

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____ X

UNITED STATES OF AMERICA

S3 10 Cr. 336 (LAK)

v.

ECF Case

JOHN CAMPOS, et al.

Defendants.

_____ X

**DEFENDANT JOHN CAMPOS'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS THE INDICTMENT**

HAFETZ NECHELES & ROCCO
Frederick P. Hafetz (FH 1219)
Kathleen E. Cassidy (KC 0630)
500 Fifth Avenue
New York, NY 10110
(212) 997-7595

CLYDE SNOW & SESSIONS
Neil A. Kaplan
Anneli R. Smith
201 South Main Street, Suite 1300
Salt Lake City, UT 84111
(801) 322-2516

Attorneys for Defendant John Campos

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I. INTRODUCTION

John Campos, who was the Vice Chairman of the Board of Directors of a Utah bank that processed financial transactions for online poker players, is charged with conspiracy to violate and violations of the Unlawful Internet Gambling Enforcement Act (“UIGEA”), 31 U.S.C. § 5363, violations of the Illegal Gambling Businesses Act (“IGBA”), 18 U.S.C. § 1955, and money laundering based on violations of IGBA, 18 U.S.C. § 1956(h). All of these charges must be dismissed.

The UIGEA charges must be dismissed because they ignore the clear exemption from prosecution set forth in UIGEA for financial transaction providers such as Mr. Campos. Additionally, the UIGEA counts must be dismissed because they fail to allege any person who as a matter of law can constitute the person “engaged in the business of betting or wagering” required by the statute.

The IGBA charges (and the money laundering charges based on them) must also be dismissed because two basic elements of the statute are not sufficiently alleged in the Indictment: that the companies in question were “gambling businesses” and that the businesses were “conducted” in a State or political subdivision of the United States.

Further, both the UIGEA and IGBA charges must be dismissed as unconstitutionally vague as applied to Mr. Campos. Moreover, criminal prosecution of the conduct alleged here would violate the rule of lenity.

II. OVERVIEW OF INDICTMENT AS IT RELATES TO MR. CAMPOS

John Campos, formerly the Vice Chairman of the Board of Directors of SunFirst Bank in St. George, Utah, was indicted along with ten other individuals in a nine-count superseding

indictment.¹ The charges relate to Internet poker and involve the operations of three different companies that host online poker games: PokerStars, Full Tilt Poker (“Full Tilt”), and Absolute Poker.

Each of these foreign companies maintained a website through which poker players could play against each other at virtual poker tables. The poker games hosted by these companies were not house-banked games in which players competed against a casino or bookmaker. Rather, the poker games at issue here were peer-to-peer games in which the players competed against each other. The poker companies did not participate in the games, and had no risk or stake in the outcome of the games. Instead, the companies provided virtual facilities for the games, and collected, in exchange, a fee for each hand played, called the “rake.” Ind. ¶ 3. Although the poker companies were always based outside of the United States and, in fact, had no presence in the United States, the Indictment alleges that their Internet operations violated federal gambling laws because the sites permitted United States customers to access and use their websites to play real-money poker games. Ind. ¶¶ 4-6, 15. It further alleges that in order to provide access to real-money poker play to the United States-based players, the poker companies caused third parties to open bank accounts at United States banks to enable processing of payments to and from United States customers. Ind. ¶¶ 23-31.

The eleven defendants charged in the case fall into four categories: owners or employees of the three foreign Internet poker companies (Scheinberg, Bitar, Tom, Beckley, Burtnick, and Tate), intermediaries between the poker companies and payment processors (Lang and Franzen), payment processors who allegedly arranged for banks to process payments for the poker

¹ Although the case is nominally a continuation of an indictment previously returned against a defendant named Daniel Tzvetkoff, the superseding indictment unsealed on April 16, 2011 (the “Indictment” or “Ind.”) was the first time criminal charges were filed against Mr. Campos and the ten other individuals referenced herein.

companies (Rubin and Elie), and, finally, Mr. Campos, the lone banker charged in the case. The Indictment alleges that the bank for which Mr. Campos served on the Board of Directors processed payments for PokerStars and Full Tilt through accounts set up at the bank by third party processors. Ind. ¶ 13.

Mr. Campos is charged in six counts of the nine-count Indictment: Count One, conspiracy to violate UIGEA; Counts Two and Three, violations of UIGEA involving PokerStars and Full Tilt, respectively;² Counts Five and Six, operating an illegal gambling business involving PokerStars and Full Tilt, respectively; and Count Nine, the money laundering conspiracy. Mr. Campos is not charged in the bank fraud conspiracy, Count Eight.

A. The UIGEA Counts (Counts One Through Three)

UIGEA prohibits “person[s] engaged in the business of betting or wagering” from knowingly accepting certain types of payments in connection with unlawful Internet gambling, as defined by federal and state law. UIGEA itself does not criminalize Internet gambling; instead, it criminalizes the receipt of funds by certain defined persons in connection with Internet gambling that is already unlawful under other federal or state laws. *See* 31 U.S.C. §§ 5361(b), 5362(10), 5363.

The UIGEA counts charge that the defendants were persons “engaged in the business of betting or wagering” who knowingly accepted payments in connection with unlawful Internet gambling, or persons who conspired with, or aided and abetted, such persons. Ind. ¶¶ 32, 33, 36, 38. Specifically, the Indictment alleges that Mr. Campos, acting on behalf of SunFirst Bank, arranged for SunFirst Bank to process payments for PokerStars and Full Tilt, and that SunFirst

² Counts Four and Seven charge violations involving Absolute Poker. Mr. Campos is not charged in those counts.

Bank indeed processed such payments from December 2009 until November 2010. Ind. ¶¶ 13, 30-31.

Of the thirty-four paragraphs in Count One, the UIGEA conspiracy count, two-thirds relate to the bank fraud scheme in which Mr. Campos was not alleged to be a participant. The bank fraud scheme allegedly involved the poker companies and third party payment processors attempting to deceive banks and credit card companies into processing poker payments. Significantly, Count One acknowledges that in late 2009 (when third party payment processing began at SunFirst Bank) disclosure was made to SunFirst that it would be processing payments for Internet poker. According to the Indictment, SunFirst's involvement was part of a new strategy by the poker companies to implement processing "that did not involve lies to banks" and to process payments "transparently," that is, without defrauding banks. Ind. ¶¶ 27-30.

B. Operating An Illegal Gambling Business (Counts Five and Six)

Mr. Campos is charged in two counts alleging the operation of an illegal gambling business in violation of 18 U.S.C. § 1955 in connection with two poker companies: PokerStars and Full Tilt. These two counts allege that Mr. Campos and the other defendants "did conduct, finance, manage, supervise, direct and own all and part of an illegal gambling business, namely a business that engaged in and facilitated online poker, in violation of New York State Penal Law Sections 225.00 and 225.05 and the law of other states in which the business operated." Ind. ¶¶ 42, 44.

C. Money Laundering Conspiracy (Count Nine)

All defendants are charged in a money laundering conspiracy to violate 18 U.S.C. § 1956 (a)(2)(A) and § 1957(a). The money laundering conspiracy charge is based on the alleged specified unlawful activity of operating an illegal gambling business, under 18 U.S.C. § 1955. Ind. ¶¶ 53-54.

ARGUMENT

III. THE UIGEA COUNTS AGAINST MR. CAMPOS SHOULD BE DISMISSED.

Mr. Campos moves to dismiss the conspiracy and substantive UIGEA counts, Counts One to Three, on four grounds. First, under the UIGEA statute, a “financial transaction provider” such as SunFirst Bank on whose behalf Mr. Campos acted as a director and agent is expressly exempt from criminal prosecution. Second, the poker companies were not “engaged in the business of betting or wagering” as required under the statute and the UIGEA counts are therefore legally insufficient on their face. Third, the statute’s application to poker as a “game subject to chance” is unconstitutionally vague. *See infra* Section V. Fourth, under the rule of lenity any uncertainty regarding the scope of UIGEA must be resolved in the defendant’s favor. *See infra* Section VI.

A. Mr. Campos Is Exempt From Prosecution Under UIGEA As A Financial Transaction Provider.

UIGEA imposes criminal liability only on persons “engaged in the business of betting or wagering,” and expressly states that “financial transaction providers” are not “engaged in the business of betting or wagering.” Instead, Congress simultaneously adopted a civil regulatory regime to govern “financial transaction providers,” thereby eschewing criminal liability under UIGEA for financial transaction providers such as SunFirst Bank and consequently, agents of financial transaction providers like Mr. Campos.

1. There Is A Clear Exemption From Criminal Liability For Financial Transaction Providers.

Enacted in 2006, UIGEA consists of seven sections, 31 U.S.C. §§ 5361 through 5367, including a provision setting forth criminal liability (§ 5363), a provision directing the promulgation of non-criminal regulation of financial transaction providers (§ 5364), and a detailed section defining terms used in UIGEA (§ 5362).

Under UIGEA's criminal prohibition, "[n]o person *engaged in the business of betting or wagering* may knowingly accept, in connection with the participation of another person in unlawful Internet gambling" payment by certain types of financial transactions. 31 U.S.C. § 5363 (emphasis added). The statute's definition section explains that "the term 'business of betting or wagering' does not include the activities of a financial transaction provider," § 5362(2), thus plainly excluding "financial transaction providers" from the reach of criminal prosecution under UIGEA. The term "financial transaction provider" is defined in § 5362(4) to mean:

a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

The term "financial institution," in turn, "has the meaning given the term in section 903 of the Electronic Fund Transfer Act," where it is defined to mean "a state or National bank." § 5362(11)(C); 15 U.S.C. §1693a(8).

As is plain on the face of the indictment, SunFirst Bank is a "financial transaction provider" under UIGEA's definition of that term. SunFirst is a Utah State Bank, thus falling under the definition of "financial transaction provider" in § 5362(4).³ The Indictment also recognizes that SunFirst Bank is a financial transaction provider, alleging that SunFirst Bank is a "small, private bank based in Saint George, Utah" and that the bank's role in the alleged offenses was "process[ing] payments for PokerStars and Full Tilt Poker." Ind. ¶¶ 13, 30-31. As a

³ SunFirst is also a "participant in a designated payment system" as that term is defined in § 5362(3).

financial transaction provider, SunFirst Bank's actions were accordingly not subject to prosecution under UIGEA.⁴

The definition of "bet or wager" under § 5362(1) further demonstrates that financial transaction providers are exempt from criminal liability under UIGEA. That subsection excludes from the definition of "bet or wager" "any deposit or other transaction with an insured depository institution." § 5362(1)(E)(vii). SunFirst Bank is an insured depository institution subject to the authority of the FDIC. The Indictment acknowledges the FDIC's authority over SunFirst. Ind. ¶ 31 (alleging that SunFirst ceased processing on November 9, 2010 "at the direction of the FDIC").

In sum, as stated by the Third Circuit in *Interactive Media Entertainment and Gaming Association ("iMEGA") v. Attorney General*:

The phrase "business of betting or wagering" does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service. 31 U.S.C. § 5362(2). Thus, *the criminal prohibition contained in § 5363 of the Act applies only to gambling-related businesses, not any financial intermediary or Internet-service provider whose services are used in connection with an unlawful bet.*

580 F.3d 113, 114 n.1 (3d Cir. 2009) (emphasis added).

UIGEA's structure also demonstrates that Congress rejected criminal liability for financial transaction providers in favor of a purely civil regulatory scheme requiring financial transaction providers like banks to make efforts to identify and block money derived from unlawful Internet gambling from being sent to gambling businesses.

⁴ Notwithstanding the clear exemption in § 5362(2), there are certain very limited circumstances in which a bank could be criminally liable under UIGEA. Section 5367, entitled "[c]ircumventions prohibited," addresses a situation in which an unlawful Internet gambling business attempts to circumvent the criminal prohibition in § 5363 by also acting as a financial transaction provider. Here, there is no allegation (nor could there be) that SunFirst came within those criteria.

Recognizing that banks and other financial transaction providers are often the intermediaries for unlawful payments to gambling businesses, Congress established the regulatory scheme set forth in § 5364, which provides that the Secretary of the Treasury and the Board of Governors of the Federal Reserve, in consultation with the Attorney General, shall prescribe regulations “requiring each designated payment system,⁵ and all participants therein, to identify and block or otherwise prevent or prohibit restricted transactions⁶ through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions” A financial transaction provider is considered to be in compliance with UIGEA if it relies on and complies with the policies of its “designated payment system” (as long as those policies comply with the requirements set forth in the statute). § 5364(c).

Pursuant to these provisions, the relevant regulatory authorities adopted an elaborate set of regulations requiring financial transaction providers and payment systems to adopt policies and procedures designed to prevent the transactions targeted by § 5363. *See* 31 C.F.R. §§ 132.1 - 132.7 (2010). While UIGEA was enacted in October 2006, financial transaction providers, like SunFirst Bank, were not required to comply with the final regulations until June 1, 2010. *See* 74 Fed. Reg. 62,687 (Dec. 1, 2009) (extending compliance date to June 1, 2010).

The regulatory scheme set forth in Section 5364 and the regulations implemented pursuant thereto reinforce that Congress intended to deal with financial transaction providers

⁵ A “designated payment system” is defined in UIGEA as “any system utilized by a financial transaction provider that the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, jointly determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.” § 5362(3).

⁶ The statute defines “restricted transaction” to mean “any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of section 5363 which the recipient [i.e. the person engaged in the business of betting or wagering] is prohibited from accepting under section 5363.” § 5362(7).

such as SunFirst Bank through a different enforcement mechanism than the one it chose for persons “engaged in the business of betting or wagering.”

2. The Exemption For Financial Transaction Providers Bars Prosecution Of Their Agents Under Theories Of Aiding And Abetting Or Conspiracy Liability.

The UIGEA counts of the Indictment charge Mr. Campos, in his capacity as an agent of SunFirst Bank, as a person who conspired with, or aided and abetted, persons “engaged in the business of betting or wagering.” The government may not circumvent Congress’s affirmative legislative decision to exempt financial transaction providers from criminal liability by charging Mr. Campos, an agent of an exempt financial transaction provider, with conspiring to violate UIGEA or aiding and abetting UIGEA violations allegedly committed by another person. Applying the law of conspiracy and aiding and abetting in such a manner would undermine Congress’s decision to exempt financial transaction providers in the first place.

Where there is clear evidence of an affirmative legislative policy, as there is here, to treat one participant in a transaction differently than others, there is a well-settled exception to the general applicability of aiding and abetting liability under 18 U.S.C. § 2 and conspiracy liability under 18 U.S.C. § 371. In *Gebardi v. United States*, 287 U.S. 112, 53 S. Ct. 35 (1932), for example, the Supreme Court reversed the Mann Act conspiracy conviction of a woman who agreed to be transported across state lines for immoral purposes. The Court held that the statute’s failure to criminalize the woman’s agreement demonstrated “an affirmative legislative policy to leave her acquiescence unpunished.” *Id.* at 123, 53 S. Ct. at 38. The Court reasoned that “[i]t would contravene that policy to hold that the very passage of the Mann Act effected a withdrawal by the conspiracy statute of that immunity which the Mann Act itself confers.” *Id.*

Gebardi remains good law, and in fact, the scope of its holding has been extended. The Supreme Court recently reaffirmed the *Gebardi* rule, holding that drug buyers do not “facilitate”

the actions of drug sellers because “where a statute treats one side of a bilateral transaction more leniently, adding to the penalty of the party on that side for facilitating the action by the other would upend the calibration of punishment set by the legislature.” *Abuelhawa v. United States*, 129 S. Ct. 2102, 2106 (2009).

The Second Circuit likewise applied *Gebardi* in *United States v. Amen*, 831 F.2d 373 (2d Cir. 1987) to hold that the government cannot use the aiding and abetting statute to circumvent Congress’s choice of which participant in an enterprise to hold criminally liable. In *Amen*, the court considered whether a defendant could be prosecuted for aiding and abetting a violator of the continuing criminal enterprise statute, 21 U.S.C. § 848. Noting that the statute had been passed in order “to target the ringleaders of large-scale narcotics operations,” the court recognized that applying aider and abettor liability to people other than the ringleaders would be inconsistent with Congress’s intent. *Amen*, 831 F.2d at 381. Citing *Gebardi*, the court reasoned that “[w]hen Congress assigns guilt to only one type of participant in a transaction, it intends to leave the others unpunished for the offense.” *Id.* Thus, even though the continuing criminal enterprise statute contained no express exemption from aiding and abetting liability for subordinates in such an enterprise, the court refused to find the defendant liable.

Similarly, in *United States v. Castle*, 925 F.2d 831 (5th Cir. 1991), the Fifth Circuit applied *Gebardi* to affirm the dismissal of a charge of conspiracy to violate the Foreign Corrupt Practices Act (“FCPA”) against a foreign official who received a bribe. The court reasoned that it would have been obvious to Congress when it enacted the FCPA that every transaction prohibited by the act would involve not only an offer of a bribe, but also an agreement on the part of a foreign official to receive the bribe. *Id.* at 835. But the statute did not set forth any

penalties for foreign officials, and the court held that this silence manifested an intent to exempt the foreign official recipients from prosecution as conspirators. *Id.*

The *Gebardi* principle applies here, but with even greater force in light of UIGEA's explicit exemption for financial transaction providers. In enacting UIGEA, Congress carefully calibrated how to treat the different participants in the "restricted transactions" UIGEA is intended to curtail. Congress's awareness that financial transaction providers would participate in these transactions is evident – indeed, the entire enforcement scheme contemplates that gambling businesses will contract with financial transaction providers to reach their customers. *See, e.g.*, 31 U.S.C. § 5361 (Congressional findings and purpose: "(1) Internet gambling is primarily funded through personal use of payment system instruments, credit cards, and wire transfers."); 31 U.S.C. § 5363 (prohibiting persons engaged in the business of betting or wagering from accepting various financial instruments in connection with the participation of another person in unlawful Internet gambling). Nevertheless, Congress affirmatively excluded financial transaction providers from UIGEA's criminal liability provision and instead enacted a separate regulatory regime to govern their actions.

Given Congress's careful delineation of criminal liability for persons "engaged in the business of betting or wagering," but not for financial transaction providers who service such persons, it would be "unseemly and unwise for the courts and the Executive Branch to bring in through the back door a criminal liability so plainly and facially eschewed in the statute creating the offense." *United States v. Shear*, 962 F.2d 488, 496 (5th Cir. 1992) (rejecting notion that employee could aid and abet employer's criminal OSHA violation where Congress had carefully balanced the respective standards for employers and employees). The government cannot

sidestep the plain exemption for financial transaction providers by charging Mr. Campos as a conspirator or aider and abettor.

Nor does the fact the Indictment charges Mr. Campos, and not SunFirst Bank, save the government's UIGEA counts. Financial transaction providers, as defined in the statute, are entities including banks that can act only through their agents. An individual acting in a representative capacity for an entity "assume[s] the rights, duties and privileges of the artificial entity or association of which [he is an] agent[] or officer[] and [he is] bound by its obligations." *See United States v. White*, 322 U.S. 694, 699, 64 S. Ct. 1248, 1251 (1944). Imposing criminal liability on the bank's agents while exempting the bank itself from criminal liability would be nonsensical, and, like applying conspiracy or aiding and abetting liability in this instance, would "bring in through the back door" the liability "so plainly and facially eschewed in the statute." *Shear*, 962 F.2d at 496.

In sum, the UIGEA counts – Counts One through Three – must be dismissed as to Mr. Campos because the activities of SunFirst Bank as a financial transaction provider and Mr. Campos's acts on behalf of SunFirst are exempt from criminal liability.

B. The UIGEA Counts Fail To Allege Any Person Legally Sufficient To Constitute A Person "Engaged In The Business Of Betting Or Wagering."

Even if UIGEA had not expressly exempted financial transaction providers such as SunFirst Bank, and thus Mr. Campos, from criminal liability, dismissal of the UIGEA counts would be warranted because the allegations that the poker companies here were "engaged in the business of betting or wagering" are insufficient as a matter of law to satisfy that element of UIGEA. To be "engaged in the business of betting or wagering" requires that the business has a stake in the outcome of gambling contests, and the Indictment here fails to allege that the poker companies had any such stake.

Section 5362(1)(A) states that the term “bet or wager” “means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.” The Indictment contains no allegation that the poker companies “stak[ed] or risk[ed] . . . something of value upon the outcome” of the poker games played on their sites. Indeed, the Indictment alleges that the poker companies received a fee or “rake” from every hand, not any amount that was dependent upon the outcome of the games. Ind. ¶ 3. Therefore, the six defendants alleged to be the owners or employees of the poker companies and the poker companies themselves cannot be “persons engaged in the business of betting or wagering.”⁷ The Indictment thus fails to allege an essential element of a UIGEA criminal violation.

There is clear case law supporting this construction of UIGEA in the context of the Wire Act, 18 U.S.C. § 1084, another federal statute that proscribes activity related to the “business of betting or wagering.” The meaning of this phrase in the Wire Act context is, of course, highly relevant to its meaning in UIGEA because “when Congress uses the same language in two statutes having similar purposes . . . it is appropriate to presume that Congress intended that text to have the same meaning in both statutes.” *Smith v. City of Jackson*, 544 U.S. 228, 233, 125 S. Ct. 1536, 1541 (2005).

Courts considering the phrase “business of betting or wagering” in the Wire Act have concluded that it is limited to “a professional gambling or bookmaking business,” in other words, where the business itself accepts risks based on the outcome of contests or events. *Pic-A-State*

⁷ Likewise, the third party payment processors did not stake or risk anything on the poker games. Further, transactions with SunFirst Bank, as an insured depository institution, are not included as a “bet or wager” under 31 U.S.C. § 5362(E)(vii), and, as already noted, its activities as a financial transaction provider are excluded from the “business of betting or wagering” under 31 U.S.C. § 5362(2).

PA., Inc v. Pennsylvania, 1993 WL 325539, at *3 (M.D. Pa. Jul. 23, 1993), *rev'd on other grounds*, 42 F.3d 175 (3d Cir. 1994). In *Pic-A-State*, the court held that retail outlets which sold out-of-state lottery tickets in exchange for a fee per ticket were not in the “business of betting or wagering” because they “set no odds, accept[ed] no wagers and distribut[ed] no risks.” *Id.* As stated in *Pic-A-State*, “[c]ourts considering the phrase ‘business of betting or wagering’ appear to have universally concluded that it involves a professional gambling or bookmaking business.” *Id.* See also *United States v. Alpirn*, 307 F. Supp. 452, 454-55 (S.D.N.Y. 1969) (“turf advisor” who provided clients with predictions about horse races was not engaged in the business of betting or wagering because he was not himself making or accepting bets, did not share in losses, and thus his arrangement with his clients was not a betting or wagering contract as that term is normally understood).

Since the poker companies in this case wagered nothing and staked no risk on the outcome of the poker contests among the players, but merely provided a service for a fee, they were not “in the business of betting or wagering.” The distinction between the poker companies in this case and websites that offer casino-style games and sports betting is stark. Online operators of casino-style games like roulette and slots are playing against their own patrons. Likewise, sports betting websites are also on the opposite side of their customers’ bets. Those operators make profits from their own customers’ losses. Such websites necessarily structure their games to give the “house” an edge in accepting bets against their customers. In contrast, in player-versus-player online poker, the website operator is not a party to the game and has no stake in the outcome of the game. It only provides the players (in exchange for a fee) with a platform (i.e., the virtual table) that they can use for playing among themselves. Accordingly, the allegations in the UIGEA counts that the poker companies were engaged in the “business of

betting and wagering” fail to satisfy a basic element of § 5363, and the UIGEA counts must be dismissed.

IV. THE IGBA COUNTS SHOULD BE DISMISSED.

Counts Five and Six charge Mr. Campos with violating the Illegal Gambling Businesses Act (“IGBA”), 18 U.S.C. §§ 1955 & 2. Those counts allege, in part, that the defendants, including Mr. Campos, presumably on a theory of aiding and abetting, “did conduct, finance, manage, supervise, direct, and own all and part of an illegal gambling business,” namely, PokerStars and Full Tilt.

The Court should dismiss these Counts for four independent reasons. First, online poker does not constitute “gambling,” as that term is used in IGBA. Second, the online poker companies are not businesses “conducted” in New York or any other State or political subdivision, as required by IGBA. Third, IGBA is unconstitutionally vague as applied to the defendants’ conduct. *See infra* Section V. Fourth, under the rule of lenity any uncertainty regarding the scope of IGBA should be resolved in favor of the defendant.⁸ *See infra* Section VI.

A. Statutory Framework

IGBA provides, in relevant part, that “[w]hoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.” 18 U.S.C. § 1955(a). The statute, in turn, provides that an “illegal gambling business” is “a gambling business,” which, *inter alia*, “is a violation of the law of a State or political subdivision in which it is conducted.” § 1955(b)(1).

⁸ It is, of course, well-settled that before Mr. Campos could be found guilty of aiding and abetting a violation of IGBA, a violation of IGBA must exist. *See United States v. Perry*, 643 F.2d 38, 46 (2d Cir. 1981).

As defined in IGBA, “‘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.” § 1955(b)(2). Thus, in order to violate IGBA, a business must meet several requirements, two of which are critical here. First, the business must be a “gambling business.” Second, the business must be “a violation of the law of a State or political subdivision in which it is conducted.” Because neither of these requirements is met, the IGBA charges must be dismissed.

B. The Poker Companies Are Not A “Gambling Business” Because Poker Is Not “Gambling” Under IGBA.

PokerStars and Full Tilt are not “illegal gambling businesses” under IGBA because they are not “gambling businesses” at all. Section 1955(b)(2) lists nine activities regarded as “gambling” – that list does not include poker, or indeed any other card game. Nor does poker share any of the characteristics common to the enumerated games.

It is a basic canon of statutory construction that “where 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.” *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 401 (2d Cir. 2008) (invoking canon of *eiusdem generis*) (internal citations and quotation marks omitted). *See also S.D. Warren Co. v. Maine Bd. of Env’tl Protection*, 547 U.S. 370, 378, 126 S. Ct. 1843, 1845 (2006) (invoking related canon of statutory interpretation, *noscitur a sociis*, that “a word is known by the company it keeps” – “a string of statutory terms raises the implication that the words grouped in a list should be given related meaning”) (internal citations and quotation marks omitted).

Here, all of the games enumerated in § 1955(b)(2) share at least two key features: (1) they are all lottery or house-banked games in which the house plays against its customers;

and (2) they are all games in which the bettor has no role in, or control over, the outcome. These common traits restrict the scope of the definition of “gambling” to games that are similar in kind to the enumerated games.

The nine gambling activities listed in (b)(2) are described below:

- *Pool-selling* is the selling or distribution of chances in a betting pool⁹—*i.e.*, “[a] gambling scheme in which numerous persons contribute stakes for betting on a particular event (such as a sporting event).”¹⁰ Players cannot affect the game’s outcome, so pool-selling is a game of chance.¹¹
- *Bookmaking* is “[g]ambling that entails the taking and recording of bets on an event, such as a horse race.”¹² Bookmaking is a game of chance, because the bettors have no way of affecting the outcome of events.¹³ The bookmaker fixes the odds and the stakes, and bets against his customers.¹⁴
- *Slot machines* are coin-operated mechanical or electronic devices that pay off when random, individually selected symbols match one another on the machine’s display. Otherwise, the bet goes to the house. Slots are house-banked, thus games of chance.¹⁵
- *Roulette* is a game in which players bet whether a ball, spun along a revolving wheel, will land on a certain color or a certain number. Players make their wagers against the house—hence roulette is a house-banked game—and the outcome is determined purely by the chance that the ball lands on the wagered number or color.¹⁶

⁹ Webster’s New International Dictionary 1764 (3d ed. 1971).

¹⁰ Black’s Law Dictionary 1181 (8th ed. 2004).

¹¹ See, e.g., *Nat’l Football League v. Governor of State of Del.*, 435 F. Supp. 1372, 1385–86 (D. Del. 1977) (“chance rather than skill is dominant factor” in betting pool).

¹² Black’s Law Dictionary 194 (8th ed. 2004).

¹³ See *Bayer v. Johnson*, 349 N.W.2d 447, 449 (S.D. 1984) (“The outcome of . . . events [in a bookmaking scheme] in no way depends upon the skill of the bettors. The wagering is therefore a contest in which chance predominates over skill.”).

¹⁴ See *id.*

¹⁵ See, e.g., *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1104 & n.12 (9th Cir. 2003) (quoting K. Alexa Koenig, *Gambling on Proposition 1A: The California Indian Self Reliance Amendment*, 36 U.S.F. L. Rev. 1033, 1041 n.65 (2002)) (“Las Vegas-style slot machines offer “house-banked” games, which enable the house to collect players’ losses.”); *Brock v. Claridge Hotel & Casino*, 711 F. Supp. 779, 780 (D.N.J. 1989) (describing slot machines and blackjack as games of chance).

¹⁶ Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/roulette> (last visited Sept. 27, 2011) (Roulette is “a gambling game in which players bet on which compartment of a revolving wheel a small ball will come to rest in.”).

- *Dice tables* are house-banked games in which players throw dice, usually in pairs, and make wagers against the house, based on the outcome of the throw, and thus they are also games of chance.¹⁷
- *Lotteries* are “[a] method of raising revenues, esp[ecially] state-government revenues, by selling tickets and giving prizes . . . to those who hold tickets with winning numbers that are drawn at random.”¹⁸ Lottery participants cannot affect the outcome.¹⁹ Because the house keeps any bet that does not pay out, a lottery is a house-banked game.
- *Numbers games* are essentially lotteries. In a numbers game, players wager that on a certain day, a chosen series of numbers will occur in some event to which the numbers game is pegged, for example, the payoff totals of a day’s horse race. The house guarantees the payoffs to any winners, and “[i]n such a game neither the number of winning players nor the total amount of the payoffs can be predicted in any one day.”²⁰
- *Bolita* is a form of lottery “in which one attempts to guess a variably determined 2-digit number,”²¹ sometimes derived by drawing numbered balls from a hopper,²² or somehow tied to the results of the state lottery. Because the numbers are “variably determined,” bolita constitutes a game of chance.²³ Bolita is a house-banked game because it is a form of lottery.
- *Policy* is similar to bolita or a numbers game, but differs in the method of determining the winning sequence or combination of digits. “In policy, [the winning sequence] is ascertained by the drawing *at random* from a wheel in which tags, each bearing one of the possible combinations of numbers that can be played, have been placed.”²⁴ Policy is thus a game of chance²⁵ and a house-banked game.

¹⁷ See, e.g., *Kansas City v. Caresio*, 447 S.W.2d 535, 537 (Mo. 1969) (finding that dice game was “game of chance” under local ordinances).

¹⁸ Black’s Law Dictionary 966 (8th ed. 2004).

¹⁹ See, e.g., *Womack v. Comm’r of IRS*, 510 F.3d 1295, 1306 (11th Cir. 2007) (describing lottery as “game of chance”); *State ex rel. Kellogg v. Kan. Mercantile Ass’n*, 25 P. 984, 985 (Kan. 1891) (holding that plan for allocation of prizes “by chance” is a lottery).

²⁰ *United States v. Baker*, 364 F.2d 107, 112 (3d Cir. 1966).

²¹ Webster’s New International Dictionary 248 (3d ed. 1971).

²² See, e.g., *United States v. Spino*, 345 F.2d 372, 373 (7th Cir. 1965).

²³ See, e.g., *Santos v. United States*, 461 F.3d 886, 888 (7th Cir. 2006) (describing “bolita” as lottery), *aff’d*, 553 U.S. 507, 128 S. Ct. 2020 (2008); *United States v. Febus*, 218 F.3d 784, 788 (7th Cir. 2000) (same); *Ex parte Alvarez*, 94 So. 155, 155 (Fla. 1922) (describing bolita as “game of chance”).

²⁴ *Baker*, 364 F.3d at 112 (emphasis added).

²⁵ See, e.g., *Forte v. United States*, 83 F.2d 612, 615-16 (D.C. Cir. 1936) (noting that “policy game is undoubtedly a lottery,” defined by D.C. Code as game of chance).

Although the statute provides that gambling “is not limited” to the enumerated games, the definition’s illustrative list establishes a framework to determine whether a game constitutes “gambling” under IGBA. Online poker is qualitatively different from all of these enumerated games. First, online poker is not house-banked—the house does not participate at all, but instead merely collects a fee, or “rake,” for hosting the game. Ind. ¶ 3. Second, online poker is a game in which the outcome depends to at least some degree on the skill and decisions of the bettors. The players compete against each other on a level playing field, using an array of talents and skill, to prevail over their opponents. These features differentiate poker from all nine of the enumerated games. Reading the statute to cover a game like poker that shares none of the common features of the enumerated games would render the language of (b)(2) mere surplusage. In order to give the language of (b)(2) substantive effect, while still attributing meaning to the phrase “includes but is not limited to,” this subsection must be interpreted as a non-exclusive list of types of “gambling” that share certain defining characteristics, thus limiting the meaning of “gambling” to games that share those characteristics. *See United States v. Menasche*, 348 U.S. 528, 538-9, 75 S. Ct. 513, 520 (1955) (“It is our duty to give effect, if possible, to every clause and word of a statute.”) (internal citations and quotation marks omitted). *See also Iannelli v. United States*, 420 U.S. 770, 789, 95 S. Ct. 1284, 1295 (1975) (describing IGBA’s limited definition of “gambling” as part of “a carefully crafted piece of legislation”). Because poker is substantially different from the games listed in IGBA, it is not “gambling” under the statute, and the IGBA charges must be dismissed.

C. PokerStars And Full Tilt Are Not Illegal Businesses “Conducted” In New York.

IGBA can only be applied to PokerStars and Full Tilt if they are illegal gambling businesses that are “a violation of the law of a State or political subdivision in which [they are] conducted.” 18 U.S.C. § 1955(b)(1) (emphasis added). They are not. Although the Indictment

charges that the poker companies were “business[es] that engaged in and facilitated online poker, in violation of New York State Penal Law Sections 225.00 and 225.05 and the laws of other states,” it fails to allege that they were businesses “conducted” in New York or any other state. The Indictment fails to mention a single act that occurred in New York or any other state that is sufficient to meet the requirement that the business was “conducted” in any U.S. state as that term has been interpreted in the IGBA context. The poker companies in this case “conducted” their businesses abroad.

The only activity alleged to have taken place in New York, or any state, is illegal betting. *See* Ind. ¶ 34(b) (alleging that on or about January 20, 2009, PokerStars, Full Tilt Poker and Absolute Poker each received an electronic transfer of funds from a gambler located in the Southern District of New York). But it is well-established that “conduct” under IGBA requires more than mere betting. In *United States v. Becker*, 461 F.2d 230 (2d Cir. 1972), *vacated on other grounds*, 417 U.S. 903, 94 S. Ct. 2597 (1974), the Second Circuit examined the meaning of the term “conducts” as used in IGBA subsection (a), which applies to anyone who “conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.” The Court found that the term “conducts” refers to any participation in the operation of a gambling business, except participation as a customer. *Id.* at 232. *See Sanabria v. United States*, 437 U.S. 54, 70-71 n.26, 98 S. Ct. 2170, 2182 n.26 (1978) (citing *Becker*, among other cases, for the proposition that § 1955 “proscribes any degree of participation in an illegal gambling business, except participation as a mere bettor”); *United States v. Greco*, 619 F.2d 635, 638 (7th Cir. 1980) (“mere bettor or customer of a gambling business cannot be said to conduct the business”) (internal citations, quotation marks, and emphasis omitted).

The word “conducted” in subsection (b)(1) thus means the same thing – that is, it does not extend to mere betting. *See, e.g., Nat’l Credit Union Admin. v. First Nat. Bank & Trust Co.*, 522 U.S. 479, 501, 118 S. Ct. 927, 939 (1998) (“[S]imilar language contained within the same section of a statute must be accorded a consistent meaning.”). Under this meaning of “conduct,” simply accepting bets from players in the United States is not sufficient to constitute “conducting” business in the United States. As a matter of law, the Indictment is therefore insufficient to establish that the poker companies’ businesses are “conducted” in New York or other states.

Moreover, the Indictment contains no allegation that the poker companies have any employees or infrastructure in the United States. No court has held that a business may be criminally liable under IGBA without some actual physical presence and conduct in the state whose law was allegedly violated. Where courts have found that a foreign-based gambling business violated IGBA, they have looked to facts such as the presence of employees or the existence of a physical office in the state. For example, in *United States v. Gotti*, 459 F.3d 296 (2d Cir. 2006), the court noted that New York-based defendants were essentially operating a local branch of the Costa Rican business in New York. *Id.* at 340. Similarly, in *United States v. Kaczowski*, the court rejected the defendants’ motion to dismiss because the indictment alleged that defendants maintained facilities in New York where they regularly received and relayed bets for players to the off-shore enterprise. 114 F. Supp. 2d 143, 151 (W.D.N.Y. 2000). *See also United States v. \$734,578.82 in U.S. Currency*, 286 F.3d 641, 659–60 (3d Cir. 2002) (holding that the defendant property was located in New Jersey, and that its forfeiture arose because of the defendant’s conduct occurring in New Jersey).

In this case, contrary to the history and plain language of IGBA, the government is attempting to apply IGBA to a business that is conducted entirely abroad. The Indictment does not allege that PokerStars or Full Tilt operated any facilities in the United States. At all times relevant to the Indictment, Poker Stars was located in the Isle of Man; Full Tilt in Ireland. Ind. ¶¶ 4-6. Indeed, the Government concedes that the poker companies “keep their computer servers, management and support staff offshore.” Karaka Decl.²⁶ ¶ 7.

This attempt to broaden the scope of IGBA to reach businesses conducted abroad must be rejected. IGBA simply does not contemplate Internet businesses and does not apply to a business that has no presence in the United States and does no more than accept money from players located in the United States. The plain language of IGBA demonstrates that it does not apply to businesses “conducted” abroad. The statute refers to “the law of a State or political subdivision,” in which the “business . . . is conducted.” This language refers to U.S. states and political subdivisions, not to foreign countries. Had Congress intended foreign entities to fall within the statute, it would have said so. *See, e.g.*, 7 U.S.C. § 8310(a) (listing separately “States or political subdivisions of States, national governments of foreign countries, local governments of foreign countries”); 16 U.S.C. § 1151(i) (“the Federal Government, or any State or political subdivision thereof, or of any foreign government”); 18 U.S.C. § 1030(e)(9) (“any State or political subdivision of the United States, any foreign country, and any state, province, municipality, or other political subdivision of a foreign country”).

The context in which IGBA was enacted reinforces that IGBA does not apply to overseas businesses. IGBA was enacted in 1970 as part of the Organized Crime Control Act in order to curtail “syndicated gambling, the lifeline of organized crime.” *United States v. Sacco*, 491 F.2d

²⁶ The Declaration of Rosemary Karaka dated March 17, 2011 was filed with the Court in support of the government’s motion for a post-indictment restraining order. It is attached as Exhibit A.

995, 998 (9th Cir. 1974). The target of the statute was brick and mortar, physical gambling operations within the United States – overseas online gambling providers did not exist. Furthermore, as Congress noted in its findings when it passed UIGEA, thirty-six years after enactment of IGBA, UIGEA was necessary because “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). This phrasing surely referred to IGBA as well as the various state laws, and it provides further support for the argument that IGBA does not reach the conduct alleged in this case. To read IGBA to apply to businesses conducted offshore would violate the presumption against extraterritorial application of statutes. *Morrison v. National Australia Bank, Ltd.*, 130 S. Ct. 2869, 2878 (2010) (“When a statute gives no clear indication of an extraterritorial application it has none.”). Accordingly, the IGBA counts should be dismissed.

V. CONSTRUING UIGEA OR IGBA TO REACH THE CONDUCT AT ISSUE WOULD RENDER THE STATUTES UNCONSTITUTIONALLY VAGUE.

As demonstrated in Sections I through IV, the Court should dismiss the UIGEA and IGBA counts without reaching the constitutional issues this case presents. The fact that both UIGEA and IGBA are unconstitutionally vague as applied to the conduct charged in the Indictment provides an additional reason for dismissal of these counts. “A statute can be impermissibly vague for either of two independent reasons: First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732, 120 S. Ct. 2480, 2498 (2000) (citing *City of Chicago v. Morales*, 527 U.S. 41, 56, 119 S. Ct. 1849, 1859 (1999)). UIGEA and IGBA are impermissibly vague as applied to Internet poker for both of these fundamental reasons.

An unconstitutionally vague statute “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.” *United States v. Harriss*, 347 U.S. 612, 617, 74 S. Ct. 808, 812 (1954). “What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is.” *United States v. Williams*, 553 U.S. 285, 306, 128 S. Ct. 1830, 1846 (2008). “The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.” *Harriss*, 347 U.S. at 617, 74 S. Ct. at 812; *accord Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 1858 (1983) (The first test for constitutional vagueness is whether “a penal statute define[s] the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited.”).

In addition, to satisfy due process, Congress must, in drafting a criminal law, “establish minimal guidelines to govern law enforcement.” *Smith v. Goguen*, 415 U.S. 566, 574, 94 S. Ct. 1242, 1248 (1974). The Supreme Court has held that this aspect of the vagueness doctrine is even more important than the requirement of fair notice. *Kolender*, 461 U.S. at 357-58, 103 S. Ct. at 1858 (“Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of vagueness doctrine is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.”) (internal citation and quotation marks omitted).

Here, UIGEA and IGBA fail in both respects. Neither UIGEA nor IGBA provides fair notice that running a poker website or receiving payments related to online poker play is

unlawful. Furthermore, neither statute establishes minimal guidelines to govern law enforcement with respect to whether, and to what extent, either statute applies to Internet poker.

A. UIGEA, As Applied To Poker, Is Unconstitutionally Vague.

UIGEA applies to online poker only if poker is “a game subject to chance,” such that bets and wagers upon the outcome of the games fall within the statutory definition of “bet or wager.” § 5362(1)(A). *See* § 5363 (criminal prohibition only applies to persons “engaged in the business of betting or wagering”); § 5362(10) (definition of “unlawful internet gambling” incorporates the term “bet or wager”). However, UIGEA is impermissibly vague as applied to poker because it provides no legal standard or guidance by which individuals, law enforcement, courts, or juries can determine whether poker qualifies as a “game subject to chance.” 31 U.S.C. § 5362(1)(A).

The phrase “game subject to chance” is vague in several important respects. First and most importantly, the statute does not say how much “chance” must be involved for a game to be “subject to chance” for purposes of the statute – e.g., whether chance must solely determine the outcome of the game, or instead predominate over skill, or perhaps be present to a material degree, or merely have the potential to alter the outcome of the game in some circumstances. Further, the statute does not clarify the appropriate level of abstraction at which to consider a “game” – i.e., in the case of poker, it does not say whether the role of chance should be considered by looking at a single hypothetical poker hand, or whether it should be considered by examining the long run. The statute also fails to explain whether the phrase “game subject to chance” is a term of art which refers only to traditional house-banked gambling games. In the context of poker, a game which indisputably involves at least some degree of skill and which is not a house-banked game, the statute’s vagueness on these issues leaves it open-ended, and denies individuals like Mr. Campos fair notice and subjects him to arbitrary criminal prosecution.

The first issue – the degree to which chance must influence the outcome of a game to deem the game “subject to chance” – is vitally important. Virtually every game involves some degree of chance, and individuals must know, and juries must be instructed, where the game must fall along the skill versus chance continuum in order to be “subject to chance” within the meaning of the statute. But the statute simply does not speak to this issue, directly or indirectly.

The statutory language provides no guidance because the phrase “subject to” has several possible meanings. “Subject to” could mean “exposed or vulnerable [to],” or it could mean “conditional upon.” Collins English Dictionary – Complete & Unabridged (10th ed. 2009). These two definitions present equally valid readings of the phrase “subject to chance.” The former suggests that any material influence could render a game subject to chance, while the latter suggests that the outcome must be wholly or overwhelmingly dependent upon chance. Neither the text of the statute nor the context in which the phrase “subject to chance” appears provides any guidance as to how to interpret the phrase. Further, it cannot be said that the phrase has any settled legal meaning that can guide an individual attempting to tailor his conduct to the law or law enforcement, courts, or juries attempting to apply the law. No other statute – federal or state – uses the phrase “subject to chance,” and no precedent interpreting this language exists.

Nor do the administrative regulations implementing UIGEA shed any light on the proper interpretation of the phrase “subject to chance.” Instead, they add to the confusion. During the rulemaking process for UIGEA, many comments were received raising the question of the statute’s application to games of skill, and particularly to poker. *See Prohibition on Funding of Unlawful Internet Gambling*, 73 Fed. Reg. 69,382, 69,386 (Nov. 18, 2008) (to be codified at 12 C.F.R. Part 233, 31 C.F.R. Part 132). Specifically, the comments asked the agencies to clarify whether Congress intended the law to apply to games of skill, whether a game was subject to

chance when skill predominated over chance, whether “game subject to chance” referred only to traditional house-banked gambling games, like roulette and slots, and whether poker was a “game subject to chance.” *Id.* The Federal Reserve and the Department of the Treasury – the two agencies charged with implementing UIGEA – refused to answer any of these questions. Instead, the agencies stated:

The Agencies believe that the characterization of each of the activities discussed above depends on the specific facts and circumstances. As noted above, the Agencies believe that questions regarding what constitutes unlawful Internet gambling should be resolved pursuant to the applicable Federal and State gambling laws. While there may be some games or contests conducted over the Internet that are not ‘games subject to chance’ and, thus, not subject to the Act and the final rule, the Agencies believe that such issues are more appropriately resolved pursuant to the various underlying gambling laws than with a single regulatory definition.

Id. (Footnotes omitted).

The agencies’ interpretation, which suggests that the phrase “subject to chance” has no independent significance, but instead draws its meaning entirely from underlying state and federal law, cannot be correct. It would mean that a single phrase in a federal statute could mean something different in every prosecution. Instead, it is clear that the statute incorporates two independent and potentially conflicting formulations of games of chance. First, § 5362(1), defines “bet or wager” in pertinent part, as the “staking or risking of something of value upon the outcome of...a game subject to chance.” One must determine whether a game constitutes a “game subject to chance” as that term is used in UIGEA. Second, § 5363 states that “no person engaged in the business of betting or wagering” can accept payments in connection with “unlawful Internet gambling.” Section 5362(10) defines “unlawful Internet gambling” as placing or receiving a bet or wager using the Internet where “such bet or wager is unlawful under any Federal or State law.”

State gambling laws typically include some formulation defining prohibited gambling in terms of the role chance plays in the game. *See, e.g.*, N.Y. Penal Law §§ 225.00(1) and (2) (using the term “contest of chance” and defining it to mean one in which “the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein”). State law formulations may be more or less permissive than the “game subject to chance” formulation used in UIGEA. The individual trying to adhere to the law or the government agent trying to enforce the law must now consider whether the game in question passes muster under the state law formulation of game of chance in addition to the federal formulation. With respect to poker, a game in which skill unquestionably plays some role, the uncertainty inherent in determining the degree of chance that separates lawful from unlawful conduct means that § 5363 “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct [is] prohibit[ed].” *Hill*, 530 U.S. at 732, 120 S. Ct. at 2498.

Regardless of whether the agencies were correct in their reading of the statute, it is clear that the agencies failed to provide readers with any guidance as to the required degree of chance. Instead, their response highlights the fact that UIGEA is hopelessly vague on this point. The best the agencies could muster in response to legitimate comments and questions about what constitutes unlawful conduct prohibited by UIGEA was that it “depends on the specific facts and circumstances.” 73 Fed. Reg. 69,382, 69,386. But which facts? And what circumstances? If the agencies themselves cannot say what Congress intended to include as a game of chance, then it simply is unfair to impose criminal liability on an individual for failing to divine the answer. *Cf. Ellwest Stereo Theater, Inc. v. Boner*, 718 F. Supp. 1553, 1581 (M.D. Tenn. 1989) (holding that “[c]learly, if the regulating authority cannot determine the establishments which are subject to its

authority, the establishments themselves cannot be expected to determine whether they need to be licensed or not.”); *City of Knoxville v. Entertainment Resources, LLC*, 166 S.W.3d 650, 656 (Tenn. 2005) (holding that “the inability of the officers charged with enforcing the ordinance to define its key terms weighs heavily against the ordinance’s constitutionality”).

UIGEA and its regulations are also silent on whether games like poker should be evaluated by examining a single hypothetical hand (and if so, what kind of hand), or by considering results over the long run, or something else. Courts, law enforcement, and individuals are left without any guidance as to how to evaluate whether poker is a “game subject to chance.” This is precisely the sort of unbridled discretion that the void-for-vagueness doctrine seeks to curb. *See Chatin v. Coombe*, 186 F.3d 82, 89 (2d Cir. 1999) (“An enactment fails to provide sufficiently explicit standards for those who apply it when it ‘impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis.’”) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108–09, 92 S. Ct. 2294, 2299 (1972)).

Significantly, since it was passed in 2006, UIGEA has been the subject of constant efforts, by lawmakers and advocates on both sides of the issue, to amend UIGEA to clarify the status of online poker under federal law. A number of legislators and current and former high-ranking law enforcement officials have spoken out on the ambiguity of UIGEA with respect to online poker and several bills intended to clarify UIGEA’s scope are currently pending before Congress. *See, e.g.*, H.R. 1174, 112th Cong. (2011). For example, in May 2011, during testimony at a House Judiciary Committee Hearing, Attorney General Eric Holder said deciding whether poker was a game of skill or chance was “beyond my capabilities,” but said that it was

up to Congress to clarify the laws with regard to online poker.²⁷ Former FBI Director Louis Freeh, speaking at a news conference in the U.S. House of Representatives, recently noted that UIGEA has “great ambiguity” which “puts a burden on the banks and the financial institutions to police the Internet, which is a ridiculous proposition.” Tony Batt, *Former FBI Director Calls For Federal Internet Poker Regulation*, GamblingCompliance, Sept. 16, 2011, <http://www.gamblingcompliance.com/node/47530>.

Because the term “game subject to chance” is integral to the application of the statute, but the statute fails to provide any explicit standards for what that means, 31 U.S.C. § 5363 is unconstitutionally vague as applied to online poker. *See Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127 (1926) (“[T]he terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.”). Therefore, Counts One, Two, and Three of the Indictment should be dismissed against Mr. Campos.

B. IGBA, As Applied To Poker, Is Unconstitutionally Vague.

In addition, Counts Five and Six should be dismissed because reading IGBA to cover defendants’ alleged conduct would render the statute so open-ended that it would fail constitutional scrutiny.

As discussed in Section IV.B., *supra*, IGBA does not mention poker even once. If the statute is interpreted to mean that online poker, despite sharing none of the characteristics common to the “gambling” games enumerated in § 1955(b)(2), falls within the scope of IGBA,

²⁷ Nathan Vardi, *U.S. Attorney General Calls On-line Poker Crackdown Appropriate But Doesn’t Know if Poker is a Game of Chance or Skill*, Forbes, May 3, 2011, available at <http://tinyurl.com/holderpoker>.

then the statute offers no guidelines by which either law enforcement or a person of reasonable intelligence can assess whether a given game falls within the statute's scope. This vagueness creates a strong probability of arbitrary enforcement. While IGBA has been upheld against facial challenges, it would be unconstitutional to apply its definition of "gambling" to a game like poker—which, as discussed, bears no relationship to the games enumerated in the statute.

VI. UNDER THE RULE OF LENITY ANY UNCERTAINTY REGARDING THE SCOPE OF UIGEA OR IGBA MUST BE RESOLVED IN MR. CAMPOS'S FAVOR.

Under the rule of lenity, unless online poker is unambiguously covered by the terms of UIGEA or IGBA, Mr. Campos's conduct should not be deemed unlawful. The Supreme Court has directed that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *United States v. Bass*, 404 U.S. 336, 347, 92 S. Ct. 515, 522 (1971) (internal citation and quotation marks omitted). "This policy embodies the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should." *Id.* at 348, 92 S. Ct. at 522 (internal quotation marks omitted); *see also United States v. Lanier*, 520 U.S. 259, 266, 117 S. Ct. 1219, 1225 (1997) ("[T]he canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by [] resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered"); *Bell v. United States*, 349 U.S. 81, 83, 75 S. Ct. 620, 622 (1955) ("It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment.").²⁸

Applying the basic principle of lenity to this case, the prosecution of Mr. Campos for violations of UIGEA and IGBA must fail. Neither UIGEA nor IGBA contains the requisite clear statement that online poker is covered by its terms. UIGEA does not mention the game of poker,

²⁸ The rule of lenity is especially appropriate in construing statutes that, like IGBA, constitute predicate offenses for the money laundering statute. *See Skilling v. United States*, 130 S. Ct. 2896, 2932-22 (2010).

and, as discussed, it does not define “game subject to chance,” leaving the scope of the statutory prohibition open-ended. Similarly, under IGBA, online poker can be an illegal gambling business only if poker is considered “gambling.” Not only does IGBA fail to list poker among the enumerated “gambling” games, IGBA does not define “gambling” beyond listing nine house-banked games of pure chance. With respect to both statutes, the rule of lenity requires this Court to adopt the most defendant-friendly interpretation of the statute and read it to exclude online poker. And finally, IGBA applies only to illegal gambling businesses that “are a violation of the law of a State or political subdivision in which [they are] conducted,” 18 U.S.C. § 1955(b)(1). For the reasons set forth in Section IV, *supra*, under the rule of lenity the Court should construe the term “conducted” in IGBA to exclude the conduct alleged here – merely accepting bets placed in New York or other states.

The Supreme Court’s recent decision in *United States v. Santos*, 553 U.S. 507, 513-15, 128 S. Ct. 2020, 2025-2026 (2008), is instructive. In *Santos*, the Court applied the rule of lenity in affirming the lower courts’ decision vacating money laundering convictions premised on the statutory term “proceeds,” which Congress did not define. The Court recognized that the term could mean either of two different things, but that “the tie must go to the defendant.” *Id.* at 514, 128 S. Ct. at 2025. Under the rule of lenity and the Supreme Court’s reasoning in *Santos*, this Court must adopt the defendant-friendly reading of UIGEA and IGBA and find that these statutes do not cover the conduct charged in this case. Accordingly, Counts One through Three, Five and Six must be dismissed.

VII. IF THE COURT DISMISSES THE IGBA COUNTS, IT MUST ALSO DISMISS THE MONEY LAUNDERING COUNT.

The money laundering conspiracy charge, Count Nine, is based on the alleged specified unlawful activity of operating an illegal gambling business in violation of 18 U.S.C. § 1955, as

charged in Counts Five and Six. Ind. ¶¶ 53-54. If the Court dismisses Counts Five and Six, it must also dismiss Count Nine. See *United States v. D'Allesio*, 822 F. Supp. 1134, 1146 (D.N.J. 1993) (money laundering counts of indictment had to be dismissed after district court dismissed mail fraud counts which had served as specified unlawful activity underlying money laundering charges).

CONCLUSION

For the foregoing reasons, Mr. Campos respectfully requests that the Court dismiss all counts of the Indictment against him, and grant any such further relief as the Court may deem just and proper.

Dated: September 30, 2011
New York, New York

Respectfully submitted,

HAFETZ NECHELES & ROCCO

CLYDE SNOW & SESSIONS

By: _____
Frederick P. Hafetz (FH 1219)
Kathleen E. Cassidy (KC 0630)

By: Neil A. Kaplan
Anneli R. Smith

500 Fifth Avenue, 29th Floor
New York, NY 10110
(212) 997-7595

201 South Main Street, Suite 1300
Salt Lake City, UT 84111
(801) 322-2516

Attorneys for Defendant John Campos

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

ISAI SCHEINBERG,
RAYMOND BITAR,
SCOTT TOM,
BRENT BECKLEY,
NELSON BURTNICK,
PAUL TATE,
RYAN LANG,
BRADLEY FRANZEN,
IRA RUBIN,
CHAD ELIE,
and
JASON CAMPOS,

Defendants.

-----x

DECLARATION OF ROSEMARY KARAKA
IN SUPPORT OF POST-INDICTMENT
RESTRAINING ORDER

S3 10 Cr. 336 (LAK)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

I, ROSEMARY KARAKA, pursuant to Title 28, United States Code, Section 1746, declare, under penalty of perjury, that I am a Special Agent with the Federal Bureau of Investigation and further declare under penalty of perjury the following:

1. I am a special agent with the Federal Bureau of Investigation ("FBI"), and have so been employed for over 19 years. I am presently assigned to a squad that investigates, among other things, financial institution fraud, illegal gambling, and money laundering. The information contained in this declaration is based upon my personal knowledge and my review of documents and records gathered during the course of

this investigation, as well as information obtained, directly or indirectly, from other sources and agents. Because this declaration is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of the investigation.

Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

2. I make this declaration in support of the application by the United States of America for a post-indictment order restraining ISAI SCHEINBERG, RAYMOND BITAR, SCOTT TOM, BRENT BECKLEY, NELSON BURTNICK, PAUL TATE, RYAN LANG, BRADLEY FRANZEN, IRA RUBIN, CHAD ELIE, and JASON CAMPOS, the defendants, and others from engaging in the transfer, sale, assignment, pledge, hypothecation, encumbrance, dissipation, distribution or movement of the contents of the bank accounts identified in Schedule A of this declaration (the "Target Accounts"). Because funds in many of these accounts can be quickly and easily transferred, the requested Restraining Order is necessary and essential to preserve these assets pending the resolution of this matter. Without such an Order, these funds could be quickly dissipated or concealed.

3. There is probable cause to believe that the Target Accounts contain property that constitutes or is derived from

proceeds traceable to the operation of illegal gambling businesses, in violation of 18 U.S.C. § 1955, and constitutes property used in the operation of illegal gambling businesses and the commission of gambling offenses. As such, the contents of the Target Accounts are subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(C), 1955(d), and 28 U.S.C. § 2461.

4. In addition, there is probable cause to believe that the Target Accounts contain property involved in a conspiracy to commit money laundering, or property traceable to such property, in violation of 18 U.S.C. § 1956(h). As such, the contents of the Target Accounts are subject to forfeiture to the United States pursuant to 18 U.S.C. § 982(a)(1).

5. In addition, there is probable cause to believe that the Target Accounts contain the proceeds of a conspiracy to commit bank and wire fraud in violation of 18 U.S.C. §§ 1343, 1344 and 1349 affecting financial institutions. As such, the contents of the Target Accounts are subject to forfeiture to the United States pursuant to 18 U.S.C. § 982(a)(2)(A).

BACKGROUND

6. This matter arises out of an investigation by the FBI and other law enforcement agencies of illegal internet gambling businesses which, although typically based offshore, predominantly serve players based in the United States. These gambling businesses offer "real money" casino games, poker, and sports betting to United States players, in violation of multiple federal criminal statutes including but not limited to 18 U.S.C. § 1955 (making it illegal to operate an illegal gambling business), § 1956 (money laundering), and § 1349 (conspiring to commit bank and wire fraud).

7. Although illegal internet gambling companies keep their computer servers, management and support staff offshore, they must rely on the United States financial system both to obtain money from gamblers and to pay those gamblers who wish to withdraw funds from the online gambling companies. However, because United States financial institutions generally refuse to handle financial transactions that they know to be related to internet gambling, the offshore internet gambling companies and the payment processors who serve them must, as a matter of course, make false representations to United States financial institutions in order to conduct these transactions and to conceal the nature, source, ownership, and control of the funds.

The Indictment

8. On or about March 10, 2011, a superseding indictment, S3 10 Cr. 336 (LAK) (the "Indictment") was filed under seal in the Southern District of New York, charging ISAI SCHEINBERG, RAYMOND BITAR, SCOTT TOM, BRENT BECKLEY, NELSON BURTNICK, PAUL TATE, RYAN LANG, BRADLEY FRANZEN, IRA RUBIN, CHAD ELIE, and JASON CAMPOS, the defendants, with conspiring to violate the Unlawful Internet Gambling Enforcement Act ("UIGEA"), 31 U.S.C. § 5363, in violation of Title 18, United States Code, 371; violating the UIGEA; operating illegal gambling businesses, in violation of Title 18, United States Code, Sections 1955 and 2; conspiring to commit wire fraud and bank fraud, in violation of Title 18, United States Code, Section 1349; and conspiring to launder money, in violation of Title 18, United States Code, Section 1956(h). A true and correct copy of the Indictment is attached to the accompanying Application for Restraining Order as Exhibit A.

9. The Indictment contains forfeiture allegations providing notice of the Government's intent to seek the forfeiture of all of the defendants' right, title, and interest in, among other things, the contents of many of the Target Accounts. The remaining Target Accounts are listed in a Bill of Particulars that has been subsequently filed.

The Poker Companies

10. As set forth in the Indictment, from at least in or about November 2006, the three leading internet poker companies doing business in the United States were PokerStars, Full Tilt Poker, and Absolute Poker/Ultimate Bet. (Ind. ¶ 1). PokerStars, headquartered in the Isle of Mann, provides real-money gambling through its website, pokerstars.com, to United States customers. PokerStars does business through several privately held corporations and other entities, including, but not limited to, Oldford Group Ltd., Stelekram Ltd., and Sphene International Ltd. (Ind. ¶ 4). ISAI SCHEINBERG, the defendant, was a founder, owner, and principal decision-maker for PokerStars. (Id.).

11. Full Tilt Poker, headquartered in Ireland, provides real-money gambling through its website, fulltiltpoker.com, to United States customers. Full Tilt Poker does business through several privately held corporations and other entities, including, but not limited to, Tiltware LLC, Kolyma Corporation A.V.V., Pocket Kings Ltd., Pocket Kings Consulting Ltd., Filco Ltd., Vantage Ltd., Ranston Ltd., Mail Media Ltd., and Full Tilt Poker Ltd. (Ind. ¶ 5). As of March 2011, Full Tilt Poker was the second-largest poker operator offering gambling on poker games to United States residents.

(Id.). RAYMOND BITAR, the defendant, was a founder, owner, and principal decision-maker for Full Tilt Poker. (Id.).

12. Absolute Poker, headquartered in Costa Rica, provides real-money gambling through its websites, absolutepoker.com and ultimatebet.com, to United States customers. Absolute Poker does business through several privately held corporations and other entities, including Blue Water Services Ltd. (Ind. ¶ 6). In or about October 2006, Tokwiro Enterprises was identified as the owner of record of Absolute Poker and a companion poker and blackjack gambling website, Ultimate Bet. (Id.). In or around August 2010, ownership of Absolute Poker and Ultimate Bet was transferred to Blanca Games, Inc. of Antigua. (Id.). SCOTT TOM and BRENT BECKLEY, the defendants, were founders and/or principal decision-makers for Absolute Poker. (Id.).

13. From in or about October 2006 through in or about November 2008, NELSON BURTINICK, the defendant, was an employee in the payment processing department of PokerStars, where he ultimately served as head of payment processing. From in or about January 2009 up to and including in or about March 2011, BURTINICK has served as head of the payment processing department for Full Tilt Poker. (Ind. ¶ 7).

14. From at least in or about the summer of 2006 up to and including in or about March 2011, PAUL TATE, the defendant,

was an employee of PokerStars, including in the payment processing department. From in or about Early 2009, up to and including in or about March 2011, TATE has served as the head of the payment processing department for PokerStars. (Ind. ¶ 8).

The Poker Processors

15. As described in the Indictment, because United States banks were largely unwilling to process payments for an illegal activity such as internet gambling, the Poker Companies used fraudulent methods to avoid restrictions imposed by the banks in order to receive billions of dollars from United States residents who gambled through the Poker Companies. (Ind. ¶ 1). The Poker Companies relied on highly compensated third-party payment processors, who lied to United States banks about the nature of the financial transactions they were processing and covered up those lies through the creation of phony corporations and websites to disguise payments to the Poker Companies. (Ind. ¶ 2).

16. From at least in or about October 2006, up to and including at least in or about the spring of 2010, RYAN LANG, the defendant, worked with the Poker Companies to identify poker processors willing to process payments for the Poker Companies, including through deceptive means. In this capacity, LANG acted as an intermediary between principals of the Poker Companies and the poker processors. (Ind. ¶ 9). On or about July 19, 2010,

the Honorable Kevin Nathaniel Fox, United States Magistrate Judge, issued warrants to seize, among other things, accounts of a payment processor that processed poker payments for Redfall International, another poker processor created by LANG and others to process payments for PokerStars and Full Tilt Poker, as property involved in the operation of an illegal gambling business, property traceable to the proceeds of the operation of an illegal gambling business and to bank fraud, and involved in or traceable to money laundering.

17. From at least in or about 2007, BRADLEY FRANZEN, the defendant, worked with internet gambling companies, including the Poker Companies, to identify poker processors willing to process payments for the Poker Companies, including through deceptive means. In this capacity, FRANZEN acted as an intermediary between principals of the Poker Companies and the poker processors. (Ind. ¶ 10).

18. From at least in or about 2007, up to and including in or about March 2011, IRA RUBIN, the defendant, processed payments for various internet gambling companies, including each of the Poker Companies, by disguising the payments as payments to dozens of phony internet merchants. (Ind. ¶ 11).

19. From at least in or about the summer of 2008, up to and including in or about March 2011, CHAD ELIE, the defendant, together with others, opened bank accounts in the

United States, including through deceptive means, through which each of the Poker Companies received payments from United States-based gamblers. (Ind. ¶ 12). The companies that ELIE operated in order to process payments for the Poker Companies included Viable Marketing Corp. and Viable Processing Solutions. On or about October 26, 2009, the Honorable Frank Maas, United States Magistrate Judge for the Southern District of New York, issued warrants to seize the contents of Viable Marketing accounts held at Fifth Third Bank and Bank of America, N.A., as property involved in the operation of an illegal gambling business, property traceable to the proceeds of the operation of an illegal gambling business, and involved in or traceable to money laundering. On or about February 19, 2010, the Honorable Kevin Nathaniel Fox, United States Magistrate Judge for the Southern District of New York, issued warrants to seize two accounts in the name of Viable Processing Solutions held at the National Bank of California as property involved in the operation of an illegal gambling business, property traceable to the proceeds of the operation of an illegal gambling business, and involved in or traceable to money laundering.

20. From at least in or about September 2009, up to and including in or about March 2011, JOHN CAMPOS, the defendant, was the Vice Chairman of the Board of Directors and part owner of

SunFirst Bank in St. George, Utah, which processed payments for PokerStars and Full Tilt Poker. (Ind. ¶ 13).

Overview Of the Scheme To Defraud

21. As described in the Indictment, because internet gambling businesses such as those operated by the Poker Companies were illegal under United States law, internet gambling companies, including the Poker Companies, were not permitted by United States banks to open bank accounts in the United States to receive proceeds from United States gamblers. Instead, the principals of the Poker Companies operated through various deceptive means designed to trick United States banks and financial institutions into processing gambling transactions on the Poker Companies' behalf. (Ind. ¶ 16).

22. For example, as described more fully in the Indictment, ISAI SHEINBERG, RAYMOND BITAR, BRENT BECKLEY, NELSON BURTINICK, and PAUL TATE, the defendants, and others, worked with and directed others to deceive credit card issuers and to disguise poker payments made using credit cards so that the issuing banks would process the payments. (Ind. ¶¶ 17-18). These deceptive and fraudulent practices included, for example, creating phony non-gambling companies that the Poker Companies used to initiate the credit card charges (Ind. ¶ 19), and creating pre-paid cards designed for United States gamblers to use to transfer funds to the Poker Companies and other gambling

companies, with the purpose of the cards disguised by fake internet web sites and phony consumer "reviews" of the cards making it appear that the cards had some other, legitimate, purpose. (Ind. ¶ 20).

23. In addition, as described more fully in the Indictment, ISAI SHEINBERG, RAYMOND BITAR, BRENT BECKLEY, NELSON BURTNICK, and PAUL TATE, the defendants, and others, worked with and directed others to develop another method of deceiving United States banks and financial institutions into processing their respective Poker Companies' internet gambling transactions through fraudulent e-check processing. (Ind. ¶ 21). The Poker Companies used poker processors to establish payment processing accounts at various United States banks and disguised from the banks the fact that the accounts would be used to process payments for internet poker transactions by making the transactions appear to relate to phony internet merchants. (Ind. ¶¶ 22-26). RYAN LANG, BRADLEY FRANZEN, and CHAD ELIE, the defendants, among others, introduced poker processors to the Poker Companies and in some instances operated poker processors themselves. (Id.).

24. As described further in the Indictment, in or around late 2009, following the collapse of multiple e-check processing operations used by the Poker Companies and the judicially ordered seizure of funds, ISAI SCHEINBERG, RAYMOND

BITAR, PAUL TATE, and NELSON BURTINICK the defendants, began looking for banks that would knowingly process online poker transactions. (Ind. ¶ 27). The Poker Companies turned to poker processors RYAN LANG, BRADLEY FRANZEN, and CHAD ELIE, the defendants, among others, to arrange for so-called "transparent processing." (Ind. ¶ 28). ELIE, for example, induced JOHN CAMPOS, the defendant, to agree to process gambling transactions through Sunfirst Bank with promises of a \$10 million investment in Sunfirst, a small, financially troubled bank; with sizeable fee income from the processing; and with a \$20,000 payment directly to CAMPOS himself. (Ind. ¶¶ 29-31).

PROBABLE CAUSE THAT THE CONTENTS OF
THE TARGET ACCOUNTS ARE SUBJECT TO FORFEITURE

25. Below, I describe facts establishing probable cause to believe that the contents of the Target Accounts are subject to forfeiture and that a restraining order is appropriate to preserve those accounts for criminal forfeiture in this case. First, I address certain accounts owned or controlled by the Poker Companies (the "Poker Company Accounts") and accounts owned or controlled by principals of the Poker Companies (the "Poker Company Principal Accounts") that contain property that constitutes or is derived from proceeds traceable to the operation of an illegal gambling business, in violation of 18 U.S.C. § 1955, and property used in the operation of an illegal gambling business and commission of the gambling offense.

Second, I address accounts that were used by poker processors and that received funds from poker processors that fraudulently processed online poker transactions (the "Poker Processor Accounts"), which contain property traceable to the illegal gambling businesses, property traceable to the bank and wire fraud offenses, and property traceable to actual or attempted money laundering.

Poker Company Accounts

The PokerStars Accounts

26. As described more fully below, from my participation in this investigation, including my discussions with other law enforcement agents, my review of reports written by other law enforcement agents, and my review of records of bank accounts and financial transactions, I have learned in substance and in part that Oldford Group Ltd., Stelekram Ltd., and Sphene International Ltd., among others, are entities involved in the operation of PokerStars. (Ind. ¶ 4).

The Sphene Accounts

27. I have reviewed a report of an interview by law enforcement agents with a former employee of PokerStars (the "PokerStars Employee") who was familiar with the entities used to process payments for PokerStars. From that report of interview, I learned in substance and in part that the PokerStars Employee described "everything" going through Sphene International Ltd. in

or about 2008, after Intabill, an Australian poker processor, stopped processing poker payments. (See Ind. ¶ 26(a)).

28. As discussed more fully below, poker processor Elite Debit processed online payments for PokerStars and Full Tilt Poker through Triple Seven LP accounts at Sunfirst Bank, St. George, Utah, from at least in or about December 2009 through at least in or about May 2010. From my review of records from Sunfirst Bank concerning these processing accounts, I have learned the following in substance and in part:

a. From at least on or about December 11, 2009, through at least on or about April 27, 2010, at least approximately \$31,749,242.04 was transferred from the Sunfirst poker processing accounts to an account numbered 27351910081015 held at Credit Agricole (Suisse) SA in the name of Sphene (International) Limited, IBAN CH8908741014319300001.

b. From at least on or about April 28, 2010, through at least on or about May 28, 2010, at least approximately \$6,681,425.99 was transferred from the Sunfirst poker processing accounts to an account numbered held at Credit Agricole (Suisse) SA in the name of Sphene (International) Limited, IBAN CH6208741014319300002.

29. As discussed more fully below, poker processor 21 Debit LLC, a payment processor operated by CHAD ELIE, the defendant, processed online poker payments for PokerStars and

Full Tilt Poker through All American Bank, Illinois. A cashier's check dated December 29, 2010, in the amount of \$2,000,000 was drawn on account numbered 200003291 held at All American Bank in the name of 21 Debit LLC, for payment to "Sphene." The check appears to have been deposited into an account held at the Banque Hapoalim (Suisse) SA, Luxembourg, in the name of Sphene International Limited.

The Oldford Group Account

30. From reports of interviews with the PokerStars Employee, I learned in substance and in part that the PokerStars Employee described the Oldford Group as the parent company of PokerStars' Isle of Mann operations.

31. I have reviewed wire transfer instructions for payments for PokerStars from Intabill, an Australian company that processed online poker payments (see Ind. ¶ 26(a)) and emails concerning those wire transfer instructions from in or about 2008 through in or about 2009. These wires, which total several millions Euros, are to an account held at Credit Agricole (Suisse) SA in the name of the Oldford Group Limited, IBAN CH1508741014093800001.

The Full Tilt Accounts

32. As described more fully below, from my participation in this investigation, including my discussions with other law enforcement agents, my review of reports written

by other law enforcement agents, and my review of records of bank accounts and financial transactions, I have learned in substance and in part that Tiltware LLC, Kolyma Corporation A.V.V., Pocket Kings Ltd., Pocket Kings Consulting Ltd., Filco Ltd., Vantage Ltd., Ranston Ltd., Mailmedia Ltd., and Full Tilt Poker Ltd. are entities involved in the operation of Full Tilt Poker. (Ind. ¶ 5).

The Tiltware Accounts

33. I have reviewed, among other things, a civil complaint filed in 2010 by Tiltware LLC against a former employee of that company in the United States District Court for the District of Nevada. In the complaint, Tiltware LLC alleges that it is a software and licensing company, which develops and provides exclusive software, development, and consulting services to Full Tilt Poker.

34. I have spoken with a Special Agent with the Department of Homeland Security, Immigration and Customs Enforcement ("ICE") who learned from Comerica Bank that accounts numbered 1892947126 and 1892947134 at Comerica Bank are held in the name of Tiltware.

The Kolyma Corporation Accounts

35. I have reviewed an affidavit filed in an Australian court by a former executive (the "Poker Processor Executive") at Intabill, an Australian company that processed

online poker payments. (See also Ind. ¶ 26(a)). The affidavit alleges that Kolyma Corporation is part of the Full Tilt Poker group of companies.

36. I have also reviewed wire transfer instructions for payments from Intabill to Full Tilt Poker and emails concerning those wire transfer instructions from in or about 2008 through in or about 2009. These wires, which total several millions Euros, are to accounts numbered E3451230800000007283 (the "Kolyma 7283 Account") and E7951230800000007249 (the "Kolyma 7249 Account") held at Wirecard Bank AG, Germany, in the name of Kolyma Corporation.

37. As discussed more fully below, poker processor Elite Debit processed online payments for PokerStars and Full Tilt Poker through Triple Seven LP accounts at Sunfirst Bank, St. George, Utah, from at least in or about December 2009 through at least in or about May 2010. From my review of records from Sunfirst Bank concerning these processing accounts, I have learned in substance and part that from at least on or about February 3, 2010, through at least on or about March 8, 2010, at least approximately \$2,904,025.94 was wired from an account numbered 121015408 held at Sunfirst Bank in the name of Triple Seven LP d/b/a Netwebfunds.com to the Kolyma 7283 Account. I have also reviewed a letter from CAMPOS, as Vice Chairman of the Board of Directors of Sunfirst Bank, to Kolyma Corporation, dated

April 13, 2010. The letter acknowledges that Sunfirst Bank has agreed to process remotely created checks and related transactions on behalf of Kolyma Corporation through Elite Debit and that Sunfirst Bank has been informed that a portion of the transactions involve Full Tilt Corporation, an internet poker operator.

The Ranston Accounts

38. I have reviewed an affidavit dated May 10, 2010, by Special Agent Paul Serson, Department of Homeland Security, Immigration and Customs Enforcement ("ICE"). From that affidavit, I learned in substance and in part that Special Agent Serson reviewed documents from JP Morgan Chase Bank ("JPMC") relating to Ranston Ltd. and discussed Ranston Ltd. with JPMC personnel, and learned that for several years, Ranston had been making payments to JPMC customers who were associated with online gaming or poker web sites. Moreover, Special Agent Serson and other law enforcement agents interviewed two individuals in late 2009 and early 2010, both of whom stated in substance and in part that they played poker on Full Tilt Poker's website, fulltiltpoker.com, and both of whom identified payments from Ranston totaling several tens of thousands of dollars as payments from poker winnings on Full Tilt Poker.

39. I have also reviewed wire transfer records from Citibank, N.A., the U.S. correspondent bank for Basler Kantonal

Bank, Switzerland. From those records, I learned the following in substance and in part:

a. In approximately November 2009, at least four wires totaling approximately \$9,000,000 were sent from an account held at Basler Kantonal Bank in the name of Ranston Ltd., IBAN CH4900770016542263375, to an account at Danske Bank A/S, Denmark, held in the name Pocket Kings Ltd., IBAN IE07DABA95151340074209.

b. In approximately November 2009, at least two wires totaling approximately \$12,000,000 were sent from an account held at Allied Irish Bank in the name of Filco Ltd, IBAN IE85AIBK93006727971082, to an account held at Basler Kantonal Bank, Switzerland, in the name of Ranston LTD, IBAN CH7000770016542254461.

40. I have reviewed the website of FINMA, the Swiss regulatory body overseeing banks, insurance companies, stock exchanges, securities dealers and collective investment schemes. According to FINMA, Ranston Ltd. was added to FINMA's list of "unauthorized institutions" or "black list" on or about October 14, 2009, based on Ranston's apparent involvement in activities that require FINMA authorization, without appropriate authorization for those activities.

The Mailmedia Account

41. From my review of a summary of wire transfers prepared by a Special Agent with ICE, I have learned in substance

an in part that, after Ranston's blacklisting by FINMA, an account held at Basler Kantonal Bank in the name of Mailmedia, numbered CH7300770252534932001 (the "Mailmedia Account"), began wiring funds through the Citibank, N.A., correspondent account for Basler Kantonal Bank. Wire transfer records show the same address for Mailmedia as Ranston Ltd., a post office box in the Bahamas. Numerous wire transfers from the Mailmedia Account include, among other things, references to "FTP Sponsorship" of various individuals involving what appear to be mixed martial arts events. As discussed more fully below, the Mailmedia Account received wires from, among others, Filco and Vantage Ltd.

The Vantage Account

42. I have reviewed records from wire transfer records from Citibank, N.A., the U.S. correspondent bank for Basler Kantonal Bank, Switzerland. From that review, I learned in substance and in part that funds were wired from an account held at Banque Invik SA, Luxembourg, in the name of Vantage Limited, IBAN LU811944013080000USD (the "Vantage Invik Account"), to the Mailmedia Account as follows:

Date	Amount
June 25, 2010	\$1,999,974.00
July 2, 2010	\$3,199,974.00
July 9, 2010	\$1,999,974.00
July 16, 2010	\$1,999,974.00
July 29, 2010	\$2,999,974.00

August 17, 2010	\$2,999,974.00
September 2, 2010	\$1,999,974.00
September 17, 2010	\$2,999,974.00
September 29, 2010	\$28,957,974.00
TOTAL:	\$49,157,766.00

43. As discussed more fully below, poker processor Elite Debit processed online payments for PokerStars and Full Tilt Poker through Triple Seven accounts at Sunfirst Bank in St. George, Utah, from at least in or about December 2009 through at least in or about May 2010. From my review of records from the Federal Reserve relating to Sunfirst Bank wires, I have learned in substance and in part that from on or about July 2, 2010, through on or about September 22, 2010, at least approximately \$16,843,345.01 was wired to the Vantage Invik Account from accounts at Sunfirst Bank held in the names of Powder Monkeys, LLC, Triple Seven, LLP, Triple Seven, LP, and Mastery Merchant, LLC.

44. As discussed further below, poker processor Trinity Global Commerce Corp. processed online poker payments on behalf of Full Tilt Poker through Vensure Federal Credit Union ("Vensure"). I have reviewed a letter dated November 30, 2010, to the president of Vensure from Garry Galon. The letter states in substance and in part that Trinity is a bank account holding company charged with the responsibility of holding a bank account

at Vensure and "collect[ing] funds on behalf of Blackford and the ultimate originator Vantage Ltd aka Full Tilt. Blackford is the entity that has a processing contract with Vantage."

45. As discussed more fully below, poker processor 21 Debit LLC, a payment processor operated by CHAD ELIE, the defendant, processed online poker payments for PokerStars and Full Tilt Poker through All American Bank, Illinois. A cashier's check dated December 29, 2010, in the amount of \$1,000,000 was drawn on account numbered 200003291 held at All American Bank in the name of 21 Debit LLC, for payment to "Vantage." From All American Bank's records, it appears that the check cleared on or about February 14, 2011, and was deposited into an account at Basler Kantonal Bank, Switzerland.

The Filco Accounts

46. I have reviewed wire transfer records from Citibank, N.A., the U.S. correspondent bank for Basler Kantonal Bank, Switzerland. From those records, I learned the following in substance and in part:

a. As discussed above with respect to the Ranston Accounts, in approximately November 2009, at least two wires totaling approximately \$12,000,000 were sent from an account held at Allied Irish Bank in the name of Filco Ltd, IBAN IE85AIBK93006727971082 (the "Filco ANIB Account"), to an account

held at Basler Kantonal Bank, Switzerland, in the name of Ranston LTD, IBAN CH7000770016542254461.

b. On or about November 17, 2009, approximately \$1,500,000 was wired from Ranston Ltd. account numbered CH4900770016542263375 at Basler Kantonal Bank to an account held at WestLB AG, Germany, in the name of Filco Ltd, IBAN DE19512308000000007262.

c. On or about January 15, 2010, approximately \$11,250,000 was wired from the Filco ANIB Account to the Mailmedia Account.

d. The address given for Filco Ltd. on the Citibank, N.A. records concerning the two November 2009 wire transfers to Ranston is the same as the address given for Vantage Limited in the Citibank, N.A. records concerning the wire transfers described in paragraph 42, supra.

The Absolute Poker Accounts

47. As described more fully below, from my participation in this investigation, including my discussions with other law enforcement agents, my review of reports written by other law enforcement agents, and my review of records of bank accounts and financial transactions, I have learned in substance and in part that Blue Water Services Ltd., Tokwiro Enterprises (which acquired Absolute Poker), Disora Investment, Inc., and

Rintrade Finance SA are entities involved in the operation of Absolute Poker. (Ind. ¶ 6).

The Blue Water Account

48. From my review of reports of interviews of a former employee of Absolute Poker and a former payment processor who worked with Absolute Poker, I learned in substance and in part that both the former employee and the former processor stated that Blue Water Services was a corporate entity through which Absolute Poker conducted business.

49. From my review of wire transfer instructions for payments from Intabill to Absolute Poker and emails concerning those wire transfer instructions from in or about 2007 through in or about 2009, I learned in substance and in part that wire records show a payment of \$131,900.00 to the Blue Water account at Sparkasse Bank Malta, account number MT23SBMT555050000001108 on or about October 12, 2007. The accompanying email's subject header reads: "Absolute." The records reflect March 28, 2008, transfers of € 71,572.24 and € 100,168.45 into the account. The subject header of the accompanying email reads: "RE: Absolute - release holds."

The Towkiro Account

50. In or about 2007, an officer of Tokwiro Enterprises ("Tokwiro") posted videos on the internet that stated, in substance and in part, that Joseph Tokwiro Norton, the

former chief of the Kahnawake tribe in Canada, had purchased Absolute Poker and Ultimate Bet and established Tokwiro as the parent company for those entities with Norton as the sole owner.

51. I have also reviewed an email dated in or about March 2009 from the principal of a poker payment processor to RYAN LANG, the defendant. In that email, the principal of the poker payment processor forwarded to LANG an email that the poker payment processor received from BRADLEY FRANZEN, the defendant. In his email, FRANZEN stated "This is what I got back from AP [Absolute Poker] today" and included an email stating in part: "We are in the process of setting up bank accounts for HJH, meanwhile, we would like to use the settlement account for the company Tokwiro Enterprises, ENRG. The beneficial owner of both companies is Joseph Tokwiro Norton."

52. I have reviewed Intabill wire transfer instructions for payments for Absolute Poker from Intabill, which include instructions to transfer funds to account numbered MT14SBMT5550500000011451GAEURO held at Sparkasse Bank Malta in the name of Tokwiro Enterprises ENRG (the "Tokwiro Account"). For example, on March 19, 2009, an internal Intabill email attached instructions for two transfers of € 100,000.00 to the Tokwiro Account. The instructions are saved as "Absolute.pdf" and "Ultimate.pdf."

The Disora Accounts

53. I have reviewed a summary prepared by another FBI agent concerning the contents of a thumb drive provided to law enforcement by a former close associate ("TOM's close associate") of SCOTT TOM, the defendant, a founder and principal at Absolute Poker. The thumb drive included numerous wire transaction instructions. Among these was an instruction to transfer \$200,000 to account numbered 61-12-9436-6 held at Banco Panameno De La Vivienda SA, Panama, in the name of Disora Investment, Inc.

54. The thumb drive also includes instructions for a transfer of € 400,000 "from Disora" and a transfer of € 250,000 from "the Disora Investments account" to account numbered 0011271083 held at Citibank London, England, in the name of Mundial Valores, for the benefit of Disora Investment, Inc., MAM000804, and all funds traceable thereto.

The Rintrade Account

55. The thumb drive provided by TOM's associate also contained (a) an instruction to wire \$400,000 "from the Disora Investments account" to account numbered CH4308755011432400000 held at Pictet and Co., Switzerland, in the name of Rintrade Finance SA (the "Rintrade Account"); and (b) an instruction, purportedly from TOM's close associate, to transfer € 265,457 "from the True Color main account" to the Rintrade Account.

TOM's close associate denied to law enforcement that the close associate had issued this instruction.

Poker Company Principal Accounts

The Bitar and Pocket Kings Accounts

56. As set forth in the Indictment, RAYMOND BITAR, the defendant, was a founder, owner, and principal decision-maker for Full Tilt Poker. From my participation in this investigation and my discussions with other law enforcement agents who have participated in this investigation, I am not aware of any significant source of income for BITAR other than his earnings from Full Tilt Poker and its related entities.

57. I have reviewed a summary prepared by a Special Agent with ICE concerning Reports of Foreign Bank and Financial Accounts ("FBARs") filed with the IRS by RAYMOND BITAR, the defendant, for the tax years 2007 through 2010, obtained through the IRS's Currency and Banking Retrieval System. The IRS requires U.S. persons to file an FBAR when that person has a financial interest in or signature authority or other authority over any financial account in a foreign country, if the aggregate value of these accounts exceeds \$10,000 at any time during the calendar year. From that summary, I learned in substance and in part that BITAR claimed a financial interest in or signature authority or other authority over the following accounts:

- a. account numbered 60092074136054 held at Natwest, Jersey, in the name of Raymond Bitar;
- b. account numbered 95434087766 held at Natwest, Channel Islands, in the name of Raymond Bitar;
- c. account numbered 91707289 held at Bank of Ireland, Ireland, in the name of Raymond Bitar;
- d. account numbered 99045014745206 held at Bank of Scotland Ireland, Inc., Ireland, in the name of Raymond Bitar;
- e. account numbered 95151380025186 held at National Irish Bank, Ireland, in the name of Raymond Bitar;
- f. account numbered 95151340062618 held at National Irish Bank, Ireland, in the name of Raymond Bitar;
- g. account numbered 26257031 held at Allied Irish Bank, Ireland, in the name of Raymond Bitar;
- h. account numbered 7262 held at Wirecard Bank AG, Germany, in the name of Raymond Bitar;
- i. account numbered 7244 held at Wirecard Bank AG, Germany, in the name of Raymond Bitar;
- j. account numbered 99045014801116 held at Bank of Scotland Ireland, Inc., Ireland, in the name of Pocket Kings Consulting LTD;
- k. account numbered 99022000439546 held at National Irish Bank, Ireland, in the name of Pocket Kings Ltd, IBAN;

l. account numbered 99022000440162 held at National Irish Bank, Ireland, in the name of Pocket Kings Ltd;

m. account numbered IE58IPBS9906291390203 held at Irish Permanent Treasury, PLC, in the name of Pocket Kings;

58. I have spoken with a Special Agent with the Department of Homeland Security, Immigration and Customs Enforcement ("ICE") who learned from Comerica Bank that accounts numbered 800801483 and 800922552 held at Comerica Bank, Dallas, Texas, are held in the name of Raymond Bitar.

59. I have reviewed records from the Federal Reserve Bank of New York relating to wire transfers involving Pocket Kings. From those records, I have learned in substance and in part that wires from the following Pocket Kings accounts have passed through the Federal Reserve since on or about January 4, 2010:

a. account numbered IE07DABA95151340074209 held at National Irish Bank (Part of Danske Bank Group) in the name of Pocket Kings Limited;

b. account numbered IE38DABA95151340025151 held at National Irish Bank (Part of Danske Bank Group) in the name of Pocket Kings Limited;

c. account numbered IE42DABA95151340062618 held at National Irish Bank (Part of Danske Bank Group) in the name of Pocket Kings Limited;

d. account numbered IE58IPBS99062913190203 held at Irish Permanent Treasury in the name of Pocket Kings Limited;

e. account numbered IE67AIBK93208626257031 held at Allied Irish Bank in the name of Pocket Kings (the "Pocket Kings 7031 Allied Account"); and

f. account numbered LU621944013130000USD held at Banque Invik in the name of Pocket Kings Limited.

60. On or about September 7, 2010, approximately \$250,000 was transferred from the Pocket Kings 7031 Allied Account to account numbered 8000801483 held at Comerica Bank in the name of Raymond Bitar.

Poker Processor Accounts

The Sunfirst Bank Accounts and Related Accounts

61. From my involvement in this investigation, including my review of documents obtained from Sunfirst Bank, I have learned the following in substance and in part:

a. I have reviewed an agreement between Sunfirst Bank and its corporate parent, Sunfirst Corp., and Triple Seven LP and Elite Debit, among others, dated as of October 3, 2009. In this agreement, Sunfirst Bank agreed in substance, among other things, to provide electronic payment transaction processing.

services, particularly Automated Clearinghouse ("ACH")¹ and "Check21" processing, to Triple Seven LP and Elite Debit.

b. I have also reviewed an "ACH Originator Using A Third Party Sender Agreement" between Sunfirst Bank and

- (a) EliteDebit, Inc., sending files for Net Web Funds, and
- (b) EliteDebit, Inc., sending files for A Web Debit. In this agreement, Sunfirst agreed in substance to provide ACH services to Net Web Funds and for A Web Debit through EliteDebit. The same individual signed these agreements on behalf of Triple Seven LP, EliteDebit Inc., Net Web Debit, and A Web Debit.

c. I have reviewed a letter from JOHN CAMPOS, the defendant, as Vice Chairman of the Board of Directors of Sunfirst Bank, to Sphene International Ltd., dated March 9, 2010. The letter acknowledges that Sunfirst Bank has agreed to process remotely created checks and related transactions on behalf of Sphene through Elite Debit and that Sunfirst Bank has been

¹ From my participation in this investigation, I have learned that the ACH system, which is administered by the Federal Reserve, allows for fast and efficient electronic funds transfers to and from individuals' checking accounts through "e-checks" or "electronic checks." Payment processing companies with access to the ACH system can "pull" money from individual consumer bank accounts (i.e. debit the consumer's account) and route it to gambling companies (typically based abroad) and "push" money from the gambling companies into individual checking accounts to pay winnings (i.e. credit the consumer's account). Typically, a gambler simply logs onto the web site of an internet gambling company and chooses "e-check" or some similarly described option and enters his or her United States bank account information, which the payment processors use to complete these transactions.

informed that a portion of the transactions involve PokerStars, an internet poker operator.

d. I have also reviewed a letter from CAMPOS, as Vice Chairman of the Board of Directors of Sunfirst Bank, to Kolyma Corporation, dated April 13, 2010. The letter acknowledges that Sunfirst Bank has agreed to process remotely created checks and related transactions on behalf of Kolyma Corporation through Elite Debit and that Sunfirst Bank has been informed that a portion of the transactions involve Full Tilt Corporation, an internet poker operator.

e. I have reviewed daily tracking reports from Sunfirst Bank concerning Triple Seven, LP d/b/a "A Web Debit;" Triple Seven, LP d/b/a "NetWebFunds" or "netwebfunds.com;" Mastery Merchant, LLC d/b/a "Pstars;" and Powder Monkeys d/b/a "Full Tilt." These reports reflect that from on or about January 21, 2010, through on or about June 16, 2010, Sunfirst Bank received ACH deposits for Triple Seven, LP d/b/a A Web Debit and Triple Seven, LP d/b/a Netwebfunds or netwebfunds.com, typically in amounts totaling several hundred thousands of dollars daily for each merchant and in some cases in totaling over one million dollars. Beginning on or about June 22, 2010, there were no further deposits for A Web Debit or NetWebFunds, but from on or about June 22, 2010, through at least on or about July 23, 2010, daily deposits for Pstars and Full Tilt were typically in amounts

totaling several hundred thousands of dollars for each merchant and in some cases exceeded a million dollars a day.

f. From my review of international wire transfer agreements provided by Sunfirst Bank concerning account numbered 121015408 held at Sunfirst Bank, St. George, Utah, in the name of Triple Seven LP d/b/a Netwebfunds.com (the "Sunfirst Netwebfunds Account") and account numbered 121015390 held at Sunfirst Bank, St. George, Utah, in the name of Triple Seven LP d/b/a A WEB DEBIT (the "Sunfirst A Web Debit Account"), I have learned the following in substance and in part:

1) From on or about February 3, 2010, through on or about March 8, 2010, at least approximately \$2,904,025.94 was transferred by wire from the Sunfirst Netwebfunds Account to the Kolyma Wirecard account.

2) From on or about December 11, 2009, through on or about April 27, 2010, at least approximately \$31,749,242.04 in U.S. currency and Euros was transferred from the Sunfirst Netwebfunds Account and the Sunfirst A Web Debit Account to account numbered 27351910081015 held at Credit Agricole (Suisse) SA, IBAN CH8908741014319300001, in the name of Sphene (International) Limited.

3) From on or about April 28, 2010, through on or about May 28, 2010, at least approximately \$6,681,425.99 in Euros was transferred from the Sunfirst A Web Debit Account to

account numbered 14319300002 held at Credit Agricole (Suisse) SA, IBAN CH6208741014319300002, in the name of Sphene (International) Limited.

4) From on or about December 11, 2009, through on or about February 2, 2010, at least approximately \$359,279.88 was transferred by wire from the Sunfirst Netwebfunds Account to account numbered 27351910081015 held at Societé Generale Cyprus LTD, Cyprus, in the name of Golden Shores Properties Limited.

5) From on or about March 16, 2010, through on or about April 14, 2010, at least approximately \$3,481,589.51 was transferred by wire from the Sunfirst Netwebfunds Account and the Sunfirst A Web Debit Account to account numbered CY1211501001065983USDCACC002 held at FBME Bank LTD, Cyprus, in the name of Triple Seven Inc.

6) From on or about April 1, 2010, through on or about May 20, 2010, at least approximately \$2,900,000 was transferred by wire from the Sunfirst Netwebfunds Account and the Sunfirst A Web Debit Account to account numbered 5510045221 held at Wells Fargo, N.A., in the name of Triple Seven L.P.

7) On or about April 1, 2010, approximately \$1,025,000 was transferred by wire from the Sunfirst Netwebfunds Account to account numbered 7478010312 held at Wells Fargo, N.A., in the name of Kombi Capital.

g. From my discussion with a representative of the FDIC (the "FDIC Examiner"), I learned in substance and in part that in or about late 2010, Sunfirst Bank was examined by the Federal Deposit Insurance Corporation ("FDIC"), its federal regulator. In or about November 9, 2010, the FDIC issued a cease-and-desist order to Sunfirst Bank concerning processing for online poker companies because of the risk to the bank's solvency, required the bank to establish poker processing reserve accounts if the bank was to continue processing, and ordered that the poker processing funds at the bank be frozen. Sunfirst Bank created three processing accounts for its PokerStars processing in the name of Mastery Merchant and three processing accounts for its Full Tilt processing in the names of Powder Monkeys. Sunfirst Bank established reserve accounts for its Pokerstars and Full Tilt processing as follows:

1) account numbered 12900584 held at Sunfirst Bank, St. George, Utah, formerly in the name of Sunfirst Bank ITF Powder Monkeys/Full Tilt, now in the name of Sunfirst Bank (the "Powder Monkeys Sunfirst Account"); and

2) account numbered 129000576 on deposit at Sunfirst Bank, St. George, Utah, formerly in the name of Sunfirst Bank ITF Mastery Merchant/Pstars, now in the name of Sunfirst Bank (the "Mastery Merchant Sunfirst Account").

h. According to the FDIC Examiner, all poker processing funds at Sunfirst Bank have been transferred to the Powder Monkeys Sunfirst Account and the Mastery Merchant Sunfirst Account, where they are subject both to the FDIC cease-and-desist order and a separate restraining order issued by the FTC in connection with an action against Elite Debit Inc. and others.

The Chad Elie Accounts and Related Accounts

62. From my involvement in this investigation, including my review of records from All American Bank relating to accounts held at that institution in the name of 21 Debit LLC, I have learned the following in substance and in part:

a. In or about November 2010, 21 Debit LLC opened three accounts at All American Bank, Des Plaines, Illinois numbered 200003291 (the "21 Debit 3291 AAB Account"), 200003317 (the "21 Debit 3317 AAB Account"), and 200003325 (the "21 Debit 3325 AAB Account"). CHAD ELIE, the defendant, is the account signatory on each of the accounts.

b. On or about November 18, 2010, approximately \$149,974.00 was wired from the Vantage Invik Account to All American Bank, with the reference "FFC [for further credit] 2L [sic] Debit LLC 200003291."

c. On or about November 18, 2010, ELIE sent an email to personnel at All American Bank asking in part to open three more accounts: an operating account (already opened), a

reserve account, an account to be used for checks to deposit, and an account to be used for checks that are written.

d. On or about November 18, 2010, a representative of All American Bank sent ELIE an email stating in part that "We received a wire in the amount of \$419,974.00. Today, I also received a deposit via UPS in the amount of \$2,9637.18 (29 checks)"

e. On or about December 29, 2010, three cashier's checks totaling \$4.1 million were drawn on the 21 Debit 3291 AAB Account (\$3.5 million) and account number 200003309 in the name of 21 Debit LLC at All American Bank (the "21 Debit AAB 3309 Account"). One cashier's check in the amount of \$2,000,000 was made payable to "Sphene." A second cashier's check in the amount of \$1,000,000 was made payable to "Vantage" and deposited in Basler Kantonal Bank. The third cashier's check in the amount of \$1.1 million was made payable to 21 Debit LLC and, as discussed below, was deposited into a 21 Debit LLC account held at New City Bank.

f. From my review of the 21 Debit accounts at All American Bank, the activity in the 21 Debit 3291 AAB Account is consistent with the account being a pay-in account for online poker players. The activity in the 21 Debit AAB 3309 Account is consistent with that account being both a pay-in account for

online poker players and a payout account paying winnings to online poker players.

g. On or about January 14, 2011, All American Bank and the FDIC entered into a consent order directing the bank, among other things, to cease providing third party payment processing for deposit customers and their associated accountholders, customers, and clients and otherwise to sever its relationship with such customers.

63. Funds were transferred from the 21 Debit accounts at All American Bank as follows:

a. At least two wires of approximately \$400,000 each, totaling \$800,000, was made to Hotwire Financial LLC, account number 201002907 at Barclays Bank, UK. The wire records include the reference "FC Chad Elie."

b. At least nine wires of approximately \$400,000 each, totaling \$3,600,000, were made to Hotwire Financial LTD, account number GB26BARC20473563472044 at Barclays Bank, UK. The wire records include the reference "FFC [for further credit] 20100 2097 Chad Elie" or "FFC 2010 02097 Chad Canary."

c. At least approximately \$1,000,000 was wired to 4 A Consulting, account number 953500105 at Bank One Utah.

d. At least approximately \$50,000 was wired to Ndeka LLC, account number 730666271, at Whitney National Bank, New Orleans, Louisiana.

e. At least approximately \$74,919 was wired to Credit Capital Funding, account number 2919208124 at Bank of America, N.A.

64. From my involvement in this investigation, including my review of records from New City Bank, Chicago, Illinois, relating to accounts held at that institution in the name of 21 Debit LLC, I have learned the following in substance and in part:

a. 21Debit LLC and New City Bank entered into an operations agreement regarding the processing of merchant transactions dated as of January 6, 2011. CHAD ELIE, the defendant, appears to have signed on behalf of 21Debit LLC.

b. 21Debit LLC opened at least three accounts at New City Bank: account numbered 32433 in the name of 21Debit LLC dba PS Payments (the "21 Debit PokerStars NCB Account"); account numbered 32441 in the name of 21Debit LLC dba FLT Payments (the "21 Debit Full Tilt NCB Account"); and account number 32506 in the name of 21Debit LLC (the "21 Debit NCB Account"). ELIE is the account signatory on each of these accounts. It appears that the account opening records were signed on or about December 22, 2010.

c. New City Bank wrote a letter dated December 21, 2010, to Stelekram with an address in the Isle of Man that stated in substance and in part that New City Bank was "aware

that the ACH/demand draft/Check21/wire transfers/card transactions/paper checks sent through the mail or courier services and other related transactions being processed by New City Bank on behalf of Stelekram ('Stelekram') through 21 Debit LLC constitute transactions involving the internet Poker operator, PokerStars."

d. New City Bank wrote a letter dated December 23, 2010, to Vantage LTD c/o an address in Los Angeles, CA, that stated in substance and in part that New City Bank was "aware that transactions to be processed directly by 21Debit, LLC on behalf of Vantage LTD ('FullTilt Poker'), are for the benefit of the worldwide internet virtual online peer-to-peer poker card room for iPoker operator, FullTilt Poker."

e. On or about December 29, 2010, a cashier's check in the amount of \$1,100,000 from All American Bank, 21 Debit, LLC, was deposited into the 21 Debit NCB Account.

f. From my review of minutes of a January 20, 2011, meeting of the board of directors of New City Bank with representatives of the FDIC, I learned in substance and in part that the FDIC directed the bank not to process transactions for 21Debit LLC and that the FDIC and the bank were in discussions about a consent order prohibiting the bank from engaging in third party payment processing.

The Griting Accounts

65. On or about December 1, 2010, the Honorable Ronald Ellis, United States Magistrate Judge for the Southern District of New York, issued seizure warrants for, inter alia, the contents of account numbered 972402309 held at UMPQUA Bank, Roseburg, Oregon, in the name of "ULTRA SAFE PAY" (the "UMPQUA Account"), and all property traceable thereto, as monies involved in a money laundering transaction or attempted money laundering transaction, in violation of 18 U.S.C. § 1956(a)(2)(A); and (b) the proceeds of illegal internet gambling and property involved in illegal internet gambling, in violation of 18 U.S.C. § 1955.

66. The seizure warrant for the UMPQUA Account was issued based on my affidavit describing how the UMPQUA Account received funds from Electronic Payment Exchange ("EPX"), a payment processor with accounts at First Bank of Delaware. EPX acted as a payment processor for MAS, Inc., which was a poker processor for Full Tilt Poker. A true and correct copy of my prior affidavit is attached to this Declaration as Exhibit A and its contents are incorporated by reference as if fully set forth herein.

67. As described in my affidavit, from on or about February 12, 2010, through on or about November 5, 2010, EPX processed ACH transactions crediting the UMPQUA Account with a net amount of approximately \$102,835,174.67 from MAS. From in or

about August 12, 2009, through on or about November 9, 2010, approximately \$122,945,451.78 was transferred from the UMPQUA Account to account numbered 004-411-346034-838 held at Hong Kong and Shanghai Banking Corporation, Hong Kong, in the name of Griting Investments LTD (the "Griting Account"). . On or about November 15 and 16, 2010, an additional \$1,713,663.23 was wired from the UMPQUA Account to the Griting Account.

The Vensure Accounts

68. From my participation in this investigation, including my review of documents relating to account numbered 1093 held at Vensure Federal Credit Union, Mesa, Arizona, in the name of Trinity Global Commerce Corp. (the "Trinity Account") and my discussions with an investigator for the National Credit Union Administration ("Investigator-1"), I have learned the following in substance and in part:

a. I have reviewed an ACH Origination Agreement dated as of March 30, 2010, between Vensure Federal Credit Union ("Vensure") and Trinity Global Commerce Corp. ("Trinity"). In this agreement, Vensure agreed in substance and in part to act as the Originating Depository Financial Institution ("ODFI") for Trinity for ACH transactions. The agreement is signed by Garry M. Galon on behalf of Trinity, which has an address in British Columbia, Canada.

b. I have also reviewed an ACH Third Party Sender Agreement between Trinity and Vensure dated December 1, 2010. Schedule G to the agreement identifies the originators for which Trinity intends to process payments as Stelekram LTD and Vantage LTD. The company description for each is "Online Poker."

c. I have also reviewed a letter dated November 30, 2010, to the president of Vensure from Garry Galon. The letter states in substance and in part that Trinity is a bank account holding company charged with the responsibility of holding a bank account at Vensure and "collect[ing] funds on behalf of Blackford and the ultimate originator Vantage Ltd aka Full Tilt. Blackford is the entity that has a processing contract with Vantage."

d. From my review of records from the Federal Reserve relating to Trinity wire transfers, I learned that between at least on or about January 4, 2010, and March 3, 2011, at least approximately \$326,866,000 was wired from the Trinity Account to account numbered 1200402039 held at Banca Privada D'Andorra, Andorra, in the name of Trinity Global Commerce Corp. These wire transfers typically include the description "Payment Processing Settlement."

e. Furthermore, between at least on or about January 5, 2010, and January 4, 2011, at least approximately \$194,459,000 was transferred from the Trinity Account to account

numbered MT54SBMT5550500000016782GAUSD0 held at Sparkasse Bank Malta PLC, Malta, in the name of Trinity Global Commerce Corp. These wire transfers typically include the description "Payment Processing Settlement."

The Terricorp Inc. d/b/a/ TLC Global Accounts

69. From my participation in this investigation, including my review of documents relating to accounts numbered account numbered 27554003786, 27554003760, 27554001038, and 27551017789 held at Royal Bank of Canada, Canada, in the in the name of Terricorp Inc. d/b/a TLC Global (the "Terricorp 3786 Account," the "Terricorp 3760 Account," the "Terricorp 1038 Account," and the "Terricorp 7789 Account"), I have learned the following in substance and in part:

a. The Terricorp accounts were opened at a branch of the Royal Bank of Canada located in Kirkland, Quebec. Terricorp described its business as "Advertising -> Mailing House." Terricorp described its need for cross-border banking services as "current operations and disbursement auditor services."

b. The account statements for the Terricorp 3786 Account for the statements periods October 30, 2009, through January 29, 2010, reflect the payment of numerous checks from the account, typically in amounts ranging from approximately \$25 to approximately \$2,500. From my participation in this

investigation, this is consistent with the account operating as a payout account for online poker customers to receive their online poker winnings. Beginning in or about January 29, 2010, the statements appear to reflect batched transactions and the individual checks are no longer itemized.

c. The Terricorp 3786 Account appears to be funded primarily by transfers from the Terricorp 3760 Account. The Terricorp 3760 Account, in turn, appears to typically be funded with wire transfers in amounts in the hundreds of thousands of dollars from accounts held in the names of Terricorp and Voltrex.

70. A cooperating witness ("CW") who has previously provided reliable and corroborated information in connection with this investigation,² requested a payout of approximately \$35.00 from the CW's online poker account at www.pokerstars.com to the CW's bank account and a payout of approximately \$100.00 from the CW's online poker account at www.fulltilt.com to the CW's bank account in or about the summer of 2010. Afterwards, the CW received by mail to the CW's address in the Southern District of New York, a check in the amount of \$35 and a check in the amount of \$100.20, each drawn on account numbered 0275503786 at the Royal Bank of Canada, bearing the name "TLC Global" (the

² The CW previously pled guilty to gambling and money laundering-related offenses in the United States District Court for the Southern District pursuant to a cooperation agreement.

Terricorp 3786 Account). The return address on the envelope enclosing the checks was a PO Box in Buffalo, New York (the "Buffalo PO Box").

71. From my review of records from the Federal Reserve relating to wire transfers relating to Terricorp Inc., I learned in substance and in part that an account numbered 4800198399 held at Harris Bank, Palatine, Illinois, received at least approximately \$546,523.00 from an account numbered GB81RBOS16630000368036 held at the Royal Bank of Scotland in the name of Voltrex Ltd.

72. In early 2011, the CW requested a payout of approximately \$100 from the CW's online poker account at www.fulltilt.com to the CW's bank account. Afterwards, the CW received by mail to an address in the Southern District of New York, a check in the amount of \$100.17, drawn on account numbered 2000059819596 at Wachovia Bank, a division of Wells Fargo Bank, N.A., bearing the name "Eastern Expressions" (the "Eastern Expressions Account"). The return address on the envelope was the Buffalo PO Box.

73. From my review of records from the Federal Reserve relating to wire transfers involving the Eastern Expressions Account, I learned in substance and in part that the Eastern Expressions Account received at least approximately \$1,048,004.00 in wire transfers between on or about November 18, 2010, and on

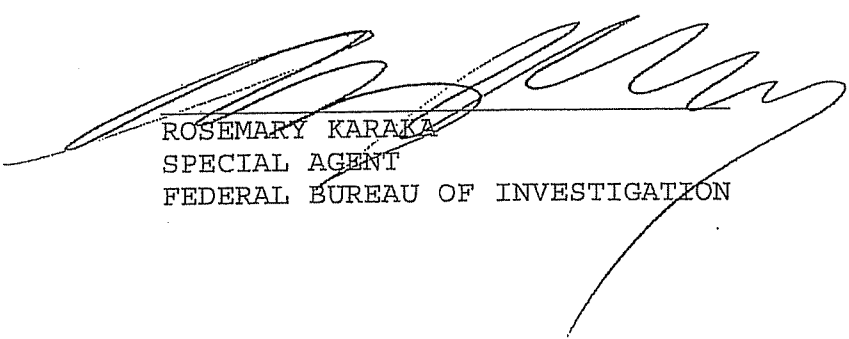
or about February 4, 2011, from account numbered 104773862842 held at Bendix Foreign Exchange, Toronto, Ontario. The wire transfers typically include the reference "B/O Terricorp Inc."

CONCLUSION

74. For the foregoing reasons, I submit that there is probable cause to believe that the Target Accounts contain (a) the proceeds of illegal internet gambling and property involved in illegal internet gambling, in violation of 18 U.S.C. § 1955; (b) the proceeds of a conspiracy to commit wire fraud and bank fraud, in violation of 18 U.S.C. §§ 1343, 1344, and 1349 which affected financial institutions; and (c) monies involved in a conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). Accordingly, the contents of the Target Accounts are subject to forfeiture to the United States of America pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1) and (2)(A), and 1955, and 28 U.S.C. § 2461; and I respectfully request that the Court issue a Restraining Order for the contents of the Target Accounts, as described in paragraph 2, supra, and Schedule A hereto.

75. I also respectfully request that this Declaration be sealed until further order of the Court and any restraining order issued based on this Declaration be sealed until it is served, so as not to jeopardize the investigation of this matter. The Indictment is presently under seal and the charged defendants have not yet been arrested. Were this affidavit to be made public prior to the arrest of the defendants and the unsealing of the Indictment, it would interfere with the ability of law enforcement agents to execute arrest warrants for the defendants and would make it difficult, if not impossible, to serve the restraining order on the defendants and permit the defendants and those acting with them to transfer, conceal, or dissipate the funds sought to be restrained.

Pursuant to Title 28, United States Code, Section 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of March, 2011:



ROSEMARY KARAKA
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

SCHEDULE A TO KARAKA DECLARATION

Poker Company Accounts

The PokerStars Accounts

The Sphene Accounts

1. account numbered 27351910081015 held at Credit Agricole (Suisse) SA, Switzerland, in the name of Sphene International Limited, IBAN CH8908741014319300001, and all funds traceable thereto;
2. account held at Credit Agricole (Suisse) SA, Switzerland, in the name of Sphene (International) Limited, IBAN CH6208741014319300002, and all funds traceable thereto;
3. all accounts held at Bank Hapoalim (Suisse) SA, Luxembourg, in the name of Sphene International, and all funds traceable thereto;

The Oldford Group Account

4. account held at Credit Agricole (Suisse) SA, Switzerland, in the name of the Oldford Group Limited, IBAN CH1508741014093800001, and all funds traceable thereto;

The Full Tilt Accounts

The Tiltware Accounts

5. account numbered 1892947126 held at Comerica Bank, Dallas, Texas, in the name of Tiltware, and all funds traceable thereto;
6. account numbered 1892947134 held at Comerica Bank, Dallas, Texas, in the name of Tiltware, and all funds traceable thereto;

The Kolyma Corporation Accounts

7. account numbered E34512308000000007283 held at Wirecard Bank AG, Germany, in the name of Kolyma Corporation, and all funds traceable thereto;
8. account numbered E79512308000000007249 held at Wirecard Bank AG, Germany, in the name of Kolyma Corporation, and all funds traceable thereto;

The Ranston Accounts

9. account held at Basler Kantonal Bank, Switzerland, in the name of Ranston Ltd., IBAN CH4900770016542263375, and all funds traceable thereto;
10. account held at Basler Kantonal Bank, Switzerland, in the name of Ranston LTD, IBAN CH7000770016542254461, and all funds traceable thereto;

The Mailmedia Account

11. account held at Basler Kantonal Bank, Switzerland, in the name of Mailmedia, numbered CH7300770252534932001, and all funds traceable thereto;

The Vantage Account

12. account held at Banque Invik SA, Luxembourg, in the name of Vantage Limited, IBAN LU811944013080000USD, and all funds traceable thereto;
13. account held at Basler Kantonal Bank, Switzerland, in the name of Vantage Ltd. and all funds traceable thereto;

The Filco Accounts

14. account held at Allied Irish Bank in the name of Filco Ltd, IBAN IE85AIBK93006727971082, and all funds traceable thereto;
15. account held at WestLB AG, Germany, in the name of Filco Ltd, IBAN DE19512308000000007262, and all funds traceable thereto;

The Absolute Poker Accounts

The Blue Water Account

16. account numbered MT23SBMT5550500000001108 held at Sparkasse Bank Malta in the name of Blue Water Services LTD, and all funds traceable thereto;

The Towkiro Account

17. account numbered MT14SBMT55505000000011451GAEURO held at Sparkasse Bank Malta in the name of Tokwiro Enterprises ENRG, and all funds traceable thereto;

The Disora Accounts

18. account numbered 61-12-9436-6 held at Banco Panameno De La Vivienda SA, Panama, in the name of Disora Investment, Inc., and all funds traceable thereto;
19. account numbered 0011271083 held at Citibank London, England, in the name of Mundial Valores, for the benefit of Disora Investment, Inc., MAM000804, and all funds traceable thereto;

The Rintrade Account

20. account numbered CH4308755011432400000 held at Pictet and Co., Switzerland, in the name of Rintrade Finance SA and all funds traceable thereto;

Poker Company Principal Accounts

The Bitar and Pocket Kings Accounts

21. account numbered 60092074136054 held at Natwest, Jersey, in the name of Raymond Bitar, and all funds traceable thereto;
22. account numbered 95434087766 held at Natwest, Channel Islands, in the name of Raymond Bitar, and all funds traceable thereto;
23. account numbered 91707289 held at Bank of Ireland, Ireland, in the name of Raymond Bitar, and all funds traceable thereto;
24. account numbered 99045014745206 held at Bank of Scotland Ireland, Inc., Ireland, in the name of Raymond Bitar, and all funds traceable thereto;
25. account numbered 95151380025186 held at National Irish Bank, Ireland, in the name of Raymond Bitar, and all funds traceable thereto;
26. account numbered 95151340062618 held at National Irish Bank, Ireland, in the name of Raymond Bitar, and all funds traceable thereto;
27. account numbered 26257031 held at Allied Irish Bank, Ireland, in the name of Raymond Bitar, and all funds traceable thereto;

28. account numbered 7262 held at Wirecard Bank AG, Germany, in the name of Raymond Bitar, and all funds traceable thereto;
29. account numbered 7244 held at Wirecard Bank AG, Germany, in the name of Raymond Bitar, and all funds traceable thereto;
30. account numbered 99045014801116 held at Bank of Scotland Ireland, Inc., Ireland, in the name of Pocket Kings Consulting LTD, and all funds traceable thereto;
31. account numbered 99022000439546 held at National Irish Bank, Ireland, in the name of Pocket Kings Ltd, and all funds traceable thereto;
32. account numbered 99022000440162 held at National Irish Bank, Ireland, in the name of Pocket Kings Ltd, and all funds traceable thereto;
33. account numbered IE58IPBS9906291390203 held at Irish Permanent Treasury, PLC, in the name of Pocket Kings, and all funds traceable thereto;
34. account numbered 800801483 held at Comerica Bank, Dallas, Texas, in the name of Raymond Bitar and all funds traceable thereto;
35. account numbered 800922552 held at Comerica Bank, Dallas, Texas, in the name of Raymond Bitar and all funds traceable thereto;
36. account numbered IE07DABA95151340074209 held at National Irish Bank in the name of Pocket Kings Limited, and all funds traceable thereto;
37. account numbered IE38DABA95151340025151 held at National Irish Bank in the name of Pocket Kings Limited, and all funds traceable thereto;
38. account numbered IE42DABA95151340062618 held at National Irish Bank in the name of Pocket Kings Limited, and all funds traceable thereto;
39. account numbered IE58IPBS99062913190203 held at Irish Permanent Treasury in the name of Pocket Kings Limited, and all funds traceable thereto;
40. account numbered IE67AIBK93208626257031 held at Allied Irish Bank in the name of Pocket Kings, and all funds

traceable thereto;

41. account numbered LU621944013130000USD held at Banque Invik, Luxemburg, held in the name of Pocket Kings Limited, and all funds traceable thereto;
42. Account numbered IE07DABA95151340074209 held at Danske Bank A/S, Denmark, held in the name Pocket Kings Ltd., and all funds traceable thereto.
43. account numbered 8000801483 held at Comerica Bank, Dallas, Texas, in the name of Raymond Bitar, and all funds traceable thereto;

Poker Processor Accounts

The Sunfirst Bank Accounts and Related Accounts

44. account numbered 121015408 held at Sunfirst Bank, St. George, Utah, in the name of Triple Seven LP d/b/a Netwebfunds.com, and all funds traceable thereto;
45. account numbered 121015390 held at Sunfirst Bank, St. George, Utah, in the name of Triple Seven LP d/b/a A WEB DEBIT, and all funds traceable thereto;
46. account numbered 27351910081015 held at Societé Generale Cyprus LTD, Cyprus, in the name of Golden Shores Properties Limited, and all funds traceable thereto;
47. account numbered CY1211501001065983USDCACC002 held at FBME Bank LTD, Cyprus, in the name of Triple Seven Inc., and all funds traceable thereto;
48. account numbered 5510045221 held at Wells Fargo, N.A., in the name of Triple Seven L.P., and all funds traceable thereto;
49. account numbered 7478010312 held at Wells Fargo, N.A., in the name of Kombi Capital, and all funds traceable thereto;
50. account numbered 12900584 held at Sunfirst Bank, St. George, Utah, formerly in the name of Sunfirst Bank ITF Powder Monkeys/Full Tilt, now in the name of Sunfirst Bank, and all funds traceable thereto;
51. account numbered 129000576 on deposit at Sunfirst Bank, St. George, Utah, formerly in the name of Sunfirst Bank ITF

Mastery Merchant/Psars, now in the name of Sunfirst Bank, and all funds traceable thereto;

The Chad Elie Accounts and Related Accounts

52. account numbered 200003291 held at All American Bank, Des Plaines, Illinois, in the name of 21 Debit LLC, and all funds traceable thereto;
53. account numbered 200003317 held at All American Bank, Des Plaines, Illinois, in the name of 21 Debit LLC, and all funds traceable thereto;
54. account numbered 200003325 held at All American Bank, Des Plaines, Illinois, in the name of 21 Debit LLC, and all funds traceable thereto;
55. Account numbered 200003309 held at All American Bank, Des Plaines, Illinois, in the name of 21 Debit LLC, and all funds traceable thereto;
56. account number 201002907 at Barclays Bank, UK in the name of Hotwire Financial LLC, and all funds traceable thereto;
57. account number GB26BARC20473563472044 at Barclays Bank, UK, in the name of Hotwire Financial LTD, and all funds traceable thereto;
58. account number 953500105 at Bank One Utah, in the name of 4 A Consulting, and all funds traceable thereto;
59. account number 730666271, at Whitney National Bank, New Orleans, Louisiana in the name of Ndeka LLC, and all funds traceable thereto;
60. account number 2919208124 at Bank of America, N.A. in the name of Credit Capital Funding, and all funds traceable thereto;
61. account numbered 32433 at New City Bank in the name of 21Debit LLC dba PS Payments, and all funds traceable thereto;
62. account numbered 32441 at New City Bank in the name of 21Debit LLC dba FLT Payments, and all funds traceable thereto;
63. account number 32506 at New City Bank in the name of 21Debit

LLC, and all funds traceable thereto;

The Griting Account and Related Account

64. account numbered 972402309 held at UMPQUA Bank, Roseburg, Oregon, in the name of "ULTRA SAFE PAY," and all property traceable thereto;
65. account numbered 004-411-346034-838 held at Hong Kong and Shanghai Banking Corporation, Hong Kong, in the name of Griting Investments LTD, and all funds traceable thereto;

The Vensure/Trinity Global Accounts

66. account numbered 1093 held at Vensure Federal Credit Union, Mesa, Arizona, in the name of Trinity Global Commerce Corp.
67. account numbered 1200402039 held at Banca Privada D'Andorra, Andorra, in the name of Trinity Global Commerce Corp., and all funds traceable thereto;
68. account numbered MT54SBMT55505000000016782GAUSD0 held at Sparkasse Bank Malta PLC, Malta, in the name of Trinity Global Commerce Corp., and all funds traceable thereto;

The Terricorp Inc. d/b/a/ TLC Global Accounts and Related Accounts

69. account numbered 27554003786 held at Royal Bank of Canada, Canada, in the in the name of Terricorp Inc. d/b/a TLC Global, and all funds traceable thereto;
70. account numbered 27554003760 held at Royal Bank of Canada, Canada, in the in the name of Terricorp Inc. d/b/a TLC Global, and all funds traceable thereto;
71. account numbered 27554001038 held at Royal Bank of Canada, Canada, in the in the name of Terricorp Inc. d/b/a TLC Global, and all funds traceable thereto;
72. account numbered 27551017789 held at Royal Bank of Canada, Canada, in the in the name of Terricorp Inc. d/b/a TLC Global, and all funds traceable thereto;
73. account numbered 4800198399 held at Harris Bank, Palatine, Illinois, and all funds traceable thereto;
74. account numbered GB81RBOS16630000368036 held at the Royal

Bank of Scotland in the name of Voltrex Ltd., and all funds traceable thereto;

75. account numbered 2000059819596 held at Wachovia Bank, a division of Wells Fargo Bank, N.A.; in the name "Eastern Expressions," and all funds traceable thereto;
76. account numbered 104773862842 held at Bendix Foreign Exchange, Toronto, Ontario, and all funds traceable thereto.

Exhibit

A

10 MAG 2701

PREET BHARARA
United States Attorney for the
Southern District of New York

By: MICHAEL D. LOCKARD
Assistant United States Attorney
(212) 637-2193

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA :

- v. - :

TO BE FILED UNDER SEAL

\$6,152,285.88 IN UNITED STATES
CURRENCY ON DEPOSIT AT FIRST BANK
OF DELAWARE, PHILADELPHIA,
PENNSYLVANIA, IN ACCOUNT NUMBERED
9016139;

: AFFIDAVIT IN SUPPORT
: OF SEIZURE WARRANTS
: PURSUANT TO 18 U.S.C.
: §§ 981, 984 & 1955
:

ALL FUNDS ON DEPOSIT AT UMPQUA
BANK, ROSEBURG, OREGON, IN ACCOUNT
NUMBER 972402309, HELD IN THE NAME
OF "ULTRA SAFE PAY," AND ALL
PROPERTY TRACEABLE THERETO; AND

ALL FUNDS ON DEPOSIT AT HAWAII
NATIONAL BANK, HONOLULU, HAWAII, IN
ACCOUNT NUMBER 12008656, HELD IN
THE NAME OF "MAS INC.", AND ALL
PROPERTY TRACEABLE THERETO;

Defendants-in-rem.

----- x
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

ROSEMARY KARAKA, being duly sworn, deposes and says:

1. I am a Special Agent with the Federal Bureau of
Investigation ("FBI"), and have been so employed for over 19
years. I am presently assigned to a squad that investigates,
among other things, financial institution fraud, illegal

gambling, and money laundering. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, my review of law enforcement reports and other pertinent documents, and my conversations with other law enforcement officers. Where the actions, statements, and conversations of others are recounted herein, they are recounted in substance and part, unless otherwise indicated. Because this affidavit is for the limited purpose of establishing probable cause for a seizure warrant, it does not set forth every fact learned in the course of this investigation.

2. This affidavit is submitted in support of the Government's application for the issuance of warrants to seize and forfeit the following:

- a. \$6,152,285.88 IN UNITED STATES CURRENCY ON DEPOSIT AT FIRST BANK OF DELAWARE, PHILADELPHIA, PENNSYLVANIA; IN ACCOUNT NUMBERED 9016139 (the "EPX Segregated Account");
- b. ALL FUNDS ON DEPOSIT AT UMPQUA BANK, ROSEBURG, OREGON, IN ACCOUNT NUMBER 972402309, HELD IN THE NAME OF "ULTRA SAFE PAY," (the "UMPQUA Account"), AND ALL PROPERTY TRACEABLE THERETO; AND
- c. ALL FUNDS ON DEPOSIT AT HAWAII NATIONAL BANK, HONOLULU, HAWAII, IN ACCOUNT NUMBER 12008656, HELD IN THE NAME OF "MAS INC." (the "HNB Account"), AND ALL PROPERTY TRACEABLE THERETO;

(the "Defendant Funds").

3. There is probable cause to believe that the Defendant Funds constitute or are derived from proceeds traceable to the operation of an illegal gambling business, in violation of 18 U.S.C. § 1955, and the illegal transmission of gambling information, in violation of 18 U.S.C. § 1084, and property used in the operation of an illegal gambling business and commission of the gambling offense. As such, the Defendant Funds are subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(C), 984, and 1955(d).

4. In addition, there is probable cause to believe that the Defendant Funds are property involved in actual or attempted money laundering transactions, or property traceable to such property, in violation of 18 U.S.C. § 1956(a). As such, the Defendant Funds are subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(A) and 984.

5. In addition, there is probable cause to believe that the Defendant Funds constitute proceeds of bank fraud, in violation of 18 U.S.C. § 1344. As such, the Defendant Funds are subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 984.

BACKGROUND

6. For approximately four years, FBI agents have been investigating illegal internet gambling businesses which, although typically based offshore, predominantly serve players

based in the United States. These gambling businesses offer "real money" casino games, poker, and sports betting to United States players, in violation of multiple federal criminal statutes including but not limited to 18 U.S.C. § 1084 (making it unlawful to use a wire in connection with placing a bet or wager), § 1955 (making it illegal to operate an illegal gambling business) and §§ 1956 and 1957 (money laundering).

7. Although illegal internet gambling companies keep their computer servers, management and support staff offshore, they must rely on the United States financial system both to obtain money from gamblers and to pay those gamblers who wish to withdraw funds from the online gambling companies. However, because United States financial institutions generally refuse to handle financial transactions that they know to be related to internet gambling, the offshore internet gambling companies and the payment processors who serve them must, as a matter of course, make false representations to United States financial institutions in order to conduct these transactions.

8. The leading internet gambling companies hire processing companies who have the ability to withdraw funds directly from United States consumers' bank accounts through a process known as the Automated Clearinghouse (or "ACH") system. The ACH system, which is administered by the Federal Reserve, allows for fast and efficient electronic funds transfers to and

from individuals' checking accounts through "e-checks" or "electronic checks." Payment processing companies with access to the ACH system can "pull" money from individual consumer bank accounts (i.e. debit the consumer's account) and route it to gambling companies (typically based abroad) and "push" money from the gambling companies into individual checking accounts to pay winnings (i.e. credit the consumer's account). Typically, a gambler simply logs onto the web site of an internet gambling company and chooses "e-check" or some similarly described option and enters his or her United States bank account information to complete these transactions. The gambling companies rely on these payment processors with access to the ACH system because Visa and Mastercard make it difficult for the United States residents to fund gambling transactions with credit cards.

9. Because United States banks cannot lawfully process ACH payments relating to online gambling, the payment processing companies hired by the offshore internet gambling companies must take steps to deceive financial institutions in order to induce them to allow such ACH processing. For example, external payment processors may create phoney non-gambling internet businesses (complete with web pages, and in many cases corporate formalities) and represent to banks that they are processing on behalf of these businesses, and may employ "descriptors" for the transactions that would be transmitted through the ACH system

that identified the transactions as being for various non-gambling web merchants. The "descriptors" would appear as text on the customer's bank statement--and be seen by the customer's bank--and would therefore make the transactions appear to relate to something other than gambling.

**PROBABLE CAUSE THAT THE
DEFENDANT FUNDS ARE SUBJECT TO FORFEITURE**

10. I have reviewed records relating to accounts numbered 9012893 (the "EPX Settlement Account") and 9012907 (the "EPX Reserve Account") at First Bank of Delaware, held in the name of "EXP" (the "EPX Accounts"), the UMPQUA Account, and the HNB Account, and have spoken with representatives of First Bank of Delaware and with representatives of Electronic Payment Exchange ("EPX")¹ concerning the EPX Accounts. Furthermore, I have spoken with other FBI agents and have reviewed reports written by other FBI agents concerning the investigation of illegal online gaming businesses discussed above.

11. I have spoken with another FBI agent who has spoken with a cooperating witness ("CW") located in the Southern District of New York, who has previously provided reliable and corroborated information in connection with this investigation.²

¹ Although the Electronic Payment Exchange goes by the acronym "EPX," the name on the EPX Accounts is "EXP."

² The CW previously pled guilty to a gambling- and money laundering-related offenses in the United States District Court

I have also reviewed records provided by the CW relating to the CW's bank account and online gambling transactions. In July 2010, the CW transferred \$21 to the CW's online poker account with Full Tilt Poker, one of the largest online real-money poker sites in the world. Afterwards, an ACH transaction in the amount of \$21 posted to the CW's bank account with the descriptor "AUTOMATED DEBIT MAS 8773094831." Also in July 2010, the CW withdrew \$100 from the CW's online poker account with Full Tilt Poker, and later received an ACH deposit to the CW's bank account with the descriptor "AUTOMATED CREDIT MAS 8773094831." The originating bank for both ACH transactions was the First Bank of Delaware.

12. From my review of records relating to the EPX Accounts, including records relating to "MAS Inc." provided by First Bank of Delaware and by EPX; and my discussions with representatives of First Bank of Delaware and of EPX; I have learned the following in substance and in part:

a. EPX is a company based in Wilmington, Delaware, that provides third-party payment processing services.

b. MAS, Inc. ("MAS") is a customer of EPX. According to EPX's records, MAS is an "e-commerce" company located in Honolulu, Hawaii. The address provided for MAS

for the Southern District pursuant to a cooperation agreement.

appears to be the office of an accounting firm (the "Accounting Firm") located in Honolulu, Hawaii.

c. The materials provided by EPX to First Bank of Delaware concerning MAS include an Accountant's Report dated January 15, 2010, on letterhead from the Accounting Firm. The Accountant's Report notes that the report is a compilation "limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them." The Accountant's Report further notes that "Management has elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the income tax basis of accounting." The letter states that "We [the Accounting Firm] are not independent with respect to MAS, Inc."

d. MAS is EPX's largest customer. In the month of July, MAS originated 338,914 transactions totaling \$15,264,414.05, out of \$59,954,678.30 by all EPX customers. In August, MAS originated 471,191 transactions totaling \$21,696,007.46, out of \$56,952,855.89 by all EPX customers. In September, MAS originated 487,123 transactions totaling \$21,047,054, out of \$55,660,215 by all EPX customers.

e. I have reviewed transaction detail reports for MAS transactions for the months of July, August, and September 2010. These reports include the date and amount of the transactions and the customer name, among other information. There are approximately thousands of transactions each business day, some debiting customer accounts (collecting money) and some crediting customer accounts (paying money out). The MAS transactions have characteristics consistent with transactions for other internet gambling payment processors that I have reviewed in the course of this investigation: The debit transactions are all identified with the ACH code "WEB" for internet-based transactions. The customer accounts are almost all in the names of individuals, rather than companies. The majority of transactions are in even dollar amounts, such as \$10, \$25, or \$50. The most common transaction size is a \$10 debit. The debits are typically in amounts from \$10 to \$100, ranging up to \$2,500. The credits range up to \$1500.

f. ACH transactions that EPX processes for credit to MAS are first credited to the EPX reserve account. The funds are then transferred to the EPX settlement account, where they are available to be transferred to other accounts, including customer accounts, the UMPQUA Account, or the HNB Account.

13. On or about September 21, 2010, a representative of First Bank of Delaware sent an email to a representative of

EPX asking for the originators of five MAS transactions. The EPX representative replied that MAS was the originator and that MAS owned several websites that sold different products. On or about September 27, 2010, the EPX representative provided a list of 88 websites that MAS purportedly owned and operated. From my discussions with the First Bank of Delaware representative, I learned that EPX never advised First Bank of Delaware that MAS was processing transactions for online gambling.

14. In my discussions with representatives of EPX, those representatives stated that they believed MAS was a third-party payment processor and did not know or believe that MAS processed transactions related to online gambling. According to the EPX representatives, had EPX known that MAS was processing transactions relating to online gambling, EPX would not have processed payments for MAS.

15. On or about November 12, 2010, the United States Attorney's Office for the Southern District of New York directed First Bank of Delaware, pursuant to Title 18, United States Code, Section 981(b)(2)(B), to freeze the EPX Accounts to prevent them from being dissipated or transferred by EPX or by MAS. On or about November 15, 2010, First Bank of Delaware transferred approximately \$6,823,874.90, representing the amount of funds in the accounts traceable to MAS, from the EPX Accounts to the EPX Segregated Account and lifted the restrictions on the EPX

Accounts. On or about November 18, 2010, at the Government's request, First Bank of Delaware released approximately \$671,589.02 to EPX from the EPX Segregated Account to offset ACH return transactions that effectively reversed prior ACH credits to the EPX Accounts for which the MAS customer had insufficient funds, provided an invalid bank account number, and similar reasons. Approximately \$6,152,285.88 from the EPX Accounts remains blocked and segregated in the EPX Segregated Account by First Bank of Delaware.

16. From my review of Hawaii National Bank records relating to the HNB Account, I learned in substance and in part that when MAS Inc. opened the HNB Account, it represented that it was an "Internet Retailer," and described its business as providing payment solutions for online retailers such as "Hotels, Bed and Breakfast, Travel Agents, Airlines, E-Marketing companies, and Activity Centers." The application materials do not disclose that MAS would process online gambling transactions.

17. From my review of EPX and First Bank of Delaware records relating to the EPX Accounts, UMPQUA records relating to the UMPQUA Account, and Hawaii National Bank records relating to the HNB Account, I have learned in substance and in part that since February 2010, MAS had transferred over approximately \$104 million from the EPX Accounts to the UMPQUA Account and the HNB Account. Most of the funds transferred to the UPMQUA Account

were then transferred to an account in Hong Kong in the name of "Griting Investments."

a. From on or about February 12, 2010, through on or about November 5, 2010, EPX processed ACH transactions crediting the UMPQUA Account with a net amount of approximately \$102,835,174.67 from MAS. This net number reflects approximately \$115,351,378.85 in ACH transfers to the UPMQUA Account and approximately \$12,516,204.18 in ACH transfers from the UPMQUA Account to the EPX Accounts.

b. From in or about August 12, 2009, through on or about November 9, 2010, approximately \$122,945,451.78 was transferred from the UMPQUA Account to an account in the name of "Griting Investments" in Hong Kong.

c. From on or about June 3, 2010, through on or about November 5, 2010, EPX processed ACH transactions crediting the HNB Account with a net amount of approximately \$1,497,473.41 from MAS. This net number reflects approximately \$1,827,304.11 in ACH transfers to the HNB Account and approximately \$329,830.70 in transfers from the HNB Account to the EPX Accounts.

d. From in or about January 29, 2010, when the HNB Account was opened, through on or about November 10, 2010, approximately \$3.7 million was transferred from the HNB Account to the UMPQUA Account.

STATUTORY AUTHORITY

18. The statutory provisions pursuant to which the Defendant Funds are subject to seizure and forfeiture are described below.

19. Title 18, United States Code, Section 981(a)(1)(A) subjects to forfeiture "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of . . . section 1956 . . . of this title, or any property traceable to such property."

20. Title 18, United States Code, Section 1956 provides, in pertinent part, that:

(a)(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity

shall be guilty of a crime.

21. Title 18, United States Code, Section 1956(c)(7)(A) provides that the term "specified unlawful activity" includes "any act or activity constituting an offense listed in section 1961(1) of this title". Included among the enumerated offenses in 18 U.S.C. § 1961(1) is 18 U.S.C. § 1955, which prohibits the operating of illegal gambling businesses, 18

U.S.C. § 1084, and racketeering activity, which includes any act or threat involving gambling, which is chargeable under State law and punishable by imprisonment for more than one year.

22. Furthermore, 18 U.S.C. § 981(a)(1)(C) subjects to forfeiture:

Any property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting 'specific unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

23. Again, as noted in paragraph 25, supra, 18 U.S.C. § 1956(c)(7)(A) provides that the term "specified unlawful activity" includes "any act or activity constituting an offense listed in section 1961(1) of this title," and § 1961(1) includes 18 U.S.C. §§ 1955 and 1084 among the enumerated offenses.

24. Section 1961(1) of Title 18, United States Code, also lists bank fraud in violation of Title 18, United States Code, Section 1344. Section 1344 provides, in pertinent part, that:

Whoever knowingly executes, or attempts to execute, a scheme or artifice (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises . . .

shall be guilty of a crime.

25. In addition, 18 U.S.C. § 1955 has its own forfeiture provision. Specifically, § 1955(d) provides that "[a]ny property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States."

26. Furthermore, 18 U.S.C. § 984 provides, in relevant part, that:

- (a) (1) In any forfeiture action in rem in which the subject property is . . . funds deposited in an account in a financial institution . . .
 - (A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and
 - (B) it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.
- (2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.
- (b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

27. Section 981(b)(1) of Title 18, United States Code, provides that any property subject to forfeiture to the United States under 18 U.S.C. § 981(a) may be seized by the Attorney

General. Section 981(b) (2) provides that such a seizure may be made "pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure."

28. In addition, Section 981(b) (3) provides that, notwithstanding the provisions of Federal Rule of Criminal Procedure 41(a), a seizure warrant may be issued pursuant to Section 981(b) by a judicial officer in any district in which a forfeiture action against the property may be filed under Title 28, United States Code, Section 1355(b). Under Section 1355(b) (1) (A), a forfeiture action or proceeding may be brought in the district in which any of the acts or omissions giving rise to the forfeiture occurred.

29. Were this affidavit to be made public at this time, it would interfere with an ongoing criminal investigation into certain individuals engaged in the criminal business of online gambling and money laundering. Making the affidavit public also would interfere with the ability of law enforcement officers to locate and seize the proceeds of criminal online gambling businesses.

30. Should the court issue a seizure warrant on the basis of this affidavit, making that warrant publicly available before it is executed could interfere with the ability of law


enforcement officers to seize the Defendant Funds before they are dissipated.

CONCLUSION

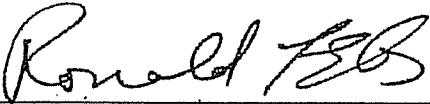
31. For the foregoing reasons, I submit that there is probable cause to believe that the Defendant Funds constitute (a) monies involved in a money laundering transaction or attempted money laundering transaction, in violation of 18 U.S.C. § 1956(a)(2)(A); and (b) the proceeds of illegal internet gambling and property involved in illegal internet gambling, in violation of 18 U.S.C. § 1955. Accordingly, the Defendant Funds are subject to forfeiture to the United States of America pursuant to 18 U.S.C. §§ 981(a)(1)(A) and (C) and 1955, and I respectfully request that the Court issue a seizure warrant for the Defendant Funds, as described in paragraph 2, supra.

32. I also respectfully request that this Affidavit be sealed until further order of the Court, and any warrant issued based on this Affidavit be sealed until it is executed, so as not to jeopardize the investigation of this matter.

DEC 07 2010



Special Agent Rosemary Karaka
Federal Bureau of Investigation

Sworn to before me this
1st day of December, 2010


HONORABLE RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

This Affidavit must remain under seal until further Order of the Court and the accompanying Seizure Warrant must remain under seal until it is executed.

SO ORDERED


HONORABLE RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

DEC 07 2010