

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiffs,

- v. -

11-CV-2564(LBS)

POKERSTARS, et al.,

Defendants,

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

Defendants-In-Rem.

----- X

**CHRISTOPHER FERGUSON’S MEMORANDUM OF LAW JOINING
HOWARD LEDERER’S MEMORANDUM OF LAW IN SUPPORT OF
HIS MOTION TO DISMISS THE VERIFIED SECOND AMENDED COMPLAINT**

Christopher Ferguson joins in Howard Lederer’s Motion to Dismiss the Verified Second Amended Complaint (the “SAC”) and Mr. Lederer’s Memorandum in Support thereof for failure to state a claim under Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. The deficiencies in the SAC and the legal arguments asserted by Mr. Lederer, including the recent decision in *United States v. DiCristina*, No. 11-CR-414, 2012 WL3573895 (E.D.N.Y. Aug. 21, 2012), apply equally to Mr. Ferguson. The factual allegations against Mr. Ferguson are strikingly deficient.

The Government still fails to state a single specific allegation — new or otherwise — that could give rise to a claim against Mr. Ferguson or his *in rem* property. The sum total of the factual allegations in the SAC against Mr. Ferguson are: (1) he was a founder and member or chairman of the board of Full Tilt Poker (SAC ¶¶ 8, 30); and (2) he received distributions from

the company (in a significantly lesser amount than allocated to him in accordance with his ownership interest) (SAC. ¶¶ 115). Mr. Ferguson readily concedes these facts. Neither of them come close to establishing liability. Indeed, the Government's only real theory against Mr. Ferguson seems to be that he should be held strictly liable for the actions of a company in which he owned an interest and for which he served as a director. This is no theory at all.

As for allegations of specific wrongdoing by Mr. Ferguson, there are *none*. In 189 paragraphs of factual allegations, nowhere does the SAC allege that Mr. Ferguson made any misstatements to anyone, was involved in any scheme to defraud towards anyone, was involved in any wrongful conduct toward players, or any wrongful conduct involving payment processors. Nor does the SAC allege that Mr. Ferguson had any knowledge of the conduct regarding payment processing or the segregation of player funds of which the SAC makes much.

It is not enough to allege claims of purported wrongdoing against the company, and then say Mr. Ferguson was a director. It is not enough to allege claims of purported wrongdoing against the company, and then say Mr. Ferguson received distributions from the company. The company has settled. It is no longer a defendant. And, the allegations of the SAC, as to the *in personam* claims against Mr. Ferguson, do not come close to meeting the exacting pleading standards of Rule 9(b) of the Federal Rules of Civil Procedure or even the lesser standards of Rules (8) and 12(b)(6). *See Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009)

With respect to the *in rem* claims, Mr. Ferguson joins in the arguments asserted by Mr. Lederer.

For the reasons stated above and those presented in Howard Lederer's Memorandum of Law, the SAC as to Mr. Ferguson should be dismissed.

November 16, 2012

Respectfully submitted:

/ s/ Julie Withers

Jonathan Harris
Julie Withers
Harris, O'Brien, St. Laurent & Houghteling LLP
111 Broadway, Suite 1502
New York, New York 10006
Tel. (212) 397-3370
Fax (212) 202-6206
Jon@harrislawny.com

Ian J. Imrich
Law Offices of Ian J. Imrich, APC
10866 Wilshire Blvd., Suite 1240
Los Angeles, CA 90024

Attorneys for Christopher Ferguson