

1 LAW OFFICES OF RICHARD PACHTER  
Richard Pachter (SBN 120069)  
2 555 University Avenue, Suite 200  
Sacramento, CA 95825  
3 Telephone: (916) 485-1617  
Facsimile: (916) 379-7838  
4 [richard@pachterlaw.com](mailto:richard@pachterlaw.com)

5 Attorney for Defendant JUSTIN KURAITIS

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7 UNITED STATES DISTRICT COURT  
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  
DEFENDANT JUSTIN KURAITIS'  
REPLY MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS FIRST AMENDED  
COMPLAINT

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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18 I.

19 **Plaintiffs' Claims Are Barred Under California Public Policy**

20 Each of plaintiffs' three claims against defendant Justin  
21 Kuraitis arise from their alleged damages sustained in poker  
22 games that they played at Kings' Casino Management Corp. dba  
23 ("Stones"). Under well-established California precedent,  
24 therefore, each of these claims is barred as a matter of law.  
25 Rather than confront this well-established law, plaintiffs'  
26 Opposition delves into cases from two centuries ago and posits  
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1 (without authority) a wish for what they would like California  
2 law to be rather than an acknowledgement of what the law is.

3 After citing pages of numerous older cases that are not  
4 relied upon by Stones and Kuraitis nor helpful to plaintiffs'  
5 position, plaintiffs cite three cases to argue that the "trend"  
6 of California law has changed more recently to recognize claims  
7 for "legal gaming-related damages." ECF 56 at 24-30.

8  
9 *None of these authorities even remotely stand for the*  
10 *proposition that California law allows gamblers to sue for*  
11 *gaming losses or damages incurred in California. To the*  
12 *contrary, California law plainly and unequivocally prohibits*  
13 *judicial resolution of claims arising out of California gaming*  
14 *transactions. Kelly v. First Astri Corp., 72 Cal. App. 4th 462,*  
15 *489 (1999).*

16  
17 Two of the cases cited by plaintiffs to support their  
18 argument about the "trend" of California law actually **pre-date**  
19 *Kelly* and the third does not even mention *Kelly*, let alone  
20 attempt to distinguish it. *Crockford's Club v. Si-Ahmed*, 203  
21 Cal.App. 3d 1402, 1406 (1988) simply held that principles of  
22 comity allowed for the enforcement of judgments from another  
23 jurisdiction. Just as unremarkable is *Nevcal Enterprises, Inc.*  
24 *v. Cal-Neva Lodge, Inc.*, 194 Cal. App. 2d 177 (1961), a case  
25 that merely involved an application of Nevada law to a dispute  
26 involving an accounting relating to events occurring in Nevada  
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1 and justiciable in that state. *Id.* at 179.<sup>1</sup> Neither case casts  
2 any doubt upon the validity of the later-decided *Kelly*.

3         *Rodriguez v. Topps Co.*, 104 F. Supp. 2d 1224 (S.D. Cal.  
4 2000) is no more helpful to plaintiffs. That case considered  
5 the difference between “injury” and “standing” in a civil RICO  
6 case -- nowhere does the Court analyze California law on  
7 gambling transactions, cite *Kelly* or any other California case,  
8 let alone cast any doubt on the continued validity of *Kelly*.  
9 Notably, while citing the off-point *Topps* decision from the  
10 Southern District, plaintiffs ignore a later civil RICO case  
11 from the same District cited in the Opening Memoranda, which  
12 expressly considered these issues and explicitly held that  
13 “California’s strong and broad public policy precludes” state  
14 law claims arising out of gambling transactions or activities.  
15 *Alves v. Players Edge, Inc.*, 2007 U.S. Dist. LEXIS 98184, \*37-39  
16 (S.D. Cal. 2007).  
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19         Plaintiffs also ignore another more recent federal case  
20 that is right on point and that was relied upon by both Stones  
21 and Kuraitis in the opening memoranda: *Hang Ngoc Lam v. Hawaiian*  
22 *Gardens Casino*, 2020 WL 806655 (C.D. Cal. Jan. 8, 2020).

23         In *Lam*, Judge Gee confronted claims brought by gamblers who  
24 alleged a California card room cheated them out of winnings they  
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26 <sup>1</sup>Although of no particular moment to the issues in this case,  
27 even *Nevcal* noted that under Nevada law “a patron who has a  
28 winning ticket on a Keno game cannot collect it through the  
Courts.” *Id.* at 181 (citation omitted).

1 were entitled to while playing Fortune 7 Baccarat. Judge Gee  
2 concluded that the card room was "correct" in arguing  
3 plaintiffs' claims:

4 [M]ust fail in light of California's public policy 'against  
5 judicial resolution of civil claims arising out of gambling  
6 contracts or transaction.' MTD at 3 (citing *Kelly v. Frist*  
7 *Astri Corp.*, 72 Cal. App. 4<sup>th</sup> 462, 489, 84 Cal. Rptr. 2d 810  
8 (1999); see also *Jamotchian v. Sci. Games Corp.*, 371  
9 F.App'x 812, 813 (9<sup>th</sup> Cir. 2010)(determining that, without  
10 any indication that the California Supreme Court would  
11 decide differently, *Kelly* accurately represents  
12 California's public policy stance against judicial  
13 resolution of claims arising out of gambling transactions).

14 *Id.* at 4. Judge Gee agreed that *Kelly* reflected  
15 California's pervasive "public policy against judicial  
16 resolution of civil claims arising out of gambling contracts or  
17 transactions absent a statutory right to bring such claims" and  
18 noted that there was no "statutory authority that allows  
19 [plaintiffs] to circumvent that policy." *Id.* at 5.

20 Judge Gee noted that this public policy applied whether the  
21 underlying gambling transactions were legal or illegal. *Id.* at  
22 6. Therefore, because "[p]laintiffs' alleged injuries arise out  
23 of a gambling transaction or contract . . . their claims fail as  
24 a matter of California law and public policy." *Id.* at 7.

25 So, too, do plaintiffs' claims fail here. While  
26 plaintiffs' Opposition is filled with an exhaustive discussion  
27 of more than two hundred years of California case law, they have  
28 not cited a single California case where gamblers have been able  
to sue in a California court to recover money lost, bet or spent

1 in a gambling game conducted in California. While plaintiffs  
2 contend the public policy has changed and that their arguments  
3 have “commenced finding a receptive judicial audience,” that is  
4 mere wishful thinking. ECF 56 at 33–34. California law and  
5 public policy bars plaintiffs’ lawsuit.<sup>2</sup>

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7 II.

8 **Plaintiffs’ Claims Also Fail Because Their Damages Are**  
9 **Speculative And Unenforceable**

10 As demonstrated in our opening brief as well as the motion  
11 and memorandum submitted by Stones, plaintiffs’ three claims  
12 against Mr. Kuraitis also fail because gambling losses are too  
13 speculative, thus there are no recoverable damages. E.g. *Vu v.*  
14 *California Commerce Club, Inc.*, 58 Cal. App. 4th 229 (1997);  
15 *Youst v. Longo*, 43 Cal. 3d 64 (1987).

16 Plaintiffs’ efforts to distinguish *Vu* and *Youst* are  
17 unavailing for the reasons pointed out in Stones’ reply. In an  
18 effort to rescue their case, plaintiffs responded to the initial  
19 motions to dismiss by amending their complaint to allege damages  
20 arising from what they erroneously refer to as the “rake.” ECF  
21 40 at paragraphs 184 to 187. Plaintiffs claim that even if  
22 their gambling losses are too speculative, they nonetheless may  
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24 \_\_\_\_\_  
25 <sup>2</sup> Plaintiffs also seem to argue that voluminous accusations about  
26 the purported extensiveness of the alleged conduct underlying  
27 their claims somehow means that this clear California law and  
28 public policy should not apply here. Nonsense. And while we must  
accept the allegations of the FAC for purposes of this motion,  
suffice it to say that Mr. Kuraitis submits the FAC is filled  
with unsupportable hyperbole and misstatements.

1 recover damages because the "rake" is "in no way tied to gaming  
2 wins or losses." ECF 56 at 23, lines 3-4.

3 But this argument is wrong. The FAC alleges that: "Stones  
4 collected a rake from every hand of poker in which Mr. Postle  
5 participated." ECF 40, paragraph 184; see also ECF 56 at 57  
6 ("Plaintiffs paid for these services through a portion of the  
7 "rake," or the fixed-rate amount of money Stones extracted from  
8 each played pot in the broadcast game.")  
9

10 Such collection fees are directly tied to gaming wins  
11 because they are paid out of the pot when it is distributed to  
12 the winner of each hand. The only person who is "damaged" by the  
13 collection fee for each hand, therefore, would be the winner of  
14 each hand. ECF 45 at 16. On hands that defendant Postle won; he  
15 was the person who was "damaged", not plaintiffs. On hands that  
16 defendant Postle lost, plaintiffs would not suffer damages, and  
17 certainly not damages proximately caused by any alleged  
18 cheating. Plaintiffs understandably have gone to great lengths  
19 to try to cobble together a theory of damages that is not barred  
20 under well-established California law, but they have failed to  
21 do so.  
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23 III.

24 **Plaintiffs Have Failed to Plead Fraud With Specificity**

25 While plaintiffs admit certain of the pleading failings in  
26 the fraud claim against Mr. Kuraitis and Stones (claim 8), they  
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28

1 ignore others.<sup>3</sup> Plaintiffs ignore the arguments Mr. Kuraitis made  
2 at pages 4 and 5 of his opening memorandum. Plaintiffs' fraud  
3 claim does not allege with requisite specificity:

- 4 • The dates and hands that Ms. Mills and Ms. Brill played  
5 with Mr. Postle after their alleged communications with Mr.  
6 Kuraitis;
- 7 • That Ms. Mills and Ms. Brill played in those games by  
8 reasonably relying upon the alleged statements made by Mr.  
9 Kuraitis;
- 10 • That Ms. Mills and Ms. Brill sustained specified damages by  
11 playing in those games, i.e., that they incurred losses to  
12 Mr. Postle; and
- 13 • That Mr. Postle's cheating in those games proximately  
14 caused such damages.  
15

16 Mr. Kuraitis submits that if counsel undertakes a diligent  
17 inquiry the two remaining Stones Fraud Plaintiffs will not be  
18 able to make such allegations with the required specificity  
19 under the Federal Rules.  
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22 \_\_\_\_\_  
23 <sup>3</sup> Plaintiffs concede that Mr. Goone has no fraud claim and seek to  
24 salvage Ms. Mills' claim by improperly citing to a text message  
25 that is nowhere mentioned or referred to in the FAC. While Mr.  
26 Kuraitis appreciates the fact that, when pressed for more  
27 specificity, counsel apparently made certain inquiries of his  
28 clients and concluded that one of the three had no fraud claim,  
counsel should have made similar inquiries regarding reliance,  
damages and proximate causation and should have concluded that  
the entire claim must be dropped. The claim is unwarranted for  
the reasons set forth herein as well as those pointed out in the  
opening memoranda and Stones' reply memorandum.

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IV.

**Mr. Kuraitis Joins In Stones' Reply**

As pointed out in Stones' reply, there are numerous other deficiencies in plaintiffs' Opposition to the Motions to Dismiss the three claims alleged against Mr. Kuraitis (Claims 3, 6 and 8) and Mr. Kuraitis joins in Stones' reply which is incorporated herein by reference pursuant to Fed. R. Civ. P. 10(c).

V.

**CONCLUSION**

For all of the foregoing reasons, Defendant Justin Kuraitis respectfully requests that the Court dismiss the First Amended Complaint.

Dated: May 11, 2020

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



**PROOF OF SERVICE**

I, Richard Pachter, declare,

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

On May 11, 2020, I served the following document(s):

**DEFENDANT KURAITIS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

BY ELECTRONIC MAIL TRANSMISSION: By electronic mail transmission from richard@pachterlaw.com on May 11, 2020, by transmitting a PDF format copy of such document(s) to defendant Michael Postle each such person at the e-mail address which he had provided of [JRSTOX@yahoo.com](mailto:JRSTOX@yahoo.com). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error. Mr. Postle has previously agreed to accept service of documents from the undersigned by email in this matter.

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

/s/ Richard Pachter  
Richard Pachter