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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 WBS-AC

NOTICE OF MOTION AND MOTION TO
DISMISS FIRST AMENDED
COMPLAINT; JOINDER IN MOTION TO
DISMISS OF KINGS' CASINO
MANAGEMENT CORP.

Date: May 18, 2020
Time: 1:30 p.m.
Dept.: Courtroom 5
Judge: Hon. William B. Shubb

Complaint Filed: October 8,
2019

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24 PLEASE TAKE NOTICE that at 1:30 p.m. on May 17, 2020, or as
25 soon thereafter as the matter may be heard in Courtroom 5 of the
26 Robert T. Matsui United States Courthouse, located at 501 I
27 Street, Sacramento, CA 95814, pursuant to Federal Rules of Civil
28 Procedure 9(b) and 12(b)(6), defendant Justin F. Kuraitis will

1 and hereby does move to dismiss the First Amended Complaint
2 filed by plaintiffs Veronica Brill et al. on March 25, 2020 (ECF
3 No. 40) for failure to state a claim upon which relief may be
4 granted and for failure to allege claims of fraud and
5 misrepresentation with the requisite particularity. This Motion
6 is based upon this Notice of Motion and Motion, this Joinder in
7 the Notice of Motion and Motion to Dismiss filed by Kings'
8 Casino Management Corp. successor by merger with King's Casino,
9 LLC dba Stones Gambling Hall ("Stones'), the Memoranda of Points
10 and Authorities accompanying this Notice of Motion and Motion
11 and Stones' Notice of Motion and Motion, all pleadings and
12 evidence on file in this matter, oral argument of counsel, and
13 such other materials and argument as may be presented in
14 connection with the hearing of the Motion. Kuraitis expressly
15 relies upon and joins in the Motion to Dismiss filed by Stones,
16 which is incorporated herein by reference pursuant to Fed. R.
17 Civ. P. 10(c).
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19 Dated: April 8, 2020
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22 By: /s/ Richard Pachter
RICHARD PACHTER
23 Attorney for Defendant Justin F.
Kuraitis
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MEMORANDUM OF POINTS AND AUTHORITIES

This case arises out of plaintiffs' complaints about how they fared in poker games played at Stones. Plaintiffs allege that one of the other participants in these games, defendant Michael Postle, somehow cheated. Plaintiffs not only seek to hold Mr. Postle responsible for their supposed (yet wholly unspecified) gambling losses, but have also sued Stones and Justin Kuraitis, a mid-level employee of Stones, who served as the Director of Stones Live Poker. (ECF 40, paragraph 115).

Justin Kuraitis joins in Stones' Motion to Dismiss, ECF 45. Mr. Kuraitis is named as a defendant in three claims: (1) Claim Three for Negligent Misrepresentation, (2) Claim Six for Negligence, and (3) Claim Eight for Fraud.

Stones' Motion to Dismiss demonstrates numerous reasons why each of these three claims should be dismissed and Mr. Kuraitis joins in each of those arguments and incorporates Stones' Motion to Dismiss as though fully set forth herein.

As Stones' Motion to Dismiss shows, California law precludes each of these claims due to the fact that alleged gambling losses are not recoverable, both because such losses are speculative and because lawsuits to recover such damages are barred by long-standing California public policy. ECF 45, at 5-8. E.g. *Vu v. California Commerce Club, Inc.*, 58 Cal. App. 4th 229 (1997); *Youst v. Longo*, 43 Cal. 3d 64 (1987); *Kelly v. First*

1 *Astri Corp.*, 72 Cal. App. 4th 462, 490 (1999); *Hang Ngoc Lam v.*
2 *Hawaiian Gardens Casino*, 2020 WL 806655 (C.D. Cal. Jan. 8,
3 2020).

4 Stones' Motion to Dismiss further establishes that the
5 negligence-based claims fail because Stones did not have a duty
6 to protect plaintiffs from gambling losses to Mr. Postle. Nor
7 does plaintiffs' First Amended Complaint anywhere allege that
8 Mr. Kuraitis, a mid-level employee of Stones, owed the
9 plaintiffs any such legal duty.¹ While plaintiffs' pleading
10 failure alone justifies dismissal of the negligence-based claims
11 against Mr. Kuraitis, Stones' Motion to Dismiss demonstrates
12 that plaintiffs cannot cure this pleading deficiency pursuant to
13 the economic loss rule. ECF 45, at 8-12. See *S. California Gas*
14 *Leak Cases*, 7 Cal. 5th 391, 398 (2019) and other cases cited at
15 ECF 45, at 9-12.
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18 Three plaintiffs, Ms. Brill, Ms. Mills and Mr. Goone (the
19 "Stone Fraud Victims"), allege a fraud claim against Mr.
20 Kuraitis (and Stones). ECF 40, paragraphs 261-267. Once
21 again, Stones' Motion to Dismiss demonstrates that this claim
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25 _____
26 ¹ Instead, plaintiffs' First Amended Complaint persists in its
27 artful allegation that Mr. Kuraitis has a "duty to ensure the
28 game was carried out in a manner reasonably free of cheating."
ECF 40, paragraph 245. In order to state negligence-based
claims, however, plaintiffs must allege that Mr. Kuraitis owed a
duty to plaintiffs, not to "the game."

1 must be dismissed for additional reasons including the failure
2 to allege fraud with the requisite specificity under the Federal
3 Rules of Civil Procedure. ECF 45, at 12-14 and cases cited
4 therein.

5 The First Amended Complaint falls far short of alleging how
6 Mr. Kuraitis can be liable for fraud to these three plaintiffs.
7 In fact, only Ms. Brill makes any allegations about when she
8 purportedly spoke with Mr. Kuraitis and what was supposedly said
9 in that single conversation. ECF 40, at paragraphs 159-60. But
10 not even Ms. Brill alleges that she reasonably relied upon these
11 statements and that such statements proximately caused her any
12 damages.
13

14 Ms. Brill alleges merely that she spoke with Mr. Kuraitis
15 on March 20, 2019 and notified him of her concern that Mr.
16 Postle was cheating. ECF 40, paragraph 159. The complaint
17 alleges that during this conversation, Mr. Kuraitis allegedly
18 responded that: (i) "the Stones Live Poker game is 'one hundred
19 percent secure,' claiming there is no possibility of anyone
20 cheating, asserting there to be an outside agency that audits
21 the Stones Live Poker stream every three (3) months, declaring
22 that Mr. Postle is simply a 'fearless player' who uses a
23 'Martingale strategy' to win at poker, and alleging Mr. Postle's
24 play is so unique as to be incomprehensible to professional
25 poker players." ECF 40, paragraph 160.
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1 These are the only allegations specifying any relevant
2 comments purportedly made by Mr. Kuraitis to the Stones Fraud
3 Plaintiffs (Ms. Brill, Ms. Mills and Mr. Goone).² Assuming the
4 truth of these comments for purposes of the Motion to Dismiss
5 only, these allegations fall far short of what is required.

6 Thus, for instance, nowhere in the 54 pages of the First
7 Amended Complaint is there a single allegation about any
8 conversation between Mr. Kuraitis and either of the other two
9 Stones Fraud Plaintiffs, Ms. Mills or Mr. Goone, let alone a
10 description of the date of such conversation or the contents of
11 such conversation.
12

13 None of the Stones Fraud Plaintiffs allege that they
14 justifiably or reasonably relied upon statements from Mr.
15 Kuraitis. Indeed, given their allegation that a review of the
16 *public* "cumulative footage of Mr. Postle's play [] would have
17 revealed cheating to be rampant" and that any "putative
18 investigation . . . would have revealed cheating," ECF 40 at
19

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21 ² Plaintiffs also make conclusory allegations that on unspecified
22 dates Mr. Kuraitis told unspecified people that Mr. Postle was
23 not cheating, but simply played "on another level." ECF 40,
24 paragraphs 164, 228. Plaintiffs also state that on unspecified
25 dates Mr. Kuraitis told unspecified people that Stones had
26 conducted *or would conduct* a thorough investigation into the
27 matter which did not reveal cheating. ECF 44, paragraphs
28 165, 169, and 263. These allegations do not satisfy the pleading
standards for fraud or misrepresentation claims as amply
demonstrated in Stones' Motion. But even if they did, there is
not a single allegation that any plaintiffs heard, let alone
reasonably relied upon, such representations. Nor are there
allegations that such plaintiffs thereafter played poker hands
against Mr. Postle and lost money to Mr. Postle as a result of
his cheating in such games, i.e., causation or loss.

1 paragraph 264, the Stone Fraud Plaintiffs cannot have reasonably
2 relied upon statements from Mr. Kuraitis.

3 Nor have plaintiffs adequately alleged causation or loss.
4 None of the Stones Fraud Plaintiffs have alleged that they ever
5 actually played a hand of poker with Mr. Postle after a
6 discussion with Mr. Kuraitis. Nor have they alleged they lost
7 money to Mr. Postle after they spoke with Mr. Kuraitis, let
8 alone made such allegations with the specificity required under
9 the Federal Rules.
10

11 Finally, Mr. Kuraitis joins in Stones' Motion to Dismiss
12 the negligent misrepresentation claim (Claim 3) on the
13 additional grounds set forth at pages 15 to 18 of Stones' Motion
14 to Dismiss.

15 For all of the foregoing reasons, Defendant Justin Kuraitis
16 respectfully requests that the Court dismiss the First Amended
17 Complaint.
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21 Dated: April 8, 2020

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

PROOF OF SERVICE

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2
3 I, Richard Pachter, declare,

4 I am a citizen of the United States and employed in the
5 City and County of Sacramento California. I am over the
6 age of 18 and not a party to the within action; my business
7 address is 555 University Avenue, Suite 200, Sacramento, CA
8 95825.
9

10 On April 8, 2020, I served the following document(s):

11 **DEFENDANT KURAITIS' NOTICE OF MOTION AND MOTION TO**
12 **DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT; [PROPOSED] ORDER**

13 BY ELECTRONIC MAIL TRANSMISSION: By electronic
14 mail transmission from richard@pachterlaw.com on
15 April 8, 2020, by transmitting a PDF format copy
16 of such document(s) to defendant Michael Postle
17 each such person at the e-mail address which he
18 had provided of JRSTOX@yahoo.com. The document(s)
19 was/were transmitted by electronic transmission
20 and such transmission was reported as complete and
21 without error. Mr. Postle has previously agreed
22 to accept service of documents from the
23 undersigned by email in this matter.

24 I declare under penalty of perjury under the laws of the
25 State of California that the information submitted is true and
26 correct and that this declaration was executed on April 8,
27 2020 at Sacramento, California.
28

/s/ Richard Pachter_____
Richard Pachter