

UNITED STATES DISTRICT COURT
SOUTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

11 CV 2564 (LBS)

v.

POKERSTARS, et al.,

Defendants,

**AFFIRMATION IN
SUPPORT OF UNOPPOSED
MOTION FOR STAY**

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

Defendants-In-Rem.

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RICHARD LEVITT affirms the following under penalties of perjury:

1. I represent Claimant Raymond Bitar in the above-captioned matter and submit this affirmation in support of the within motion, without opposition from the government, to stay these proceedings pending the outcome of the criminal charges pending against Mr. Bitar in *United States v. Raymond Bitar*, 12 CR. 529 (BSJ). A proposed Order is attached.

2. On March 10, 2011, Mr. Bitar and ten others were charged in the Southern District of New York, in a sealed nine-count indictment, with conspiracy to violate the Unlawful Internet Gambling Enforcement Act, operation of an illegal gambling business, conspiracy to commit bank and wire fraud, and conspiracy to commit money laundering. *See United States v. Scheinberg et al.*, 10 Cr. 336 (LAK).

3. On April 15, 2011 and September 20, 2011 the United States filed a civil Verified Complaint and First Amended Verified Complaint, respectively. The claims in

these Complaints substantially overlap with those allegations made in the initial Indictment and added additional claims that the Full Tilt defendants, including Bitar, defrauded their customers. This Complaint seeks, among other relief, *in rem* forfeiture of all Full Tilt assets and all proceeds derived from the alleged illegal acts, including gambling (First Claim for Relief), bank and wire fraud (Second Claim for Relief) and money laundering (Third Claim for Relief). In all, one billion dollars is sought from Full Tilt Poker and \$40,954,783.53 is sought from Mr. Bitar. *See* First Amended Complaint, p. 89. Additionally, numerous of Full Tilt's and Mr. Bitar's bank accounts have been seized pursuant to the Post-Indictment Restraining Order.

4. Mr. Bitar was not in the United States when the initial indictment was filed, but returned voluntarily on or about July 2, 2012 and has been arraigned on a superseding indictment that added charges reflecting the broader fraud allegations of the First Amended Verified Complaint. *United States v. Bitar*, 10 Cr. 336 (LAK)(S8). Subsequently, Mr. Bitar's case was severed, reassigned to Judge Jones and given a new docket number: 12 Cr. 529 (BSJ). Mr. Bitar is presently at liberty on bail.

5. "The weight of authority in this Circuit indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment." *In re Par Pharmaceutical*, 133 F.R.D. 12, 13 (S.D.N.Y. 1990) (citing cases for this proposition); *see also Dresser Industries*, 628 F.2d at 1375-76 (A "strong[] case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter."); *Hicks v. New York*, 268 F. Supp. 2d 238, 242 (E.D.N.Y. 2003); *American Express*, 225 F. Supp. 2d at 265; *Brock v. Tolkow*, 109

F.R.D. 116, 119 (E.D.N.Y. 1985); Judge Milton Pollack, *Parallel Civil and Criminal Proceedings*, 129 F.R.D. 201, 203 (S.D.N.Y. 1989) (“The most important factor at the threshold is the degree to which the civil issues overlap with the criminal issues”). This rule reflects constitutional, statutory and commonsense concerns. Although stays are not constitutionally mandated, *see Nosik v. Singe*, 40 F.3d 592, 596 (2d Cir. 1994), courts recognize that a defendant’s Fifth Amendment rights are jeopardized by parallel proceedings where, e.g., a defendant is required to choose between incriminating himself at a deposition or suffering a negative inference should he refuse to speak. *See Sterling Nat. Bank*, 175 F. Supp. 2d at 578 (“There is no question that any defendant facing parallel criminal and civil litigation is hard put to decide whether to waive the privilege and give potentially damaging testimony or to assert it at the risk of having a Court or jury draw adverse inferences against him in the civil case.”).

6. Here, Mr. Bitar, without opposition from the government, posits that a stay of these proceedings pending the outcome of the pending indictment is in the mutual interest of the parties and is otherwise appropriate upon application of the relevant criteria, including: 1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the case, including whether the defendants have been indicted; (3) the private interests of the plaintiff in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; (4) the private interests of and burden on the defendants; (5) the interests of the courts; (6) the interests of persons not parties to the civil litigation; and (7) the public interest.

WHEREFORE, Raymond Bitar respectfully requests that the Court endorse the accompanying proposed Order staying the instant proceedings against Mr. Bitar until the conclusion of the parallel criminal proceedings in *United States v. Bitar*, 12 Cr. 529 (BSJ).

Dated: New York, New York
July 12, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Levitt", written in a cursive style.

RICHARD LEVITT