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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

10 GORDON VAYO, an individual,
11 Plaintiff,

12 v.

13
14 RATIONAL ENTERTAINMENT
ENTERPRISES LIMITED D/B/A
15 POKERSTARS, an Isle of Man corporation;
16 and DOES 1-10, inclusive,
17 Defendants.

CASE NO. 2:18-CV-3706

COMPLAINT FOR:

- 18 **(1) FRAUD & DECEIT, CAL. CIVIL CODE § 1709-1710**
- 19 **(2) FALSE ADVERSITING, LANHAM ACT § 43(A)**
- 20 **(3) FALSE ADVERSITING, CAL. BUS. & PROF. CODE § 17500**
- 21 **(4) VIOLATION OF RIGHT OF PUBLICITY, CAL. CIV. CODE § 3344**
- 22 **(5) UNFAIR COMPETITION, CAL. BUS. & PROF. CODE § 17200**
- 23 **(6) BREACH OF A WRITTEN CONTRACT**
- 24 **(7) MONEY HAD AND RECEIVED**
- 25 **(8) PROMISSORY ESTOPPEL**
- 26 **DEMAND FOR JURY TRIAL**

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1 **COMPLAINT**

2 Plaintiff Gordon Vayo (“Vayo” or “Plaintiff”) alleges, on information and
3 belief, as follows:

4 **NATURE OF THE ACTION**

5 1. In this case, Mr. Vayo, an internationally renowned professional poker
6 player, seeks redress for a pattern of fraudulent and unlawful conduct engaged in by
7 Defendant Rational Entertainment Enterprises Limited d/b/a PokerStars (“REEL” or
8 “Defendant”). Defendant’s conduct has defrauded Mr. Vayo and, on information and
9 belief, untold other users of the PokerStars.com site, out of the winnings that they
10 have earned from game-play on Defendant’s PokerStars.com website.

11 2. In particular, since approximately 2011, Defendant has engaged in a
12 practice of approving U.S. citizens and residents for play on the PokerStars.com site,
13 allowing and encouraging them to play on the site, happily taking their money – in
14 many cases for years. Then, after a U.S. citizen or resident wins a significant amount
15 of money on the PokerStars.com site, Defendant conducts a sham investigation into
16 the user’s activities and the location of the user’s access of the site, placing the onus
17 on the player to retroactively prove that it is “inconceivable” that his or her play could
18 have originated from within the United States, in order to gin up a pretext to deny
19 payment. In this way Defendant takes the money of Plaintiff and other users of the
20 PokerStars.com site with impunity, while depriving the same users of their largest
21 winnings if and when they occur.

22 3. The Plaintiff, Mr. Vayo, is a world-renowned professional poker player,
23 who was the runner up at the 2016 World Series of Poker Main Event, and was
24 featured in an in-depth Time article in October 2016. He has been a regular player on
25 the PokerStars.com site since at least 2007. Mr. Vayo is a U.S. citizen and Los
26 Angeles resident who resides part-time in Ottawa, Canada. His Canadian residency is
27 due, in part, to his desire, as a professional poker player, to play online poker, since
28 online poker play has been prohibited in most U.S. jurisdictions since 2011.

1 4. After online poker was banned in the United States after the Department
2 of Justice’s criminal indictments of individuals connected with PokerStars.com and
3 other online poker sites on April 15, 2011, Mr. Vayo applied to play on the
4 PokerStars.com site as a part-time Canadian resident. Mr. Vayo submitted the
5 documentation required by Defendant regarding his part-time Canadian residence.
6 Mr. Vayo’s application was approved and certified by Defendant on or about May 6,
7 2013. After approval, Mr. Vayo played for years on the site during his time in Canada
8 without incident. During this time, Mr. Vayo participated in literally thousands of
9 PokerStars.com online tournaments, and in hundreds of thousands of cash games on
10 the site.

11 5. In May 2017, however, Mr. Vayo entered Defendant’s annual “SCOOP”
12 tournament on PokerStars.com. The SCOOP tournament – or “Spring Championship
13 of Online Poker Tournament Series” – is Defendant’s premier annual online poker
14 tournament hosted on PokerStars.com. During its 10 years in existence, the SCOOP
15 tournament has attracted millions of professional and amateur players from around the
16 world, and has been the main attraction for players to use and join the PokerStars.com
17 site. Advertisements for the 2018 SCOOP event tout that the tournament will pay out
18 over \$65 million in “guaranteed prize money” to tournament participants.

19 6. On May 22, 2017, Mr. Vayo won approximately \$692,460 for taking 1st
20 place in 2017 SCOOP Event #1-High \$1,050 No Limit Holdem. Defendant
21 announced Mr. Vayo as the winner and posted the winnings to his PokerStars online
22 account. Mr. Vayo subsequently engaged in interviews and other publicity regarding
23 the SCOOP win, and PokerStars.com touted Mr. Vayo’s victory on its blog and
24 website.

25 7. Between May 22 and July 25, 2017, Defendant continued to allow Mr.
26 Vayo to play regularly on the PokerStars.com site. Indeed, Mr. Vayo played
27 approximately 37 tournaments and 5,500 hands of cash games during this time.
28 Throughout this time Defendant continued to allow Mr. Vayo full access to his

1 PokerStars.com account. Indeed, during this period, Mr. Vayo made nearly \$90,000
2 in transfers out of his PokerStars.com online account to other PokerStars.com users’
3 online accounts on the PokerStars.com website – all without incident.

4 8. On July 25, 2017, however, Mr. Vayo attempted to “cash out” his
5 PokerStars.com online account, rather than just playing it on the site or transferring it
6 within the PokerStars.com online system. When he did, Defendant suddenly notified
7 Mr. Vayo that his account was being frozen for investigation of suspicious activity.
8 What ensued was a nearly year-long inquest, during which Defendant engaged in an
9 appalling campaign of harassment, prying into every aspect of Mr. Vayo’s record,
10 demanding Mr. Vayo produce detailed retroactive proof of his location, and even
11 opening meritless investigations into his friends’ accounts, in order to gin up a pretext
12 for not paying Mr. Vayo what he had won.

13 9. Although Mr. Vayo had already applied for and submitted documents
14 establishing his Canadian residency, and Defendant had already examined those
15 documents and pre-approved and certified Mr. Vayo for playing on the
16 PokerStars.com site, as part of its inquest Defendant demanded that Mr. Vayo submit
17 documents “proving” after the fact that he was in Canada on each day of the SCOOP
18 tournament.

19 10. Never before had Defendant demanded retroactive proof of Mr. Vayo’s
20 whereabouts during any of his years of game play on the PokerStars.com site.
21 Nevertheless, Mr. Vayo complied with Defendant’s demands and provided evidence
22 showing that he was in Canada during the entirety of his play in the SCOOP
23 tournament. Defendant nevertheless insisted that, despite the evidence produced by
24 Mr. Vayo, it was “not inconceivable” that Mr. Vayo was in the U.S. at some point
25 during the SCOOP tournament. Nowhere on the PokerStars.com website or Terms of
26 Service does it inform players that they may be required to retroactively submit
27 evidence establishing that it was “inconceivable” that they might have been in a
28 different jurisdiction, on pain of being deprived of their winnings and having its

1 accounts frozen.

2 11. On April 7, 2018, Defendant’s counsel sent Mr. Vayo a letter stating that
3 its investigation had concluded and that Mr. Vayo had failed to produce evidence
4 sufficient to “rebut” Defendant’s suspicion that Mr. Vayo was in the U.S. during a
5 portion of the SCOOP tournament, and, as a result, Mr. Vayo would not be paid.
6 Ironically, to this day, Defendant continues to tout Mr. Gordon as the winner of the
7 SCOOP tournament on the PokerStars.com site, and continue to profit off of its use of
8 Mr. Gordon’s name, which is held in high regard in the poker community.

9 12. In the end, Defendant not only refused to pay Mr. Vayo what it owed
10 him, but also threatened to counter-sue Mr. Vayo for breach of its Terms of Service if
11 Mr. Vayo did not comply with a purported “exclusive venue” provision contained in
12 the PokerStars.com Terms of Service. This provision purports to require all users of
13 the PokerStars.com site to bring any legal claims they might wish to assert against
14 Defendant, including for Defendant’s violations of its own Terms of Service, on the
15 Isle of Man – a small island in the Irish sea between Great Britain and Ireland, which
16 is often used as a tax haven by corporations, and which employs an archaic sui generis
17 system of law called “Manx law.” In this way, Defendant purports to shield itself
18 from any practical or realistic possibility of being sued – thus allowing Defendant to
19 violate its own Terms of Service with impunity against any PokerStars.com user that
20 does not have the means or wherewithal to file and litigate a lawsuit on the Isle of
21 Man. Plaintiff is informed and believes that the Isle of Man venue provision
22 contained in Defendant’s Terms of Service is unreasonable and unconscionable and,
23 as a result, is null and void. *See Frigate Ltd. v. Damia*, No. C 06-04734 CRB, 2007
24 WL 127996 (N.D. Cal. Jan. 12, 2007) (holding Isle of Man venue provision
25 unreasonable and void).

26 13. As a result of the foregoing conduct by Defendant, Plaintiff was left with
27 no choice but to file this lawsuit to redress Defendant’s fraudulent conduct and
28 violations, and to collect what he is owed.

1 **JURISDICTION AND VENUE**

2 14. This Court has subject matter jurisdiction over this action pursuant to 28
3 U.S.C. §§ 1331, 1332(a) and 1367. Plaintiff asserts federal claims under the Lanham
4 Act. In addition, as stated in paragraphs 17 and 18 below, for purposes of diversity
5 jurisdiction, Plaintiff is a citizen of the State of California and Defendant is a citizen
6 of the Isle of Man. The amount in controversy exceeds the sum of \$75,000.00
7 exclusive of interest and costs.

8 15. This Court has personal jurisdiction over Defendant because it has
9 purposefully availed itself of the benefits of this forum by committing wrongful acts
10 which have had direct effects in this District, including regarding the primary conduct
11 that forms the basis of the allegations herein.

12 16. Venue is proper in the Central District of California pursuant to 28
13 U.S.C. § 1391(b)(2) and (3).

14
15 **THE PARTIES**

16 17. Plaintiff Gordon Vayo is an individual residing in Los Angeles,
17 California and is also a part-time resident of Ottawa, Ontario, Canada. Mr. Vayo is a
18 world-renowned professional poker player.

19 18. On information and belief, Defendant REEL is an Isle of Man entity
20 whose principal place of business purports to be in Onchan, Isle of Man. On
21 information and belief, REEL's primary business is to own and operate the online
22 poker website, PokerStars.com. REEL was registered to do business in the State of
23 New Jersey, but has recently filed to withdraw that status, claiming that it no longer
24 does business in the State of New Jersey.

25 19. The true names and capacities, whether individual, corporate, associate or
26 otherwise, of Defendant sued herein as DOES 1-10, inclusive, are unknown at the
27 present time and Plaintiff therefore sues said DOES and each of them by such
28 fictitious names. If necessary, Plaintiff will seek leave of court to amend this

1 complaint to allege their true names and capacities when they are ascertained.

2 20. Unless otherwise indicated herein, on information and belief, each of
3 DOES 1-10, inclusive, participated in the activities described herein and rendered
4 material assistance to the other Defendant in the actions alleged herein, conspired and
5 agreed with and aided and abetted one or more of the other Defendant and at all
6 relevant times each of the Defendant was the principal or agent, partner, parent,
7 subsidiary, affiliate, owner, manager, independent contractor, servant and/or employee
8 of at least one other of the other Defendant and all of the acts performed by them or
9 omissions alleged herein were made in the course and scope of their employment,
10 agency, partnership or other such relationship and with knowledge, consent, approval
11 and/or ratification of the principals and each of them. Unless otherwise indicated
12 herein, each of the parties herein named as DOES 1-10 is responsible in some manner
13 or fashion and is liable and responsible on the facts alleged herein for all the relief
14 sought.

15
16 **GENERAL ALLEGATIONS**

17
18 **Defendant's Approval of Mr. Vayo's Play on the PokerStars Site**

19 21. Mr. Vayo is a world-renowned professional poker player who plays both
20 in-person and online poker games. Mr. Vayo was a regular player on the
21 PokerStars.com site from at least 2007 until the instant dispute arose in or about July
22 2017.

23 22. Defendant owns and operates the online poker website, PokerStars.com.

24 23. On or about April 15, 2011, founders and associates of the three largest
25 online poker sites at the time, PokerStars, Full Tilt Poker and Cereus, were criminally
26 indicted in the Southern District of New York on charges of violations of the
27 Unlawful Internet Gambling Enforcement Act, bank fraud and money laundering.
28 This date has come to be known as "Black Friday" in the online poker community, as

1 it effectively marked the end of online poker in the United States, unless and until
2 specifically authorized and approved by state law.

3 24. After Black Friday, Defendant shut down the PokerStars accounts of
4 United States residents, and prohibited users from accessing and playing on the site
5 from any location within the United States.

6 25. Nevertheless, Defendant implemented an application procedure to allow
7 U.S. residents to apply for reinstatement of their PokerStars accounts upon providing
8 what Defendant deemed to be adequate documentation of a residence located outside
9 of the U.S. Upon approval, players would regain access to their PokerStars accounts,
10 albeit with use restricted to locations outside the U.S.

11 26. Mr. Vayo, who was a part-time resident of Canada, submitted an
12 application to Defendant for approval. At the time, Mr. Vayo's Canadian residence
13 was in Montreal, Canada. Mr. Vayo submitted his application with the documentation
14 required by Defendant to show his part-time residence in Montreal.

15 27. Mr. Vayo's application was approved and certified by Defendant on or
16 about May 6, 2013, and his PokerStars.com account was reinstated. Mr. Vayo then
17 resumed his play on the PokerStars.com site, playing extensively on the site during his
18 time in Canada.

19 28. The following year, in 2013, Mr. Vayo established a residence in
20 Rosarito, Mexico. Mr. Vayo submitted an updated application to Defendant to verify
21 his Mexico address. The updated application was approved and recorded by
22 Defendant, and Mr. Vayo began playing regularly on the site while at his residence in
23 Rosarito, Mexico.

24 29. In 2014, Mr. Vayo's Canadian residence changed from Montreal to
25 Ottawa. Mr. Vayo again submitted an updated application to Defendant to verify his
26 updated Canadian address. The updated application was again approved and recorded
27 by Defendant, and Mr. Vayo continued playing extensively on the site while at his
28 residence in Ottawa.

1 30. Mr. Vayo played for years on the site during his time in Canada without
2 incident. Between Defendant’s original approval of his Canadian application in 2012
3 and July 2017, Mr. Vayo participated in literally thousands of PokerStars.com online
4 tournaments, and played in hundreds of thousands of cash games on the
5 PokerStars.com site.

6
7 Mr. Vayo’s Winnings in the 2017 SCOOP Tournament

8 31. Defendant’s largest event hosted on the PokerStars.com site is the annual
9 “SCOOP” tournament. The SCOOP tournament – or “Spring Championship of
10 Online Poker Tournament Series” – is Defendant’s premier annual online poker
11 tournament.

12 32. During its 10 years in existence, the SCOOP tournament has attracted
13 millions of professional and amateur players from around the world, and has been the
14 main attraction for players to use and join the PokerStars.com site. Advertisements
15 for the 2018 SCOOP event tout that the tournament will pay out over \$65 million in
16 “guaranteed prize money” to tournament participants.

17 33. In May 2017, Mr. Vayo entered Defendant’s annual SCOOP tournament
18 on PokerStars.com. In particular, between May 20-22, 2017, Mr. Vayo played the
19 SCOOP Event #1-High \$1,050 No Limit Holdem, a grueling, intensive 3-day event.
20 Mr. Vayo took first place, winning the event, on May 22, 2017. His winnings for the
21 event totaled \$692,460.

22 34. Defendant announced Mr. Vayo as the winner and posted his winnings to
23 his PokerStars online account.

24 35. Mr. Vayo subsequently engaged in interviews and other publicity
25 regarding the SCOOP win.

26 36. PokerStars.com touted Mr. Vayo’s victory in the SCOOP tournament on
27 its blog and website, and continues to do so to this day.
28

1 Mr. Vayo’s Play on the PokerStars Site Between May and July 2017

2 37. Between May 22 and July 25, 2017, Defendant continued to allow Mr.
3 Vayo to play regularly on the PokerStars.com site. Indeed, Mr. Vayo played
4 approximately 37 tournaments and 5,500 hands of cash games during this time.

5 38. Throughout May, June and July 2017, Defendant continued to allow Mr.
6 Vayo full access to his PokerStars.com account.

7 39. Indeed, during this period, Mr. Vayo made approximately \$87,213 in
8 transfers out of his PokerStars.com online account to other PokerStars.com users’
9 online accounts on the PokerStars.com website, in seven (7) separate transfers – all
10 without incident.

11
12 Defendant Freezes Mr. Vayo’s Account and Conduct a Sham Investigation

13 40. On July 25, 2017, however, Mr. Vayo attempted to “cash out” his
14 PokerStars.com online account, rather than just playing it on the site or transferring it
15 within the PokerStars.com online system.

16 41. Upon receiving Mr. Vayo’s cash-out request on July 25, Defendant
17 initiated communications with Mr. Vayo regarding his bank account details,
18 purportedly in order to ensure that the cash-out went to the correct account. These
19 communications continued between July 25 and July 31, 2017.

20 42. On July 31, 2017, six (6) days after Mr. Vayo’s cash-out request,
21 Defendant suddenly notified Mr. Vayo that his account was being “*temporarily*
22 *restricted for a routine review.*”

23 43. Five (5) days later, on August 5, 2017, Defendant notified Mr. Vayo, for
24 the first time, without explanation, that “*it came to our attention that there has been*
25 *account access and activity from within the United States.*”

26 44. Defendant’s notification came after Defendant allowed and encouraged
27 Mr. Vayo to play on the PokerStars.com site for over five (5) years using his certified
28 PokerStars.com account, and over two (2) months after his win in the SCOOP

1 tournament – but just eleven (11) days after his cash-out request.

2 45. Mr. Vayo’s use of and means of accessing his PokerStars account did not
3 materially change during the five (5) plus years after his account was approved and
4 reactivated by Defendant. During that time, Mr. Vayo regularly and continuously
5 used his PokerStars account to play in thousands of PokerStars.com tournaments and
6 in hundreds of thousands of cash games on the PokerStars.com site while he was in
7 Canada.

8 46. While Mr. Vayo did not understand what prompted Defendant’s sudden
9 inquiry, he surmised that the issue may have been related to a problem with the VPN
10 he was using to access internet sites which he had encountered earlier that Spring, and
11 which had persisted between March and May of 2017. He promptly responded to
12 Defendant that same day, on August 5, 2017 – less than two hours after receiving
13 Defendant’s email – and informed Defendant of the VPN issue that he had
14 encountered earlier that Spring.

15 47. On August 22, 2017, Defendant responded stating that Mr. Vayo’s
16 explanation was insufficient, accused Mr. Vayo of “repeatedly” accessing his account
17 from the United States, and stated that his account would remain closed and the funds
18 frozen pending its further investigation. Defendant provided no explanation
19 whatsoever of why it believed Mr. Vayo’s explanation was insufficient, nor did it
20 provide any explanation or any details whatsoever regarding its accusation of repeated
21 access of his account from the United States – not even the time period of the alleged
22 improper access.

23 48. Despite Defendant’s failure and refusal to provide any details to Mr.
24 Vayo regarding its accusations, what ensued was a year-long inquest and an appalling
25 campaign of harassment by Defendant which it used, first, to delay paying Mr. Vayo
26 for months, and then as a pretext for refusing to pay Mr. Vayo at all.

27 49. Defendant’s modus operandi throughout its inquest was to lodge vague
28 allegations against Mr. Vayo that he might have accessed his account while in the

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1 United States at some point in time during the many years that he played on the site
2 using his Canadian account, and then put the onus on Mr. Vayo to “prove” that he was
3 in Canada at all times during the thousands of tournaments and hundreds of thousands
4 of cash games in which he played using his Canadian account.

5 50. Mr. Vayo continued communicating with Defendant directly during
6 August and September 2017, responding promptly to each inquiry and answering
7 Defendant’s questions. Mr. Vayo voluntarily provided evidence of his whereabouts
8 during the SCOOP tournament itself, and proof of his ongoing residence and activities
9 in Canada.

10 51. Defendant, meanwhile, provided Mr. Vayo with no details and no
11 evidence regarding its vague allegations during this entire time period.

12 52. In addition, on September 29, 2017, Defendant also froze the account of
13 Mr. Vayo’s friend because he had taken over play for Mr. Vayo for approximately an
14 hour during a tournament when Mr. Vayo’s power went out. This action is not only
15 not prohibited, it is specifically authorized by Defendant’s Terms of Service for the
16 PokerStars.com site. *See* Terms of Service § 21(f).

17 53. The account of Mr. Vayo’s friend, who is also an American citizen living
18 abroad, was frozen for several days before being reinstated. Defendant’s actions with
19 respect to the freezing of Mr. Vayo’s friend’s account serve to further underscore the
20 sham nature of Defendant’s investigation, attempting pressure Mr. Vayo into forgoing
21 his winnings by investigating his friends and acquaintances.

22 54. After months of stonewalling by Defendant, Mr. Vayo hired legal
23 counsel to address the matter with Defendant, thus, adding insult to injury by forcing
24 Mr. Vayo to incur legal fees to simply get paid what he was owed.

25 55. Mr. Vayo’s counsel sent a letter to Defendant on September 27, 2017, to
26 which Defendant’s in-house counsel responded on October 4, 2017. This October 4
27 letter was the first time that Defendant provided any details at all regarding its
28 allegations against Mr. Vayo. Specifically, Defendant alleged that there were

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1 connections on Mr. Vayo's account originating from the United States between March
2 and July 2017 totaling "56,000 tournament hands," including the SCOOP tournament.

3 56. Mr. Vayo's counsel responded on October 10, pointing out that between
4 March and July 2017 Mr. Vayo played only about 8,800 tournament hands *in total*,
5 thus, any information suggesting the he played 56,000 tournament hands during this
6 period from the United States was verifiably false. Mr. Vayo's counsel demanded that
7 Defendant produce the information on which it was basing its allegations.

8 57. On November 14, 2017, Defendant responded by letter from outside
9 counsel, attaching a chart listing 54 alleged connections by Mr. Vayo originating from
10 within the U.S. All but nine (9) of the alleged connections were between March 24
11 and May 18, 2017, with the remainder occurring in late July 2017. Notably, *none of*
12 *the alleged connections were during Mr. Vayo's play during the SCOOP tournament.*
13 Moreover, this was the first time that Defendant provided Mr. Vayo any purported
14 "evidence" regarding Mr. Vayo's alleged U.S. access of the site.

15 58. Mr. Vayo's counsel responded on December 4, 2017, pointing out the
16 numerous deficiencies in Defendant's list. Among other things: the alleged U.S.
17 connections overlapped entirely with the period of the VPN malfunction in Spring
18 2017 that Mr. Vayo had disclosed to Defendant less than two (2) hours after they
19 originally raised the issue of U.S. contacts. In addition, all of the ISP addresses on
20 Defendant's list in fact traced to *Canada*, not to the U.S. Further, while Defendant
21 listed the "Wi-Fi Region" for all of the connections as "California," without further
22 explanation, Mr. Vayo pointed out that he did not access the site via Wi-Fi, but used a
23 hard-lined connection to his computer. Moreover, numerous of the alleged U.S.
24 logins for Mr. Vayo's account occurred on the same days as logins to his account from
25 Canada, which Defendant did not contest, and it defies logic that Mr. Vayo was
26 logging into his account from both Canada and the United States several times a day
27 on successive days. This too pointed to the VPN malfunction that Mr. Vayo had
28 previously and immediately disclosed to Defendant. Also in this correspondence, Mr.

1 Vayo provided even further documentation regarding his activities in Canada during
2 the relevant time period.

3 59. Defendant responded on January 15, 2018 – a month and a half later –
4 not with further evidence or explanations of the deficiencies in its purported evidence,
5 but by asserting that Mr. Vayo’s documentation of his whereabouts was insufficient
6 *because he had not proven that it was “inconceivable” that he had “travelled to the*
7 *US and was present in the US on May 22”* when he won the SCOOP tournament.

8 60. Defendant made this assertion despite the fact that Defendant itself did
9 not even allege that there were any out of jurisdiction logins to Mr. Vayo’s account
10 during the SCOOP tournament, and despite the fact that Mr. Vayo had submitted
11 uncontroverted evidence – which Defendant did not contest – that he was in fact in
12 Canada on the first two days of the SCOOP tournament, on May 20 and 21, and it
13 would have been virtually impossible (not to mention inexplicable) for him to travel to
14 the U.S. in the middle of an active, intensive, major tournament that required nearly
15 around-the-clock play and focus, leaving time for only brief periods of rest and
16 nourishment.

17 61. On April 7, 2018, Defendant’s counsel sent Mr. Vayo a letter stating that
18 its investigation had concluded and that, because Mr. Vayo had failed to produce
19 evidence sufficient to “rebut” Defendant’s suspicion that Mr. Vayo may have been in
20 the U.S. during a portion of the SCOOP tournament, his account would remain frozen
21 and he would not be paid.

22
23 Defendant’s Pattern of Fraudulent Conduct

24 62. Mr. Vayo is informed and believes, and on this basis alleges, that
25 Defendant have engaged and are engaging in a pattern and practice of conduct
26 intended to defraud users of the PokerStars.com site.

27 63. In particular, Defendant engages in a practice of routinely approving
28 PokerStars users’ accounts for play outside of the U.S. upon submission of

1 documentation that Defendant in its sole discretion deem adequate.

2 64. Defendant then encourages such users to play on the PokerStars.com site,
3 turning a blind eye and reaping huge profits while PokerStars.com users spend their
4 money playing on the site.

5 65. On information and belief, Defendant regularly employs no procedures or
6 methods to check whether users of the site are accessing the site from within the U.S.
7 or outside the U.S.

8 66. However, when a user wins a large amount of money on the
9 PokerStars.com site, Defendant opens an investigation of the winner's account. Only
10 then does Defendant employ procedures or methods by which it allegedly checks the
11 jurisdiction from which the PokerStars user has accessed his or her account.

12 67. In this way, Defendant uses the prohibition on online poker under U.S.
13 law as a whipsaw to maximize its profits, while denying large payouts to players by
14 demanding that they retroactively prove their whereabouts – potentially over a period
15 of several years – on pain of forfeiting their winnings.

16 68. Nowhere on the PokerStars.com website or Terms of Service does
17 Defendant inform players that they may be required to submit evidence to
18 retroactively prove their whereabouts upon demand – much less, as Defendant
19 demanded of Mr. Vayo, to establish that it was “inconceivable” that they might have
20 been in the U.S. – on pain of being deprived of their winnings and having their
21 accounts frozen.

22 69. Mr. Vayo is specifically aware of at least one other PokerStars.com user
23 (“Player A”), who was subjected to a similar pattern of conduct by Defendant shortly
24 after Player A won a 6-figure payout on the PokerStars.com site.

25 70. Mr. Vayo is informed and believes that Player A is a U.S. citizen with a
26 part-time residence outside the U.S. After Black Friday, Player A applied to have his
27 PokerStars account reinstated for play outside the U.S. Defendant reviewed and
28 approved Player A's application and reinstated his account. Player A subsequently

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1 played on the PokerStars.com site for years using his out-of-jurisdiction account
2 without incident.

3 71. However, in 2016, shortly after winning a payout of approximately
4 \$140,000 on PokerStars.com, Defendant froze Player A’s account on suspicion of
5 U.S. logins to Player A’s account. After delaying payment to Player A for
6 approximately a full year, Defendant finally relented and unfroze Player A’s account
7 and paid him what he was owed.

8 72. On information and belief, the aforementioned conduct forms only a part
9 of Defendant’s pattern and practice of conduct aimed at defrauding users of the
10 PokerStars.com site.

11
12 Defendant Seeks to Immunize Itself from Suit Via an “Isle of Man” Exclusive Venue
13 Provision in Its Terms of Service

14 73. Defendant not only refused to pay Mr. Vayo what it owed him, but also
15 threatened to counter-sue Mr. Vayo for breach of its Terms of Service if Mr. Vayo did
16 not comply with a purported “exclusive venue” provision contained in the
17 PokerStars.com Terms of Service.

18 74. This provision purports to require all users of the PokerStars.com site to
19 bring any legal claims they might wish to assert against Defendant, including for
20 Defendant’s violations of its own Terms of Service, on the Isle of Man – a small
21 island in the Irish sea between Great Britain and Ireland, which is often used as a tax
22 haven by corporations, and which employs an archaic sui generis system of law called
23 “Manx law.”

24 75. In this way, Defendant purports to shield itself from any practical or
25 realistic possibility of being sued – thus allowing Defendant to violate its own Terms
26 of Service with impunity against any PokerStars.com user that does not have the
27 means or wherewithal to file and litigate a lawsuit on the Isle of Man.

28 76. Plaintiff is informed and believes that the Isle of Man venue provision

1 contained in Defendant's Terms of Service is unreasonable and unconscionable and,
2 as a result, is null and void. *See Frigate Ltd. v. Damia*, No. C 06-04734 CRB, 2007
3 WL 127996 (N.D. Cal. Jan. 12, 2007) (holding Isle of Man venue provision
4 unreasonable and void).

5
6 Defendant's Continuing Use of Mr. Vayo's Name to Publicize Its Site

7 77. Ironically, to this day, Defendant continues to tout Mr. Gordon as the
8 winner of the SCOOP tournament on the PokerStars.com site, and continue to profit
9 off of its use of Mr. Gordon's name, which is held in high regard in the poker
10 community.

11
12 **FIRST CLAIM FOR RELIEF**

13 **(Fraud & Deceit, Cal. Civ. Code § 1709-1710)**

14 **Against All Defendants**

15 78. Plaintiff repeats and realleges the allegations made in paragraphs 1
16 through 77 as if fully set forth herein.

17 79. Defendant falsely represented and held out to Plaintiff and other users of
18 the PokerStars.com site, that, while they would be held liable for payment of their
19 losses when they lost money in game-play on the PokerStars.com site, Plaintiff and
20 other users of the site would also be paid the money that they won in game-play on the
21 PokerStars.com site.

22 80. Defendant also withheld information material to Plaintiff and other
23 PokerStars.com users' decision to play and put their money at risk on the site.
24 Specifically, Defendant never informed Plaintiff or other users of the site that they
25 may be required to provide retroactive incontrovertible proof of their whereabouts at
26 all time during their access and use of the PokerStars.com site, on pain of having their
27 winnings frozen and/or forfeited.

28 81. Defendant further engaged in a pattern of fraudulent conduct designed to

1 deprive winners of the biggest prizes on the PokerStars.com site of their winnings. As
2 described above, Defendant purported to approve U.S. citizens and residents,
3 including Plaintiff, for play on the PokerStars.com site, and reinstate their accounts
4 after they were shut down following the Black Friday events of April 15, 2011, upon
5 the user's provision of documents deemed sufficient and approved by Defendant.
6 Defendant then allowed and encouraged Plaintiff and other users to play on the
7 PokerStars.com site for months and years, while they placed their money at risk on the
8 site in what they believed to be games in which they had a fair opportunity to either
9 win or lose their money based on their play. During this time Defendant turned a
10 blind eye and was indifferent to the location from which users of the PokerStars.com
11 site were playing and accessing the site. Only after a user won a significant amount of
12 money on the PokerStars.com site, would Defendant conduct an investigation into the
13 location of the user's play and access of the site. In this way Defendant was able to
14 take the money of Plaintiff and other users of the PokerStars.com site with impunity,
15 while depriving the same users of their largest wins if and when such wins occurred.

16 82. Defendant engaged in the aforementioned misrepresentations and deceit
17 with an intent to defraud Plaintiff and other users of the PokerStars.com site.
18 Defendant acted with knowledge of the falsity of its representations and the
19 materiality of its omissions, and intended to induce Plaintiff and other PokerStars
20 users to rely on Defendant's misrepresentations and deceit.

21 83. Plaintiff and other PokerStars users did in fact justifiably rely on
22 Defendant's misrepresentations and deceit to their detriment by choosing to access
23 and play on the PokerStars.com site in reliance on Defendant's false representations
24 and withholding of information material to Plaintiff's and other users' decision to play
25 on the PokerStars.com site.

26 84. As a result of Defendant's aforementioned fraud and deceit, Plaintiff was
27 damaged in an amount to be proven at trial, by risking and spending enormous sums
28 of money and absorbing losses on the site, and then being deprived of his largest

1 winnings on the PokerStars.com site.

2 85. Because Defendant’s aforementioned acts and omissions were
3 undertaken with fraud, oppression and/or malice, Plaintiff is entitled to exemplary and
4 punitive damages in an amount to be determined at trial.

5
6 **SECOND CLAIM FOR RELIEF**

7 **(FALSE ADVERTISING – LANHAM ACT § 43(a))**

8 **Against All Defendants**

9 86. Plaintiff repeats and realleges the allegations made in paragraphs 1
10 through 85 as if fully set forth herein.

11 87. Defendant has made false and misleading statements concerning the
12 PokerStars.com site in order to induce Plaintiff and other users to join and risk their
13 money on the site. In particular, Defendant has held out to Plaintiff and other users of
14 the site that, while they may lose money in game-play on the site, if they win money
15 on the site, they will be paid.

16 88. Notwithstanding what they hold out to the public, Defendant engages in a
17 pattern of conduct designed to deprive some of the biggest winners on the
18 PokerStars.com site of their winnings. As a result, its representations to the public
19 about the PokerStars.com site are false and misleading.

20 89. In addition, Defendant advertises the SCOOP tournament to tournament
21 participants as having \$65 million in “guaranteed prize money” in 2018 and a similar
22 amount in 2017. However, Defendant does not pay out the full amount of the
23 “guaranteed prize money,” including amounts owed to Plaintiff.

24 90. In addition, Defendant has held out to the public over the past year that
25 Mr. Vayo was the winner of the SCOOP tournament in question, using his famous
26 name to promote and draw users to the site, when in fact behind the scenes Defendant
27 had frozen Mr. Vayo’s account and alleged that he was not in fact the legitimate
28 winner of the tournament in question.

1 91. Defendant knew or should have known, through the exercise of
2 reasonable care, that the aforementioned statements and representations to the public
3 were untrue and misleading.

4 92. Defendant's false and misleading statements deceive and/or have the
5 capacity to deceive a substantial segment of the users and potential users of the
6 PokerStars.com site, and do so in a material manner that is likely to influence the
7 purchasing decisions of users and potential users of the site, including by inducing
8 potential users to use the PokerStars.com site when they otherwise would not have
9 and/or inducing users of the PokerStars.com site to play more on the site than they
10 otherwise would have if not for Defendant's false and misleading statements.

11 93. While Plaintiff disputes and denies Defendant's allegations that Mr.
12 Vayo accessed and played on the PokerStars.com site from within the United States, if
13 Defendant is correct in its accusations that Mr. Vayo and/or other users of the
14 PokerStars.com site regularly play and access the site from within the U.S., and have
15 done so for years while Defendant took no action against them, Defendant's services
16 are sold in interstate commerce.

17 94. Defendant's violations were intentional, willful, and with reckless
18 disregard and indifference to Plaintiff's rights.

19 95. As a direct, proximate, and foreseeable result of the conduct and
20 omissions alleged above, Plaintiff and other users of the PokerStars.com site have
21 suffered and will continue to suffer damages and Defendant has been and continues to
22 be unjustly enriched in an amount to be determined at trial.

23 96. Plaintiff is further entitled to treble damages for Defendant's willful
24 conduct, as provided by the Lanham Act.

25 97. As a direct and proximate result of the foregoing acts and conduct,
26 Plaintiff has sustained and will continue to sustain substantial, immediate, and
27 irreparable injury, for which there is no adequate remedy at law, including without
28 limitation the loss of consumer goodwill. Plaintiff is informed and believes and on

1 that basis avers that unless enjoined and restrained by this Court, Defendant will
2 continue to engage in conduct violative of the Lanham Act. Plaintiff is entitled to
3 preliminary and permanent injunctive relief.

4
5 **THIRD CLAIM FOR RELIEF**

6 **(FALSE ADVERTISING – CAL. BUS. & PROF. CODE § 17500 ET SEQ.)**

7 **Against All Defendants**

8 98. Plaintiff repeats and realleges the allegations made in paragraphs 1
9 through 97 as if fully set forth herein.

10 99. Defendant has made untrue and misleading statements concerning the
11 PokerStars.com site in order to induce Plaintiff and other users to join and risk their
12 money on the site. In particular, Defendant has held out to Plaintiff and other users of
13 the site that, while they may lose money in game-play on the site, if they win money
14 on the site, they will be paid.

15 100. Notwithstanding what they hold out to the public, Defendant engages in a
16 pattern of conduct designed to deprive some of the biggest winners on the
17 PokerStars.com site of their winnings. As a result, their representations to the public
18 about the PokerStars.com site are false and misleading.

19 101. In addition, Defendant advertises the SCOOP tournament to tournament
20 participants as having \$65 million in “guaranteed prize money” in 2018 and a similar
21 amount in 2017. However, Defendant does not pay out the full amount of the
22 “guaranteed prize money,” including amounts owed to Plaintiff.

23 102. In addition, Defendant has held out to the public over the past year that
24 Mr. Vayo was the winner of the SCOOP tournament in question, using his famous
25 name to promote and draw users to the site, when in fact behind the scenes Defendant
26 had frozen Mr. Vayo’s account and alleged that he was not in fact the legitimate
27 winner of the tournament in question.

28 103. Defendant knew or should have known, through the exercise of

1 reasonable care, that the aforementioned statements and representations to the public
2 were untrue and misleading.

3 104. Defendant's false and misleading statements deceive and/or have the
4 capacity to deceive a substantial segment of the users and potential users of the
5 PokerStars.com site, and do so in a material manner that is likely to influence the
6 purchasing decisions of users and potential users of the site, including by inducing
7 potential users to use the PokerStars.com site when they otherwise would not have
8 and/or inducing users of the PokerStars.com site to play more on the site than they
9 otherwise would have if not for Defendant's false and misleading statements.

10 105. As a direct, proximate, and foreseeable result of the conduct and
11 omissions alleged above, Plaintiff and other users of the PokerStars.com site have
12 suffered and will continue to suffer damages and Defendant has been and continues to
13 be unjustly enriched in an amount to be determined at trial.

14 106. Because Defendant's aforementioned acts and omissions were
15 undertaken with fraud, oppression and/or malice, Plaintiff is entitled to exemplary and
16 punitive damages in an amount to be determined at trial.

17 107. As a direct and proximate result of the foregoing acts and conduct,
18 Plaintiff has sustained and will continue to sustain substantial, immediate, and
19 irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed
20 and believes and on that basis avers that unless enjoined and restrained by this Court,
21 Defendant will continue to engage in conduct violative of California Business and
22 Professions Code Section 17500. Plaintiff is entitled to preliminary and permanent
23 injunctive relief.

24
25 **FOURTH CLAIM FOR RELIEF**

26 **(Violation of Rights of Publicity, Cal. Civil Code § 3344)**

27 **Against All Defendants**

28 108. Plaintiff repeats and realleges the allegations made in paragraphs 1

1 through 107 as if fully set forth herein.

2 109. Defendant has used Plaintiff's name and identity in order to promote,
3 advertise and market the PokerStars.com site. In particular, Defendant has promoted,
4 advertised and marketed the PokerStars.com site by holding out to the public on the
5 PokerStars.com website and blog over the past year that Mr. Vayo was the winner of
6 the SCOOP tournament in question, using his famous name to promote and draw
7 users to the site, when in fact behind the scenes Defendant had frozen Mr. Vayo's
8 account and alleged that he was not in fact the legitimate winner of the tournament in
9 question.

10 110. The aforementioned appropriation and use of Plaintiff's name and
11 identity were to Defendant's commercial advantage.

12 111. Plaintiff did not consent to such appropriation and use of his name and
13 identity by Defendant.

14 112. As a direct, proximate, and foreseeable result of the acts and conduct
15 alleged above, Plaintiff has suffered and will continue to suffer damages, and
16 Defendant has been and continues to be unjustly enriched in an amount to be
17 determined at trial.

18 113. In addition or in the alternative, Plaintiff is entitled to statutory damages
19 as provided by the California Business and Professions Code.

20 114. Because Defendant's aforementioned acts and omissions were
21 undertaken with fraud, oppression and/or malice, Plaintiff is entitled to exemplary and
22 punitive damages in an amount to be determined at trial.

23 115. As a direct and proximate result of the foregoing acts and conduct,
24 Plaintiff has sustained and will continue to sustain substantial, immediate, and
25 irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed
26 and believes and on that basis avers that unless enjoined and restrained by this Court,
27 Defendant will continue to engage in conduct violative of the California Civil Code.
28 Plaintiff is entitled to preliminary and permanent injunctive relief.

FIFTH CLAIM FOR RELIEF

(Unfair Business Practices in Violation of Cal. Bus. & Prof. Code § 17200)

Against All Defendants

116. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 115 as if fully set forth herein.

117. Defendant, through the conduct alleged herein, has engaged in and continues to engage in unlawful, unfair, and/or fraudulent conduct in violation of Section 17200 *et seq.* of the California Business and Professions Code.

118. The unlawful conduct in which Defendant has engaged and continue to engage includes false advertising in violation of the Lanham Act, false advertising in violation of California Business and Professions Code Section 17500, and an invasion of Plaintiff’s rights of publicity in violation of California Civil Code Section 3344.

119. Defendant’s violations were intentional, willful, and with reckless disregard and indifference to Plaintiff’s and other PokerStars users’ rights.

120. As a direct and proximate result of the foregoing acts and conduct, Plaintiff and other users of the PokerStars.com have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed and believes and on that basis avers that unless enjoined and restrained by this Court, Defendant will continue to engage in unlawful and wrongful conduct in violation of the law. Plaintiff is entitled to preliminary and permanent injunctive relief.

SIXTH CLAIM FOR RELIEF

(Breach of a Written Contract)

Against All Defendants

121. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 120 as if fully set forth herein.

122. To the extent that Defendant’s PokerStars.com Terms of Service –

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1 including the Poker Rules, PM Game Terms and Conditions, Real Money Processing
2 and Currency Exchange Terms and Conditions, FAQ, and other documents referenced
3 and incorporated into the Terms of Service – are deemed effective, in general or as
4 they pertain to Plaintiff, the Terms of Service constitute a valid, binding written
5 contract to which Defendant is bound, except to the extent that certain terms,
6 including the venue and choice of law provisions, are unconscionable and therefore
7 null and void.

8 123. Defendant has materially breached its obligations under the Terms of
9 Service by: (a) failing and refusing to pay Plaintiff his winnings from playing “real
10 money games” offered and hosted on the PokerStars.com site, and as described in the
11 Terms of Service; (b) by taking more than the “rake,” as set forth in the FAQ; and (c)
12 seizing Plaintiff’s funds and locking Plaintiff’s account based on the mere unfounded
13 suspicion of out of jurisdiction play, in violation of Section 8.1 of the Terms of
14 Service, which permits Defendant to invoke these remedies only upon establishment
15 of actual “breaches” of the Terms of Service.

16 124. Plaintiff has fully performed all conditions, covenants and obligations
17 required of Plaintiff under the Terms of Service, except to the extent that Plaintiff’s
18 obligations have been excused.

19 125. As a direct, proximate, and foreseeable result of the conduct and
20 omissions alleged above, Plaintiff has suffered damages in an amount to be
21 determined at trial, but in no event less than \$692,460.00, plus interest thereon from
22 the date of Defendant’s breach.

23
24 **SEVENTH CLAIM FOR RELIEF**

25 **(Money Had and Received)**

26 **Against All Defendants**

27 126. Plaintiff repeats and realleges the allegations made in paragraphs 1
28 through 125 as if fully set forth herein.

1 127. Defendant received and is in possession of money that was intended to be
2 used for the benefit of Plaintiff – namely, his winnings in the SCOOP tournament and
3 the money in Plaintiff’s PokerStars.com account.

4 128. Defendant has failed and refused to use this money for the benefit of
5 Plaintiff and have frozen his PokerStars.com account.

6 129. Defendant has failed and refused to give Plaintiff this money and have
7 frozen his PokerStars.com account.

8 130. As a direct, proximate, and foreseeable result of the conduct and
9 omissions alleged above, Plaintiff has suffered damages in an amount to be
10 determined at trial, but in no event less than \$692,460.00, plus interest thereon from
11 the date of Defendant’s breach.

12
13 **EIGHTH CLAIM FOR RELIEF**

14 **(Promissory Estoppel)**

15 **Against All Defendants**

16 131. Plaintiff repeats and realleges the allegations made in paragraphs 1
17 through 130 as if fully set forth herein.

18 132. By announcing Plaintiff as the winner of the SCOOP Event #1-High
19 \$1,050 No Limit Holdem tournament, publicizing his victory and allowing Plaintiff to
20 transfer his winnings in inter-player transfers on PokerStars.com accounts, Defendant
21 clearly and unambiguously promised Plaintiff to pay him what he won in the SCOOP
22 tournament.

23 133. Notwithstanding the foregoing, Defendant failed and refused to do the
24 acts promised.

25 134. The aforesaid promise was intended to induce and did induce Plaintiff to
26 continue playing on the site, transferring money from his account to other
27 PokerStars.com and to engage in other acts that he would not have absent Defendant’s
28 promise.

1 135. Plaintiff reasonably relied on Defendant’s promise in engaging in the
2 aforesaid acts and conduct.

3 136. As a direct, proximate, and foreseeable result of the conduct and
4 omissions alleged above, Plaintiff has suffered damages in an amount to be
5 determined at trial, but in no event less than \$692,460.00, plus interest thereon from
6 the date of Defendant’s breach.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment
10 against Defendant as follows:

11 A. For an award of direct and consequential damages in an amount to be
12 ascertained at trial but in no event less than \$692,460.00, plus interest thereon at the
13 legal rate of ten percent (10%) per annum from the date of Defendant’s breach;

14 B. For punitive and exemplary damages in an amount to be ascertained at
15 trial;

16 C. For restitution and disgorgement of Defendant’s ill-gotten gains as a
17 result of Defendant’s violations of law, in an amount to be ascertained at trial;

18 D. For treble damages pursuant to the Lanham Act;

19 E. For prejudgment interest as allowable by law;

20 F. For preliminary and permanent injunctive relief;

21 G. For Plaintiff’s costs of suit;

22 H. For reasonable attorneys’ fees; and

23 //

24 //

25 //

26 //

27 //

28 //

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1 I. For such other and further relief as the Court may deem just and proper.
2

3 DATED: May 2, 2018

FAYER GIPSON LLP
GREGORY A. FAYER
MICHELLE K. MILLARD

5 By /S/Gregory A. Fayer
6 GREGORY A. FAYER
7 Attorneys for Plaintiff Gordon Vayo
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FAYER GIPSON LLP

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury.

DATED: May 2, 2018

FAYER GIPSON LLP
GREGORY A. FAYER
MICHELLE K. MILLARD

By /S/Gregory A. Fayer
GREGORY A. FAYER
Attorneys for Plaintiff Gordon Vayo

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