

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000578-118

(Class Action)  
SUPERIOR COURT

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**M. SCHNURBACH**

*Petitioner*

-vs.-

**FULL TILT POKER LTD.**

**TILTWARE LLC, KOLYMA  
CORPORATION A.V.V., POCKET  
KINGS LTD., POCKET KINGS  
CONSULTING LTD., FILCO LTD.,  
VANTAGE LTD., RANSTON LTD.,  
MAIL MEDIA LTD.**

**HOWARD LEDERER, CHRIS  
FERGUSON, (...), (...), (...), (...), MIKE  
MATUSOW, and (...)**

(...)

**RAYMOND BITAR**

**NELSON BURTNICK**

(...)

*Respondents*

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**AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
&  
TO ASCRIBE THE STATUS OF REPRESENTATIVE  
(Art. 1002 C.C.P. and following)**

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,  
SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER  
STATES AS FOLLOWS:

**I. GENERAL PRESENTATION**

## A) THE ACTION

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:
  - all residents in Canada who have money being held in their Full Tilt Poker Player Accounts since approximately June 30<sup>th</sup> 2011, or any other group to be determined by the Court;

Alternately (or as a subclass)

  - all residents in Quebec who have money being held in their Full Tilt Poker Player Accounts since approximately June 30<sup>th</sup> 2011, or any other group to be determined by the Court;
2. The present action involves the Respondents' illegal freezing, commingling of funds, and misappropriation of Class Members' money that is kept in their internet poker player's accounts which is accessible through the website [www.fulltiltpoker.com](http://www.fulltiltpoker.com);

## B) THE RESPONDENTS

3. Full Tilt is the umbrella entity behind the Full Tilt Poker internet website ([www.fulltiltpoker.com](http://www.fulltiltpoker.com)), the Full Tilt Poker brand, the Full Tilt Team of professional poker players, and numerous privately-held companies and individuals that operate for and under the umbrella entity (together being referred to herein as "Full Tilt");
4. Respondent Full Tilt Poker Ltd. ("FTPL") is the corporate entity with which the members of the Full Tilt Team have contracted. FTPL has participated in and/or directed the conduct of Full Tilt;
5. Respondent Tiltware LLC ("Tiltware") is a corporate entity and the exclusive poker software developer and licensor for Full Tilt. Tiltware is also the Full Tilt marketing wing. Tiltware has participated in and/or directed the conduct of Full Tilt, having served as the mechanism to redirect players' funds for the personal use of the owners of Full Tilt. Tiltware is the parent company of Pocket Kings Ltd., Pocket Kings Consulting Ltd., and Filco Ltd.;
6. Respondent Vantage, Ltd. ("Vantage") is a corporate entity with which users of the Full Tilt website, including, specifically, "persons situated in North America," enter into an "End User License Agreement." That Agreement states: "Adult users of all skill levels who are situated in North America can

download the proprietary gaming software needed to participate in poker tournaments and to play online interactive games of poker for real money at [www.fulltiltpoker.com](http://www.fulltiltpoker.com). Vantage owned Swiss bank accounts that contain players' funds. Vantage has participated in and/or directed the conduct of Full Tilt. Vantage, operating under the Full Tilt Poker brand name, was (...) a licensee of the Alderney Gambling Control Commission. By virtue of its license, Vantage was (...) licensed, on behalf of Full Tilt, to register new customers, accept deposits from new and existing customers, permit withdrawal of funds by existing customers and permit participation by customers in gambling transactions and game play. This license was revoked on June 29, 2011;

7. Respondent Filco Ltd. ("Filco") is a corporate entity that holds or held, at all or some relevant time(s), the "eGambling" license issued by the Alderney Gambling Control Commission. Filco has participated in and/or directed the conduct of Full Tilt. Filco is a related company to Pocket Kings Ltd. and Filco's corporate parent is Tiltware. As a licensee of the Alderney Gambling Control Commission, Filco is licensed, on behalf of Full Tilt Poker, to register new customers, accept deposits from new and existing customers, permit withdrawal of funds by existing customers and permit participation by customers in gambling transactions and game play;
8. Respondent Kolyma Corporation A.V.V. ("Kolyma") is a corporate entity and the legal owner of the Full Tilt website. Kolyma has participated in and/or directed the conduct of Full Tilt;
9. Respondent Pocket Kings Ltd. ("Pocket Kings") is a corporate entity and is responsible for operating the Full Tilt website. Pocket Kings has at all or some relevant time(s) provided "[t]echnology and [m]arketing consulting services to the online poker industry and one of the fastest growing poker sites, Full Tilt Poker." Pocket Kings is has participated in and/or directed the conduct of Full Tilt. Pocket Kings' parent company is Tiltware. Pocket Kings is a related company to Filco and Pocket Kings Consulting Ltd;
10. Respondent Pocket Kings Consulting Ltd. ("Pocket Kings Consulting") is a corporate entity and is a related company to Pocket Kings and Filco. Pocket Kings Consulting is the exclusive consultant to Full Tilt Poker. Pocket Kings Consulting has participated in and/or directed the conduct of Full Tilt;
11. Respondent Ranston Ltd. ("Ranston") is a corporate entity in whose name Full Tilt Poker funds are held in Switzerland. Ranston has participated in and/or directed the conduct of Full Tilt, including having participated in or directed the conduct of the company in aid of its illegal acts;
12. Respondent Mail Media Ltd. ("Mail Media") is a corporate entity in whose name Full Tilt funds are held in Switzerland. Mail Media has participated in

and/or directed the conduct of Full Tilt, including having participated in or directed the conduct of the company in aid of its illegal acts;

13. Respondent Raymond Bitar ("Bitar") is an individual and a founder, owner, principal decision-maker and CEO (...) of Full Tilt. Bitar is, and at all or some relevant time(s) has been, a shareholder and director of Full Tilt and/or one or more related entities. Bitar is and/or was CEO (...) of Tiltware (...) since its founding in 2003 and Bitar is and/or was one of only two directors of the company (...), holding an approximate 7.8% interest (...). A warrant for Bitar's arrest was issued in connection with the Department of Justice's ongoing prosecution of racketeering activity by individuals associated with Full Tilt on April 15, 2011. Since that date, Bitar, a U.S. resident, has not returned to the United States. Respondent Bitar personally received approximately \$41 million from Full Tilt, including approximately \$34,454,781.53 in ownership distributions and at least \$6.5 million in "profit sharing" payments;
14. Respondent Nelson Burtnick ("Burtnick") is an individual and a member of Full Tilt. Starting in 2009, Burtnick was an employee of Full Tilt Poker Ltd. and the head of the payment processing department for Full Tilt (and/or its related entities). Burtnick has directed or otherwise participated in the conduct of Full Tilt's affairs, especially with respect to payment processing activity. A warrant for Burtnick's arrest was issued in connection with the Department of Justice's ongoing prosecution of racketeering activity by individuals associated with Full Tilt on April 15, 2011;
15. Respondents Howard Lederer ("Lederer"), (...), Christopher "Jesus" Ferguson ("Ferguson"), (...), (...), (...), (...), (...), (...), Mike Matusow ("Matusow"), (...) are individuals and members of Full Tilt. At all or some relevant time(s), each person is or has been a shareholder and director of, and/or a participant in, Full Tilt and/or one or more Full Tilt related entities. They are all widely-known professional poker players themselves and members of Team Full Tilt. As a member of the Team, they represent the Full Tilt brand in poker-related events all over the world, wearing clothing and accessories that bear the easily recognizable Full Tilt Poker patch;
16. Respondent Lederer is on the Board of Directors of Full Tilt and is also a founder and creator of the Full Tilt Poker site and brand. He (...) is and/or was President of, (...) and on the Board of Directors of Tiltware (...), owning an approximate 8.6% interest in the company (...). He personally received approximately \$42 million from Full Tilt, including approximately \$37,856,010.92 in ownership distributions and at least \$4 million in "profit sharing" payments;
17. (...)



18. Respondent Ferguson is on the Board of Directors of Full Tilt and is also a founder of the Full Tilt Poker site and brand. He is and/or was also the Chairman of the Board of Directors of Tiltware (...), owning an approximate 19.2% interest in the company. He personally was allocated approximately \$85,161,305.88 in distributions. Company records reflect that approximately \$25 million of this sum was actually transferred to Ferguson's personal accounts, with remaining balances characterized as "owed" to Ferguson;
19. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Respondents will be referred to as "Full Tilt" for the purposes hereof;

### C) THE SITUATION

20. Full Tilt is an online poker venture where players can gamble with real money. Players have access to Full Tilt's online card rooms via the Full Tilt software, which is exclusively available for download from [www.fulltiltpoker.com](http://www.fulltiltpoker.com);
- 20.1 The Full Tilt internet gambling venture is a product that was launched, directed, managed and marketed, in part, by members of the Full Tilt umbrella working in concert;
- 20.2 Full Tilt engaged in an intense, concerted marketing effort aimed at inducing players to download the Full Tilt software, and open and fund real money accounts ("Player Accounts"). These efforts included:
- a) Solicitation through internet advertisements and links,
  - b) Television ads purchased on channels received by thousands,
  - c) Sponsorship of televised high-stakes games,
  - d) Obtaining personal contact information, including bank account information, from poker players through the internet,
  - e) Contracting with internet poker players regarding the Full Tilt software the players downloaded,
  - f) Maintaining and providing access to Player Accounts, and
  - g) Sponsoring celebrity poker professionals to wear Full Tilt branded apparel during televised matches;
21. Full Tilt customers who played for real money on the Full Tilt website were required to maintain a Player Account. Full Tilt customers could deposit their funds into their personal Player Accounts through four (4) (...) methods (...):
- a) Instant eChecks – players could use the Automated Clearinghouse system ("ACH"), an electronic network administered by the Federal

Reserve, to transfer funds between their bank accounts and their Full Tilt accounts using “eChecks”;

- b) Visa and MasterCard – players could use their ATM, credit, debit or check cards to transfer funds into their Full Tilt accounts;
- c) Click2Pay – players could transfer funds from their German, Swiss, or Austrian bank accounts (or credit cards) into their Full Tilt accounts;
- d) Cash Transfer – Full Tilt advertised that players could “walk into more than 100,000 convenient locations (such as banks, convenience stores, and markets) and transfer cash in person”;

The deposited funds were held by Full Tilt in escrow in accounts that were accessible to the players at all times through their Full Tilt Player Accounts. The funds remained, at all times, however, the property of the account holder who deposited them, even though Full Tilt served as a custodian. Upon establishing their Player Accounts and depositing money into their Player Accounts, Full Tilt customers were free to play for real money in Full Tilt Poker card rooms with players from all over the world and even with professional poker legends sponsored by Full Tilt;

22. When players wished to withdraw the funds in their account, they did so with ease by navigating to a prominent button on the player's screen entitled "cashier", selecting a withdrawal amount, and selecting a method of withdrawal. The player would either get a credit on his credit card, a wire transfer to the player's bank account, or a paper cheque. Nevertheless, player's would often keep substantial balances in their accounts;
23. Starting in or about 2001, Visa and MasterCard began requiring that internet gambling providers use a particular transaction code for internet gambling transactions. The purpose being that (...) the card issuer could identify those transactions and choose whether to approve or deny them;
24. By 2002, U.S. banks that issued credit cards to U.S. consumers were becoming increasingly reluctant to extend credit to customers for internet gambling purposes and began declining transactions bearing the internet gambling code as a matter of policy. Later, the banks also began prohibiting poker businesses from opening bank accounts for purposes of engaging in internet gambling related transaction with their customers;
25. On October 13<sup>th</sup> 2006, the Unlawful Internet Gambling Enforcement Act of 2006 (18 U.S.C.S. § 5361 et. seq.) [UIGEA] was signed into law in the United States, making it a federal offence (...) for a business to knowingly accept most forms of payment “in connection with the participation of another person in unlawful internet gambling.” While many internet poker providers left the U.S. market upon passage of the UIGEA, Full Tilt did not despite being rendered nearly incapable of profiting in its most valuable region;



- 25.1 Unbeknownst to the players holding Player Accounts, Full Tilt conspired to evade the various measures impeding their operation. A massive fraudulent scheme was executed that involved intentionally creating sham merchants and fake e-commerce websites and in doing so, Full Tilt lied to the players, deceived the banks, credit card companies and financial institutions. The Respondents illegally and deceptively accepted and processed deposits from players, via wire fraud, bank fraud, and money laundering. This illegal conduct allowed the Respondents, including Lederer, Ferguson and Bitar to inequitably acquire millions of dollars illicit profits and funds from the Players Accounts, through their capacities as directors of Full Tilt;
26. As the credit card issuers ceased processing their transactions, Full Tilt responded with deception and lies in order to circumvent the Visa and Mastercard regulations and to deceive U.S. banks into authorizing billions of dollars in poker payments related to their internet gambling transactions (...). This was accomplished by applying incorrect transaction codes, by arranging for the money received from gamblers to be disguised as payments to non-existent online merchants and other non-gambling businesses, and through the use of pre-paid credit cards;
- 26.1 Full Tilt specifically lied to their players about:
- a) The risks of keeping funds in a Full Tilt account;
  - b) How their funds were being handled on deposit;
  - c) Full Tilt's relationship with "third party" "independent" processors;
  - d) Full Tilt's creation of fake companies and websites used to deceive U.S. banks into processing their transactions;
  - e) Full Tilt's noncompliance with bank regulations;
  - f) The use of offshore bank accounts in the name of the fake merchants they created, and
  - g) The creation and use of U.S. bank accounts under the same false pretenses;

#### Credit Card Fraud

27. One approach undertaken by Full Tilt was to direct and pay complicit third party payment processors to lie to U.S. banks about the nature of the internet gambling transactions. Full Tilt directed third party processors to apply incorrect codes (or no codes at all) to the transactions at issue in order to fool U.S. banks into believing that the transactions were unrelated to any internet gambling scheme;
- 27.1 Respondents Bitar and Burtnick played central roles in this fraudulent activity by working with, and directing others to apply these incorrect transaction codes to Full Tilt's gambling transactions with the goal of



disguising the nature of those transactions and creating the intended false appearance that the transactions were completely unrelated to internet gambling;

28. (...) Full Tilt, primarily through Respondents Bitar and Burtnick, deceived the banks and credit card issuers (...) by creating fictitious non-gambling companies to initiate and process Visa and MasterCard transactions for them through merchant accounts in offshore banks. These companies were deliberately named and positioned so as not to arouse suspicion and to elude detection. Companies with names like “Arrow Checks,” “TLC Global,” and “Eastern Expressions” processed thousands of internet gambling transactions without the required (...) codes;
- 28.1 In addition, since the credit card networks were often able to detect the fraudulent nature of these phony “merchants” after a certain period of time and shut down processing, Respondents Bitar and Burtnick, along with their co-conspirators, arranged for a supply of stand-by phony merchants to be used when a particular phony merchant was discovered;
- 28.2 Another method used by Full Tilt to mislead U.S. banks was the use of certain pre-paid credit cards. Primarily through Respondents Bitar and Burtnick, Full Tilt developed so-called “stored value cards” – such as pre-paid debit cards or even pre-paid “phone” cards – that could be “loaded” with funds from a U.S. customer’s credit card without using a gambling transaction code. Once “loaded” in this fashion, the stored value cards were used by gamblers almost exclusively to transfer funds to Full Tilt. To avoid detection, Respondents Bitar and Burtnick arranged for fake websites and phony consumer “reviews” of these stored value cards so that it would appear that these cards has some other legitimate purpose;

#### eCheck Fraud

29. An (...) additional obstacle for Full Tilt was that the UIGEA prevented (...) it from opening U.S. bank accounts, which were necessary for electronic cheque (“eCheck”) processing. An eCheck is an electronic funds transfer to and from U.S. bank accounts. These are processed through the (...) ACH (...) administered by the Federal Reserve (...);
30. Respondents Bitar and Burtnick worked with, and directed others to (...) engage third party processors to process fraudulent eCheck transactions (...) in an effort to deceive U.S. banks into processing their disguised internet gambling transactions. Those eCheck processors lied about the nature of the transactions to the banks, representing that the eCheck transactions were for legitimate e-commerce purposes and not for internet gambling purposes;





- 30.1 In this scheme, Respondents Bitar and Burtnick relied on various middlemen to connect Full Tilt with payment processors that were willing to handle internet poker eCheck transactions. Processing agreements were entered into that provided for substantially higher processing fees than those typically charged for legitimate, non-gambling merchants. Together, Full Tilt and the eCheck processors conspired to disguise the receipt of gambling payments so that the transactions would falsely appear to the U.S. banks as non-gambling transactions;
- 30.2 The development and selection of phony merchants and websites to serve as cover for the poker processing was conducted in close coordination with Full Tilt itself, including Respondents Bitar and Burtnick. When a U.S. gambler entered his or her checking account information on one of the Poker Company's websites, the e-check transaction was submitted through the ACH system using the name of one of the phony businesses rather than the name of the Poker Company, and the charge appeared on the customer's bank account under this phony name. The e-check processors' computer systems communicated with the computer systems of the Poker Companies so that when a gambler entered e-check information on one of the Poker Operator's websites, the gambler and Poker Operator received notice of the name of the phony merchant that would appear on the customer's bank account statement, in lieu of the name of the Poker Company, as having initiated the charge;
31. Full Tilt was complicit in creating phony companies, even going so far as to put up fake websites for their innocuously-named front organizations, in order to deceive any bank investigators into believing the eCheck transactions were for regular e-commerce merchants and not for any gambling related purpose;

"Transparent Processing"

- 31.1 In late 2009, following the collapse of multiple eCheck processing operations used by Full Tilt, Respondent Bitar began exploring a new payment processing strategy – so-called "transparent processing" – and directed Respondent Burtnick to find processing solutions that did not involve the current methods of deception;
- 31.2 To overcome the difficulty in identifying "transparent" processors who would illegally process their gambling transactions, Respondent Burtnick turned to processors that had previously worked with poker companies. These "transparent" processors were able to persuade certain small, local banks to engage in such processing in exchange for sizeable fee income and investment promises;
- 31.3 Full Tilt Poker, Respondent Lederer, Respondent Ferguson, Respondent Bitar and Respondent Burtnick utilized an unremitting series of lies and



omissions concerning the true nature of these monetary transactions due to the immense profit to be made at the time;

- 31.4 Internet poker was a highly profitable industry and was expected to be worth approximately \$6 billion in early 2011. Aside from the normal stream of profits and returns, the amount of money from the Player Accounts allowed for distribution to the Full Tilt owners, which were approved and received by Respondents Lederer, Ferguson and Bitar. These distributions were valued at approximately \$10 million per month and were paid until at least April 1, 2011;
- 31.5 In or about the summer of 2010, Full Tilt's payment processing channels were so disrupted that the company faced increasing difficulty attempting to collect funds from players in the United States. Rather than disclose this fact, Full Tilt Poker simply credited players' online gambling accounts with money that had never actually been collected from the players' bank accounts. Full Tilt allowed players to gamble with -- and lose to other players -- this phantom money that Full Tilt Poker never actually collected or possessed. When other players won these phantom funds, their accounts were credited with money that Full Tilt did not actually possess. As a result, Full Tilt soon developed a massive shortfall between the money owed to the players and the money actually collected from the players, with Full Tilt having credited approximately \$130 million in phantom money to U.S. players' online accounts that was never actually collected from players' bank accounts. Full Tilt never disclosed this shortfall to the public;
32. This all came to a head when, on April 15<sup>th</sup> 2011, the U.S. Attorney for the Southern District of New York seized the assets of the "Big Three" internet poker companies operating in the United States (Full Tilt Poker, PokerStars, and Absolute Poker). Arrest warrants were issued for certain founders of these companies, including Respondent Bitar and Respondent Burtnick for, among other offenses, money laundering, conspiracy to commit wire fraud, and conspiracy to commit bank fraud. The Department of Justice ("DOJ") also filed a civil suit against the three companies for in rem forfeiture of all assets and proceeds derived from the illegal acts in which these companies allegedly engaged. Due to the Respondents' commingling of funds, this in rem procedure encompassed approximately \$150 million in players' funds. The DOJ Civil Complaint, 11-Civ-2564 (S.D.N.Y., April 15, 2011) and the DOJ Superseding Indictment, 10-CR-336 (S.D.N.Y., filed under seal March 10, 2011, unsealed April 14, 2011) are produced herein respectively as **Exhibit R-1** and **Exhibit R-2**;
- 32.1 Following the execution of the Arrest warrants, Full Tilt terminated its United States operations; however, it continued to operate its online gambling business outside of the United States and continued to collect



deposits from non-U.S. players. Full Tilt continued accepting player funds despite the fact that it had liabilities to players around the world for over \$300 million, yet held only a small fraction of that amount in its bank accounts. Indeed, in early June 2011, Lederer reported to others at Full Tilt that there was only approximately \$6 million left;

- 32.2 Respondent Bitar was indeed well aware of the need for new deposits after April 15, 2011, and even knew that even a few million dollars' of unexpected withdrawals could reveal the true financial situation. In an internal email dated June 12, 2011, Bitar expressed concern that a company announcement regarding layoffs and the Board of Directors being replaced would be seen as bad news, which would cause a "new run on the bank," adding that "it could be a huge run" and that "at this point we can't even take a five million run";
- 32.3 Full Tilt never disclosed the fact that it had no ability to return funds to these new depositors if they requested the money back. Instead, Full Tilt allowed players to believe that its international business was separate from, and unaffected by, its defunct United States operations;
33. Since April 15<sup>th</sup> 2011, known as "Black Friday" in the poker industry, U.S. players with Full Tilt Player Accounts have been denied access to their own funds;
34. On April 19<sup>th</sup> 2011, the U.S. Attorney for the Southern District of New York entered into an agreement with Full Tilt Poker to allow them to continue using and operating the internet domain www.fulltiltpoker.com with regard to Canadian residents in the following manner:

"The Agreement does not prohibit, and, in fact, expressly allows for, FTP to provide for, and facilitate, players outside of the United States to engage in playing online poker for real money through the Domain, or any other domain names, sub-domain names, websites, or Internet-based means of communication under the control of FTP."

the whole as appears more fully from a copy of said agreement, produced herein as **Exhibit R-3**;

35. The Agreement (R-3) also allowed for Full Tilt to return U.S. players' money in the following manner:

"This Agreement does not prohibit, and, in fact, expressly allows for, FTP to utilize the Domain (and any other forms of communication) to facilitate the withdrawal of U.S. players' funds held in account with FTP. While withdrawal of funds is expressly permitted, the deposit of funds by U.S. players is expressly prohibited. FTP agrees that any financial transactions



with players located in the United States shall be strictly limited to the return of those players' funds held in account with FTP.”

Despite this, Full Tilt has not returned to U.S. players their own money being held in their player accounts;

36. On June 29<sup>th</sup> 2011, the gaming commission of Alderney, the British Channel Island where Full Tilt holds a gaming license, suspended its license, and overnight Full Tilt shut down its internet card rooms, which had remained open since April 15<sup>th</sup> 2011 to non-U.S. players and to U.S. players not playing for real money;
- 36.1 Respondents Lederer, Ferguson and Bitar, in their capacity as directors of Full Tilt, exercised unlawful and dominion and control over the funds in the Player Accounts, by denying the players access to their funds, both prior to and following the events of April 15, 2011. This deliberate interference with the class members' rights to their property was accomplished through channeling the funds through illegal means and distributing it to themselves as well as other Full Tilt owners;
- 36.2 In an effort to aid the return of funds with which Full Tilt was entrusted, the DOJ entered into an explicit agreement with Full Tilt to facilitate the repatriation of U.S. players' funds. Following April 15, 2011, despite the permission and acquiescence of the DOJ, Respondents Lederer, Ferguson and Bitar, by and through Full Tilt, have failed to return to the players the funds in the Player Accounts and have instead prevented them from access;
- 36.3 After separating the players from their rightful money, Respondents Lederer, Ferguson and Bitar have consistently refused to refund the player deposits, to reimburse the players for the dollar-value of the contents of their player accounts, or to permit players access to the funds in their player accounts;
- 36.4 On September 20, 2011, the DOJ filed an Amended Civil Complaint naming Respondents Lederer and Ferguson as additional Defendants and revealing that, as directors of Full Tilt, they were utilizing the funds in the Player Accounts as their own personal “checkbook”, and that Full Tilt was essentially a Ponzi Scheme. This scheme involved the fact that Full Tilt and its owners allowed players to deposit, and play poker with, phantom funds that Full Tilt knew, in many cases, would be impossible to collect from players' bank accounts and that Full Tilt's owners continued at that time to pay out large amounts of players' money to themselves. This was accomplished through commingling of funds in the Player Accounts with the operational funds of various Full Tilt entities and then being utilized to pay out illegal distributions and loans to Full Tilt owners. This occurred



- despite repeated representations to the contrary by Full Tilt regarding the security and safety of the funds, the whole as appears more fully from a copy of the Amended DOJ Civil Complaint, produced herein as **Exhibit R-1A**:
- 36.5 Respondent Lederer has received approximately \$42 million from Full Tilt including approximately \$37,856,010.92 in ownership distributions and at least \$4 million in “profit sharing” payments;
- 36.6 Respondent Ferguson personally was allocated approximately 85,161,305.88 in distributions. Company records reflect that approximately \$25 million of this sum was actually transferred to his personal accounts, with remaining balances characterized as “owed” to Ferguson;
- 36.7 Respondent Bitar has personally received approximately \$41 million from Full Tilt, including approximately \$34,454,781.53 million in ownership distributions and at least \$6.5 million in “profit sharing” payments;
- 36.8 Respondents Lederer, Ferguson and Bitar approved an approximate \$443,860,530 million in total distributions and an unknown amount in millions of dollars in loans to themselves and to the other approximately 19 owners of the Full Tilt umbrella, specifically Tiltware, from funds directly traceable to the Player Accounts, despite the fact that Full Tilt did not have sufficient funds to repay its players;
- 36.9 Respondents Lederer, Ferguson and Bitar, through their capacities as directors of Full Tilt, have effectively conceded their obligation to restore access to the Player Accounts, stating: “Please be assured that your funds are safe, and we thank you for your patience while we do everything in our power to have your money returned to you as soon as possible.”
37. To date (...), Full Tilt, and in particular, Respondents Lederer, Ferguson and Bitar have not permitted Canadian players, or any other players for that matter, to make cash out requests and have offered no legitimate explanation for the refusal. Full Tilt has been completely denying them access to their own Player Accounts and to their own funds despite the players’ superior right to such funds and the permission and encouragement of the DOJ to return the funds to the players;
- 37.1 Full Tilt continues to misrepresent their intentions to fulfill the obligation to refund, return or otherwise reimburse unsuspecting players’ funds. Upon attempting to access their accounts, account holders receive the following message (or a similar one):



“Unfortunately, due to recent actions by the U.S. government, Full Tilt Poker is unable to accept “real money” play from U.S. players at the current time, and this includes any deposits or withdrawals. We are working to resolve these issues as soon as possible and will keep you updated as information becomes available to us.

We are deeply sorry for this inconvenience, but these events are beyond our control. Please be assured that your funds are safe, and we thank you for your patience while we do everything in our power to have your money returned to you as soon as possible.

Please contact support@fulltiltpoker.com for more information.”

38. Nevertheless, Full Tilt’s website (...) deceptively represents to players that money in their Full Tilt accounts will be “safe and secure” upon deposit in a Full Tilt Player Account. Specifically, the webpage stated:

“If you’re looking to get the most out of your online poker experience, Full Tilt Poker offers a wide selection of real money ring games and tournaments for your enjoyment. What’s more, Full Tilt Poker works hard to ensure that playing for real money is safe, easy, and secure by:

- Providing a variety of safe and secure payment processors to make depositing money fast and easy.
- Ensuring any money you have on deposit with Full Tilt Poker is safe and secure.
- Protecting your valuable personal information.
- Processing withdrawals quickly and efficiently.”

- 38.1 This description of Full Tilt’s payment processing operations is simply false. In reality, the payment processors were not safe and secure because they were sham companies; the funds held in player accounts with Full Tilt were never safe and secure because they were the object of Full Tilt’s umbrella money laundering scheme as directed by Respondents Lederer, Ferguson and Bitar. Further, the Player Accounts were not safe and secure because the funds were being commingled with Full Tilt’s operational funds and distributed to Respondents Lederer, Ferguson, Bitar and other owners at their direction;

- 38.2 In a further act of brazen misrepresentation, the Full Tilt webpage dealing with “Security” states”:

“Full Tilt Poker conducts their banking and financial affairs in accordance with generally accepted standards of internationally recognized banking institutions. Full Tilt Poker follows and adheres



to applicable laws pertaining to transaction reporting and anti-money laundering laws and regulations.”

38.3 Respondent Lederer, along with another Full Tilt executive, advised a Full Tilt employee in March 2008 that Full Tilt could represent to players that it kept all of the player funds in segregated accounts and that funds would be available for withdrawal by players at all times. Based upon this direction, Full Tilt subsequently created email templates to be used in responding to player inquiries regarding the security of player funds;

38.4 On various occasions from 2008 through 2010, Full Tilt suffered publicly reported problems with its payment processors, prompting players to question whether their accounts with Full Tilt were safe. Full Tilt representatives responded by posting statements on the Poker Forum assuring players that their funds were secure. For example, on June 9, 2009, in response to a thread on the Poker Forum entitled “Online poker seizure made front page of Yahoo finance,” in which users expressed concern about their Full Tilt Poker accounts, “FTPDoug” wrote the following post:

“Understandably, many of you have concerns regarding certain bank accounts with poker players’ money being frozen in the US, and I’d just like to reassure everyone that your funds remain safe and secure at FTP, and the processing of withdrawal requests is proceeding as normal and is still available to all of our players. . . . We always make sure we can cash out any of our players at any time. You should never have to worry that you won’t get your money...”

38.5 These misrepresentations falsely proclaimed to players that Full Tilt could be trusted with their money. Through these statements, Full Tilt, Respondent Lederer and Respondent Ferguson successfully concealed the truth from players about the extreme risks any player depositing funds in a Full Tilt account actually bore and were then able to effect the unlawful transfer of those funds upon receipt;

38.6 On November 16, 2011, Respondent Ferguson filed claims in the Southern District of New York, on behalf of four (4) entities within the Full Tilt umbrella, stating that those companies have a “right, title or interest” in the assets within those accounts and that the companies were the “lawful owners”. These four entities are Respondents Filco, Kolyma, Tiltware and Pocket Kings. Included in these filings were bank account numbers. He stated that the money in the accounts were “funds deposited by Full Tilt players to be transferred to Tiltware-related entities or funds deposited by Tiltware-related entities that were in the process of being returned to Full Tilt Poker players”. This admission makes it unmistakably clear that



Respondent Ferguson knew that the funds from the Player Accounts were impermissibly intertwined with the operational funds and were being distributed to “various Tiltware-related entities” despite repeated representations to the contrary;

- 38.7 On November 28, 2011, Respondent Lederer followed suit and filed claims in the Southern District of New York for the funds within two (2) bank accounts. The signed claim states that he is the “lawful owner and the party that held legal title to the bank accounts referenced” and that he “has right, title, or interest in any other account seized by the government pursuant to the above captioned forfeiture in rem action that contains properties subject to Lederer’s legal and equitable ownership”;
39. As of March 31, 2011, Full Tilt has withheld approximately \$390 million to players around the world, including approximately \$150 million of players’ money. Further, Respondents Lederer and Ferguson are still attempting to lay claim to such funds despite the fact that they are the rightful property of the players;
40. The company Terricorp Inc., doing business as “TLC Global”, and which acted as a third party processor for Full Tilt, has the following accounts in Canada, namely:
- a) account numbered 27554003786 held at Royal Bank of Canada
  - b) account numbered 27554003760 held at Royal Bank of Canada
  - c) account numbered 27554001038 held at Royal Bank of Canada
  - d) account numbered 27551017789 held at Royal Bank of Canada
  - e) account numbered 104773862842 held at Bendix Foreign Exchange, Toronto, Ontario;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

41. The Petitioner has been an online poker player at [www.fulltiltpoker.com](http://www.fulltiltpoker.com) since approximately 2003. He has downloaded the software and has been playing online poker with real money at a frequency of around every six (6) months;
42. As of June 30<sup>th</sup> 2011, the Petitioner has a balance in his player account of anywhere between \$1 to \$5 dollars, which he has been unable to access and withdraw due to Full Tilt having frozen his money;





43. The Petitioner is also aware, through his own internet research, that at least two (2) class action against Full Tilt Poker have been taken in the USA based on the same issues that he has experienced, the whole as appears more fully from a copy of said Class Action Complaints, produced herein *en liasse* as **Exhibit R-4**;

43.1 The Petitioner has also been keeping himself up to date and is aware of numerous developments in the present case, including the possible sale of Full Tilt, as well as, other USA class actions being filed and/or amended, the whole as appears more fully from a copy of said updated Class Action Complaints, produced herein *en liasse* as **Exhibit R-4A**;

44. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

45. In consequence of the foregoing, Petitioner is justified in claiming damages;

### **III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

46. Every member of the class has had their money frozen and have been denied access to their Full Tilt Player Accounts;

47. All of the damages to the class members are a direct and proximate result of the Respondents' conduct;

48. In consequence of the foregoing, members of the class are justified in claiming damages;

### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

49. Online poker at [www.fulltiltpoker.com](http://www.fulltiltpoker.com) is widespread across Canada and Quebec;

50. Petitioner is unaware of the specific number of persons who possess player accounts at [www.fulltiltpoker.com](http://www.fulltiltpoker.com), however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);

51. Class members are numerous and are scattered across the entire province and country;



52. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;
53. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
54. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
55. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action
56. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
57. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
58. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondents block access to Class Members' Full Tilt Player Accounts?
  - b) Have the Respondents refused to return Class Member's own money that they were entrusted with to hold?
  - c) Whether all of the Respondents participated in the conduct or the affairs of Full Tilt, and, if so what was the nature of such participation?
  - d) Should the Respondents be ordered to return any and all sums of money that is in Class Member's Player Accounts?



e) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

59. The interests of justice favour that this motion be granted in accordance with its conclusions;

## **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

60. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages;

61. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages of the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class the amount of money that is in their Player Accounts, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that he be attributed the status of representative of the Class

62. Petitioner is a member of the class;
63. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;
64. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
65. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
66. Petitioner, with the assistance of his attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
67. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protecting so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
68. Petitioner understands the nature of the action;
69. Petitioner's interests are not antagonistic to those of other members of the class;
- 69.1 Petitioner has mandated his attorneys to create a web link on its internet website to allow for the collection of names, coordinates, emails, and other relevant details of potential class members so as to be able to communicate with them if necessary and to keep them up-to-date with any new developments, the whole as will be seen at trial with a such a list under seal. The response from Class members has been extraordinary;
- 69.2 Petitioner is in constant communication with his attorneys in order to give and receive news related to the present action;
- 69.3 Petitioner has already made himself available for court appearances, such as on May 25<sup>th</sup> 2012 and will continue to make himself available to help serve the Class that he is seeking to represent;



- 69.4 Petitioner is extremely knowledgeable in the field of gaming;
- 69.5 Petitioner has spoke to many potential Class members that he knows personally about the situation that poker players were faced with due to the Respondents conduct, both before and after the present action was instituted. He experienced firsthand the outrage of these Class members and saw the damages that the Respondents have caused to them;
- 69.6 Petitioner will continue to do all that is necessary to assist his attorneys and to help get other poker players' money back, as his objective is to do all he can to help get Class members compensated for their losses;
- B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal
70. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;
71. The Petitioner's attorneys practice their profession in the judicial district of Montreal;
72. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada who have money being held in their Full Tilt Poker Player Accounts since approximately June 30<sup>th</sup> 2011, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have money being held in their Full Tilt Poker Player Accounts since approximately June 30<sup>th</sup> 2011, or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondents block access to Class Members' Full Tilt Player Accounts?
- b) Have the Respondents refused to return Class Member's own money that they were entrusted with to hold?
- c) Whether all of the Respondents participated in the conduct or the affairs of Full Tilt, and, if so what was the nature of such participation?
- d) Should the Respondents be ordered to return any and all sums of money that is in Class Member's Player Accounts?
- e) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages of the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class the amount of money that is in their Player Accounts, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;



**DECLARE** that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the class in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

**ORDER** that said notice be available on the website [www.fulltiltpoker.com](http://www.fulltiltpoker.com) with a link stating "Notice to Full Tilt Real Money Players";

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**THE WHOLE** with costs including publications fees.

Montreal, June 8, 2012

(s) Jeff Orenstein

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CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
Attorneys for the Petitioner