

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

DRAFTKINGS, INC., a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
LISA M. MADIGAN, in her official capacity as)
Attorney General of the State of Illinois,)
)
Defendant.)
)
)
)

Case No. 2015CH18622
CALENDAR/ROOM 16
TIME 00:00
Declaratory Judgment

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff DraftKings, Inc. (“DraftKings”), by and through its attorneys, Sidley Austin LLP, as and for its Verified Complaint for Declaratory and Injunctive Relief, alleges as follows:

PRELIMINARY STATEMENT

1. This action seeks to prevent Illinois Attorney General Lisa Madigan from banishing the Daily Fantasy Sports (“DFS”) contests openly played in this State for nearly a decade and enjoyed by hundreds of thousands of Illinoisans before any court has the opportunity to decide the legality of those contests.

2. On December 23, 2015, the Attorney General issued an Opinion Letter (“Opinion Letter”) that misinterprets Illinois’ laws by concluding that Illinois residents who play DFS contests are committing criminal acts and that DFS contest hosts like DraftKings are operating illegally in Illinois.

3. In a concurrent letter to DraftKings, the Attorney General’s Office stated it expected DraftKings to change its terms of service to preclude Illinois residents from participating in daily fantasy sports contests on their site.

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4. The Opinion and Cover Letters have caused immediate and significant harm to DraftKings' business here and nationwide; this issue is joined and this is a justiciable controversy. Emergency declaratory and injunctive relief is necessary to prevent further damage to DraftKings business by restraining the Attorney General from pursuing any civil enforcement or tort action against DraftKings or its business partners in Illinois until this Court has determined the legality of DFS games under Illinois law and afforded affected businesses the opportunity to clear their good names.

5. To be clear, this is about Illinois, but it is not just about Illinois. And that is what makes this precipitous action so pernicious and the stakes here so consequential. The Attorney General's opinion, if left unchecked, will not only force DraftKings to exit the State, but also have a ripple effect, irreparably harming DraftKings' operations throughout the nation and causing it to lose customer goodwill that can never be restored. Indeed, in suddenly declaring illegal a game that has long been played lawfully, openly, and honestly in this State, the Attorney General ignores the judicial and legislative processes already in motion, throws into turmoil the DFS industry, and affects the ability of many Americans to enjoy one of their favorite games.

6. Fantasy sports have become a national pastime. DFS—a natural outgrowth of traditional season-long fantasy sports contests, although more sophisticated and requiring even more skill than its forerunner—is played by millions of Americans. DraftKings was a relatively late entrant into the DFS market in April 2012, but the entrepreneurs behind this start-up have seen it grow quickly to become one of the nation's two largest DFS providers. It serves more than two million customers across 44 states, including Illinois. DFS companies have operated openly, honestly, legally and permissibly in Illinois for nearly a decade.

7. The Opinion Letter is not the benign rumination on Illinois law that it purports to be. As an initial matter, it has set off a chain of events that—if unchecked— will unjustly destroy a legitimate industry, depriving hundreds of thousands of Illinoisans of the use and enjoyment of their favorite DFS websites. But more to the point, the Opinion Letter flies in the face of Illinois law, which plainly permits games of skill such as DFS.

8. Because DraftKings' contests are games of skill and therefore exempted from Illinois gambling laws, DraftKings has a "strong likelihood" of prevailing on the merits. Illinois' gambling statute, which prohibits twelve kinds of misdemeanor gambling, *expressly exempts* contests like DFS from its scope. Specifically, it exempts contests involving "[o]ffers of prizes, award or compensation to the *actual contestants* in any *bona fide contest for the determination of skill*, speed, strength or endurance[.]" 720 ILCS 5/28-1(b)(2) (West 2014) (emphasis added). DFS contests qualify for the exemption because they are "bona fide contest[s] for the determination of skill," because they are played by "actual contestants" who compete for predetermined "prizes," and because the set-amount entry fees "contestants" pay to DraftKings to participate in the "contests" are not "bets" or "wagers."

9. *First*, DraftKings' contests are complex games of skill. All DFS contestants act as general managers or owners of their fantasy teams, putting together their fantasy rosters from among the same pool of athletes. In doing so, they must use their strategic know-how and ingenuity to select a lineup that will outperform their competitors'. The strategy and skill involved in the game is indisputable. Not only does it require an intensive knowledge of various sports, rules, athletes, and statistics, but DFS players must also understand and incorporate into their gameplay the different rules and features of the fantasy contests themselves that require and reward different strategies. They must skillfully manage a salary cap, identify "value" players

who outperform their assigned salary, master a complex scoring system, and modify their strategies based on the structure of the contest itself. A lineup that performs well in one fantasy contest may not perform well in another; understanding why is part of the puzzle. Academic scholarship, skills studies, and expert commentary all conclusively establish the significance of these strategic considerations: DFS is a classic game of skill and entirely legal under Illinois law.

10. *Second*, players of DraftKings' fantasy contests are "actual contestants." They are *actually competing* against one another to determine who put together the highest-performing fantasy lineup. No one would deny that football is a game of skill, and that a team's general manager constructs the roster through skill, knowledge and statistics. Similarly, here, DFS players act as their team's general managers, using skill to craft their rosters and then compete against one another in a contest. *That* is the only contest in which DFS players pay an entry fee to compete, and in which they are eligible to win a predetermined prize. They control the outcome of the fantasy competition by exercising complete control and skill over the lineups they choose, thereby using their skills to profoundly influence the outcome of the fantasy contest.

11. *Third*, the entry fees collected by DraftKings are not "bets" or "wagers." DFS contestants pay a set entry fee to compete for a predetermined prize that DraftKings will pay regardless of the outcome of either the fantasy contest or any real-world sporting event. To be clear, DraftKings does not participate in any fantasy contest, and its compensation has nothing to do with who, how, or why any fantasy player wins its fantasy contests. Illinois courts have adopted the majority view that contests in which participants pay a set entry fee to compete for predetermined prizes are permissible games, not illegal gambling. DraftKings serves as a neutral third-party administrator, collecting entry fees, setting contest rules, calculating points, and

awarding guaranteed prizes to the winners of DFS contests—prizes that DraftKings announces in advance of the contests and has to pay regardless of the number of entrants.

12. The Opinion Letter also constitutes unconstitutional overreach, and emergency relief should issue for that reason as well. The letter has violated Illinois' separation of powers by making what amounts to a legislative judgment that DFS contests should be banned, and by effectively convicting and punishing DraftKings prior to any judicial determination that DFS violates Illinois law. The Opinion Letter jumps to the unfounded and circular conclusion that because legislators are working on legislation that explicitly exempts DFS contests from Illinois gambling laws, DFS contests must therefore violate Illinois gambling laws. This is particularly outlandish when the legislator who introduced the very bill in the legislature that the Attorney General now seeks to usurp, State Representative Mike Zalewski, has acknowledged time and again that he does not believe DFS contests are illegal. Indeed, in a statement yesterday in response to the Opinion Letter, he declared: "I do not believe that daily fantasy sports involve gambling[.]"

13. Further, the Opinion Letter is unclear on its position on traditional fantasy sports vis-à-vis DFS. The Attorney General makes a passing reference to the difference in the length of daily fantasy and season long fantasy contests—a meaningless difference given that DFS is simply an outgrowth of season long fantasy sports but involving even more skill than its predecessor. In highlighting the different periods of time covered by season-long and daily fantasy contests, and only declaring DFS to be illegal gambling, the Attorney General is violating equal protection by singling out DFS for special punishment. See Opinion Letter 2. Even more importantly, the reasoning in the Attorney General's opinion would also seem to outlaw traditional season-long fantasy sports, a game beloved by tens of millions of sports fans

in the United States for over 50 years. Just as with DFS games, season-long fantasy sports has all the elements that the Attorney General claims violate the law: payment of entry fees to participate in a contest for a prize for the creation of the best line-up based on real-world athletes that gains points based on the performance of those real-world athletes. So, to the extent the Attorney General’s opinion provides for an exemption for traditional fantasy-sports, that exemption is arbitrary and capricious, and it violates equal protection by singling out DFS for special punishment. But the practical effect of the Opinion Letter is to sow confusion in the entire fantasy industry (whether sports-related) in conducting a cursory analysis that essentially forbids all fantasy-style contests. The Illinois gambling statute provides no basis for drawing such an arbitrary and irrational distinction between season-long and daily sports, or for such a broad prohibition on a particular kind of skill-based contest (*viz.* fantasy competitions) with “actual contestants.”

14. The Opinion Letter’s incorrect interpretation of Illinois law is the first of its kind in Illinois. No other Illinois official has ever found DFS to be illegal. Indeed, Representative Zalewski, wants to “encourage” DFS contests, not “stifle” them. He understands first-hand the skill involved in DFS contests, explaining, “I’ve played fantasy sports and I know that you cannot willy-nilly pick a lineup and expect to win.” That is exactly what DraftKings offers and Illinois law expressly permits—games of skill. That should end the inquiry.

15. This Court’s immediate intervention is necessary to prevent the irreparable harm that would result from the Opinion Letter. Illinois is home to approximately 10% of DraftKings’ customers nationwide. Absent emergency relief, the Opinion Letter will force DraftKings to shutter its Illinois operations, harming not just the company, but hundreds of thousands of Illinoisans who enjoy its games—all prior to any judicial determination settling the question of

the legality of DraftKings' operations. Furthermore, the Opinion Letter—and the adverse publicity attendant to it—are having a chilling effect on DraftKings' business nationwide, as well as its ability to attract new investors and partners, and is putting its relationships with vendors and business partners at risk. The Opinion Letter effectively denies DraftKings its day in court, commanding it to shut down before it has even had the opportunity to defend itself, and violating due process.

16. Meanwhile, the equities here militate strongly in favor of emergency relief. The Attorney General has rushed to issue a devastating opinion regarding an industry that has been operating openly and honestly and permissibly in Illinois for nearly a decade. Not once during that time did any state regulatory officials, including this Attorney General, so much as suggest that those companies might be violating the law. Nothing changed this week that required such a precipitous about-face on the Attorney General's part.

17. The question of DFS's legality is currently pending in Illinois federal court in *Stoddart v. DraftKings, Inc.*, No. 3:15 Civ. 1307 (JPG) (DGW) (filed Nov. 25, 2015), and the Statement of Policy indicates that the Attorney General will refrain from issuing opinions in such circumstances, declaring: "The Attorney General will not furnish opinions on questions scheduled for determination by the courts." Statement of Policy 2. This unexplained departure from the Office's own policies further confirms that there is no justification for the Opinion Letter, and its misguided interpretation of the law threatens to significantly harm DraftKings. This Court should therefore declare the Opinion Letter ineffectual and void, and grant an emergency injunction requiring the Attorney General to refrain from pursuing any civil action against DraftKings, other than before this Court in this litigation, where the legality of DFS games under Illinois law will properly be determined. That relief, and only that relief, will

ensure that this important question of Illinois law, which affects hundreds of thousands of Illinoisans and millions of Americans, will be decided by a court of law, not executive fiat.

18. In addition, in issuing the Opinion Letter, the Attorney General's Office has acted against its own longstanding, written policies that have been in place for over 50 years. The Attorney General's Statement of Policy of the Illinois Attorney General Relating to Furnishing Written Opinions (the "Statement of Policy"), adopted March 29, 1962, provides that the Attorney General can issue opinions in response to requests from the "chairperson" or "minority spokesperson" of any committee. Statement of Policy 1. On information and belief, the representative who requested the Opinion Letter was neither the chairperson nor the minority spokesperson of any committee. This departure from longstanding written policy should be viewed skeptically.

PARTIES

19. Plaintiff DRAFTKINGS, INC., is a Delaware corporation with its principal place of business in Boston, Massachusetts.

20. Defendant LISA MADIGAN is the Attorney General of the State of Illinois. DraftKings brings this proceeding against Attorney General Madigan in her official capacity.

JURISDICTION AND VENUE

21. This Court has jurisdiction pursuant over the subject matter of this action pursuant to Section 2-701 of the Illinois Code of Civil Procedure. The Court has jurisdiction over Defendant Madigan insofar as the events which give rise to this action occurred in the State of Illinois and were undertaken in her official capacity as Attorney General of the state.

22. Venue is proper in Cook County because Defendant Madigan's Chicago office is located in Cook County.

FACTUAL ALLEGATIONS RELATED TO ALL COUNTS

A. **DraftKings And Fantasy Sports Contests**

23. DraftKings provides an online platform for individuals to enter DFS contests with friends, family, or other fantasy-sports enthusiasts.

24. While DraftKings has offered DFS since approximately April 2012, DFS games have been around at least since the launch of Fantasy Sports Live in June 2007. Since then, many other companies have entered the DFS marketplace, including FanDuel, which was founded in or about 2009.

25. Traditional fantasy sports have existed since as early as the 1960s and provide fans with an opportunity to assemble a fantasy team of real-life athletes to compete against other fantasy players. Traditional fantasy contests generally span the entire season of a particular sport—typically four to six months.

26. DFS was a natural and more sophisticated outgrowth of traditional season-long fantasy sports. Like season-long games, DFS gave sports fans the opportunity to use knowledge, skill, and evidence-based analytics to strategically assemble a team of players within firm salary constraints. Like season-long games, DFS games give sports fans the opportunity to use knowledge, skill, and evidence-based analytics, and are decided based on the fantasy points compiled in the fantasy contest. Both season-long and DFS bear exactly the same relationship to real-world sporting events: fantasy results are based on statistics compiled by real-world athletes, but are never mere proxies for the binary outcomes of real-world sporting events. Indeed, every fantasy contest—whether it is fantasy football, baseball, scrabble, celebrities, or music, all real existing games—operates according to this principle. However, unlike season-long contests, DFS games last one day or one week (depending on the sport), rather than for many months.

27. DraftKings now offers DFS games in 44 states of the United States and the District of Columbia.

28. DraftKings offers a variety of contest types (for example, large-field tournaments, head-to-head contests, private leagues) in 11 different sports and e-sports.

29. DraftKings users pay an entry fee to enter cash contests, while there is no entry fee whatsoever to play in free contests. Winners of contests receive prizes. The prize structure is always known ahead of time when users decide to pay an entry fee and enter a contest, and does not change.

30. A DraftKings user's lineup comprises between five and 11 real-world athletes, and the success of a lineup depends on the combined performance in numerous statistical categories of those real-world athletes across many real-world sporting events.

31. The strategy required to play DFS successfully has nothing to do with correctly predicting the ultimate win-loss outcome or margin of victory of a real-world sporting event, such as a football or basketball game, as in a traditional sports bet. The results of DraftKings' fantasy contests are not tethered to the outcomes of real-world sporting events. Nor do they have anything to do with predicting whether a particular athlete will achieve a particular in-game accomplishment, as in a traditional prop bet. DraftKings customers do not place bets on events outside of their control; rather, they pay entry fees to participate in a fantasy contest against other contestants in which they compete by selecting the lineup that determines the winners and losers.

B. DraftKings' Contests Are Complex Games Of Skill, Not Gambling

32. There is overwhelming evidence that DraftKings' contests are complex games of skill. In essence, DraftKings participants act as "General Managers" of a fantasy team and compete against other participants to see who can execute the General Manager skill set most effectively. This skill set comprises three core strategic elements: (1) the salary cap structure,

which implicates econometric strategies concerning opportunity cost and relative value; (2) the fantasy point scoring systems, which affect relative valuation of athletes; and (3) the contest rules and prizing eligibility, which affect player selection strategies.

1. Core Strategic Element #1: Salary Cap Management

33. DraftKings assigns a fictional “salary” to each real-world athlete who could be selected to any fantasy team, as well as a “salary cap” that limits the sum of the salaries of athletes that a DFS player can select constitute a user’s lineup. The same salary cap and fictional “salaries” of real-world athletes applies consistently to all players in a particular contest, which significantly augments the skill required to participate and succeed in those contests. This mechanism prevents DFS players from merely selecting the real-world athletes that they believe will score the most points at every position in their lineup—such a strategy would cause them to exceed the salary cap. Rather, DFS players must consider the expected value of each real-world athlete, set against the constraint to the salary cap, the overall composition of the roster, and the opportunity cost of other real-world athletes who are not selected.

34. Managing the salary cap—that is, picking the right mixture of athletes to play on the fantasy team—lies at the heart of DFS strategy, and mastering that strategy is incredibly complex.

35. The strategic elements of managing the salary cap are magnified by the fact that a player’s salary does not change during the contest, whether the contest lasts for one day (as in NBA and MLB games) or one week (as in NFL games). While sports betting lines fluctuate as real-world sporting events approach to respond to new market information, all DFS player salaries remain fixed once they are established. This creates a strong incentive for DFS players to exercise research and analytical skill, constantly monitoring any sports-related news that may affect player valuations, particularly injury reports that emerge from team practices—late-

breaking real-world lineup changes can have a dramatic impact on strategic choices in DFS lineups.

36. As an illustration, consider the following comparison between NBA players LeBron James of the Cleveland Cavaliers and Jerry Bayless of the Milwaukee Bucks for DraftKings contests held on November 2, 2015—an illustration of the core strategic principle that the better real-world athlete may often not be the better selection in the fantasy contest. James's and Bayless's DraftKings salaries were \$9,700 and \$3,200, respectively, out of the overall \$50,000 salary cap space allotted.

37. In their real-life games, James and Bayless produced the following statistics and corresponding DraftKings points: James (22 points, 9 rebounds, 11 assists, 4 steals, 2 blocks, **61.75** DraftKings points); Bayless (26 points, 3 rebounds, 2 assists, 0 steals, 0 blocks, **34.75** DraftKings points).

38. James is universally considered a far superior real-life NBA player to Bayless, and indeed on this particular night he played a far superior game. However, within the strategic regime created by DraftKings' contests, Bayless was a *significantly better* fantasy selection.

39. While James cost \$157 of DraftKings salary for each fantasy point scored, Bayless cost only \$92 per point. DraftKings contest data confirms that Bayless's superior point-per-dollar value produced superior results for participants who selected him. DraftKings rosters that included Bayless on November 2 produced an average lineup score approximately 16 fantasy points higher than rosters that included James—an enormous, significant margin. Furthermore, entries that included Bayless had a win rate in head-to-head and 50/50 contests that was 24 percentage points higher than entries that included James.

40. DraftKings participants who are unfamiliar or unskilled at employing the necessary strategic principles may incorrectly assume that simply picking the best superstar is the key to success, but skilled players were able to identify Bayless as a superior value on November 2 by monitoring late-breaking lineup news: Normally a reserve player, Bayless was announced as the starting point guard for that evening's game less than one hour before it began. Because DraftKings salaries are fixed, selecting a starting point guard at a "backup price" presented a clear opportunity to gain a strategic advantage.

2. Core Strategic Element #2: Fantasy Point Scoring System

41. DFS contests are governed according to unique fantasy point scoring systems that determine how many fantasy points are gained or lost for each applicable real-world statistic. Learning, understanding, and mastering each sport's—and each DFS provider's—unique scoring system adds another level of strategic decision-making to the DFS General Manager's skill set.

42. For example, in NFL contests, the DraftKings scoring system awards 1.0 point for a reception, while the FanDuel scoring system awards only 0.5 points. The difference may appear negligible, but a sophisticated user understands its enormous implications for the relative valuation among running backs, wide receivers, and even quarterbacks.

43. In a DraftKings contest, a skilled participant will likely assign more value to pass-catchers than he would in a FanDuel contest, while a FanDuel participant will likely assign relatively more value to quarterbacks.

44. Other examples of strategy-enhancing scoring differences between DraftKings and FanDuel include: DraftKings awards special bonus points for individual milestones such as 300 yards passing by a quarterback, while FanDuel does not; FanDuel uses placekickers in NFL contests and awards points based on field goals, while DraftKings does not; DraftKings MLB contests award 2 points per strikeout, while FanDuel awards only 1 point.

45. Each of these slight differences—and many more—affect the skills-based strategic judgments that inform DFS players’ decisions.

3. Core Strategic Element #3: Contests Rules Regarding Prize Eligibility

46. Another DFS contest attribute that drives player selection strategy is prize structure—who wins, and how much. DraftKings offers a variety of different types of contests, with some contests involving a more top-heavy prize structure than others. Again, these differences in contest design create drastically disparate strategic incentives.

47. Large-field tournaments with guaranteed prize pools (“GPP”) generally have top-heavy prize structures in which approximately the top 20% of finishers earn money, and the vast majority of prizes, by dollar amount, are paid out to the top 1% of finishers. By contrast, in both head-to-head and larger 50/50 contests, a player wins the maximum amount merely by beating one opponent or finishing in the top half of the field.

48. There are at least three key strategic considerations that vary depending on whether a participant enters a large-field GPP tournament or a head-to-head (or 50/50) contest: (1) player volatility, (2) game theory and contrarian play, and (3) stacking versus hedging.

49. In head-to-head and 50/50 contests, a skilled DFS user might select real-life players who offer lower volatility and therefore less risk. Consider two hypothetical wide receivers who average the same 15 DraftKings points per week. Player A routinely scores fewer than 5 points or more than 25 points in contests, while Player B never scores below 12 or greater than 18 points. In head-to-head and 50/50 contests, Player B is likely the more strategically sound selection because such a selection eliminates the risk of a 5-point performance. Because of the unique prize structure in large tournaments, by contrast, the possibility of scoring 25 or more points is *worth* that risk, and thus Player A might be the sounder choice.

50. GPP tournaments incentivize what game theory experts call “contrarian strategy”: purposely differentiating one’s lineup from the lineups of other contestants. To finish within the top 1% of all entries, it is not enough to select players who perform well; successful participants will select players who perform well *and* are chosen by relatively few of their competitors. To increase the likelihood of achieving high enough scores to be eligible for top prizes, DFS contestants in GPP tournaments typically strive to select a fantasy roster that will score well *and* be unique among the field.

51. Finally, head-to-head contests and GPP tournaments generally create opposite incentives when it comes to positive and negative correlation among prospective fantasy selections. In GPP tournaments, it is often strategically advantageous to employ a technique known as “stacking”: selecting a combination of athletes whose expected fantasy performances are positively correlated. An example of stacking in NFL contests is the selection of a quarterback *and* the wide receiver who is known to be the quarterback’s favorite pass-catching target. In head-to-head contests, it is often wiser to do the opposite: “hedge” against one’s quarterback selection by choosing wide receivers from other real-life teams.

52. For example, consider a DraftKings participant who has selected the Green Bay Packers’ Aaron Rodgers as her quarterback and is deciding between the Packers’ Randall Cobb and the Arizona Cardinals’ Larry Fitzgerald at wide receiver. Cobb and Fitzgerald are historically comparable fantasy producers with comparable DraftKings salaries. In a GPP tournament, a skilled DFS player might well consider selecting Cobb, as Cobb is statistically likely to have a good performance if Aaron Rodgers has a good performance—and statistically likely to have a poor performance if Rodgers does. By contrast, in a head-to-head contest, Larry

Fitzgerald might be the safer (and thus wiser) choice, because a poor performance by Rodgers has no bearing on whether Fitzgerald lives up to expectations.

53. The strategic and skill-based concepts described above are by no means unique to DFS; they are an integral part of basic investment strategies for approaching the stock market as well. The concepts of hedge, positive and negative correlation, expected value, contrarian play, exposure, variance, and return-on-investment are basic economic terms that guide not only how to assemble a fantasy roster, but also how to build a stock portfolio.

C. Evidence of the Skill-Based Nature of DFS

54. The skill-based nature of DFS games has been repeatedly confirmed by leading experts. For example, Ed Miller—an MIT-trained engineer and noted author of gaming strategy books—and Daniel Singer—the leader of McKinsey & Company’s Global Sports and Gaming Practice—penned an article published by Sports Business Daily entitled: “For daily fantasy sports operators, the curse of too much skill.” Among Miller and Singer’s conclusions was the assertion that in the first half of the 2015 MLB season, 91% of DFS player profits were won by just 1.3% of players.

55. Miller and Singer also identified two primary ways in which skilled users succeed over unskilled users: (1) skilled users employ lineups that create covariance by choosing multiple athletes from the same real-life team in order to produce the extreme DFS outcomes—good and bad—that are necessary to win a large field tournament; and (2) skilled users exploit salary cap pricing inefficiencies by using sophisticated models to optimize their lineups by projecting which athletes are most likely to under- or over-perform relative to their salary on a given day.

56. To help measure the degree of control DFS users exercise over their outcomes, DraftKings engaged Gaming Laboratories International (“GLI”) to conduct sophisticated computer simulations involving DraftKings contests in MLB, NBA, NHL, and NFL.

57. GLI tested the performance of DraftKings lineups generated at random—subject only to the constraint that 90% of the salary cap must be used—compared to the results achieved by top-earning DraftKings users. In each case, skilled users dramatically outperformed the computer simulation in head-to-head contests: , 96% of the time in NBA, 84% of the time in NFL, 83% of the time in MLB, and 82% of the time in NHL.

58. DFS is also fundamentally different than other games about which the issue of skill versus chance has been previously debated, such as poker. Unlike poker, where players start each hand on a non-level playing field based on the cards they are randomly dealt, in DFS, each user starts in the exact same position and has complete and total control over the lineup the user chooses, within the consistent constraint of the salary cap. The fact that a DFS user has no control over player injuries is in no meaningful way different from the season-long fantasy sports games the Attorney General appears to distinguish in its opinion. And it is also no different than the small degree of chance present in all games of skill.

59. In addition to reducing the impact of injured and underperforming players, DFS also greatly enhances the degree to which users can learn from mistakes, develop their skills, and refine their strategic thinking between contests over the course of one real-life season.

D. Federal Statutory Recognition in 2006 That Fantasy Sports Activity Warrants Distinct Recognition

60. The Unlawful Internet Gambling Enforcement Act (“UIGEA”), 31 U.S.C. §§ 5361-5367 (2006), prohibits any person engaged in the business of betting or wagering from accepting any credit or funds from another person in connection with the latter’s participation in “unlawful Internet gambling.” 31 U.S.C. § 5363. Under UIGEA, “unlawful Internet gambling” means “to place, receive, or otherwise knowingly transmit a bet or wager by any means which

involves the use, at least in part, of the Internet” in a jurisdiction where applicable federal or state law makes such a bet illegal. 31 U.S.C. § 5362(10)(A).

61. Critically, however, Congress recognized that fantasy sports activities are different from the gambling UIGEA prohibits because American enjoyment of fantasy sports activity has been traditionally understood not as criminal activity, but as innocent and innocuous conduct. Congress codified this understanding in UIGEA by defining a “bet or wager” as “the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome,” 31 U.S.C. § 5362(1)(A), and then *excepting* from that definition, among other things, “participation in any [qualifying] fantasy or simulation sports game.” See 31 U.S.C. § 5362(1)(E)(ix)(I)-(III).

62. In other words, federal law carves, and in its most recent action on this issue, Congress deliberately carved out fantasy sports games from the definition of “unlawful Internet gambling” in this statute. DraftKings operates with careful attention to UIGEA, to its exception for qualifying fantasy sports activities, and to the laws of the various states.

E. DraftKings In Illinois And The Opinion Letter

63. DraftKings has operated in Illinois since 2012. It has advertised on broadcast-television and radio stations, and entered sponsorship agreements with some of Illinois’ major sports teams, including the Chicago Cubs, the Chicago White Sox, and the Chicago Blackhawks. Despite operating openly and transparently throughout Illinois for the past three years, no state prosecutor has ever brought gambling charges against DraftKings or questioned the legality of DraftKings’ games. Nor has any state prosecutor brought charges against CBS, Yahoo!, or other companies that offer online DFS contests, which Illinois residents have been playing for almost a decade.

64. On or about November 17, 2015, counsel for Plaintiff DraftKings met with representatives from the Attorney General's office. At this meeting, counsel for DraftKings presented extensive research demonstrating the legality of DraftKings' offerings under Illinois law.

65. On or about December 9, 2015, Illinois State representative Scott Drury sent a letter to the Attorney General requesting the office's opinion on the legality of Daily Fantasy Sports websites.

F. The December 23, 2015 Opinion Letter

66. On the evening of December 23, 2015, Defendants issued and released to the public the Opinion Letter and accompanying Cover Letter. The Cover Letter conveyed Defendants' "expect[ation]" that, "unless and until the Illinois General Assembly passes legislation specifically exempting daily fantasy sports contests from subsection 28-1(a) of the Illinois Criminal Code of 2012," DraftKings "will amend [its] Terms of Use to include Illinois as an additional state whose residents are not eligible to participate in [daily fantasy sports] contests." Cover Letter 1.

67. The Opinion Letter fundamentally and erroneously misunderstands DraftKings' contests and the laws that govern those contests, and contains assertions undermining the very statutory interpretation it advances.

68. The Opinion Letter alleges that DraftKings' offerings violate the law under the following theories:

69. First, the opinion alleges that DraftKings' operations constitute illegal gambling under the definition set forth in section 28-1(a)(1) of the Criminal Code (720 ILCS 5/28-1(a)(1) (West 2014)) because: (1) regardless of whether DraftKings' contests are games of chance or games of skill, section 28-1(a)(1) "expressly encompasses both"; (2) DraftKings' customers

“must pay an entry fee or buy-in amount in order to win a prize”; and (3) the exemption set forth in section 28-1(b)(2) of the Criminal Code (720 ILCS 5/28-1(b)(2) (West 2014)) does not apply. Opinion Letter 8-9.

70. Second, the opinion alleges that DraftKings’ operations constitute illegal gambling under the definition set forth in section 28-1(a)(12) of the Criminal Code (720 ILCS 5/28-1(a)(12) (West 2014)) because: (1) DraftKings operates a website that “allow[s] individuals to play games of chance or skill for money”; and (2) the exemption set forth in section 28-1(b)(2) does not apply. Opinion Letter 9.

71. The opinion asserts that the exemption set forth in section 28-1(b)(2) does not apply because DFS players are not “actual contestants in a *bona fide* contest for the determination of skill, speed, strength, or endurance.” Opinion Letter 10-11. Employing a largely conclusory analysis, the opinion states that “the phrase ‘actual contestants’ as used in subsection 28-1(b)(2) does not apply to those persons who pay entry fees for a chance to win a prize for forecasting the performance of professional or college athletes over whom they have no control or influence.” Opinion Letter 13. In the process, the opinion reads into the statute a requirement that does not exist, namely that subsection 28-1(b)(2) only applies to actual contestants “in a sporting event.” Opinion Letter 10. It also understates the tremendous amount of skill involved in DFS. And it relies on the inapt analogy that DFS is no different than wagering on a sporting event.

G. The Inconsistencies And Errors In Defendants’ Letter

72. The Opinion Letter advances several logical and legal fallacies. First, the Opinion Letter points to the fact that legislators in Illinois (and Kansas) have proposed legislation specifically exempting fantasy contests from the scope of gambling laws as evidence that fantasy contests are illegal under those laws. This logic is wholly circular—indeed, the legislators may

just as easily have concluded that legislation is necessary to prevent state enforcement officials such as the Attorney General from misinterpreting the gambling laws of Illinois in a manner that threatens the existence of DFS and other fantasy contests. Proposing a law that specifically exempts fantasy sports from the scope of the gambling laws does not change the fact that fantasy sports are already legal under those laws; it assures they will not be construed incorrectly by overzealous members of the executive branch.

73. Indeed, as noted previously, the legislator who introduced the bill in the legislature to which the Attorney General refers, Representative Zalewski said as recently as yesterday: “I do not believe that daily fantasy sports involve gambling[.]” What is more, just because Representative Zalewski and others want to regulate an industry does not say anything about their views on its legality.

74. Moreover, the Attorney General’s conclusion that the actual contestants in DFS are not the general managers, but rather the athletes on the field, rests entirely on the Attorney General’s misreading of the statute. The Attorney General asserts with no support whatsoever that subsection 28-1(b)(2) only applies to actual contestants “in a sporting event.” Opinion Letter 10. However, that language and limitation nowhere appears in the statute. To be sure, contests for the determination of speed, strength and endurance, do suggest athletic events. However, contests for the determination of skill do not. Indeed, under the Attorney General’s reading, a chess tournament where participants pay an entry fee and where a predetermined prize is awarded (like in DFS), would be illegal gambling because chess is not a sporting event.

75. Once the Attorney General’s self-imposed limitation on subsection 28-1(b)(2) is removed, her analysis crumbles. DFS contests involve actual contestants—the would-be general managers—who pay entry fees to compete against one another for a fixed prize in a contest for

the determination of skill, specifically who can assemble a fantasy roster that scores the most points. The Attorney General's cramped view of the meaning of the word "skill" completely misses the mark. The outcome of the fantasy contest is not based on the performance of any one athlete or team; rather it is based on the skill of the DFS player in constructing a lineup that competes against other fantasy lineups. The athletes themselves are not competing in the DFS contest; their statistical performance is merely a piece of the DFS puzzle that DFS players must assemble. DFS contests involve determining the relative skill of DFS participants who are the "actual contestants" in the fantasy contest. And of course, it is the fantasy contest which the DFS player pays a fee to enter and in which the DFS player may win a predetermined prize. Indeed, while significantly understating the skill involved, the Opinion Letter even grudgingly acknowledges that fantasy-sports contests "involve some degree of skill, such as selecting an athlete for a participant's team based on knowledge of the athlete's historical performance, match-up against a particular opponent, performance in a particular venue, and/or performance in particular weather conditions[.]" Opinion Letter at 12-13. The Attorney General's reasoning boils down to an unsupported assertion that DFS does not involve skill because it says so. It has no basis in the law. The Opinion Letter entirely ignores the overwhelming evidence, explained above, that DFS is a skill-based competition.

76. The Attorney General narrowly and incorrectly focuses on the skill of the athletes in the real world game, minimizing the skill of the DFS player and asserting that the former controls the outcome of the game to the complete exclusion of the latter. But every game involves elements out of the control of the player. By the Opinion Letter's logic, a bass fishing contest is controlled completely by the "skill" of the fish but has nothing to do with the skill of

the fisherman. Or a dog show is determined completely by the “skill” of the judges and has nothing to do with the competing dog owners. Such a reading simply cannot stand.

H. Immediate And Irreparable Harm To Plaintiff, Its Customers, And Employees

77. The harm threatened by Defendants to DraftKings’ customers, employees, operations, finances, and reputation is extraordinary and self-evident.

78. First, DraftKings would suffer irreparable harm because it will be forced to shutter its operations in Illinois—one of its largest markets. There are more than 256,000 DraftKings customers in Illinois, accounting for a large percentage of the approximately 2.5 million total players who play in the company’s contests. DraftKings’ Illinois customers have paid more than \$92 million in entry fees thus far in 2015, generating more than \$9 million in revenue. Should DraftKings cease operations in Illinois, the loss of such a large percentage of total revenue from this key market would be devastating to the company, its employees, and to shareholder value.

79. Moreover, DraftKings would lose the support of its investors and its fundraising efforts would be severely hampered. DraftKings has partnered with major sports entities such as Fox Sports, Major League Baseball, the National Hockey League, and Major League Soccer. DraftKings also has business relationships with sports franchises such as the Chicago White Sox, Chicago Blackhawks, and Chicago Cubs. A shutdown would have a chilling effect on DraftKings’ ability to attract new investors and partners and would impede its ability to continue its relationships with its existing investors and partners.

80. Certain of DraftKings’ payment processors—essential to the functioning of payments from users and, therefore, to the operation of DraftKings’ business—have also informed DraftKings that they are hesitant to continue doing business with DraftKings if it continues operating in Illinois in the face of an adverse Illinois Attorney General’s opinion.

81. All of this harm would not be confined to Illinois, but would cause a cascading effect throughout the country—including in the dozens of states where DraftKings continues to operate lawfully—adversely affecting its customer base and its business relations with vendors, customers, regulators, and the payment processors on which the company depends.

I. The New York Attorney General Action Pending In New York State Court

82. On the evening of November 10, 2015, the New York Attorney General (“NYAG”) released a letter to the public “demand[ing]” that DraftKings “cease and desist” offering DFS contests in New York within the next five business days. The NYAG proclaimed that his banishment was effective “immediately,” and proceeded to threaten DraftKings’ most important business partners and vendors with enforcement actions if they did not immediately stop performing their contractual obligations to DraftKings in New York.

83. In order to protect itself against the NYAG’s unconstitutional actions, on November 13, DraftKings filed suit against the NYAG and the State of New York in New York State Supreme Court.¹ A few days later, on November 16, DraftKings moved the court for a temporary restraining order and preliminary injunction to preserve the status quo and enjoin the NYAG from taking enforcement actions or making threats against the company or its business partners until the questions concerning the lawfulness of DFS contests could be resolved on the merits. After hearing arguments on DraftKings’ motion for a temporary restraining order that same day, Judge Manuel Mendez denied DraftKings’ request based on the NYAG’s assurance

¹ DraftKings’ petition against the NYAG was filed in *DraftKings, Inc. v. Schneiderman*, Case No. 102014/2015 (N.Y. Sup. Ct. N.Y. County).

that nothing would be done to stop DraftKings from engaging in its business pending decision on the parties' preliminary injunction motions and consent to an expedited hearing date.

84. The next day, on November 17, the NYAG filed a complaint against DraftKings, alleging, among other things, that DraftKings is unlawfully promoting gambling.² The NYAG simultaneously moved for a preliminary injunction.

85. On November 25, Judge Mendez heard arguments on both sides' preliminary injunction motions. Two weeks later, on December 11, Judge Mendez granted the NYAG's motion for a preliminary injunction, ordering DraftKings to stop operating in the State of New York.³

86. Within hours of Judge Mendez's ruling, DraftKings appealed to the First Department of the New York Appellate Division and moved the appellate court for a stay of the preliminary injunction. After hearing arguments that afternoon, Justice Paul Feinman granted DraftKings' motion and temporarily suspended the injunction granted by Judge Mendez earlier that day.

87. A full panel of the Appellate Division is expected to consider DraftKings' motion for stay pending appeal after the parties complete briefing on January 4. A schedule for appellate briefing has not yet been set. In the meantime, DraftKings continues to lawfully operate DFS contests in New York.

² The NYAG's complaint against DraftKings was filed in *People ex rel. Schneiderman v. DraftKings, Inc.*, Case No. 453054/2015 (N.Y. Sup. Ct. N.Y. County).

³ Judge Mendez also denied DraftKings' motion for a preliminary injunction against the NYAG.

STATEMENT OF THE CLAIMS

FIRST CAUSE OF ACTION

DECLARATORY AND INJUNCTIVE RELIEF

88. DraftKings re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

89. Each and every one of the grave legal errors described herein independently warrants declaratory and injunctive relief in favor of Plaintiff, including, but not limited to, the grounds that the Letter is agency action unauthorized by Illinois law, including because the Attorney General's Office does not have authority to unilaterally demand by Opinion Letter that a company cease operations in Illinois, and is further in conflict with Illinois law, including the very provisions Defendants have purported to interpret and seek to enforce.

SECOND CAUSE OF ACTION

DENIAL OF DUE PROCESS: FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983

90. DraftKings re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

91. By engaging in this conduct, Defendants have violated, and unless enjoined will continue to violate, DraftKings' rights under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, as made enforceable through 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

DENIAL OF DUE PROCESS: ARTICLE I, SECTION 2 OF ILLINOIS CONSTITUTION

92. DraftKings re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

93. By engaging in this conduct, Defendants have violated, and unless enjoined will continue to violate, DraftKings' rights under the Due Process Clause of Article I, Section 2 of the Illinois Constitution.

FOURTH CAUSE OF ACTION

**SEPARATION OF POWERS: ARTICLE II, SECTION 1; ARTICLE IV, SECTION 1;
ARTICLE V, SECTION 1; ARTICLE VI, SECTION 1 OF ILLINOIS CONSTITUTION**

94. DraftKings re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

95. By engaging in this conduct, Defendants have violated, and unless enjoined will continue to violate, DraftKings' rights under the separation-of-powers provisions of the Illinois Constitution, namely Section 1 of Articles II, IV, V, and VI.

FIFTH CAUSE OF ACTION

**DENIAL OF EQUAL PROTECTION: FOURTEENTH AMENDMENT OF THE
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983**

96. DraftKings re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

97. By engaging in this conduct, Defendants have violated, and unless enjoined will continue to violate, DraftKings' rights under the Equal Protection Clause of the United States Constitution, as made enforceable through 42 U.S.C. § 1983.

SIXTH CAUSE OF ACTION

**DENIAL OF EQUAL PROTECTION: ARTICLE I, SECTION 2 OF ILLINOIS
CONSTITUTION**

98. DraftKings re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

99. By engaging in this conduct, Defendants have violated, and unless enjoined will continue to violate, DraftKings' rights under the Equal Protection Clause of Article 1, Section 2 of the Illinois Constitution.

SEVENTH CAUSE OF ACTION

AGENCY ACTION INVALID AS ARBITRARY AND CAPRICIOUS AND IN EXCESS OF JURISDICTION: 735 ILCS 5/3-113 (West 2003)

100. DraftKings re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

101. By engaging in this conduct, Defendants have violated, and unless enjoined will continue to violate, Article III of the Illinois Code of Civil Procedure. Among other grave legal errors, the Opinion Letter is agency action unauthorized by Illinois law, because, among other reasons, the Attorney General's Office does not have authority to unilaterally demand by Opinion Letter that a company cease operations in Illinois. The Letter is further in conflict with Illinois law, including the very provisions Defendants have purported to interpret and seek to enforce.

102. As a direct result of Defendants' misconduct, DraftKings has suffered and will continue to suffer irreparable harm to its ability to operate its business. DraftKings has no adequate remedy at law.

JURY DEMAND

103. DraftKings demands a trial by jury in this action on each of its claims triable to a jury.

DRAFTKINGS IS ENTITLED TO EXPEDITED TREATMENT

104. DraftKings will seek expedited proceedings based on the foregoing.

PRAYER FOR RELIEF

105. DraftKings respectfully requests that the Court issue a declaration, on an expedited basis, pursuant to sections 2-701, 11-101, and 11-102 of the Code of Civil Procedure (735 ILCS 5/2-701, 11-101, 11-102 (West 2003)), and 42 U.S.C. §§ 1983 and 1988:

a. Declaring that DraftKings' DFS contests do not constitute "gambling" within the meaning of Illinois law, including section 28-1(a) of the Criminal Code (720 ILCS 5/28-1(a) (West 2014));

b. Declaring that DraftKings does not maintain or operate a prohibited website within the meaning of Illinois law, including section 28-1(a)(12) of the Criminal Code (720 ILCS 5/28-1(a)(12) (West 2014)); and

c. Declaring that the Attorney General's December 23, 2015 Opinion Letter is otherwise ineffectual and void.

106. DraftKings further requests an injunction against the Attorney General's taking any enforcement actions, or filing any other lawsuit, inconsistent with the Court's declaratory judgment requested above.

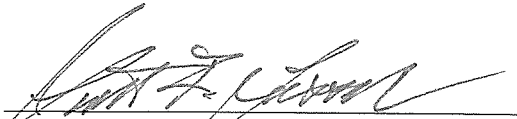
107. DraftKings further requests the award of its costs of this action, including attorneys' fees to the extent authorized by law.

108. DraftKings also seeks such other, further and different relief as the Court determines to be just and proper, including relief further or consequential to DraftKings' request for declaratory relief to the extent set forth above.

Dated: Chicago, Illinois
December 24, 2015

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By:



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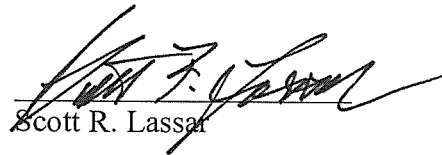
Attorneys for Plaintiff DraftKings, Inc.

**pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I, Scott R. Lassar, an attorney, hereby certify that on December 24, 2015, I caused to be served a true and correct copy of the foregoing: (1) **Chancery Division Civil Cover Sheet**, (2) **Summons**, (3) **Jury Demand Form**, (4) **Verified Complaint for Declaratory and Injunctive Relief**, (5) **Amanda Aycock's *pro hac vice* Statement and Certificate of Good Standing in the State of New York**, (6) **Debra Wong Yang's *pro hac vice* Statement and Certificate of Good Standing in the State of California**, and (7) **Douglas Fuchs' *pro hac vice* Statement and Certificate of Good Standing in the State of California**, via U.S. Mail and by electronic mail, to the following:

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