

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

POKERSTARS, et al.,

Defendants.

ALL RIGHT, TITLE AND INTEREST IN
THE ASSETS OF POKERSTARS, et al.,

Defendants-In-Rem.

Case No. 1:11 Civ. 02564 (LBS)

ECF CASE

Filed Electronically

**DEFENDANT AND CLAIMANT RAFAEL FURST'S MEMORANDUM IN SUPPORT
OF HIS MOTION TO DISMISS COUNTS ONE AND FOUR, AND CLAIM FOR CIVIL
MONEY LAUNDERING PENALTIES, OF THE VERIFIED FIRST AMENDED
COMPLAINT**

In support of his Motion to Dismiss Counts One and Four, and the claim for civil money laundering penalties, of the Verified First Amended Complaint ("Complaint") as pleaded against him, Defendant and Claimant Rafael Furst ("Furst") hereby respectfully adopts and incorporates by reference, in its entirety, the Memorandum of Points and Authorities in Support of Defendant and Claimant Howard Lederer's Motion to Dismiss Verified First Amended Complaint (the "Lederer Memorandum").¹ (Docket Entry #190.) Furst incorporates and asserts the arguments contained in the Lederer Memorandum, including but not limited to its discussion of the applicable pleading standards and the Government's failure to adequately plead the allegedly unlawful underlying activity. Indeed, the allegations against Mr. Furst are even more sparse than those against Mr. Lederer, and do not make out the necessary elements of a claim for money

¹ The sole exception to this adoption and incorporation is that, to the extent that any statement in the Lederer Memorandum agrees that any claim in the Verified First Amended Complaint is legally sufficient, Furst does not adopt or incorporate such statement.

laundering penalties under any theory. Claims One and Four should therefore be dismissed, as should the Complaint's claim for civil money laundering penalties.

The statutory provision invoked by the Government, 18 U.S.C. § 1956(b), applies only to a defendant who "conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3) [of 18 U.S.C. § 1956], or [18 U.S.C. § 1957], or a transportation, transmission, or transfer described in subsection (a)(2) [of 18 U.S.C. § 1956]." The Complaint's allegations do not adequately set forth a violation of any of these statutory provisions.

As to 18 U.S.C. § 1956(a)(1), the Complaint does not allege that Mr. Furst "conduct[ed] or attempt[ed] to conduct . . . a financial transaction which in fact involve[d] the proceeds of specified unlawful activity," while "knowing that the property involved in [that] financial transaction represent[ed] the proceeds of some form of unlawful activity." Nor does it allege that any such transaction was conducted or attempted "with the intent to promote the carrying on of specified unlawful activity; or . . . with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986," 18 U.S.C. § 1956(a)(1)(A), or that Mr. Furst "[knew] that the transaction [was] designed in whole or in part . . . to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or . . . to avoid a transaction reporting requirement under State or Federal law," *id.* § 1956(a)(1)(B).

As to 18 U.S.C. § 1956(a)(3), the Complaint does not allege that Mr. Furst had the "intent . . . to promote the carrying on of specified unlawful activity; . . . to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or . . . to avoid a transaction reporting requirement under State or Federal law." Nor does it allege that Mr. Furst "conduct[ed] or attempt[ed] to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity."

As to 18 U.S.C. § 1957, the Complaint does not allege that Mr. Furst "*knowingly* engage[d] or attempt[ed] to engage in a monetary transaction in criminally derived property . . .

derived from specified unlawful activity.” 18 U.S.C. § 1957(a) (emphasis added).

Finally, as to 18 U.S.C. § 1956(a)(2), the Complaint does not allege that, assuming the transnational element is adequately pleaded Mr. Furst had “the intent to promote the carrying on of specified unlawful activity,” 18 U.S.C. § 1956(a)(2)(A), or “[knew] that the monetary instrument or funds involved in the transportation, transmission, or transfer represent[ed] the proceeds of some form of unlawful activity and [knew] that such transportation, transmission, or transfer [was] designed in whole or in part . . . to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or . . . to avoid a transaction reporting requirement under State or Federal law,” *id.* § 1956(a)(2)(B).

Defendant and Claimant Furst therefore respectfully moves this Court to dismiss Counts One and Four of the Complaint as pleaded against him.

DATED: July 9, 2012

Respectfully submitted,

s/ Benjamin N. Souede
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