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)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT AND CLAIMANT HOWARD LEDERER'S MOTION TO DISMISS THE VERIFIED SECOND AMENDED COMPLAINT'S IN PERSONAM CIVIL MONEY LAUNDERING CLAIM AND FIRST AND SECOND IN REM CLAIMS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases **Page**

State Cases

Federal Statutes

State Statutes

Federal Rules

I. INTRODUCTION

The original complaint in this case made no mention of Howard Lederer. The First Amended Complaint ("FAC") added Lederer, charging him in an alleged scheme to defraud customers of Full Tilt Poker ("FTP"), which was touted as a "Ponzi Scheme" in the United States Attorney's press release. But when Lederer moved to dismiss that complaint, whose threadbare allegations stated no claim against him, much less a fraud claim, the government went back to the drawing board. The result is the instant sprawling, 133-page Second Amended Complaint ("SAC").[1]

The SAC is so structurally complex that it takes a cartographer to understand what is being alleged and against whom. As to Lederer, the allegations of scheming to defraud customers, the centerpiece of the FAC, are gone. The centerpiece of this complaint as it pertains to Lederer is the allegation that FTP—an online poker site operating abroad—was an illegal gambling business under the Illegal Gambling Business Act, ("IGBA"), 18 U.S.C. § 1955, rendering illegal any proceeds Lederer derived from it. Never mind that one month before the government filed the SAC, the Honorable Jack B. Weinstein, United States District Judge for the Eastern District of New York held in an exhaustive, 120-page opinion, that poker does ***not*** constitute "illegal gambling" under the IGBA. *See United States v. DiCristina*, __F.Supp.2d __, No. 11–CR–414, 2012 WL 3573895 (E.D.N.Y. Aug. 21, 2012). Unless the Second Circuit reverses *DiCristina*, the government's IGBA theory here is likely dead on arrival. For the reasons Judge Weinstein so meticulously catalogued in *DiCristina*, poker is not "gambling" as defined by the IGBA, and FTP's activities consequently fall outside of that statute's prohibitions.

Apparently hedging its bets against the likelihood that its IGBA claim may hold no water post-*DiCristina*, the government has added a new claim in the SAC—an alleged violation of the Travel Act, 18. U.S.C. § 1952. But far from stating a cause of action against Lederer, the new Travel Act claim merely underscores the weakness of the government's shifting legal theories.

---

[1] The SAC is attached hereto as Exhibit A.

In fact, this new claim stands on even shakier ground than the IGBA claim and must also be dismissed, since its existence relies on the Court ignoring explicit qualifying language in the very statute on which the government relies.

Because the government has disclaimed any attempt to state a fraud claim against Lederer—either based on alleged bank fraud or a fraud against FTP's own customers—the *in personam* money laundering claim must be dismissed in its entirety, along with the First and Second *in rem* claims against Lederer's property.

II. BACKGROUND

The government's 292-paragraph SAC alleges multiple *in personam* allegations against three online poker companies, twenty-one other entities, four individual defendants, and *in rem* allegations against a multitude of bank accounts and other pieces of property. The SAC recounts a series of misdeeds allegedly committed by the poker companies, focusing mainly on their alleged attempts to defraud banks as well as their own customers. But despite its prolixity—and its disproportionate fixation on Lederer's assets— the SAC contains scarcely a word about Lederer's role in any alleged wrongdoing by FTP.

A. The complaint alleges few facts concerning Lederer's role in FTP's allegedly wrongful conduct.

The sum total of the government's allegations about Lederer is that he was (1) among FTP's founders, owning roughly 8.6% of the company (SAC ¶ 30); (2) on FTP's board of directors from April 2007 until April 2011, during which times he received distributions totaling $42 million (*Id.* ¶¶ 8, 126); and (3) a managing member of Tiltware LLC, and, "[a]t certain times relevant to the Complaint," FTP's president (*Id.* ¶ 30). Despite the paucity of factual allegations against Lederer, the SAC devotes an astounding 71 paragraphs to detailing his assets.

The government further alleges that FTP defrauded its customers by "misrepresenting to players that funds credited to their online player accounts were secure and segregated from operating funds" when, allegedly, they were not. *Id.* ¶ 107. According to the SAC, FTP received customer inquiries about the security of player funds. *Id.* ¶ 108. "In response to these

inquiries," the government alleges, "in or about March of 2008, [FTP CEO Ray] Bitar, with Lederer's knowledge, advised a Full Tilt Poker employee that Full Tilt Poker could represent to players that Full Tilt Poker kept all of its player funds in segregated accounts and that funds would be available for withdrawal by players at all times." *Id.* "[A]fter receiving Bitar's response" an unnamed FTP employee allegedly emailed a response to a particular customer inquiry, which "was then forwarded to Bitar and Lederer[]." *Id.* ¶ 109. When the customer sought further "clarification as to whether 'player funds are held in segregated accounts which can't be used by the company itself,'" *Bitar* reviewed and approved the FTP employee's response to the customer indicating that customer funds "are not at all at risk." *Id.* ¶ 110 (emphasis added). "Subsequently, and based in part on this *Bitar-approved* response," FTP allegedly drafted "several form e-mail templates" for use in responding to player inquiries about their funds. *Id.* ¶ 111 (emphasis added). That is the only allegation relating to Lederer's participation in or knowledge of the alleged fraud against FTP's customers.

In addition to the IGBA, Travel Act, and wire fraud allegations included in the complaint, the government also contends that FTP committed bank fraud in violation of 18 U.S.C. § 1344 by allegedly arranging for the funds received from U.S. players to be disguised as payments to non-existent entities or non-gambling businesses. *See id.* ¶¶ 41-57. As was the case in the FAC, however, the SAC nowhere alleges that Lederer knew about or had anything to do with this supposed miscoding of transactions by FTP. *See id.* ¶¶ 41, 44-47, 49, 50, 57 (listing individuals who allegedly conspired to commit bank fraud, but omitting Lederer).

B. The complaint includes no claim against Lederer for allegedly defrauding FTP's customers.

Based on its threadbare allegations against Lederer, the government has trebled the number of claims for relief at issue in the case, increasing them from four in the FAC to twelve in the SAC. To make sense of this blunderbuss complaint, it helps to divide the forfeiture claims for relief into three distinct sets:

The first set of claims, consisting of **Claims One through Four**, allege predicate offenses that constitute the "specified unlawful activities" alleged in the eight subsequent claims for relief under the money laundering statutes. These predicate offenses are: (1) violation of IGBA (*i.e.*, FTP allegedly is an illegal gambling business), (2) violation of the Travel Act (*i.e.*, FTP allegedly violated unspecified state gambling laws), (3) bank fraud (*i.e.*, FTP allegedly miscoded transactions), and (4) player fraud (*i.e.*, FTP allegedly told poker players that their funds were kept in segregated accounts when they were not).

The second set of claims, consisting of **Claims Five through Eight**, consist of money laundering offenses whose predicate "specified unlawful activities" are those alleged in Claims One through Three, as discussed above. In other words, these claims expressly omit any reference to the player fraud theory. This is crucial in understanding the government's case against Lederer: the government's *in personam* claim for civil monetary penalties against him expressly disclaims the government's allegations of player fraud.

The third set of claims, consisting of **Claims Nine through Twelve**, consist of money laundering offenses that rest on only one predicate "specified unlawful activity"—the player fraud theory stated in Claim Four.

Of these three sets, only the first two apply to Lederer. Specifically, the government seeks forfeiture of certain bank accounts that belong to Lederer, alleging that at least some portion of the $42 million was deposited into them, *see* SAC ¶ 126 *and* Schedule C ¶¶ 2-3, along with seven pieces of real estate, a 401K retirement account, and several automobiles, *see* SAC ¶¶ 135-203 *and* Schedule D ¶¶ 1-15, which also belong to Lederer. The SAC alleges that these accounts are forfeitable pursuant to sections 981(a)(1)(A), 981(a)(1)(C), and 1955(d).

The government also seeks an *in personam* civil monetary judgment against Lederer of "not less than $42.5 million" pursuant to 18 U.S.C. § 1956(h). This figure allegedly represents the total amount of ownership distributions and "profit sharing" payments Lederer received as part-owner of FTP. SAC ¶¶ 126- 291. Notably, the government's *in personam* money laundering claim against Lederer is ***not*** predicated on the alleged player fraud theory set forth in

the Fourth Claim for Relief.[2] On the contrary, the SAC emphasizes that Bitar—and not Lederer—is alleged to be "independently liable for such penalty because he knowingly conducted transactions" predicated on Claims for Relief Nine, Eleven, and Twelve, which are in turn, predicated on Claim Four, the player fraud theory. SAC ¶ 292.

In other words, the government asserts *in rem* claims against various assets owned by Lederer. The government also seeks *in personam* a judgment of $42.5 million against Lederer, based on claims that he participated in certain specified unlawful activity, namely the IGBA violations and the Travel Act violations. Since both sets of allegations fail as a matter of law, the *in personam* allegations against Lederer must be dismissed in their entirety. All *in rem* claims based upon IGBA and the Travel Act must also be dismissed. All that then would be left of this complaint, as it pertains to Lederer, are *in rem* claims targeting certain of Lederer's assets, based on the allegation that FTP's business involved a fraud on its customers, and that the *in rem* defendants are proceeds of that unlawful activity.[3]

III. LEGAL STANDARD

The SAC asserts both an *in personam* claim against Lederer as well as *in rem* claims against certain assets as to which he has filed Notices of Claim. For the *in personam* claim, Rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure apply. Accordingly, in evaluating the sufficiency of factual allegations underpinning the *in personam* claim, the Court should follow the two-step process established in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). First, the Court

---

[2] Counsel for the government confirmed this view of the SAC in a telephone conversation with Lederer's counsel on September 11, 2012.

[3] To the extent that Claims for Relief Five through Eight are predicated on the First and Second Claims for Relief, Lederer challenges those as well. Lederer does not presently challenge the Third Claim for Relief, which is a forfeiture claim predicated on alleged bank fraud by certain individuals other than him. Even though the government does not allege—and no evidence will support—that Lederer knew about or committed bank fraud, the SAC has alleged sufficient facts to permit that *in rem* claim to proceed against the defendant bank accounts under 18 U.S.C. § 981(a)(1)(c). To the extent that Claims for Relief Five through Eight, which allege money laundering, may derive from the bank fraud allegations, Lederer elects not to challenge those here as well.

should identify and eliminate allegations "that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 679. Second, the Court should evaluate the remaining, non-conclusory allegations "to determine if they plausibly suggest an entitlement to relief." *Id.* at 681. This "plausibility standard" requires "more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* at 678 (citation and internal quotation marks omitted).

The government faces a heavy pleading burden for the *in rem* claims due to the "drastic nature of the civil forfeiture remedy." *United States v. Daccarett*, 6 F.3d 37, 47 (2d Cir. 1993). The FRCP's Supplemental Rules set the pleading standard for *in rem* civil forfeiture complaints. *See* Fed. R. Civ. P. Supp. R. A(1)(B). Supplemental Rule E(2)(a) directs the government to set forth its claims "with such particularity that the defendant . . . will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading." Fed. R. Civ. P. Supp. R. E(2)(a). Supplemental Rule G(2)(f) further commands that the government "state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial." Fed. R. Civ. P. Supp. R. G(2)(f).[4] Thus, "the Government's complaint must assert specific facts supporting an inference that the property is subject to forfeiture." *United States v. $22,173.00 in U.S. Currency*, 716 F. Supp. 2d 245, 248 (S.D.N.Y. 2010) (internal citation and quotation marks omitted).

---

[4] Although the SAC appears to promote a "probable cause" standard for its forfeiture claims, *see* SAC ¶ 218, Congress elevated the probable cause standard to a preponderance of the evidence standard by enacting the Civil Action Forfeiture Reform Act ("CAFRA") in 2000. *See United States v. $92,203.00 in U.S. Currency*, 537 F.3d 504, 509 (5th Cir. 2008) (noting the "increase in the Government's burden—from probable cause to preponderance of the evidence").

The Supplemental Rules do not supplant the FRCP. Rather, the latter "apply to Civil Forfeiture actions so long as they are not 'inconsistent with' the Supplemental Rules." *Id.* at 249 (quoting Fed. R. Civ. P. Supp. R. A(2)). Consequently, the Supreme Court's pronouncements in *Iqbal* and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), inform the legal standard for the government's *in rem* claims. *See $22,173.00 in U.S. Currency*, 716 F. Supp. 2d at 249 (noting that *Iqbal* and *Twombly* "may help to clarify when a civil forfeiture complaint survives the motion to dismiss phase"). And of course, any fraud allegations in the complaint must meet the stringent pleading requirement set forth by Federal Rule of Civil Procedure 9(b). *See Riverway Co. v. Spivey Marine & Harbor Svc. Co.*, 598 F. Supp. 909, 912 (S.D. Ill. 1984) ("The construction placed upon Rule 9(b) of the Federal Rules of Civil Procedure requiring the circumstances of an action for fraud be stated with particularity, is helpful in determining the meaning of Supplemental Rule E(2)(a).").

IV. ARGUMENT

Only one allegation in the complaint implicates Lederer in his personal capacity such that it would justify the civil money laundering penalties alleged in Section VIII of the SAC (¶¶ 288-91): his status as co-owner of FTP, which the government—in a novel and extraterritorial application of a decades-old statute never before applied to internet poker—characterizes as an "illegal gambling business" in violation of IGBA, as well as a Travel Act violation.[5] Because neither statute can be applied to FTP's activities, the government's *in personam* money laundering claims against Lederer must be dismissed. Similarly, the government's First and

---

[5] In its Third Claim for Relief, SAC ¶¶ 233-40, the government alleges conspiracy to commit bank and wire fraud against a specified list of Defendants. Howard Lederer is not included in that list. *Id.* ¶¶ 41, 44-47, 49, 50, 57. Thus, although if proved this claim may support the forfeiture of Lederer's bank accounts *in rem* as proceeds of the alleged conspiracy to commit fraud, they cannot support the *in personam* money laundering claim against Lederer. Counsel for the United States has confirmed this understanding of the Second Amended Complaint with Lederer's attorneys. Lederer does not currently move to dismiss the *in rem* claims predicated on the Third Claim for Relief.

Second Claims for Relief *in rem* against Lederer's assets which relate to the IGBA and Travel Act allegations respectively, must also be dismissed.

A. The government's IGBA claim fails to allege facts supporting an IGBA violation, and is based on an impermissible extraterritorial application of the law.

The government alleges that FTP violated IGBA, making all FTP proceeds illegal.[6] This aggressive interpretation far exceeds the statute's text and intended scope. The IGBA claim falls for three reasons, and with it the government's primary case against Lederer.

First, as Judge Weinstein recently held in an exhaustive and well-reasoned opinion, poker "is not gambling as defined by the IGBA." *DiCristina*, 2012 WL 3573895, at *60.

Second, the complaint fails to allege sufficient facts supporting a violation of state law, "an essential and substantive element" of an IGBA charge. *United States v. Miller*, 774 F.2d 883, 885 (8th Cir. 1985). To the extent that the complaint puts forth bare, unsupported allegations regarding violations of unspecified state laws, it fails to identify which FTP proceeds can be traced to which violations in which states.

Third, even if the government were able to overcome these two deficiencies, under the Supreme Court's decision in *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010), IGBA does not apply extraterritorially to a business operated abroad whose only contact with the United States is that some of its poker players are based here. Accordingly, the government's IGBA charges support neither the *in personam* claims against Lederer, nor the First Claim for Relief *in rem*. Both must be dismissed.

1. FTP is not a "gambling business" under IGBA.

To violate IGBA, a business must be engaged in "gambling" as defined in 18 U.S.C. § 1955(b)(2). *DiCristina*, 2012 WL 3573895, at *26. Section 1955(b)(2) defines "gambling" by

---

[6] The government apparently takes the position that *all* proceeds of FTP are tainted, despite the fact that a significant part of FTP's revenues originated with players living outside of the United States. Lederer reserves the right to argue that proceeds derived from international operations do not constitute proceeds from any IGBA, wire-fraud, or bank-fraud violation.

providing a non-exhaustive list of nine activities that constitute gambling. No form of poker appears on this list. But to qualify as "gambling," running an online poker website must be "similar to the specific items in the list." *Molloy v. Metropolitan Transp. Auth.*, 94 F.3d 808, 812 (2d Cir. 1996). The complaint alleges no facts that plausibly suggest that poker is similar to the specific activities listed in § 1955(b)(2). In fact, poker is fundamentally ***dissimilar*** to those activities because it is a game predominated by the players' skill, rather than chance. *DiCristina*, 2012 WL 3573895, at *60.

In concluding that DiCristina's "acts did not constitute a federal crime," the court first rejected the government's argument that the violation of an applicable state gambling law is sufficient to sustain a violation under IGBA. *Id.* at *48. Instead, the court concluded that to violate IGBA the defendant's business must constitute "gambling" as defined by § 1955(b)(2) in addition to violating an applicable state statute as required by § 1955 (b)(1)(i). The court further concluded that "to constitute an illegal gambling business" under IGBA, "the business must operate a game that is predominantly a game of chance." *Id.* at *56. With the statutory framework thus clarified, the court carefully examined the factual record and voluminous expert testimony to conclude that "[b]ecause the poker played on the defendant's premises is not predominantly a game of chance, it is not gambling as defined by the IGBA." *Id.* at *60. The court accordingly vacated DiCristina's conviction.

Because *DiCristina*'s holding and analysis apply with equal force to the IGBA allegations found in the SAC, the government has failed to state an IGBA claim against Lederer based on FTP's conduct.

a. A business must be engaged in "gambling" as defined in § 1955(b)(2) to violate IGBA.

IGBA criminalizes the conduct, finance, management, supervision, direction, or ownership of an "illegal gambling business." 18 U.S.C. § 1955(a). An "'illegal gambling business' means a gambling business which" violates state law, involves five or more persons,

and satisfies certain operation or revenue requirements. *Id.* § 1955(b)(1). Thus in order to be an "illegal gambling business," a business must first be a "gambling business." "Gambling" is defined as "includ[ing] but . . . not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein." *Id.* § 1955(b)(2).

The government has argued in the past, as it did in *DiCristina*, that an "illegal gambling business" under IGBA does not have to engage in "gambling" under § 1955(b)(2), but only has to satisfy the requirements in § 1955(b)(1)(i)-(iii). *DiCristina*, 2012 WL 3573895, at *2. (observing that the government's argument is that "any gambling activity that is illegal under state law is 'gambling' under the IGBA."). In two key ways, this would violate the "cardinal principle of statutory construction that [courts] must give effect, if possible, to every clause and word of a statute." *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (internal quotation marks omitted) (citing *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)). First, the only time the word "gambling" is used in IGBA outside of the phrase "illegal gambling business" is when IGBA defines an "illegal gambling business" as "a gambling business which" satisfies the § 1955(b)(1)(i)-(iii) requirements. *See* 18 U.S.C. § 1955(b). Thus, reading the definition of "illegal gambling business" to extend beyond businesses engaging in "gambling" under § 1955(b)(2) would make the § 1955(b)(2) definition of gambling entirely superfluous.

Second, § 1955(b)(1) defines "illegal gambling business" as "a *gambling* business which" satisfies the § 1955(b)(1)(i)-(iii) requirements. If Congress did not intend the word "gambling" to limit the type of businesses that violate the statute, it would have simply left that modifier out. The only logical interpretation of Congress's decision to include it is to read IGBA as limiting "illegal gambling businesses" to businesses engaged in "gambling" under § 1955(b)(2). To the

extent there is doubt about this interpretation, the rule of lenity requires that it be resolved in favor of the defendant. *See DiCristina*, 2012 WL 3573895, at *2, 50.

b. Running an online poker site is not "gambling" under § 1955(b)(2).

IGBA define the term "gambling" by providing a list of illustrative activities. "Gambling" includes, but is not limited to, pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein." 18 U.S.C. § 1955(b)(2). When interpreting a "general provision in light of a list of specific illustrative provisions," courts "construe the general term . . . to include only things similar to the specific items in the list." *Molloy*, 94 F.3d at 812; *see also Begay v. United States*, 553 U.S. 137, 141-42 (2008) (holding that drunk driving was not a "violent felony" for purposes of the Armed Career Criminal Act because it was "too unlike the provision's listed examples" of other violent crimes); *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 401 (2d Cir. 2008) ("[W]here general words are accompanied by a specific enumeration of persons or things, the general words should be limited to persons or things similar to those specifically enumerated." (internal citation and quotation omitted)). Thus, to support an IGBA violation, "poker must fall under the general definition of gambling and be sufficiently similar to those games listed in the statute to fall within its prohibition." *DiCristina*, 2012 WL 3573895, at *51. As Judge Weinstein correctly concluded, "[i]t does not." *Id.*

Nearly all the activities listed in § 1955(b)(2) involve games where (1) the business—or "house"—is betting directly against the customers and (2) the outcome of the game turns predominantly on chance rather than skill. None of the activities listed in § 1955(b)(2) involves a business that charges a hosting fee for players to engage in a game like bridge, scrabble, or

poker, where betting represents a calculated move in game whose outcome predominantly depends on the players' skill. *See In re Allen*, 59 Cal. 2d 5, 7 (1962) (holding that bridge is a game of skill).

First, in bookmaking, slots, roulette, dice tables, lotteries, policy, bolita, or numbers games, the house directly bets against its customers such that when the customer/bettor loses, the house wins.[7] Second, poker is unlike the activities enumerated in § 1955(b)(2) because "[t]he influence of skill on the outcome of poker games is far greater than that on the outcome of games enumerated in the IGBA's illustrations of gambling." *DiCristina,* 2012 WL 3573895, at *55.

Because poker is unlike the activities enumerated in § 1955(b)(2), poker is not "gambling" under IGBA. This is true even if, as the government has argued in the corresponding criminal case, a colloquial understanding of the word gambling would include poker. "Only in the absence of a statutory definition does this court normally look to the ordinary meaning or dictionary definitions of a term." *United States v. Lettiere*, 640 F.3d 1271, 1274 (9th Cir. 2011).

At the least, the list of activities constituting IGBA's definition of "gambling" is sufficiently ambiguous that an average person would not know whether a company hosting a poker site falls within it. In such circumstances, the rule of lenity requires that the statute "must be construed in favor of the defendant." *DiCristina*, 2012 WL 3573895, at *60.

c. The complaint never alleges that running an online poker site is "gambling" under § 1955(b)(2).

Even if the court were to disagree with *DiCristina's* conclusion that poker is not gambling under IGBA, the Second Amended Complaint fails to plead facts sufficient to establish

---

[7] The only activity listed in § 1955(b)(2) that does not involve a business betting against its customers is pool-making. Pool-making, however, is hardly a game at all but is rather simply a forum to allow people to place bets on external events over which the customers/bettors have no control.

that poker is "roughly similar" to the activities listed in § 1955(b)(2). To allege an IGBA violation, the government must allege "sufficient factual matter, accepted as true," *Iqbal*, 556 U.S. at 678, that FTP's activities in running an online poker site are similar to the activities listed in § 1955(b)(2). A complaint does not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557) (alterations in original). Yet the SAC nowhere suggests that FTP's activities are remotely similar to the activities listed in § 1955(b)(2). There are no facts in the complaint about the rules of the various poker games played on FTP, or FTP's role in charging for and administering those games.

2. Even if IGBA applies to FTP's conduct, the complaint's allegations with respect to the required violation of a state law are deficient.

Even if IGBA could be applied to FTP's conduct, the complaint nonetheless fails sufficiently to allege an IGBA violation. First, the complaint fails to allege sufficiently that FTP violated a specific state statute, one of the key elements of an IGBA claim. Second, to the extent that the complaint alleges a violation of a New York statute or a ragtag list of other statutes, it fails to allege which FTP proceeds are traceable to violations of which specific state statute.

a. The complaint fails to sufficiently allege that FTP violated a state statute

For FTP to constitute an "illegal gambling business," it must be a business which "is a violation of the law of a State or political subdivision in which it is conducted." 18 U.S.C. § 1955(b)(1)(i). As the Eighth Circuit explained: "The statute defines an 'illegal gambling business' as one which 'is a violation' of state law. 18 U.S.C. § 1955(b)(1)(i). The word 'is' strongly suggests that the Government must prove more than a violation of some state law by a gambling business. *The gambling business itself* must be illegal." *United States v. Bala*, 489 F.3d 334, 340 (8th Cir. 2007) (emphasis in original).

Indeed, the Eighth Circuit recognized the importance of pleading a particular state statute in *Miller*. There, the government's indictment "failed to cite the state statute alleged to have been violated." 774 F.2d at 883. The Eighth Circuit concluded that

> the particular state statute alleged to have been violated is an *essential and substantive element* of a violation of 18 U.S.C. section 1955. Other than the requirements of five persons and of 30 days or $2,000, the elements of a Section 1955 violation are actually contained in the underlying state law alleged to have been transgressed. Thus, the indictment's reference to Section 1955 *did not inform Miller of the crime with which he was charged.* An allegation that some state statute has been violated does not "fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished."

Id. at 885 (quoting *Hamling v. United States*, 418 U.S. 87, 117 (1974)) (emphases added). Although *Miller* involved an indictment rather than a civil forfeiture complaint, *Miller*'s conclusion that citation to a specific state statute is necessary to fully inform a defendant of the crime with which he is charged is equally applicable here. *See also United States v. Truesdale*, 152 F.3d 443, 449 (5th Cir. 1998) (reversing IGBA and related convictions because the indictment failed to allege that the defendant's conduct violated section 47.03(a)(3), rather than section 47.03(a)(2), of the Texas gambling statute). Without informing Lederer of each state offense that FTP is alleged to have committed, the SAC fails to "give [Lederer] fair notice of what [the government's] claim is." *Twombly*, 550 U.S. at 555.

Here, the government has not sufficiently alleged that the alleged gambling business conducted by FTP is illegal in the place where that business is conducted. Nor could it: FTP was legally operating under a duly issued license from the Alderney Gambling Control Commission.

To extent that the government alleges a violation of a hodgepodge of state statutes, "including but not limited to" New York, California, Connecticut, Florida, Michigan, Nevada, Ohio, Oregon, and Utah, the SAC again falls short. SAC ¶ 221. The government's broad-brush approach, citing to the statutes of nine different states along with the throwaway clause "including but not limited to," warrants the SAC's dismissal under Rule 8(a). That rule requires that a complaint "give the defendant fair notice of what [plaintiff's] claim is." *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). The SAC fails to give Lederer fair notice of what alleged conduct violated any particular statute.

To the extent the SAC is predicated on a violation of New York State Penal Law Sections 225.00 and 225.05—the only statutes *not* listed in a footnote[8]—a failure to allege facts showing that these games are games of chance may on its own be sufficient to dismiss the complaint. *See People v. Li Ai Hua*, 885 N.Y.S.2d 380, 383-84 (Crim. Ct. Queens Cty. 2009) (dismissing information for "play[ing] 'Mahjong' which is a game of chance" because the information included "no support . . . for the claim that mahjong is a game of chance").

b. The complaint fails to allege which, if any, FTP proceeds are traceable to a violation of a specific state law.

To the extent the complaint sufficiently alleges a violation of a particular state statute, the SAC nevertheless falls short of the pleading standards for *in rem* civil forfeiture complaints set forth in the FRCP's Supplemental Rules in light of the substantive requirements set forth in the CAFRA. "Supplemental Rule G(2)(f) requires that the Government 'state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trail.'" *$22,173.00 in U.S. Currency*, 716 F. Supp. 2d at 248 (citing Fed. R. Civ. P. Supp. R. G(2)(f)). Additionally, under CAFRA, "if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a *substantial connection* between the property and the offense" 18 U.S.C. § 983(c)(3) (emphasis added). Yet the SAC fails to allege that there is any connection—and certainly not a "substantial connection"—between the property it seeks to forfeit and a particular violation of IGBA. This is because any violation of IGBA turns on a violation of a state statute, *Miller*, 774 F.2d at 885, but the SAC has failed to state "sufficiently detailed facts" to allege a violation of a particular state statute. *See also* § 1955(d) (authorizing forfeiture of "property . . . used in violation of the provisions of this section").

---

[8] Lederer also observes that government's careless approach to alleging that the Poker Companies violated an array of state statutes—without specification of what conduct purportedly violated any specific statute—has led it to allege a violation of Mich. Comp. Laws § 750.313, which relates to "gambling in stocks, bonds, grain, or produce."

As the Third Circuit explained in *United States v. $734,578.82 in U.S. Currency*, 286 F.3d 641, 649 (3rd Cir. 2002), which adjudicated a civil *in rem* forfeiture action against funds based on an IGBA violation, "§1955(b)(1)(i) first looks to relevant state law to determine whether a given activity constitutes gambling." In *$734,578.82 in U.S. Currency*, a New Jersey corporation "received funds from bettors throughout the United States and processed those transfers so that the bettors could open accounts" and place bets with an English corporation. *Id.* at 650. The government cited two examples to illustrate the role of the New Jersey corporation in the gambling operation: one involved accepting $32,000 from a Wisconsin better via Western Union and the other involved accepting $25,000 from confidential source from an unspecified location via Western Union. *Id.* at 646-47. Based on these facts, the court concluded that "the alleged illegal activity occurred in New Jersey." *Id.* at 649. The court then went on to analyze whether the facts alleged constituted a violation of the N.J.S.A. 2C:37-2(a)(2) (prohibiting conduct "which materially aids any form of gambling activity). *Id.* 649-53.

$734,578.82 in U.S. Currency teaches that any civil *in rem* forfeiture action under IGBA must begin with precise allegations regarding specific conduct that violates a specific state statute. *Id.* at 657 ("[T]he forfeiture action is predicated solely upon conduct that occurred in New Jersey"). The government therefore must identify facts alleging that FTP's conduct violated specific states' laws, rather than all states generally. The SAC is plainly deficient in this regard. Merely asserting in a conclusory fashion that FTP "operated" in various states, *see* SAC ¶ 221, or "facilitated and provided real-money gambling on internet poker games to United States customers," *see id.* ¶ 29, fails to identify what acts FTP committed in a particular state.

Following from the government's failure to identify what conduct allegedly violated a particular state statute, the government also fails to identify which FTP proceeds have a "substantial connection" to an IGBA violation. *See* 18 U.S.C. § 983(c)(3). Rather than alleging these necessary facts, the government claims generally that "at least $44,314,997.31 . . . was directly tied to" all of the criminal conduct alleged in the complaint. SAC ¶ 132. But these allegations fall short of the requirements set forth in the Supplemental Rules, as they give no

indication whatsoever of the government's theory as to which funds have a "substantial connection" to an identifiable violation of IGBA. Indeed, the SAC fails to allege which funds, if any, are in fact traceable to a violation of IGBA, which must be predicated on a violation of a state statute. To the extent that the government has properly alleged FTP violated the law of one particular state and met the other requirements to sustain an IGBA violation, only FTP proceeds traceable to that IGBA violation could be subject to forfeiture. Without more, the government cannot seek to forfeit all FTP proceeds. Thus, the government has failed to allege sufficiently that any of Lederer's assets identified in the SAC are traceable to an IGBA violation.

3. IGBA does not apply extraterritorially to FTP, a company based and operated outside of the United States.

The Supreme Court's recent decision in *Morrison* demonstrates that IGBA does not apply extraterritorially. Further, based on *Morrison* and cases interpreting it, applying IGBA to FTP's conduct in this case would constitute an impermissible extraterritorial application of the statute.

a. IGBA does not apply extraterritorially.

In *Morrison*, the Supreme Court considered whether § 10(b) of the Securities Exchange Act creates a cause of action for foreign plaintiffs suing foreign and American defendants for misconduct involving foreign securities, where much of the misconduct took place in the United States. In answering that question, the Court reiterated the "longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Morrison*, 130 S. Ct. at 2877 (citation and internal quotation marks omitted). Thus, "[w]hen a statute gives no clear indication of an extraterritorial application, it has none." *Id.* at 2878; *see also Norex Petroleum Ltd. v. Access Indus., Inc.*, 631 F.3d 29, 32 (2d Cir. 2011) ("*Morrison* wholeheartedly embraces application of the presumption against extraterritoriality."). Applying that presumption, the Court concluded that § 10(b) does not apply extraterritorially. The Court first noted that "[o]n its face, § 10(b) contains nothing to suggest it applies abroad." *Morrison*, 130 S. Ct. at 2881. It then rejected all of petitioners' arguments as to why the statute applied abroad. Most notably, the Court rejected

the argument that because the prices of foreign securities are disseminated throughout the United States, and therefore affect markets in the United States, section 10(b) should apply.

Applying *Morrison*'s analysis to IGBA, it is clear that IGBA does not apply extraterritorially. On its face, IGBA contains no language suggesting extraterritorial application. Further, IGBA was passed together with the Racketeer Influence and Corrupt Organizations (RICO) Act as part of the Organized Crime Control Act of 1970. Applying *Morrison*, the Second Circuit recently held that RICO does not apply extraterritorially. *Norex*, 631 F.3d at 31. In addition, one of Congress's findings in passing the Unlawful Internet Gambling Enforcement Act ("UIGEA") was that "traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling *crosses State or national borders*." 31 U.S.C. § 5361(a)(4) (emphasis added). Congress's recognition that "traditional" mechanisms, including IGBA, were inadequate to enforce international activity confirms that IGBA lacks extraterritorial application.

b. Applying IGBA to FTP would constitute an improper extraterritorial application of IGBA.

Because IGBA lacks extraterritorial application, the government must show that FTP's activities inside the United States bring the company within the statute's reach. The government cannot make that showing. Under *Morrison*, to determine whether U.S. conduct—the "territorial event"—is sufficient to make conduct non-extraterritorial, courts must ask whether that "territorial event" was the "'focus' of congressional concern." 130 S. Ct. at 2884 (quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 255 (1991) ("*Aramco*")). *Morrison* is again instructive. There, the Court noted that section 10(b) punishes "only deceptive conduct 'in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered.'" *Id.* (quoting 15 U.S.C. § 78j(b)). On that basis, the Court held that the "focus of the Exchange Act is not upon the place where the deception originated, but upon purchases and sales of securities in the United States." *Id.* The Court also rejected the argument that a statute could be applied extraterritorially if effects of the deception were felt

inside the United States. In so holding, the Court observed that "it is a rare case of prohibited extraterritorial application that lacks *all* contact with the territory of the United States. But the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case." 130 S. Ct. at 2884.[9]

Here, FTP is an Irish corporation, governed by Irish law. Its business was legal under Irish law. Its staff and management lived and worked in Ireland. It was operating under a license from the Alderney Gambling Control Commission. FTP's bank accounts were all outside of the United States. The only "territorial events" relating to FTP are the playing of poker hands on FTP's site (and the associated payments for those hands) by players in the United States. *See* Decl. of Rosemary Karaka in Support of Post-Indictment Restraining Order, S.D.N.Y. Case No. 1:10cr00336 LAK, Dkt. # 76, at ¶ 7 ("internet gambling companies keep their computer servers, management and support staff offshore"). Yet the "focus" of § 1955 is not on playing or betting, but on those who "conduct, finance, manage, supervise, direct, or own" an "illegal gambling business." Thus, IGBA focuses on the gambling business's operations, not the nature of its customers. *See* 18 U.S.C. § 1955(b)(1). Indeed, the Supreme Court has noted that IGBA "proscribes any degree of participation in an illegal gambling business, *except participation as a mere bettor*." *Sanabria v. United States*, 437 U.S. 54, 71 n.26 (1978) (emphasis added). Yet all activities other than those of "mere bettors" were not territorial events. Just as the "focus of the Exchange Act is not upon the place where the deception originated, but upon purchases and sales of securities in the United States," *Morrison*, 130 S. Ct. at 2884, IGBA's focus is not where the poker-playing took place, but where the gambling business is located and operated. For FTP, that is not the United States.

IGBA's history further demonstrates the statute's "focus" on the gambling business, rather than the customers. IGBA "was enacted as [part] of the Organized Crime Control Act of

---

[9] Following *Morrison*, courts have found impermissible extraterritorial application of statutes despite effects on or activity in the United States. *See, e.g., United States v. Philip Morris USA, Inc.*, 783 F. Supp. 2d 23 (D.D.C. 2011); *Cedeno v. Intech Group, Inc.*, 733 F. Supp. 2d 471 (S.D.N.Y. 2010).

1970. The legislation was aimed at curtailing syndicated gambling, the lifeline of organized crime, which provides billions of dollars each year to oil its diversified machinery." *United States v. Sacco*, 491 F.2d 995, 998 (9th Cir. 1974) (internal citations omitted). It was based on Congress's findings that "organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking," and several other activities. Organized Crime Control Act of 1970, Pub. L. 91-452, 84 Stat. 922, 922-23 (1970). In passing the Act, Congress also found that organized crime's interstate nature, and propensity for bribing state and local officials, made it difficult for local authorities to combat the problem. *Sacco*, 491 F.2d at 999-1001 (citing S. Rep. No. 91-617, 91st Cong., 1st Sess. 16 (1969)). IGBA's origin in the fight against organized crime makes clear that the "focus" of the legislation was on the gambling organizations, not the bettors.

This case mirrors Judge Rakoff's recent decision in *Cedeno*, in which he concluded that RICO does not apply to a predicate money laundering scheme that used American banks to launder money when the RICO enterprise was located abroad. "So far as RICO is concerned, it is plain on the face of the statute that the statute is focused on how a pattern of racketeering affects an *enterprise*. . . . But nowhere does the statute evidence any concern with foreign enterprises." 733 F. Supp. 2d at 473 (emphasis added). Just as RICO concerns *enterprises*, and thus does not apply to foreign enterprises even if the predicate acts took place in the United States, IGBA concerns gambling *businesses*, and thus does not apply to a foreign business even if some customers happen to be located in the United States. Thus, applying IGBA to FTP's activities in this case would constitute an impermissible extraterritorial application of the statute.

B. The Travel Act claim must be dismissed.

Given the legal infirmities of the government's IGBA claim—as laid bare by *DiCristina*—it is perhaps unsurprising that the government would go searching for a new legal theory to support its case, presumably one that was deemed unworthy of inclusion in the FAC. Because the Department of Justice issued a legal opinion in September 2011cabining the scope

of the Wire Act—a statute the government had previously used to support its forfeiture allegations in this case—the government has had to resort to the Travel Act, 18 U.S.C. § 1952, in an attempt to state a cognizable claim against FTP and its owners. Because the Travel Act claim is even more attenuated, more convoluted, and more legally flawed than the government's other theories, it, too, must be dismissed.

1. The government cannot base its forfeiture or money laundering claims on the Travel Act because 18 U.S.C. § 1961(1)(A) requires that any predicate gambling offenses be punishable by more than a year in prison.

The government's Travel Act claim proceeds along the following circuitous route: Lederer's assets are forfeitable under section 981(a)(1)(c), as proceeds constituting or traceable to a violation of one of the "offense[s] constituting 'specified unlawful activity' (as defined in section 1956(c)(7))." 18 U.S.C. § 981(a)(1)(c). Section 1956(c)(7), in turn, defines "specified unlawful activity" as, among other things, "any act or activity constituting an offense listed in section 1961(1)." 18 U.S.C. § 1956(c)(7). Section 1961(1) includes two subsections relevant here, subsections (A) and (B). Subsection (B) consists of a long list of "indictable" offenses from Title 18 of the United States Code. Buried in this subsection appears the Travel Act, 18 U.S.C. §1952, a criminal statute which is helpfully described as "relating to racketeering," not gambling. 18 U.S.C. § 1961(1)(B). Section 1952, in turn, prohibits interstate travel or foreign commerce with the intent to "carry on" any "unlawful activity," where unlawful activity is defined, in part as "any business enterprise involving gambling . . . offenses in violation of the laws of the State in which they are committed." 18 U.S.C. § 1952(a)-(b)(1). Under the government's theory, section 1952's prohibition on "any business enterprise involving gambling" that violates any state law suffices to render forfeitable all of Lederer's assets listed in the SAC, and justifies the $42.5M civil money laundering penalty against him.

But in plucking the Travel Act out of section 1961(1)(B) in this way, the government has ignored section 1961(1)(A)—the very subsection that deals specifically with gambling offenses. That subsection expressly defines *which* gambling offenses can constitute specified unlawful

activity, as incorporated in section 1956(c)(7). It is a narrow list. To be cognizable as "specified unlawful activity," the government must allege an "act . . . involving . . . gambling . . . which is chargeable under State law and *punishable by imprisonment for more than one year*. 18 U.S.C. § 1961(1)(A) (emphasis added). Here, the government has alleged predicate violations of New York State Penal Law §§ 225.00 and 225.05. SAC ¶ 231. But the offense set forth in these provisions, "Promoting gambling in the second degree," is classified as a "Class A misdemeanor." N.Y. Penal Law § 225.05. Under New York law, such offenses are punishable by a prison term that "shall not exceed one year."[10] *Id.* § 70.15.

The government's gambit is straightforward enough: knowing it cannot state a claim based on the specific gambling provision in section 1961(1)(A), it has resorted to the Travel Act, a racketeering statute whose own predicate gambling offenses arguably lack the one-year prison term requirement found in the very statute on which its forfeiture and money laundering claims are based. For three reasons, the Court should not countenance this end-run around the plain language of section 1961(1).

First, the government's attempt to use the Travel Act's appearance in section 1961(1)(B) as a means to avoid the one-year prison requirement for gambling offenses found in section 1961(1)(A) would render that requirement a nullity. "It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotation marks omitted).

Second, the government's end run around 1961(1)(A)'s one-year prison requirement runs afoul of the canon of construction "that the specific governs the general." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). That canon has special force where, as here,

---

[10] To the extent the government predicates its Travel Act claim on states besides New York, such as California, Connecticut, Florida, Michigan, Nevada, Ohio, Oregon, and Utah, it bears mentioning that none of the state statutes cited in the SAC references a prison term longer than one year. *See* SAC ¶ 231 & n.4 (listing statutes).

"Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (internal quotation marks omitted); *see also HCSC-Laundry v. United States*, 450 U.S. 1, 6 (1981) (the specific governs the general "particularly when the two are interrelated and closely positioned, both in fact being parts of [the same statutory scheme]"). Here, the forfeiture and money laundering claims against Lederer are based on the complicated statutory scheme Congress has set up to determine which "specified unlawful activities" can support the causes of action. When the government arrives at section 1961(1) by way of section 1956(c)(7) and 981(a)(1)(C), it is faced with a specific provision governing gambling offenses. That provision, section 1961(1)(A), dictates that only those state gambling offenses carrying more than a year of imprisonment can support a forfeiture or money laundering claim. In other words, Congress has decided that only state law gambling offenses rising to a certain level of seriousness can support what could be a lengthy federal prison sentence (or in this case a dramatic civil forfeiture and monetary penalty). The government cannot usurp Congress's authority by hunting for another provision in the same statute that allows it to bypass this important limitation. For this reason, the Travel Act claim cannot stand as pled.

Third, the rule of lenity requires that Lederer's interpretation of section 1961(1) be adopted. That statute's first two subsections, read together, create an ambiguity as to which gambling offenses constitute a "specified unlawful activity" on which the government may base a forfeiture or money laundering claim. Given the significant penalties that may flow from alleged violations of RICO predicates, "[t]he rule of lenity 'is especially appropriate in construing . . . predicate offenses under . . . 18 U.S.C. § 1961(1).'" *See DiCristina*, 2012 WL 3573895, at *25 (quoting *Skilling v. United States*, 130 S. Ct. 2896, 2932 (2010)).

2. The government has failed sufficiently to allege a Travel Act violation.

Even if the government were permitted to outmaneuver Congress by ignoring section 1961(1)(A)'s clear limitation on gambling offenses, the Travel Act claim still must fall. The

Travel Act makes it a crime to engage in any interstate or foreign travel, or to use any mail or facility in foreign or interstate travel, with the intent to "promote, manage, establish, carry on," "facilitate," or "distribute the proceeds of" any "unlawful activity." 18 U.S.C. § 1952(a)(1)(3). "Unlawful activity," in turn, is defined as extortion, bribery, arson, and "any business enterprise involving gambling . . . offenses in violation of the laws of the State in which they are committed or of the United States." 18 U.S.C. § 1952(b)(1). As Judge Weinstein noted in *DiCristina*, unlike IGBA, the Travel Act "does not mention poker or otherwise enumerate any specific games that constitute gambling." *Dicristina*, 2012 WL 3573895 at * 41. Accordingly, Travel Act prosecutions involving "poker-related activities" have concerned "violation[s] of state, rather than federal, gaming laws." *Id.* (citing *United States v. Izzi*, 385 F.2d 412 (7th Cir. 1967); *South v. United States*, 368 F.2d 202 (5th Cir.1966)).

To state a claim under the Travel Act, the government must allege two things. First, it must allege that the conduct at issue falls within the generic term "gambling" as used in the statute. *See United States v. Nardello*, 393 U.S. 286, 295-96 (1969) (discussing the generic term "extortion"). Second, the government must allege "the commission of or the intent to commit" the state law violation(s) at issue. *United States v. Bertman*, 686 F.2d 772, 774 (9th Cir. 1982). This is so because "[t]he Travel Act establishes only concurrent federal jurisdiction over what are already state or local crimes . . . . The federal government cannot usurp state authority via the Travel Act because a state must first decide that the conduct at issue is illegal." *United States v. Nader,* 542 F.3d 713, 721–22 (9th Cir. 2008).

The SAC meets neither requirement. For all of the reasons discussed above regarding IGBA, poker does ***not*** fall within the generic term "gambling." The handful of cases affirming Travel Act violations based on poker-related activities are decades old, not binding on this Court, lacked any rigorous analysis of the question, and were decided without the benefit of the voluminous expert testimony that led Judge Weinstein to conclude what every semi-serious poker player knows: poker is a game of skill.

Moreover, the government has failed to allege what specific acts FTP took in which states, how any such acts violated each state gaming law, and which property was derived from each alleged state law violation. This lack of specifics dooms the Travel Act claim under both Rule 8(a) and Supplemental Rule E(2)(a). Lederer cannot be expected to defend a claim amounting to nothing more than "FTP violated several different state gambling laws, up to and including every such law in the union, and therefore every dime Lederer earned from FTP, no matter which state (or even country) it came from, is forfeitable." The Travel Act claim must be dismissed.

V. CONCLUSION

The government's *in personam* civil money laundering claim against Lederer is premised on allegations that FTP operated in violation of IGBA and the Travel Act. Because these claims lack legal and factual support, the *in personam* claim against Lederer must be dismissed. The government has similarly failed to plead its First and Second *in rem* claims for relief against Lederer's bank accounts and property, and those claims must also be dismissed.

Dated: November 15, 2012

Respectfully submitted,

/s/ Elliot R. Peters

Elliot R. Peters
Cody S. Harris
KEKER & VAN NEST LLP
633 Battery Street
San Francisco, CA 94111-1809
415 391 5400 (Telephone)
415 397 7188 (Facsimile)
Email: epeters@kvn.com
Email: charris@kvn.com

Attorneys for Defendant and Claimant HOWARD LEDERER

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on November 15, 2012, I caused a true copy of the foregoing Memorandum of Law In Support of Defendant and Claimant Howard Lederer's Motion to Dismiss The Verified Second Amended Complaint's In Personam Civil Money Laundering Claim And First And Second In Rem Claims to be served by the Court's ECF system upon:

Jason H. Cowley
Michael D. Lockard
United States Attorneys Office
One Saint Andrew's Plaza
New York, NY 10007
Tel: (212) 637-1060
Fax: (212) 637-0421
Jason.Cowley@usdoj.gov
Michael.Lockard@usdoj.gov

/s/Elliot R. Peters
Elliot R. Peters