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5 Attorney for Defendant JUSTIN KURAITIS

6  
7 IN THE UNITED STATES DISTRICT COURT FOR THE  
8 EASTERN DISTRICT OF CALIFORNIA

9 VERONICA BRILL, et al.,  
10 Plaintiffs,

11 v.

12 MICHAEL L. POSTLE, et al.  
13 Defendant.

Case No. 19-cv-2027 MCE-AC

NOTICE OF MOTION AND MOTION TO  
DISMISS; JOINDER IN MOTION TO  
DISMISS OF KINGS' CASINO, LLC

Date: April 16, 2020

Time: 2:00 p.m.

Judge: Hon. Morrison C. England, Jr.

Complaint Filed: October 8, 2019

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16 PLEASE TAKE NOTICE that on April 16, 2020, or as soon thereafter as the  
17 motion may be heard in Courtroom 7 of the Robert T. Matsui United States Courthouse,  
18 located at 501 I Street, Sacramento, CA 95814, pursuant to Federal Rules of Civil  
19 Procedure 9(b) and 12(b)(6), defendant Justin F. Kuraitis will and hereby does move to  
20 dismiss the Complaint filed by plaintiffs Veronica Brill et al. on October 8, 2019 (ECF  
21 No. 1) for failure to state a claim upon which relief may be granted and for failure to  
22 allege claims of fraud and misrepresentation with the requisite particularity.<sup>1</sup> This  
23 motion is based upon this Notice of Motion, Motion, and Joinder in the Notice of Motion  
24 and Motion to Dismiss filed by Kings' Casino, LLC , dba Stones Gambling Hall  
25 ("Stones'), the Memorandum of Points and Authorities accompanying this Notice of  
26

1 Motion and Motion, the Memorandum of Points and Authorities accompanying Stones'  
2 Notice of Motion and Motion, all pleadings and evidence on file in this matter, oral  
3 argument of counsel, and such other materials and argument as may be presented in  
4 connection with the hearing of the Motion. Kuraitis expressly relies upon and joins in  
5 the Motion to Dismiss filed by Stones, which is adopted and incorporated herein by  
6 reference pursuant to Federal Rule of Civil Procedure 10(c).  
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8 Dated: March 13, 2020  
9

10 By: /s/ Richard Pachter  
11 RICHARD PACHTER  
12 Attorney for Defendant Justin F. Kuraitis  
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27 <sup>1</sup> Kuraitis is setting this Motion and Joinder for hearing on the same day noticed by  
28 Defendant Kings Casino, LLC. (ECF No. 31) but understands that the Court has  
vacated the hearing on that matter. (ECF No. 32).

**MEMORANDUM OF POINTS AND AUTHORITIES**

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2 This case arises out of plaintiffs' complaints about how they fared in poker games  
3 played at, and broadcast on-line by, Kings Casino, LLC, dba Stones Gambling Hall  
4 ("Stones"). Plaintiffs allege that one of the other participants in these games, defendant  
5 Michael Postle, somehow cheated during these games. Without specifying whether  
6 each plaintiff played against Mr. Postle, when they played against Mr. Postle or what  
7 sums (if any) they lost to Mr. Postle, plaintiffs not only seek to hold Mr. Postle  
8 responsible for their unspecified alleged gambling losses, but have also sued Stones  
9 and Justin Kuraitis, a mid-level employee of Stones, who served as the Director of  
10 Stones Live Poker. (ECF 1, paragraph 49).

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12 Justin Kuraitis hereby joins in Stones' Motion to Dismiss, ECF 31, which is  
13 adopted and incorporated by reference herein under Federal Rule of Civil Procedure  
14 10(c). Mr. Kuraitis is named as a defendant in three claims: (1) Claim Three for  
15 Negligent Misrepresentation, (2) Claim Six for Negligence, and (3) Claim Eight for  
16 Fraud.

17  
18 Stones' Motion to Dismiss demonstrates numerous reasons why each of these  
19 three claims should be dismissed and Mr. Kuraitis joins in each of those arguments and  
20 adopts Stones' Motion to Dismiss and the arguments and authority cited therein as  
21 though fully set forth herein.

22 As Stones' Motion to Dismiss shows, California law precludes each of these  
23 claims because alleged gambling losses are not recoverable, both because such losses  
24 are speculative and because lawsuits to recover such damages are barred by long-  
25 standing California public policy. ECF 31, at 5-8.

26  
27 Stones' Motion to Dismiss further establishes that the negligence-based claims  
28 fail because Stones did not have a duty to protect plaintiffs from gambling losses to Mr.

1 Postle. Plaintiffs' complaint nowhere alleges that Mr. Kuraitis, a mid-level employee of  
2 Stones, owed them any such legal duty.<sup>2</sup> While plaintiffs' pleading failure alone justifies  
3 dismissal of the negligence-based claims against Mr. Kuraitis, Stones' Motion to  
4 Dismiss demonstrates that plaintiffs' cannot cure this pleading deficiency pursuant to  
5 the economic loss rule. ECF 31, at 8-13. Plaintiffs' relationships with Stones cannot  
6 give rise to a negligence claim for the reasons set forth in Stones' Motion to Dismiss,  
7 and their relationships with Mr. Kuraitis are even more attenuated. Mr. Kuraitis did not  
8 sponsor the games, was not the proprietor offering the games, was not a player in the  
9 games, did not have any economic interest in the outcome of the games, and under  
10 California law had no legal duty to protect plaintiffs from losing in poker games.  
11

12 Three plaintiffs, Ms. Brill, Ms. Mills and Mr. Goone (the "Stone Fraud Victims"),  
13 allege a fraud claim against Mr. Kuraitis (and Stones). ECF 1, paragraph 147. Once  
14 again, Stones' Motion to Dismiss demonstrates that this claim must be dismissed for  
15 additional reasons including the failure to allege fraud with the requisite specificity under  
16 the Federal Rules of Civil Procedure. ECF 31, at 13-15. While these three plaintiffs  
17 make unspecified and conclusory allegations about the purported fraud, none allege  
18 when they supposedly spoke to Mr. Kuraitis, what was said, whether (and when) any of  
19 them ever played with Mr. Postle after such conversations, and whether (and how  
20 much) any of them supposedly lost in poker games to Mr. Postle after they spoke with  
21 Mr. Kuraitis. As such, plaintiffs' complaint does not provide Mr. Kuraitis with fair notice  
22 of the fraud claim against him and the grounds upon which it rests.  
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24 Just as notably, none of these three plaintiffs allege that they justifiably or  
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27 <sup>2</sup> Instead, plaintiffs artfully allege that Mr. Kuraitis has a "duty to ensure the game was  
28 carried out in a manner reasonably free of cheating." ECF 1, paragraph 134. In order to  
state negligence-based claims, however, plaintiffs must allege that Mr. Kuraitis owed a  
duty to plaintiffs, not to "the game." See, e.g., ECF 31, p. 8.

1 reasonably relied upon the (unspecified) statements from Mr. Kuraitis. Indeed, given  
2 their allegation that a review of the public “cumulative footage of Mr. Postle’s play . . .  
3 would have revealed cheating to be rampant” and that any “putative investigation . . .  
4 would have revealed cheating,” ECF 1 at paragraph 149, the Stone Fraud Plaintiffs  
5 cannot allege that they reasonably relied upon the unspecified statements from Mr.  
6 Kuraitis.  
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8 Finally, Mr. Kuraitis joins in Stones’ motion to dismiss the negligent  
9 misrepresentation claim (Claim Three) on the additional grounds set forth at pages 16 to  
10 18 of Stones’ Motion to Dismiss.  
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14 Dated: March 13, 2020

By: /s/ Richard Pachter  
RICHARD PACHTER  
Attorney for Defendant Justin F. Kuraitis