that busts out can pass the blinds.

Racks - Racks are not allowed on the table during play

Raises - One bet plus three Raises are allowed each betting round. If a player straddles (live raise before cards are dealt out by the player directly in front of the Big Blind) the pot an extra Raise may take place before the flop (one bet plus 4 Raises). A player must either say "Raise" or put the full amount of the Raise into the pot, without going back to their chips, in order to Raise the pot. Check and Raise is allowed.

Short Buy In - One Short Buy In (after initial Buy In) is allowed per game per day. A Short Buy In is considered anything less than the minimum Buy In. Exception - Players may Re-Buy for \$150 in the 15x30 HE game.

Table Stakes - Only chips on the table at the start of a deal shall be in play for that pot, except if a player has requested chips from the floorperson, dealer, or management before the start of the deal and the request is documented by the floorperson, dealer, or management, and these chips are in transit to the table. Cash doesn't play. A player may not remove any of their chips from play until they quit the game, unless the player is using chips to pay for incidental items (food, drinks, etc.) Chips may be transferred from one player to another only if no one at the table objects. \$100 (white) chips and \$20 (grey) chips do not play in all poker games and limits.

No Limit Hold Em \$100 Max/Min Buy In (\$200 max bet) - Betting rules will be the same as in our No Limit Hold Em Tournaments. Max bet and Max raise is \$200. There is no limit on the amount of raises that can take place. The minimum bet throughout all rounds is \$3. No straddle bets next to the big blind (live \$6).

OMAHA

Type of Game

The players of Omaha play against each other for “the pot” of money on the table. The game does not utilize a player-dealer position, it is a Poker game. The gambling establishment does not participate in the actual play of the game and has no interest in the outcome of the play.

Object of the Game

The object of the game is for players to form a five-card poker hand that ranks higher than the other players’ five-card poker hand. Each player must use two out of the four cards initially dealt to them at the beginning of the game, referred to as “hole” cards, and three out of the five cards dealt on the table throughout the course of the game, referred to as “community” cards or “the board” cards, to make the highest ranking five-card poker hand, according to the rankings as shown below.

Description of the Deck and Number of Decks Used

The game shall be played using one standard 52-card deck and no Joker.

Card Values and Hand Rankings

Five-Card High Card Values-The rank of each card used in Omaha when forming a five-card high poker hand, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, and then 2. All suits shall be considered equal in rank.

Hands of cards shall rank, from lowest to highest, as follows:

Hand Dealt	Hand Requirements
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking. A king, queen, jack, 10 and 9 is the highest ranked straight flush and a 5, 4, 3, 2 and ace is the lowest ranked straight flush.
Four of a Kind	A hand that consists of four cards of the same rank. Four aces is the highest ranked four of a kind and four 2’s is the lowest ranked four of a kind.
Full House	A hand that consists of a three of a kind and a pair. Three aces and two kings is the highest ranked full house and three 2’s and two 3’s is the lowest ranked full house.
Flush	A hand that consists of five cards of the same suit, but that are not in consecutive ranking. An ace, king, queen, jack and 9 is the highest ranked flush and a 7, 5, 4, 3 and 2 is the lowest ranked flush.
Straight	A hand that consists of five cards that are in consecutive ranking, but that are not the same suit. An ace, king, queen, jack and 10 is the highest ranked straight and a 5, 4, 3, 2 and ace is the lowest ranked straight.
Three of a Kind	A hand that consists of three cards of the same rank. Three aces is the highest ranked three of a kind and three 2’s is the lowest ranked three of a kind.
Two Pairs	A hand that consists of two pairs. Two aces and two kings is the highest ranked two pairs and two 3’s and two 2’s is the lowest ranked two pairs.
One Pair	A hand that consists of two cards of the same rank. Two aces is the highest ranked pair and two 2’s is the lowest ranked pair.
High Card	A hand that consists of five cards that do not make any of the hands listed above. An ace, king, queen, jack and 9 is the highest ranked high card hand and 7, 5, 4, 3 and 2 the lowest ranked high card hand.

OMAHA

Description of Table Used and Total Number of Seated Positions

The game of Omaha shall be played on a standard poker table which shall accommodate up to ten seated positions for patrons. Each seated position at the table shall have the same minimum and maximum wagering limits during each betting round, as specified by the table limits. Back-line betting is not permitted.

Method Used to Determine Action and Distribution of Cards

When first opening a game, all players shall be dealt one card face-up, starting with the player to the immediate left of the house dealer and continuing clockwise around the table. The player with the highest ranked card shall receive the flat white disk with the words "dealer button." This button is used to visually designate which player is in the dealer position (in theory) for that hand.

The dealer button shall rotate from player to player around the table clockwise after each round of play. The player with the dealer button is the last to receive cards when they are initially dealt at the beginning of the round of play and has the right of last action on betting rounds (second, third, and fourth) except the first betting round, in which the "big blind" shall have the right to act last.

The game also utilizes two separate disks, one with the words "small blind" and the other with the words "big blind" on them, to visually designate which player is in the "small blind" position and which player is in the "big blind" position. The small blind and the big blind, which are used to initiate action, are designated positions immediately to the left of the dealer button and posted before the house dealer deals cards. On all subsequent betting rounds (second, third, and fourth), the action is started by the first active player to the left of the dealer button. The small blind and big blind buttons shall rotate from player to player around the table clockwise after each round of play.

Dealing Procedures and Round of Play

The 52-card deck shall be manually shuffled, cut, and dealt by the house dealer. Once the dealer button has been distributed by the house dealer, the player to the immediate left of the player with the dealer button shall receive the small blind button and shall be required to place the small blind. Additionally, the player to the immediate left of the player that received the small blind button shall receive the big blind button and shall be required to place the big blind. Both blinds are pre-determined based on the posted table limit, mandatory for the players with the small blind and big blind buttons, and are used to initiate action. Both blind bets shall be placed in the center of the table, which is referred to as "the pot." Once the blinds have been placed in the pot, the house dealer shall deal one card face-down to each player, starting with the player to the left of the dealer button, which is the player that received the small blind button, and continuing clockwise around the table until all players have four cards face-down. These initial four cards are referred to as "hole cards." Once each player has received their four hole cards, the first round of betting will occur. Players are given the following options, starting with the player to the left of the player that received the big blind button and continuing clockwise around the table:

- Place a wager that is equal to the amount of the big blind or "call" a wager, meaning to match the amount wagered by another player;
- Place the four hole cards face-down into the center of the table, referred to as a "fold." The hand shall be kept face-down and shall be collected by the house dealer, who shall then place them in the discard pile. A player that chooses to fold their hand will no longer participate during that round of play;

OMAHA

- Place a wager that is equal to the amount of the big blind as well as an additional amount within the posted table limit, referred to as a “raise.” There is a maximum of three raises per round of wagering, unless there are only two players participating during a round of wagering, in which case there is no limit to the number of raises.
- Call the raise, re-raise or fold their hand.
- The player in the big blind position may “check,” meaning they do not wish to place an additional wager, or they may also raise, by placing an additional wager.

After all players have acted in turn and either called all bets or folded their hand, the house dealer shall move all player bets into the pot. The house dealer shall then take the top card of the deck and place it in the discard pile without exposing it, referred to as a “burn.” The house dealer shall then take the next three cards from the top of the deck and place them face-up on the table simultaneously, which is referred to as “the flop.” These are community cards and are shared by all players. Once the first three community cards have been placed face-up on the table, the second round of betting will occur. All active players, which are players that called all wagers and did not fold their hand, shall be given the following options, starting with the first active player to the left of the dealer button:

- Place a wager according to the established table limits;
- Do not make a wager, referred to as a “check”, with the option to call or raise a wager by another player;
- Call a wager according to the rules and guidelines used in the previous round of play;
- Fold their hand according to the rules and guidelines used in the previous round of play;
- Raise the pot according to the rules and guidelines used in the previous round of play;

After all players have acted in turn and either called all bets or folded their hand, the house dealer shall move all player bets into the pot. The house dealer shall then take the top card of the deck and place it in the discard pile without exposing it. The house dealer shall then take one card from the top of the deck and place it face-up on the table so that there are now a total of four community cards face-up on the table. This is referred to as “the turn card.” This card shall also become a community card and is shared by all players. Once the fourth community card has been placed face-up on the table, the third round of betting will occur. All active players shall be given the following options, starting with the first active player to the left of the dealer button:

- Place a wager according to the established table limits;
- Call a wager according to the rules and guidelines used in the previous round of play;
- Check according to the rules and guidelines used in the previous round of play;
- Fold their hand according to the rules and guidelines used in the previous round of play;
- Raise the pot according to the rules and guidelines used in the previous round of play;

After all players have acted in turn and either called all wagers or folded their hand, the house dealer shall move all player wagers into the pot. The house dealer shall then take the top card of the deck and place it in the discard pile without exposing it. The house dealer shall then take one card from the top of the deck and place it face-up on the table so that there are now a total of five community cards face-up on the table. This is referred to as “the river card.” This card shall also become a community card and is shared by all players. Once the fifth community card has been placed face-up on the table, which is the final community card, the fourth and final round of betting will occur. All active players shall be given the following options, starting with the first active player to the left of the dealer button:

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- Place a wager according to the established table limits.
- Call a wager according to the rules and guidelines used in the previous round of play.
- Check according to the rules and guidelines used in the previous round of play;
- Fold their hand according to the rules and guidelines used in the previous round of play;
- Raise the pot according to the rules and guidelines used in the previous round of play;

How The Pot Is Awarded

After the fourth and final round of betting has been completed, the house dealer shall move all player wagers into the pot. All active players shall then enter into a showdown with each other and compare their hands. Players must use two of the four hole cards initially dealt to them at the beginning of the game and three of the five community cards turned over throughout the round of play to make the highest ranking five-card poker hand. The following shall apply for determining which player wins the pot:

- The pot shall be awarded to the player with the highest ranking five-card poker hand, according to the hand and card rankings shown above. All other players shall lose;
- In the event that more than one player has the highest ranking hand, the pot shall be split equally among the winners. In the instance that there are an odd number of chips, the odd chips shall be awarded to the player closest to the left of the dealer button.

Collection Fee Schedule

For **schedule option 1- 15**, a collection will be taken every thirty minutes. This schedule applies to limit games, as well as, no limit and pot limit games.

Minimum of a \$1-\$2 limit game to a maximum of a \$1,000-\$2,000 limit game.

Schedule Option	Number of Players	Collection Fees
1	2+	\$6.00
2	2+	\$7.00
3	2+	\$8.00
4	2+	\$9.00
5	2+	\$10.00
6	2+	\$11.00
7	2+	\$12.00
8	2+	\$13.00
9	2+	\$14.00
10	2+	\$15.00
11	2+	\$16.00
12	2+	\$17.00
13	2+	\$18.00
14	2+	\$19.00
15	2+	\$20.00

For **schedule options 16-19**, the appropriate collection based on the number of players shall be taken by the house dealer from the pot immediately after the flop. If the hand fails to reach the flop a \$1 collection, referred to as the Modified fee, will be taken from the pot.

OMAHA**Minimum of a \$1-\$2 limit game to a maximum of a \$1,000-\$2,000 limit game.**

Schedule Option	Number of Players	Collection Fees after the Flop	Modified Fee
16	7+	\$6.00	\$1.00
	5-6	\$5.00	
	2-4	\$4.00	
17	7+	\$5.00	\$1.00
	5-6	\$4.00	
	2-4	\$3.00	
18	7+	\$4.00	\$1.00
	5-6	\$3.00	
	2-4	\$2.00	
19	7+	\$3.00	\$1.00
	5-6	\$2.00	
	2-4	\$1.00	

For **schedule options 20-23**, the appropriate collection based on the number of players shall be taken by the house dealer from the pot immediately after the flop. If the hand does not reach the flop, a collection will not be taken.

Minimum of a \$1-\$2 limit game to a maximum of a \$1,000-\$2,000 limit game.

Schedule Option	Number of Players	Collection Fees after the Flop
20	7+	\$6.00
	5-6	\$5.00
	2-4	\$4.00
21	7+	\$5.00
	5-6	\$4.00
	2-4	\$3.00
22	7+	\$4.00
	5-6	\$3.00
	2-4	\$2.00
23	7+	\$3.00
	5-6	\$2.00
	2-4	\$1.00

For **schedule options 24-27**, a \$1 collection shall be taken by the house dealer from the pot before the flop regardless if the flop is reached, this will be known as the pre-flop. A collection shall also be taken after the flop, and after the turn.

Minimum of a \$1-\$2 limit game to a maximum of a \$1,000-\$2,000 limit game.

Schedule Option	Number of Players	Collection Fees		
		Pre-Flop	Flop	Turn
24	7+	\$1.00	\$4.00	\$1.00
	5-6		\$3.00	\$1.00
	2-4		\$2.00	\$0.00

OMAHA

25	7+	\$1.00	\$3.00	\$1.00
	5-6		\$2.00	\$1.00
	2-4		\$2.00	\$0.00
26	7+	\$1.00	\$2.00	\$1.00
	5-6		\$1.00	\$1.00
	2-4		\$1.00	\$0.00
27	7+	\$1.00	\$1.00	\$1.00
	5-6			
	2-4			

Collection Fees for Poker Games

- The players of the poker games, as shown above, play against each other for the pot of money on the table. The games do not utilize a player-dealer position, they are Poker games.
- The collection fees shall be pre-determined and conspicuously posted on each table prior to any cards being dealt or a round of play commencing.
- Collection rates and fees shall be determined prior to the start of play of any hand or round.
- Only one collection schedule option, which utilizes one table limit and the specified collection fees for that table limit, as listed above, shall be used at a table at any one time.
- Rates may not be calculated as a fraction or percentage of wagers made or winnings earned.
- Flat fees on wagers may be assessed at different collection rates; however, no more than five collection rates may be established per table limit.
- The Saloon at Stones Gambling Hall shall provide ample notice to patrons regarding the collection rates and fees, as well as the procedure for collecting them.
- Collection fees shall be conspicuously posted on or within view of every gaming table.

Poker Collection Rates

Texas Hold'em (GEGA-001551), No Limit Texas Hold'em (GEGA-000283), Omaha Hi-Lo Split (GEGA-001552), Omaha Hi (GEGA-004511) Big O (GEGR-002054), Pineapple Poker (GEGR-002053) - for **schedule options 1-8**, the appropriate collection will be taken, based on the number of players, from the pot immediately after the flop. If the hand does not reach the flop, no collection will be taken.

Limit Games

Minimum of a \$1-\$2 limit game to a maximum of a \$1,000-\$2,000 limit game

Schedule Option	Number of Players	Collection Fee
1	7+	\$6
	5-6	\$5
	2-4	\$4
2	7+	\$5
	5-6	\$4
	2-4	\$3
3	7+	\$5
	5-6	\$4
	2-4	\$2
4	7+	\$4
	5-6	\$3
	2-4	\$2
5	7+	\$3
	5-6	\$2
	2-4	\$1
6	8+	\$5
	7	\$4
	5-6	\$3
	2-4	\$2
7	8+	\$6
	7	\$5
	5-6	\$4
	2-4	\$2
8	8+	\$6
	7	\$4
	5-6	\$3
	2-4	\$2

For **schedule options 9-21**, the appropriate collection will be taken, based on the number of players, from the pot immediately after the total amount of the pot reaches \$9 any time after the flop. If the total amount of the pot does not reach \$9, a modified fee, as identified below, will be taken from the pot. If the hand does not reach the flop, no collection will be taken.

Minimum of a \$1-\$2 limit game to a maximum of a \$1,000-\$2,000 limit game

Schedule Option	Number of Players	Collection Fee	Modified Fee
9	7+	\$6	\$2
	5-6	\$5	
	2-4	\$4	

Poker Collection Rates

10	7+	\$5	\$2
	5-6	\$4	
	2-4	\$3	
11	7+	\$5	\$2
	5-6	\$4	
	2-4	\$2	
12	7+	\$4	\$2
	5-6	\$3	
	2-4	\$2	
13	7+	\$3	\$2
	5-6	\$2	
	2-4	\$1	
14	7+	\$5	\$2
	6	\$4	
	5	\$3	
	4	\$2	\$1
	2-3	\$1	
15	7+	\$5	\$2
	6	\$4	
	5	\$3	
	4	\$2	
16	8+	\$6	\$2
	7	\$5	
	5-6	\$4	
	2-4	\$2	
17	8+	\$6	\$2
	7	\$4	
	5-6	\$3	
	2-4	\$2	
18	8+	\$5	\$2
	7	\$4	
	5-6	\$3	
	2-4	\$2	
19	8+	\$6	\$2
	7	\$5	
	5-6	\$4	
	2-4	\$2	
20	8+	\$6	\$2
	7	\$4	
	5-6	\$3	
	2-4	\$2	
21	8+	\$6	\$2
	7	\$5	
	6	\$4	
	4-5	\$2	\$1
	2-3	\$1	

Poker Collection Rates

For **schedule options 22-51**, the collection will be taken from the pot after the pot has reached the maximum total amount in the pot listed in each schedule option. If the pot has not reached the maximum total amount in the pot for the schedule option by the end of the hand, the appropriate collection based on the total amount in the pot will be taken from the pot immediately after the river. If the hand does not reach the flop, a collection will not be taken.

Minimum of a \$1-\$2 limit game to a maximum of a \$1,000-\$2,000 limit game

Schedule Option	Collection Fees	
	Total Amount in Pot	Amount of Collection
22	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9+	\$6
23	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9+	\$5
24	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9+	\$4
25	\$1-\$5	\$1
	\$6-\$8	\$2
	\$9+	\$3
26	\$1-\$6	\$1
	\$7+	\$2
27	\$1-\$5	\$1
	\$6-\$10	\$3
	\$11+	\$6
28	\$1-\$5	\$1
	\$6-\$10	\$3
	\$11+	\$5
29	\$1-\$5	\$1
	\$6-\$10	\$2
	\$11+	\$4
30	\$1-\$5	\$1
	\$6-\$10	\$2
	\$11+	\$3
31	\$1-\$7	\$1
	\$8-\$12	\$3
	\$13+	\$6
32	\$1-\$7	\$1
	\$8-\$12	\$3
	\$13+	\$5
33	\$1-\$7	\$1
	\$8-\$12	\$3
	\$13+	\$4
34	\$1-\$7	\$1
	\$8-\$12	\$2
	\$13+	\$3
35	\$1-\$7	\$1
	\$8+	\$2

Poker Collection Rates

36	\$1-\$15	\$1
	\$16-\$25	\$4
	\$26+	\$6
37	\$1-\$15	\$1
	\$16-\$25	\$4
	\$26+	\$5
38	\$1-\$15	\$1
	\$16-\$25	\$3
	\$26+	\$4
39	\$1-\$15	\$1
	\$16-\$25	\$2
	\$26+	\$3
40	\$1-\$15	\$1
	\$16+	\$2
41	\$1-\$30	\$1
	\$31-\$50	\$4
	\$51+	\$6
42	\$1-\$30	\$1
	\$31-\$50	\$4
	\$51+	\$5
43	\$1-\$30	\$1
	\$31-\$50	\$3
	\$51+	\$4
44	\$1-\$30	\$1
	\$31-\$50	\$2
	\$51+	\$3
45	\$1-\$30	\$1
	\$31+	\$2
46	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9-\$99	\$5
	\$100+	\$6
47	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9-\$99	\$4
	\$100+	\$5
48	\$1-\$5	\$1
	\$6-\$10	\$3
	\$11-\$149	\$5
	\$150+	\$6
49	\$1-\$7	\$1
	\$8-\$12	\$3
	\$13-\$199	\$5
	\$200+	\$6
50	\$1-\$15	\$1
	\$16-\$25	\$3
	\$26-\$399	\$5
	\$400+	\$6

Poker Collection Rates

51	\$1-\$30	\$1
	\$31-\$50	\$3
	\$51-\$799	\$5
	\$800+	\$6

For **schedule options 52-59**, the appropriate collection will be taken, based on the number of players, from the pot immediately after the flop. If the hand does not reach the flop, no collection will be taken.

**No Limit/Pot Limit Games
\$20 Minimum Buy-in to
No Maximum Buy-in**

Schedule Option	Number of Players	Collection Fee
52	7+	\$6
	5-6	\$5
	2-4	\$4
53	7+	\$5
	5-6	\$4
	2-4	\$3
54	7+	\$5
	5-6	\$4
	2-4	\$2
55	7+	\$4
	5-6	\$3
	2-4	\$2
56	7+	\$3
	5-6	\$2
	2-4	\$1
57	8+	\$5
	7	\$4
	5-6	\$3
	2-4	\$2
58	8+	\$6
	7	\$5
	5-6	\$4
	2-4	\$2
59	8+	\$6
	7	\$4
	5-6	\$3
	2-4	\$2

Poker Collection Rates

For **schedule options 60-72**, the appropriate collection will be taken, based on the number of players, from the pot immediately after the total amount of the pot reaches \$9 any time after the flop. If the total amount of the pot does not reach \$9, a modified fee, as identified below, will be taken from the pot. If the hand does not reach the flop, no collection will be taken.

**\$20 Minimum Buy-in to
No Maximum Buy-in**

Schedule Option	Number of Players	Collection Fee	Modified Fee
60	7+	\$6	\$2
	5-6	\$5	
	2-4	\$4	
61	7+	\$5	\$2
	5-6	\$4	
	2-4	\$3	
62	7+	\$5	\$2
	5-6	\$4	
	2-4	\$2	
63	7+	\$4	\$2
	5-6	\$3	
	2-4	\$2	
64	7+	\$3	\$2
	5-6	\$2	
	2-4	\$1	
65	7+	\$5	\$2
	6	\$4	
	5	\$3	
	4	\$2	\$1
	2-3	\$1	
66	7+	\$5	\$2
	6	\$4	
	5	\$3	
	4	\$2	
67	8+	\$6	\$2
	7	\$5	
	5-6	\$4	
	2-4	\$2	
68	8+	\$6	\$2
	7	\$4	
	5-6	\$3	
	2-4	\$2	
69	8+	\$5	\$2
	7	\$4	
	5-6	\$3	
	2-4	\$2	
70	8+	\$6	\$2
	7	\$5	
	5-6	\$4	
	2-4	\$2	

Poker Collection Rates

71	8+	\$6	\$2
	7	\$4	
	5-6	\$3	
	2-4	\$2	
72	8+	\$6	\$2
	7	\$5	
	6	\$4	
	4-5	\$2	\$1
	2-3	\$1	

For **schedule options 73-102**, the collection will be taken from the pot after the pot has reached the maximum total amount in the pot listed in each schedule option. If the pot has not reached the maximum total amount in the pot for the schedule option by the end of the hand, the appropriate collection based on the total amount in the pot will be taken from the pot immediately after the river. If the hand does not reach the flop, a collection will not be taken.

**\$20 Minimum Buy-in to
No Maximum Buy-in**

Schedule Option	Collection Fees	
	Total Amount in Pot	Amount of Collection
73	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9+	\$6
74	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9+	\$5
75	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9+	\$4
76	\$1-\$5	\$1
	\$6-\$8	\$2
	\$9+	\$3
77	\$1-\$6	\$1
	\$7+	\$2
78	\$1-\$5	\$1
	\$6-\$10	\$3
	\$11+	\$6
79	\$1-\$5	\$1
	\$6-\$10	\$3
	\$11+	\$5
80	\$1-\$5	\$1
	\$6-\$10	\$2
	\$11+	\$4
81	\$1-\$5	\$1
	\$6-\$10	\$2
	\$11+	\$3
82	\$1-\$7	\$1
	\$8-\$12	\$3
	\$13+	\$6

Poker Collection Rates

83	\$1-\$7	\$1
	\$8-\$12	\$3
	\$13+	\$5
84	\$1-\$7	\$1
	\$8-\$12	\$3
	\$13+	\$4
85	\$1-\$7	\$1
	\$8-\$12	\$2
	\$13+	\$3
86	\$1-\$7	\$1
	\$8+	\$2
87	\$1-\$15	\$1
	\$16-\$25	\$4
	\$26+	\$6
88	\$1-\$15	\$1
	\$16-\$25	\$4
	\$26+	\$5
89	\$1-\$15	\$1
	\$16-\$25	\$3
	\$26+	\$4
90	\$1-\$15	\$1
	\$16-\$25	\$2
	\$26+	\$3
91	\$1-\$15	\$1
	\$16+	\$2
92	\$1-\$30	\$1
	\$31-\$50	\$4
	\$51+	\$6
93	\$1-\$30	\$1
	\$31-\$50	\$4
	\$51+	\$5
94	\$1-\$30	\$1
	\$31-\$50	\$3
	\$51+	\$4
95	\$1-\$30	\$1
	\$31-\$50	\$2
	\$51+	\$3
96	\$1-\$30	\$1
	\$31+	\$2
97	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9-\$99	\$5
	\$100+	\$6
98	\$1-\$5	\$1
	\$6-\$8	\$3
	\$9-\$99	\$4
	\$100+	\$5

Poker Collection Rates

99	\$1-\$5	\$1
	\$6-\$10	\$3
	\$11-\$149	\$5
	\$150+	\$6
100	\$1-\$7	\$1
	\$8-\$12	\$3
	\$13-\$199	\$5
	\$200+	\$6
101	\$1-\$15	\$1
	\$16-\$25	\$3
	\$26-\$399	\$5
	\$400+	\$6
102	\$1-\$30	\$1
	\$31-\$50	\$3
	\$51-\$799	\$5
	\$800+	\$6

For **schedule options 103-117**, a collection will be collected every thirty minutes and applies to limit games, as well as no limit and pot limit games.

Schedule Option	Number of Players	Collection Fees
103	2+	\$6
104	2+	\$7
105	2+	\$8
106	2+	\$9
107	2+	\$10
108	2+	\$11
109	2+	\$12
110	2+	\$13
111	2+	\$14
112	2+	\$15
113	2+	\$16
114	2+	\$17
115	2+	\$18
116	2+	\$19
117	2+	\$20

7 Card Stud (GEGA-001177) – For **schedule option 1**, a collection will be taken, based on the number of players, from the pot after the antes and before the start of the deal.

Table limits will be a minimum of \$1 to a maximum of unlimited

Schedule Option	Number of Players	Collection Fees
1	7+	\$5
	5-6	\$4
	4 or less	\$3

Poker Collection Rates

Collection Fees for Poker Games

- The players of the poker games, as shown above, play against each other for the pot of money on the table. The games do not utilize a player-dealer position, they are Poker games.
- The collection fees will be pre-determined and conspicuously posted on each table prior to any cards being dealt or a round of play commencing.
- Collection rates and fees will be determined prior to the start of play of any hand or round.
- Only one collection schedule option, which utilizes one table limit and the specified collection fees for that table limit, as listed above, will be used at a table at any one time.
- Rates may not be calculated as a fraction or percentage of wagers made or winnings earned.
- Flat fees on wagers may be assessed at different collection rates; however, no more than five collection rates may be established per table limit.
- The Saloon at Stones Gambling Hall will provide ample notice to patrons regarding the collection rates and fees, as well as the procedure for collecting them.
- Collection fees will be conspicuously posted on or within view of every gaming table.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VERONICA BRILL; et al.,
Plaintiffs,
v.
MICHAEL L. POSTLE; et al.,
Defendants.

Case No. 2:19-cv-02027-MCE-AC

**[PROPOSED] ORDER GRANTING
DEFENDANT KING'S CASINO,
LLC'S MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

[Proposed] Order

Upon consideration of Defendant King's Casino, LLC's Motion to Dismiss Plaintiffs' Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs' opposition thereto, and Defendant's Reply, the arguments of counsel, and the entire record herein, and for the reasons stated by the Court on the record at the hearing on April 16, 2020, it is this ___ day of April 2020:

ORDERED that Defendant King's Casino, LLC's Motion to Dismiss Plaintiffs' Complaint be, and hereby is GRANTED.

Date: April __, 2020

Morrison C. England, Jr.
United States District Judge