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OF ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 01 2009

John A. Clarke, Executive Officer/Clerk
By RUGENA LOPEZ, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 LARY KENNEDY, an individual, and GREG)
11 OMOTOY, an individual)

12 Plaintiffs,)

13 vs.)

14 FULL TILT POKER, an organization; CHRIS)
15 FERGUSON, an individual; HOWARD)
16 LEDERER, an individual; RAYMOND)
17 BITAR, an individual; PHILLIP GORDON, an)
18 individual; ANDY BLOCH, an individual;)
19 PHIL IVEY, an individual; PERRY)
20 FRIEDMAN, an individual; JOHN JUANDA,)
21 an individual; ERIK LINDGREN, an)
22 individual; ERIK SEIDEL, an individual;)
23 MICHAEL MATUSOW, an individual;)
24 ALLEN CUNNINGHAM, an individual; GUS)
25 HANSEN, an individual; PATRIK)
26 ANTONIUS, an individual; TILTWARE LLC,)
27 a California limited liability company; and)
28 DOES 1 through 60, inclusive,)

Defendants.)

Case No.

BC423036

COMPLAINT FOR:

- (1) FRAUD
- (2) RELIEF UNDER THE RACKETEER-INFLUENCED CORRUPT ORGANIZATIONS ACT ("RICO"), 18 U.S.C. § 1964 et seq;
- (3) RELIEF UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ.
- (4) UNJUST ENRICHMENT
- (5) LIBEL
- (6) SLANDER

23 Plaintiffs, Lary Kennedy and Greg Omotoy hereby allege as follows:

24 **THE PARTIES**

25 1. Plaintiff, LARY KENNEDY ("Kennedy"), is a professional poker player who
26 resides in the County of Los Angeles, State of California. Plaintiff, GREG OMOTOY
27 ("Omotoy"), resides in the County of Los Angeles, State of California.

1 2. Defendant CHRIS FERGUSON (“Ferguson”) is, and at all relevant times hereto
2 was, an individual residing in the County of Los Angeles, State of California.

3 3. HOWARD LEDERER (“Lederer”) is, and at all relevant times hereto was, an
4 individual residing in the County of Clark, State of Nevada. Lederer was convicted of illegal
5 bookmaking, i.e. sports wagering.

6 4. Defendant RAYMOND BITAR (“Bitar”) is, and at all relevant times hereto was,
7 an individual residing in the County of Los Angeles, State of California.

8 5. Defendant PHILLIP GORDON (“Gordon”) is, and at all relevant times hereto was,
9 an individual residing in the County of County of Clark, State of Nevada.

10 6. Defendant ANDY BLOCH (“Block”) is, and at all relevant times hereto was, an
11 individual residing in the County of Clark, State of Nevada.

12 7. Defendant PHIL IVEY (“Ivey”) is, and at all relevant times hereto was, an
13 individual residing in the County of Clark, State of Nevada.

14 8. Defendant PERRY FRIEDMAN (“Friedman”) is, and at all relevant times hereto
15 was, an individual residing in the County of Los Angeles, State of California.

16 9. Defendant JOHN JUANDA (“Juanda”) is, and at all relevant times hereto was, an
17 individual residing in the County of Clark, State of Nevada.

18 10. Defendant ERIK LINDGREN (“Lindgren”) is, and at all relevant times hereto was,
19 an individual residing in the County of Clark, State of Nevada.

20 11. Defendant ERIK SEIDEL (“Seidel”) is, and at all relevant times hereto was, an
21 individual residing in the County of Clark, State of Nevada.

22 12. Defendant MICHAEL MATUSOW (“Matusow”) is, and at all relevant times
23 hereto was, an individual residing in the County of Clark, State of Nevada.

24 13. Defendant ALLEN CUNNINGHAM (“Cunningham”) is, and at all relevant times
25 hereto was, an individual residing in the County of Clark, State of Nevada.

26 14. Defendant GUS HANSEN (“Hansen”) is, and at all relevant times hereto was, a
27 citizen of the Kingdom of Denmark.

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1 16. Defendant PATRIK ANTONIUS (“Antonius”) is, and at all relevant times hereto
2 was, a citizen of the Kingdom Denmark.

3 17. FULL TILT POKER (“Full Tilt”) is an organization which developed software for
4 an on-line poker room and robots to play in such rooms and operates an internet-based website
5 called Full Tilt Poker at the URLs www.Full Tilt poker.com and www.Full Tilt poker.net. It was
6 founded by Ferguson, Lederer, Bitar, Gordon, Block, Ivey, and Friedman (the “Founder
7 Defendants”) in 2003. Each of the Founder Defendants holds an interest in Full Tilt. Full Tilt
8 originally comprised two companies under the common control of the Founder Defendants,
9 Defendant TILTWARE, LLC, a California limited liability company with an address at 10866
10 Wilshire Blvd. 4th Floor, Los Angeles, CA 90024 (“Tiltware”), and Vert Enterprises, a company
11 ostensibly located in St. Kitts and Nevis. In fact Vert Enterprises had no independent existence
12 from Tiltware, and was operated from Los Angeles, California for more than two years. Lederer
13 and Bitar were ostensibly the head of Tiltware, and Ferguson, though playing no public role, was a
14 de facto if not de jure director and executive of Full Tilt. Of the Founder Defendants, all but
15 Lederer and Ivey have computer technology experience and all of them are professional or semi-
16 professional poker players. Of the Founder Defendants, all but Bitar are held out to be part of
17 “Team Full Tilt” or “Full Tilt Pros” who act as spokespersons and representatives of the business.

18 18. At some time after 2003 Defendants Lindgren, Seidel, Matusow, Cunningham,
19 Hansen and Antonius acquired interests in Full Tilt and began exercising common control of Full
20 Tilt with the Founder Defendants, all such Defendants being hereinafter referred to as the
21 “Individual Defendants”. The Full Tilt organization was expanded to include corporate entities in
22 addition to Tiltware and Vert; however the actual organizational rights and responsibilities are
23 unwritten and exercised in common among the Individual Defendants, with Lederer taking the
24 pre-eminent position.

25 19. Plaintiffs are informed and believe and on that basis allege that all Defendants
26 knowingly and willfully conspired to conduct the actions alleged herein. Each Defendant did the
27 acts and things herein alleged pursuant to, and in furtherance of, the conspiracy, or lent aid and
28 encouragement to the conspiracy.

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2 **COMMON ALLEGATIONS**

3 20. The Defendants operate the websites Full Tilt poker.com and Full Tilt poker.net.
4 These sites are ostensibly on-line poker rooms. An on-line poker room is a Internet-based version
5 of California cardrooms such as the Bicycle Casino and the Commerce Casino (both located in
6 Los Angeles County). At a cardroom players engage in poker and other cardgames against each
7 other, and the owner of the cardroom has no stake in the outcome, instead charging a fee to play
8 each hand.

9 21. To play at Full Tilt, a person signs up for an account with Full Tilt online and sends
10 money to a bank account, on-line payment system or credit card. The person appears to other
11 players as a two-dimensional “avatar” selected from a pool of stock images, and chooses a screen
12 name. There is no ostensibly “house” to play against; instead the Full Tilt takes a small amount
13 from each pot won by a player, called “rake”. On-line cardrooms are not illegal in California and
14 certain other American states, but unlicensed operation of a casino where the owner of the poker
15 room makes or pays out wagers is illegal in every American state.

16 22. Though Full Tilt represents that its business is not gambling and is a cardroom both
17 statements are false. Poker is considered a form of gambling in every American state, though
18 some states, like California, treat it differently from other kinds of gambling. Full Tilt has never
19 been a cardroom because the house, that it is to say the Full Tilt business, regularly plays. The
20 presence of the Full Tilt “house” is manifested in at least two different ways. First, the Individual
21 Defendants and certain other professional poker players sponsored by Full Tilt will play on the
22 site, utilizing the funds of Full Tilt as their stakes in the game. The appearances of the Individual
23 Defendants and the other professionals is in some cases open to other players and in some cases
24 not, however the fact that they play with Full Tilt’s money is completely hidden to players.

25 23. A second means by which Full Tilt takes a position in the games in which it
26 operates are through “robots” which are computer programs that play poker by interacting with an
27 on-line poker room in a manner similar to a human being. Ferguson and Bloch (graduates of
28 UCLA and MIT respectively) created poker robots to play on Full Tilt’s websites. The purpose of
the robots were twofold: first, they filled out virtual poker tables which were slow; second, the

1 which are transmitted through the United States interstate telephone communication system.

2 These statements, made and repeated from 2004 to date, include without limitation, the following:

- 3 a. Poker is a game of skill and is not deemed to be gambling under federal or state
4 law.
- 5 b. Full Tilt operates a cardroom where everyone plays for their own account,
6 including the Individual Defendants.
- 7 c. Full Tilt does not tolerate the operation of robots on its site.
- 8 d. The money of players deposited and won on Full Tilt is safe.
- 9 e. Full Tilt treats its customers fairly and consistently in accordance with the highest
10 standards of the poker community.

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12 28. Kennedy is a professional poker player specializing in “heads up” play, which is
13 poker played between two persons only. She was aware of the statement made in the immediately
14 preceding paragraph through some or all of the modes of communication specified above. She
15 reasonably relied on these representations and sent money to Full Tilt to fund her player account
16 and played on that site for many years.

17 29. In November, 2007, a poker player whom Full Tilt has favored with his own
18 personal virtual tables, “TheComplainer”, accused Kennedy’s avatar, “pokergirl_z”, of being a
19 “robot” in various on-line poker forums and discussion groups. “TheComplainer” player regularly
20 compiled and distributed large lists of player accounts he contended were robots.

21 30. Kennedy has never used a robot or computer program to assist her play. To prove
22 her skill, she has even used webcams to broadcast images of her playing live online.

23 31. The Individual Defendants and Full Tilt ignored this evidence and confiscated in
24 excess of \$80,000 in the Full Tilt accounts of Kennedy and/or Omotoy (whose account Kennedy
25 utilized after Omotoy abandoned the game) on or about January of 2008. Virtually all of such
26 funds were the property of Kennedy. From and after that time Full Tilt and the Individual
27 Defendants have publicly stated that Kennedy’s success as a player was due to her employing or
28 being assisted by a poker robot.

1 37. Full Tilt has conducted at least one Internet gambling transaction in violation of the
2 law of Illinois, Indiana, Louisiana, Massachusetts, Nevada, Oregon, South Dakota, New Jersey,
3 Nevada, Washington State, Missouri, Kentucky and Utah each year since 2004. As of the date of
4 this Complaint the state of Kentucky seeks to obtain control over Full Tilt's domain names for
5 violation of Kentucky anti-gambling law, accusations that Full Tilt has declined to contest in the
6 Kentucky state courts. In addition the United States has confiscated millions of dollars of funds
7 dispatched by Full Tilt to its customers in the United States.

8 38. Each of the actions identified in paragraphs 33 through 35 constitutes a
9 "racketeering activity" under 18 U.S.C. § 1961(1), and in aggregate they constitute a "pattern of
10 racketeering activity" under 18 U.S.C. § 1961(5). Full Tilt is an "enterprise" under 18 U.S.C. §
11 1961(4). Each of the Individual Defendants maintains an interest in and controls Full Tilt through
12 which they engage in the above referenced pattern of racketeering activity. Each of the Individual
13 Defendants participates in the conduct of Full Tilt's affairs through a pattern of racketeering
14 activities.

15 39. Plaintiffs have been injured by the pattern of racketeering activities conducted by
16 the Individual Defendants, who are jointly and severally liable to Plaintiffs for three times the
17 amount of economic losses arising from the pattern of racketeering activities plus attorney's fees.
18 These include not only out of pocket losses but also the income Kennedy would otherwise have
19 made playing in lawful poker venues.

20 40. The Individual Defendants conducted the pattern of racketeering activity alleged
21 above with malice and/or willful intent to deprive players, including Plaintiffs, of property rights,
22 legal rights and money. This despicable conduct subjected Plaintiffs to cruel and unjust hardship
23 in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive
24 damages.

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2 **THIRD CAUSE OF ACTION**

3 **VIOLATION OF BUSINESS AND PROFESSION CODE SECTION 17200, *et seq.***

4 (By Kennedy As Against the Individual Defendant, Full Tilt and Does 31-40)

5 41. Plaintiff Kennedy hereby incorporate by this reference paragraphs 1 through 25, 27
6 through 32, and 35 through 39 inclusive, as if set forth in full.

7 42. The conduct the Individual Defendants and Full Tilt was and will be unlawful
8 business acts or practices because they repetitively violated, *inter alia*, Penal Code §330, 18
9 U.S.C. § 1323, and 18 U.S.C. § 1962.

10 43. The conduct of the Individual Defendants and Full Tilt set forth above was and will
11 be a fraudulent business act or practice and deceptive or misleading advertisement because it was
12 likely to deceive members of the general public to induce them to play on Full Tilt's website and
13 send Full Tilt money.

14 44. In engaging in conduct that constitutes unfair competition and false advertising, the
15 Individual Defendants and Full Tilt have acquired money or property from members of the general
16 public who reside in California, including Kennedy.

17 45. It is impossible for Plaintiff Kennedy to determine the exact amount of money due
18 to the general public without a detailed review of the financial books and records of the Individual
19 Defendants and Full Tilt. Accordingly, Plaintiff Kennedy seeks, among other things, an
20 accounting of the Individual Defendants and Full Tilt and/or the appointment of a receiver over
21 Full Tilt.

22 46. The aforementioned business practices of the Individual Defendants and Full Tilt
23 are likely to continue and therefore will continue to violate the law and deceive the public.

24 47. The Individual Defendants and Full Tilt should be enjoined from conducting illegal
25 gambling enterprises in California and to California residents and should be required to restore all
26 money taken from players in California, including Plaintiff Kennedy.
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SIXTH CAUSE OF ACTION

SLANDER

(By Kennedy As Against Full Tilt and Does 51-60)

53. Kennedy hereby incorporates by this reference paragraphs 1 through 25, and 27 through 33, inclusive, as if set forth in full.

54. Executives, employees, and representatives of Full Tilt stated orally, and by mechanical or electronic means, to players and directly or indirectly to the general public in numerous circumstances that Kennedy’s account had been terminated due to her playing with or through a robot. This was a false statement made with knowledge of, or reckless disregard of, its truth or falsity. Because Kennedy is a professional poker player, this statement tended to directly injure Kennedy in her profession by imputing to her general disqualification in those respects which her occupation peculiarly requires, and imputed that Kennedy was dishonest and incapable of playing as well as she did, which imputation has a natural tendency to lessen the profits of her profession.

WHEREFORE, Plaintiffs Lary Kennedy and Greg Omoty respectfully demands the following relief:

On the First Cause of Action

1. Compensatory damages according to proof at trial;
2. An award of punitive or exemplary damages;
3. Reasonable costs incurred in this action;

On the Second Cause of Action

1. Compensatory damages according to proof at trial, tripled in accordance with 18 U.S.C. § 1964(c);
2. An award of punitive or exemplary damages;

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3. Reasonable costs incurred in this action, including reasonable attorney fees pursuant to 18 U.S.C. § 1964(c);

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On the Third Cause of Action

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1. For preliminary and permanent injunctive relief pursuant to Business & Professions Code Section 17203 and restraining and enjoining the Individual Defendants and Full Tilt from continuing the violations acts of illegal, unfair, or fraudulent competition or advertising set forth above and requiring the Individual Defendants and Full Tilt to take any acts needed to prevent further violations;
 2. For an order requiring the Individual Defendants and Full Tilt to provide an accounting of all moneys which they may have received from identifiable victims in California as a result of the acts and practices found to constitute unfair competition under Business and Professions Code Section 17200 *et seq.*;
 3. For an order that Full Tilt and the Individual Defendants make restitution by restoring to identifiable victims all funds acquired by the acts of unfair competition set forth above, including payments acquired by defendants from players on Full Tilt's website, and all additional orders necessary to accomplish this purpose, pursuant to Business and Professions Code Section 17203;
 5. Reasonable costs incurred in this action, including reasonable attorney fees pursuant to Code of Civil Procedure Section 1021.5 and/or as an equitable private attorney general and prejudgment interest;

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On the Fourth Cause of Action

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1. Restitution of all amounts confiscated by Full Tilt, in an amount according to proof.
 2. Reasonable costs incurred in this action;

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On the Fifth Cause of Action

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1. As to Kennedy only, General Damages in an amount to be determined at trial
 2. As to Kennedy only, an award of punitive or exemplary damages;

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3. Reasonable costs incurred in this action, including reasonable attorney fees under the law;

On the Sixth Cause of Action

1. As to Kennedy only, General Damages in an amount to be determined at trial
2. As to Kennedy only, an award of punitive or exemplary damages;
3. Reasonable costs incurred in this action, including reasonable attorney fees under the law;

As to All Causes of Action

1. For costs of suit incurred herein;
2. For such other and further relief as the Court deems just and proper.

Dated: **Oct 1**, 2009

By: 
CYRUS SANAI
Attorney for Plaintiffs