

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK,
by ERIC T. SCHNEIDERMAN, Attorney General of the
State of New York;

**FIRST AMENDED
COMPLAINT**

Plaintiff,

Index No. 453054/2015

- against -

IAS Part 13
Justice Manuel J. Mendez

DraftKings, Inc.,

Defendant.

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The People of the State of New York, by their attorney, Eric T. Schneiderman, Attorney General of the State of New York, allege, upon information and belief:

PRELIMINARY STATEMENT

1. Fantasy sports is a game enjoyed and legally played by millions of people nationwide, including in New York.

2. In fantasy sports, players draft “teams,” set imaginary “lineups,” and score “points” based on the performance of professional and amateur athletes in real games.

3. DraftKings, Inc. (“DraftKings”) exploits the good will associated with this game. Unlike the season-long competition played mostly for bragging rights or side wagers, DraftKings runs a casino-style gambling operation—dubbed *daily* fantasy sports (“DFS”)—where bettors can wager up to \$10,000 per “line-up” and enter for a chance to win jackpots of more than \$1 million. In 2014, DFS players in New York State wagered over \$25 million on DraftKings,

4. DraftKings uses advertisements to lure New York residents with promises of easy riches for a lucky few sports fans. The company has spent \$21 million dollars this year alone on

ads urging “*It’s the simplest way of winning life-changing piles of cash.*”

5. Other commercials promise: “The giant check is no myth . . . BECOME A MILLIONAIRE!”



6. But DraftKings only offers a way to bet on existing sporting events, nothing more. And its approach is not new: Bookmaking operations in jurisdictions with legal gambling like Nevada have long accepted sports proposition or “prop” bets (to bet on game statistics and milestones) and parlay bets (to simultaneously bet on several, independent variables in a single wager).

7. As one DFS CEO colorfully described it, DFS is like a “sports betting parlay on steroids.” DraftKings specifically encourages DFS players to consult the Vegas betting odds for athlete “prop” bets.

8. The speed of DraftKings’ games, the size of their jackpots, and the degree to which the games are sold as winnable have ensnared compulsive gamblers and threaten to trap populations at greater risk for gambling addiction, particularly male college students. This has

prompted gambling addiction experts and advocates to sound the alarm.

9. Until a major spike in ad spending this fall and a public scandal over the fairness of its games, DraftKings managed to avoid serious scrutiny as a gambling business. As an increasing number of states examine the company's business model, they are reaching the same realization; in Nevada, Georgia, Illinois, and Michigan, gaming officials have each declared DFS to be gambling or have otherwise raised serious doubt about its legality.

10. DraftKings does not offer games in Washington State (which has the same definition of "gambling" as New York) and in four other states (Arizona, Iowa, Louisiana, and Montana). When the Nevada Gaming Control Board recently determined that DFS qualified as gambling under state law, the company suspended Nevada operations the same day.

11. On November 10, 2015, the Office of the New York Attorney General ("NYAG") sent a cease and desist letter to DraftKings, advising that DraftKings that its business violated the law in New York State—which accounts for approximately 7% of DraftKings active users—and must stop accepting wagers from New York State. The letter also served as formal pre-litigation notice, indicating that NYAG would commence an enforcement action if DraftKings failed to abide by the law. It refused, choosing to file an improper lawsuit during the notice period.

12. DraftKings continues to accept wagers from a gambling business in flagrant disregard of New York's state constitution, penal laws and other statutes.

13. The State therefore brings this action to enjoin DraftKings from continuing to operate an unlawful gambling business in New York.

JURISDICTION AND PARTIES

14. Plaintiff People of the State of New York, by Attorney General Eric T. Schneiderman, brings this action pursuant to Executive Law § 63(12), Business Corporation Law

(“BCL”) § 1303, and General Business Law (“GBL”) §§ 349 and 350.

15. Defendant DraftKings is a Delaware corporation, with its principal place of business at 225 Franklin Street, 26th Floor, Boston, Massachusetts 02110.

16. This Court has jurisdiction pursuant to: (i) Executive Law § 63(12), under which the Attorney General is empowered to seek injunctive relief, restitution, disgorgement and damages when a person or business entity engages in repeated fraudulent or illegal acts or persistent fraud or illegality in the carrying on, conducting, or transacting of business; (ii) BCL § 1303, which authorizes the Attorney General to bring an action to restrain a foreign corporation from doing in this state without authority any business for the doing of which it is required to be authorized in this state; and (iii) General Business Law § 349(b), which authorizes the Attorney General to seek injunctive relief, restitution, disgorgement and civil penalties when a person or business engages in deceptive business acts and practices.

FACTS

I. Traditional Fantasy Sports Gained Fans as a Friendly, Season-Long Competition

17. Fantasy sports emerged in its modern form no later than the 1980s, starting initially with baseball and football and later expanding to other sports.

18. In traditional fantasy sports, participants create imaginary or fantasy “teams” composed of real amateur and professional athletes. During the course of the regular season, participants may adjust those fantasy teams and then “score” points depending on the real-world performance of the athletes appearing on their fantasy teams.

19. At the end of the season, all points are tallied and the team with the most points wins.

20. With the advent of the internet, traditional fantasy sports has exploded in

popularity.

21. Websites run by ESPN, CBS Sports, and others made, and continue to make it easy to run a fantasy “league” and compete against friends or colleagues. These websites host the leagues, maintain records, tabulate points, and create a forum for interacting with other league participants.

22. Each traditional fantasy league typically designates a “commissioner,” *i.e.* one of the participants who handles administrative issues, including registering with an internet host site.

23. While the precise format and rules vary from game to game, traditional fantasy sports competitions share several common elements:

a. *A competitive draft.* Prior to the start of sports season, participants “draft” a team from athletes expected to play in a particular league (*e.g.*, Major League Baseball). The draft proceeds as either: (i) a round-robin “snake” draft, where the last participant to select an athlete in one round gets the first pick in the next; or (ii) an auction draft—where each participant receives a set budget of credits with which to bid, and each athlete goes to the highest bidder. In the typical version of the game, each athlete can be drafted by only one team. Thus, each participant has an incentive not only to pick the best available athletes for his own fantasy team, but to pick athletes to “block” another team

b. *Trading, Dropping, Adding Players, and Setting Lineups.* To be successful over the course of a season, participants must actively manage their teams. This includes negotiating athlete trades with other participants, dropping injured or underperforming athletes, and adding free agents (athletes not on the roster of any

fantasy team). Such moves and adjustments can seek to add points to a participant's team or to deny them to another.

24. By making moves over the course of a long season, participants can insulate themselves to some degree from day-to-day variations in performance, can respond to player injuries, trades, suspensions, and other unpredictable occurrences, and can otherwise seek to improve their chances.

25. To remain competitive in traditional fantasy sports, participants must adjust teams and lineups throughout a season. No single game or week is determinative of a participants' success or failure.

26. Depending on the host site, the participants can exert substantial control over how the fantasy game is administered and scored. Among other changes, participants can often adjust the scoring formats, the universe of players available for drafting, the size of each team, the free agency rules, and the lineup requirements

27. Most participants in traditional fantasy leagues do not participate in competitions for major prizes or enter wagers through the fantasy league host sites.

28. Mainstream sites that host traditional fantasy sports like ESPN and CBS Sports have typically generated the bulk of their revenue from advertising and administrative fees.

29. To the extent that traditional fantasy leagues involve wagers between participants, with limited exceptions, mainstream host sites like ESPN and CBS Sports, do not participate or profit from those bets.

30. The Fantasy Sport Trade Association ("FSTA"), a trade association representing companies like the Defendant, estimated that by 2008, about 30 million people played traditional fantasy sports. Since then, the numbers of people who play traditional fantasy sports has

continued to climb.

31. The sweeping majority of participants in traditional fantasy sports compete solely for bragging rights or side wagers.

II. An Internet Gambling Prohibition Inspires a New Form of Internet Gambling

32. In 2006, the U.S. Congress passed the Unlawful Internet Gambling Enforcement Act (“UIGEA”) to expand the mechanisms available to federal prosecutors seeking to enforce anti-gambling laws against internet-based gambling companies. This statute primarily introduced new consequences for financial institutions that process illegal gambling transactions.

33. UIGEA explicitly left all other federal and state gambling laws intact, and provided that: “No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.”

34. In 2008, an online betting entrepreneur named Nigel Eccles and a few partners founded the online wagering platform Hubdub. That site let users bet on the outcome of news events. As a former employee at two online gambling companies in the U.K., Eccles reportedly saw potential in “combining the fun and excitement of online gambling with the mass interest in news.” As Eccles put it, the idea was to “gamble on what you believe will happen. You can bet on any subject under the sun.”

35. Hubdub, however, had a fatal flaw: Because UIGEA made processing wagers involving real money illegal in the United States, the site operated with *virtual* currency. This apparently provided insufficient excitement for bettors, and the news-betting component folded a few years later.

36. Reviewing UIGEA, however, Eccles seized on language that excluded certain

“fantasy sports and simulations” from the definition of “bet or wager.” Although previously not a fan of fantasy sports or American sports, in 2009, he concocted a new betting game for the U.S. market—dubbed daily fantasy sports (“DFS”).

37. Hubdub quickly spun off a new company, FanDuel, to accept bets with real money.

38. In 2012, DraftKings followed and began to offer DFS too.

III. By Rewriting the Rules, DFS Created a New Business Model for Sports Betting

39. DFS is a new business model for online gambling. The DFS sites themselves collect wagers (styled as “fees”), set jackpot amounts, and directly profit from the betting on their platforms. DFS’ rules enable near-instant gratification to players, require no time commitment, and simplify game play, including by eliminating all long-term strategy.

40. In several fundamental respects, DFS represents a clear departure from season-long fantasy sports:

- a. *First*, DFS games run on a daily and weekly basis. Scoring depends on the performance of particular athletes in a given week, a given weekend, on a given night, or even a given tournament or race (as with golf, MMA, or NASCAR). This allows for faster-paced games that require less time commitment.
- b. *Second*, DFS games allow no trading; no dropping players; and no adjusting lineups. Players must “lock in” or finalize their lineup by a particular deadline. After the lineup is locked, a DFS player can do nothing but watch as the performance of athletes in real-world games determines whether he won.

c. *Third*, DFS uses neither of the competitive draft formats, *i.e.* either the “snake” or the auction draft. Instead, it uses a salary cap draft. In a salary cap draft, the site assigns each athlete a theoretical value (a “salary”). Bettors can fill their team with players until they have exhausted their salary cap or allocation. Thus, the same athlete can appear on multiple teams.

41. The “salaries” assigned to athletes constitute odds roughly reflecting how the DFS operator (*e.g.*, DraftKings) expects a particular athlete to perform over a given time period.

42. The quick time frame of DFS and the ability to set the lineup only once eliminates any of the strategic elements associated with managing a traditional fantasy team over the course of a season. As compared to traditional fantasy sports, DFS’ rules also eliminate any strategy associated with drafting good players first, because the same players can appear in every lineup.

43. Rather than a new type of fantasy league, DFS simply devised another way to bet on sports.

44. Casinos and bookmaking operations in Nevada and non-U.S. jurisdictions with legalized sports gambling have long allowed “prop” (short for proposition) bets—*i.e.*, bets on statistics and milestones that occur in given games or in connection with particular players.

45. Indeed, DraftKings recognizes that DFS is akin to sports prop betting. DraftKings advises on its website: “Player props are also an excellent source of information for daily fantasy owners. Props are Vegas’s best guess for a player’s production—basically their projection for him in fantasy.”

46. Similarly, casinos and bookmaking operations in Nevada and, to a more limited extent, the state lotteries in Delaware, Montana, and Oregon permit parlay sports betting.

47. In a parlay, a bettor attempts to correctly predict the outcome of several variables as part of a single wager. A DFS lineup is a parlay bet in which the relevant variables are the athletes.

48. As the CEO of one DFS company put it, the large format DFS games are like “a sports betting parlay on steroids.”

IV. DraftKings Enters the Sports Gambling Business

49. Early on, Jason Robins, the CEO and co-founder of DraftKings, recognized the potential of DFS as a business model for online betting.

50. Shortly after founding DraftKings, Robins reportedly started a thread in the online forum reddit.com in which he explained: “This concept where you can basically ‘bet’ your team will win is new and *different from traditional* leagues that last an entire season.” (emphasis added).

51. Elsewhere on the thread, Robins emphasized: “The concept is *different* from traditional fantasy leagues. Our concept is a mash[-]up between poker and fantasy sports. Basically, you pick a team, deposit your wager, and if your team wins, you get the *pot*.” (emphasis added).

52. This is reflected in DraftKings marketing, with DFS promising “rapid-fire contests” of:

much shorter duration than the traditional season-long leagues and require no team management after the draft. Salary cap draft format takes just minutes to complete, unlike the hours-long snake drafts in traditional leagues. We offer new contests every day of the season, and our winners are crowned nightly. Payouts happen immediately after the games – no more waiting until the end of the season to collect winnings!

53. DraftKings offers several game styles to appeal to a variety of tastes.

54. Of particular note, DraftKings offers “Guaranteed Prize Pool” or “GPP” games,

50/50 games, and head-to-head games. Each game is structured differently.

- a. GPP games. The GPP games are the most popular based on numbers of individual players, most lineups and highest payouts. Some GPPs can accept up to several hundred-thousand lineups from DFS players, with the highest-scoring lineups winning major cash prizes. To play, GPPs cost anywhere from less than a dollar to upwards of \$5,000 to submit a single wager. In one of the largest GPPs, known as the “Millionaire Maker,” DFS players wager \$20 per lineup for a chance to win a jackpot upwards of \$1 million.
- b. 50/50 games. 50/50 games allow DFS players to effectively double their money if a lineup places in the top half of point-scoring lineups.
- c. Head-to-Head games. In head-to-head games, two DFS players enter a lineup against each other, and the lineup with more points wins. Bettors can wager up to \$10,600 in head-to-head games. The bettor with the winning lineup gets the pot, minus the cut DraftKings takes.

55. DraftKings takes a cut of all wagers, which, using poker slang, DraftKings executives at times refer to as its “rake.” The rake constitutes the company’s primary source of revenue—ranging from about 6% to more than 14%.

56. Alternatively, Robins agreed in an interview earlier this year that, although he preferred the term “commission,” DraftKings’ cut constitutes a “vig,” betting slang for the charge taken by a sports bookie.

57. As part of its marketing, DraftKings allows DFS players to play certain games for free. Borrowing another term from poker, these free games are called “freerolls.”

58. Freeroll games do not typically offer cash prizes, but may award the winner a spot in a cash prize game.

59. Except for limited exceptions, DraftKings requires players to put money at risk for a chance to win cash prizes.

60. DraftKings accepts wagers in connection with a wide range of amateur and professional sports. The company's offerings include: Major League Baseball, NFL football, NBA basketball, college football, college basketball, PGA golf, Major League Soccer, NASCAR, and Mixed Martial Arts.

V. How Betting and Scoring on DraftKings Works

61. A DFS wager constitutes a prediction by a DFS player about the combination of athletes (*i.e.*, the lineup) that he believes may score the most points in a particular DFS game. After finalizing his lineup, a DFS player cannot control or influence whether the athletes he chose will perform at, above, or below expectations.

62. Given this inherent uncertainty, certain DFS players will enter hundreds, or even thousands, of unique lineups in the hopes that one or more combinations of athletes will score well.

63. The DraftKings rules identify several circumstances where even the athletes on the field may have no influence over the number of DFS points scored. For example, the points associated with a particular athlete may be reduced or zeroed out due to:

- a. rained out, postponed, suspended, or shortened game;
- b. the league failing to correct official game statistics before DraftKings declares a winner; or
- c. a trade involving the athlete that occurs too close to when lineups lock.

64. The scores applied to any DFS lineup directly reflect the real-game performance of athletes.

65. Until a tally of the final box scores is available, the winning DFS wager or wagers are unknown and unknowable.

66. DraftKings' rules for each major sport (professional football, baseball, basketball, and hockey) specify that: "DraftKings will wait until all of the final box scores have been reported for each contest's games to ensure that the final results are accurate."

67. Similar to other types of sports betting, DFS players will try to predict or "handicap" whether the odds offered by the bookmaker (*i.e.* the salary DraftKings assigns a given athlete) accurately reflect the expected outcome (*i.e.* how well that athlete will perform in an actual game).

68. Just as the most sophisticated sports handicapper has no control over whether the team he chose will beat the point spread, a DFS player has no control over whether the lineup he chose will perform.

69. As a FanDuel spokesperson aptly observed, the results in DFS are "contingent on the positive performance of all of their players" in actual games.

70. In a November 13, 2015 court filing, DraftKings similarly observed that the success of DFS lineups "depends on the combined performance" of real-world athletes.

VI. DraftKings Marketing Materials Are Fraudulent and Misleading

71. In a bid for players and market share, DraftKings dramatically increased advertising spending this fall. DraftKings alone spent a reported \$81 million on television commercials that aired more than 22,000 times in the lead-up to the NFL season, August 1, 2015 through September 14, 2015.

72. At odds with DraftKings' public assertion that DFS contests constitute a "skill game," these advertisements portray DFS as a game that is easy to play and win.

73. In commercial-after-commercial, DraftKings' advertisements emphasized the ease of winning massive jackpots.

74. One Draftkings ad promised: "...taking home your share is *simple*: just pick your sport, pick your players, and pick up your cash. That's it. *It's the simplest way of winning life-changing piles of cash.*"



75. Another DraftKings television commercial explained: "They make winning *easier* than milking a two-legged goat . . . Do you want to be a fantasy football hero? Do you want it to be *easy and fun* with a shot to win millions?"



76. “The giant check is no myth” urged another DraftKings ad “. . . BECOME A MILLIONAIRE!”



77. The ease and simplicity of playing and winning is further reinforced on the DraftKings’ website. Among the “5 GREAT REASONS” to play DFS on DraftKings:

- a. “*No commitment* — get your sweat on in the industry’s highest paying guaranteed tournaments.” (emphasis added)
- b. “*Build your team in only minutes* and watch your scores update live online.” (emphasis added)

78. Certain DraftKings commercials also featured disclaimers that further deceived consumers about the chances that an average user will win money in a DraftKings contest.

79. In particular, DraftKings' disclaimers highlighted the average "winnings" in its contests—a number which failed to account for, net out, or acknowledge *losses or fees*. By ignoring these required costs, including the up to 14% rake retained by DraftKings, the numbers gave a misleading impression of the average *success* of a DraftKings user.

80. One disclaimer, for example, stated that "The average user's winnings for the last 12 months: \$1,263." This selective use of numbers misleadingly implied that the average DraftKings' user could expect a positive return on the money wagered. In fact, on average, DraftKings users were not net winners; they were net losers who spent more to enter contests than they recouped in contest winnings.

81. DraftKings also made deceptive claims to attract customers in connection with its "Deposit Bonus" promotion.

82. Gambling ventures have long drawn in new customers by offering them a chance to gamble for free or with extra money or credits provided by the "house" or betting operation. The "Deposit Bonus" promotion served as DraftKings' own version of this tried-and-true promotional scheme.

83. In marketing on television, the internet, and through its affiliates, DraftKings depicted its "Deposit Bonus" promotion as affording new customers a chance to gamble with free money, offering to "double" initial deposits of up to \$600.

84. In urging consumers to enter its contest, DraftKings' marketing promised:

- a. "Get a 100% deposit match up to \$600,"
- b. "EXCLUSIVE LIMITED-TIME OFFER... 100% ONE TIME DEPOSIT

BONUS,” and

- c. “Deposit Now and We’ll Double Your Cash!”
- d. “SIGN UP TODAY TO LOCK IN YOUR BONUSSES...100% bonus up to \$600!”

85. Based on these claims, a consumer would believe that enrolling in the “Deposit Bonus” promotion and depositing \$600 in a DraftKings account would translate into \$1200 in immediately available funds, *i.e.* the initial deposit of \$600 and a \$600 match from DraftKings.

86. DraftKings, however, did not double or match the initial cash deposits of new users when they were deposited.

87. DraftKings instead administered a “Deposit Bonus” scheme that was strikingly less generous, converting a program represented as doubling an initial deposit into a more modest rebate program, in which the company dribbled out small bonuses to users over time based on how much they spent on DraftKings.

88. Users accrued bonuses as a fraction (.04 or less) of the money they spent to enter DraftKings contests, and these bonuses could be used solely to enter future DraftKings contests.

89. The initial deposit amount bore zero relationship to whether, when, or how much a new user *would* receive as a bonus; the deposit amount served solely as a cap on the total bonuses a new user *could* receive, over time, based on actual wagering activity by the user on the platform.

90. In three key respects, DraftKings administered its deposit bonus promotion in a manner inconsistent with its marketing claims and the expectation of a reasonable consumer.

91. *First*, a new DraftKings user received no bonus or other benefit upon deposit; DraftKings would only credit a new user’s account after the user put some or all of that deposit

directly at risk by entering it in a DraftKings contest.

92. *Second*, DraftKings did not immediately match the full amount deposited or wagered with bonus money. Instead, in a convoluted scheme, a user enrolled in the “Deposit Bonus” promotion would receive a certain number of “Frequent Player Points” for each wager. In direct conflict with the marketing claims DraftKings used to draw in new customers, on its website, DraftKings explained how the “Deposit Bonus” actually worked:

The deposit bonus releases in increments of \$1 for every 100 Frequent Player Points (FPP's) you earn. FPP's are earned when joining any paid contest on the site.

93. While the number of FPP's DraftKings assigned to entering a particular contest varied based on several factors, including the dollar amount of the wager and the contest type, the number of FPPs assigned equated roughly to a bonus of 4% per wager or less.

94. *Third*, the bonuses were not equivalent to cash on a dollar-for-dollar or any other basis. DraftKings website explained in “Frequently Asked Questions” that the credits could only be used to enter DraftKings contests, and the bonus expired after just four months.

95. Because DraftKings assigned bonuses to user accounts at the rate of no more than 4% per wager, a new user who enrolled in the deposit bonus promotion, deposited \$600, and submitted a DraftKings wager of \$600 would receive a credit of \$24, at most.

96. To receive \$600 worth of bonuses, a user enrolled in the “Deposit Bonus” promotion would need to wager at least \$15,000.

97. Advertising and other marketing have been critical to DraftKings’ growth and viability, drawing in new customers to grow their business and replace users who leave. As DraftKings’ CEO, Jason Robins, observed, “As a relatively new company, advertising has been the best way to introduce DraftKings to new players.”

VII. DraftKings Operates a Gambling Business

98. Since 1894, Article I, Section 9 of the New York State Constitution has expressly prohibited bookmaking and all other forms of sports gambling (apart for an exception for pari-mutuel betting on horseracing).

99. The New York Penal Law has long recognized crimes for promoting gambling, including bookmaking, and for maintaining gambling devices and records. Gambling is defined, in part, as wagering on a “future contingent event” not under the bettor’s control or influence or a “contest of chance.”

100. Recognizing that these laws and similar laws in other jurisdictions are directly contrary to the DFS model, DraftKings’ U.S. website maintains that DFS “is a skill game and is not considered gambling.”

101. Yet, in the United Kingdom, where sports gambling is legal, DraftKings has taken the necessary regulatory steps to operate as a legitimate online sports betting company. In an August 17, 2015 press release, DraftKings announced it had received a license to operate in the U.K.. The release neglected to mention the name of the entity that issued the license (the U.K. Gambling Commission) or the business categories in which the license entitled DraftKings to compete (gambling software and pool-betting).

102. The DraftKings’ CEO was more straightforward in his 2012 reddit thread, explaining that DraftKings operates in the “gambling space.”

103. When presenting to investors, DraftKings is even more direct about its relationship to gambling.

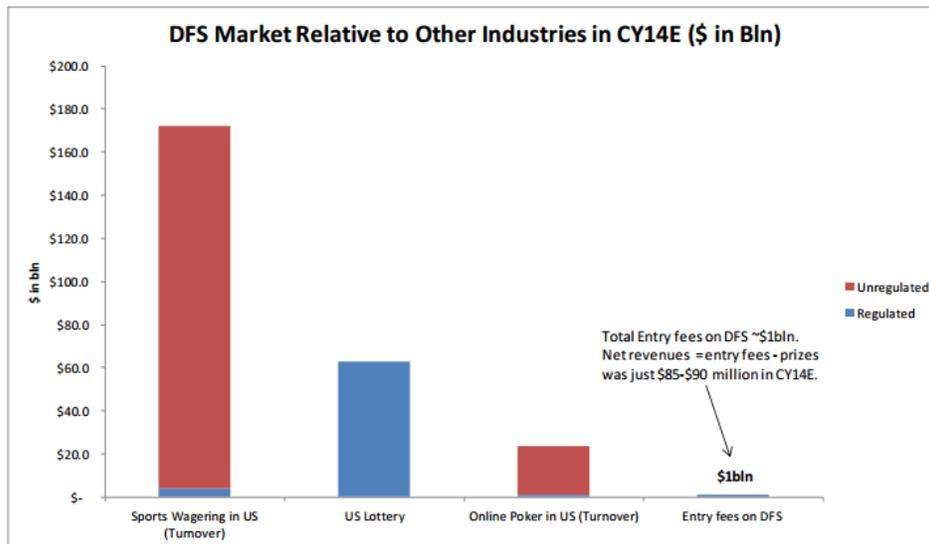
104. For example, in an investor presentation, DraftKings used slides on casinos, online poker, and sports betting to showcase DraftKings’ “Market Opportunity”:

- a. *Slide 10:* “Global opportunity for online betting and casino market estimated at ~\$27B now, ~\$36B by 2018,” which charts the revenue growth in the “Global online poker market” and in the “Global online betting and casino markets”; and,
- b. *Slide 11:* “Sports Wagering Vertical is a large addressable market,” which highlights the billions of dollars in revenue from legal and illegal sports betting in the United States.

105. The investing community likewise views DraftKings and DFS companies as gambling. For example, in a presentation prepared for the FSTA’s winter conference in 2014 (the “FSTA Presentation”), Eilers Research, a gaming industry research firm, compared DFS to the “comparable industries” of casinos, lotteries, and sports betting:

Daily Fantasy Sports – Putting the Market in Perspective

Despite the recent surge in popularity the DFS market still pales in comparison to other comparable industries:



Source: Eilers Research, LLC, NV Gaming Control Board, NJ DGE, Fanduel.com

Notes: Regulated sports wagering turnover is derived from NV Gaming Control board monthly revenue reports, unregulated sports betting turnover is based on Eilers Research, LLC estimates. Regulated online poker turnover is derived using reports from NJ DGE, DE lottery, and NV Control Board and assumes 4% effective hold rate. Unregulated online poker turnover is based off Eilers Research estimates and assumes 4% effective hold rate. US lottery sales is derived from individual state lottery reports. Entry fees on DFS are based on company reports and Eilers Research, LLC estimates.

106. DraftKings business model is directly modeled on other gambling ventures. In his 2012 reddit thread, Robins described DFS as a “mash[-]up between poker and fantasy sports.”

DraftKings, Robins explained, makes its money in a way that “is almost identical to a casino.”

107. Converting gamblers to DFS and associating DraftKings’ brand with gambling ventures is central to its growth strategy.

108. DraftKings signed sponsorship deals with well-known gambling events and venues, including the World Series of Poker, the World Poker Tour, and—in a deal with the New York Racing Association—the Belmont Stakes, the third and final leg of the Triple Crown.

109. One DraftKings executive—Jon Aguiar, who is himself a former professional poker player—credits poker players with a good part of DraftKings’ rise, explaining to LegalSportsReport.Com that they pick up DFS quickly: “Once they get to DraftKings, they already know how to deposit, they understand how a bonus works, they can navigate the lobby [*i.e.*, the wagering system] with ease.”

110. DraftKings embedded keywords related to gambling in the code on its website. This led search engines like Google to suggest DraftKings to users looking for gambling. For example, DraftKings used keywords like “fantasy golf betting,” “weekly fantasy basketball betting,” “weekly fantasy hockey betting,” “weekly fantasy football betting,” “weekly fantasy college football betting,” “weekly fantasy college basketball betting,” “Fantasy College Football Betting,” “daily fantasy basketball betting,” and “Fantasy College Basketball Betting.”

111. As reflected in the FSTA Presentation, DFS has had success converting casual gamblers—like those who play the lottery—into DFS players. One slide observed that the large-prize GPPs run by DraftKings, FanDuel, and others were already “attracting new users & serving as a new alternative for some ticket/lottery players.”

112. Yet just as in poker, blackjack, and horseracing, a small percentage of professional gamblers manage to use research, software, and large bankrolls to extract a disproportionate share of DFS jackpots.

113. With blackjack, professional players profit at the expense of the casino.

114. With poker and DFS, professional players, also known as “sharks,” profit at the expense of casual players, also known as “minnows.”

115. DraftKings data show that 89.3% of DFS players had an overall *negative* return on investment for 2013 and 2014.

116. On any given day, DraftKings will accept substantially more than five wagers placed by New York residents. These wagers total significantly more than \$5,000.

117. Based on numbers from DraftKings, over 150,000 individual New York residents placed bets with the company between April 25, 2012 and October 25, 2015.

VIII. Gambling Addiction Associated with DFS is an Increasingly Serious Problem

118. Experts in gambling addiction and other compulsive behaviors have identified DFS as a serious and growing threat to people at-risk for, or already struggling with, gambling-related illnesses.

119. DFS is an especially powerful draw for young males who are increasingly seeking help for compulsive gambling related to DFS with counselors and appearing at Gamblers Anonymous meetings.

120. For those struggling with gambling addiction or vulnerable to it, certain structural characteristics make DFS particularly dangerous.

121. As Keith Whyte, the Executive Director of the National Council on Problem Gambling (“NCPG”) explains, these structural characteristics—which are generally absent from

season-long fantasy leagues—include:

the ability for players to place large bets; the chance for players to win large payouts; the high speed of play (or, put another way, the relatively short interval between the placing of a bet and the determination of the outcome of the bet); and the perception of skill as a determinant in the outcome of the wager.

122. Dr. Jeffrey L. Derevensky, Director of the International Centre for Youth Gambling Problems and High-Risk Behavior at McGill University, notes that, among other things, false or misleading representations of the skill involved in DFS “can lead players to a preoccupation with DFS, chasing of losses, and developing symptoms and behaviors associated with a gambling disorder.”

123. According to documents shared with a potential DraftKings investor, numerous DFS players struggling with gambling addiction have called customer service to cancel their accounts and to plead with DraftKings to permanently block them from playing. DraftKings’ records show customer inquiries from DFS players seeking assistance with subjects like “Gambling Addict do not reopen,” “Please cancel account. I have a gambling problem,” and “Gambling Addiction needing disabled account.”

IX. DraftKings Attracts Scrutiny as Gambling Business

124. After incorporating in 2012, DraftKings quietly attracted investments, but remained relatively unknown outside of the subculture of DFS players and interested investors.

125. The FSTA Presentation estimated that just 2.5% of participants in traditional leagues played DFS.

126. As the president of the FSTA observed earlier this year, as “recently as two years ago everything changed. [DFS] was close to zero, a nascent pastime.”

127. Flush with new investment capital, in 2015, DraftKings began an advertising blitz designed to expand DFS beyond its niche market and grow market share as quickly as possible.

128. The growth in DFS advertising has been as spectacular as it was sudden. For all of 2014, for example, DraftKings spent just over \$1 million on advertising with NBC. In just the first ten months of 2015, DraftKings spent about \$21 million with NBC Universal/Comcast.

129. Advertising reached a peak in the weeks leading up to the 2015 NFL season, when it became nearly impossible to watch televised sports without encountering a DFS commercial.

130. On October 5, 2015, *The New York Times* published an expose titled “Scandal Erupts in Unregulated World of Fantasy Sports” that introduced DFS for the first time to many non-players. The story focused on DFS’ fairness and strongly suggested that a DraftKings employee had improperly used inside information to improve his chances of winning on FanDuel.

131. On October 6, 2015, the Office of the New York Attorney General (“NYAG”) opened an investigation

132. Reports soon emerged indicating that various other federal and state enforcement agencies and regulators were probing the operations of the two companies.

133. Gaming officials in several states raised questions as to the legality of the DFS business.

134. For an increasing number of states, the answer appears to be “no.”

Washington State

135. Washington State and New York State laws have identical statutory definitions of “gambling” and “contest of chance.” Relying on those definitions, the Washington State Gambling Commission has previously declared that online “fantasy sports wagering is not authorized for play in Washington State.”

136. While continuing to offer games in New York, neither DraftKings nor FanDuel currently accept wagers in Washington State.¹ On October 21, 2015, Chris Stearns, Chairman of the Washington State Gambling Commission, highlighted this inconsistency, observing in a tweet: “NY definition of ‘contest of chance’ & ‘gambling’ same as WA’s . . . Yet DFS offered in NY but not WA.”

Michigan

137. On September 1, 2015, the Chairman of the Michigan Gaming Control Board stated that that DFS is “illegal under current Michigan law.”

Georgia

138. On September 23, 2015, citing the gambling prohibitions in the Georgia state constitution and criminal laws, the Georgia Lottery Corporation demanded that the two rival DFS companies explain “how it is that FanDuel and DraftKings are able to lawfully operate fantasy sports games in the State of Georgia.”

Nevada

139. On October 15, 2015, the Nevada Gaming Control Board issued a public notice announcing that DFS constituted gambling. The notice stated, among other things, that:

because DFS involves wagering on the collective performance of individuals participating in sporting events, under current law, regulation and approvals, in order to lawfully expose DFS for play within the State of Nevada, a person must possess a license to operate a sports pool issued by the Nevada Gaming Commission.

140. In a memorandum dated October 16, 2015, the Office of the Nevada Attorney General issued a formal opinion supporting the decision of the Nevada Gaming Control Board.

The opinion concluded:

¹ In addition to Washington and Nevada, DraftKings and FanDuel do not currently accept wagers in Arizona, Louisiana, Iowa, and Montana because of concerns related to state law.

In short, daily fantasy sports constitute sports pools and gambling games. They may also constitute lotteries, depending on the test applied by the Nevada Supreme Court. As a result, pay-to-play daily fantasy sports cannot be offered in Nevada without licensure.

141. FanDuel and DraftKings stopped accepting wagers in Nevada a few hours after the decision of the Nevada Gaming Control Board.

Illinois

142. On October 16, 2015, a spokesperson for the Illinois Gaming Board expressed the Board's view that DFS is illegal in Illinois. The Board announced it was seeking a formal opinion from the Illinois State Attorney General. The Attorney General separately received a request for an opinion on the legality of DFS from members of the Illinois Legislature.

143. On December 23, 2015, in response to the legislative inquiry, the Illinois Attorney General issued an opinion concluding that "the daily fantasy sports contests offered by FanDuel and DraftKings clearly constitute gambling," as prohibited by the Illinois Criminal Code, and no exemption applies.

144. FanDuel and DraftKings did not stop accepting wagers in Illinois and, on December 24, 2015, filed suit seeking to override the Attorney General's determination.

National Collegiate Athletic Association ("NCAA")

145. And on August 27, 2015, the NCAA sent a cease-and-desist letter to DraftKings objecting to DFS games involving college sports.

146. The NCAA's letter provided that DFS is "inconsistent with our values, by-laws, rules and interpretations regarding sports wagering," and may violate the UIGEA, the Professional and Amateur Sports Protection Act, and state gambling laws.

147. On September 22, 2015, the NCAA reportedly told college athletic directors that the NCAA considers DFS to be gambling, and that athletes found to violate a ban on playing

DFS would face a suspension from college sports of no less than one year.

148. DraftKings continues to run DFS games connected with college sports contrary to the NCAA's specific demand.

**FIRST CAUSE OF ACTION PURSUANT TO
EXECUTIVE LAW § 63(12):
NEW YORK STATE CONSTITUTION ARTICLE I, SECTION 9**

149. The plaintiff repeats and realleges paragraphs 1 through 148 as if fully set forth herein.

150. Executive Law § 63(12) authorizes the Attorney General to bring an action to enjoin repeated illegal acts or persistent illegality in the carrying on, conducting, or transaction of business.

151. Article I, Section 9 of the New York State Constitution prohibits any lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling, except lotteries operated by the state, pari-mutuel betting on horse races, and casino gambling at no more than seven facilities.

152. As set forth above, Defendant violates Article I, Section 9 of the New York State Constitution by running a book-making or other kind of gambling business.

153. By its actions in violation of Article I, Section 9 of the New York State Constitution, defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**SECOND CAUSE OF ACTION PURSUANT TO
EXECUTIVE LAW § 63(12):
VIOLATION OF NEW YORK PENAL LAW § 225.10**

154. The plaintiff repeats and realleges paragraphs 1 through 153 as if fully set forth

herein.

155. Executive Law § 63(12) authorizes the Attorney General to bring an action to enjoin repeated illegal acts or persistent illegality in the carrying on, conducting, or transaction of business.

156. Penal Law § 225.10 prohibits any person from promoting gambling in the first degree by knowingly advancing or profiting from unlawful gambling activity by engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than five thousand dollars.

157. As set forth above, defendant violates Penal Law § 225.10 by knowingly advancing and profiting from unlawful gambling activity by receiving and accepting in any one day, and indeed on many days, more than five bets totaling more than five thousand dollars.

158. By its actions in violation of Penal Law § 225.10, defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**THIRD CAUSE OF ACTION PURSUANT TO
EXECUTIVE LAW § 63(12):
VIOLATION OF NEW YORK PENAL LAW § 225.05**

159. The plaintiff repeats and realleges paragraphs 1 through 158 as if fully set forth herein.

160. Executive Law § 63(12) authorizes the Attorney General to bring an action to enjoin repeated illegal acts or persistent illegality in the carrying on, conducting, or transaction of business.

161. Penal Law § 225.05 prohibits any person from promoting gambling in the second degree by knowingly advancing or profiting from unlawful gambling activity.

162. As set forth above, defendant violates Penal Law § 225.05 by knowingly

advancing or profiting from unlawful gambling activity.

163. By its actions in violation of Penal Law § 225.05, defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**FOURTH CAUSE OF ACTION PURSUANT TO
EXECUTIVE LAW § 63(12):
VIOLATION OF NEW YORK PENAL LAW § 225.20**

164. The plaintiff repeats and realleges paragraphs 1 through 163 as if fully set forth herein.

165. Executive Law § 63(12) authorizes the Attorney General to bring an action to enjoin repeated illegal acts or persistent illegality in the carrying on, conducting, or transaction of business.

166. Penal Law § 225.20 prohibits any person from possessing gambling records in the first degree when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than five thousand dollars.

167. As set forth above, defendant violates Penal Law § 225.20 by, with knowledge of the contents thereof, possessing any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and constituting, reflecting or representing more than five bets totaling more than five thousand dollars.

168. To wit, Defendant maintains a computer system recording hundreds of thousands of illegal wagers.

169. By its actions in violation of Penal Law § 225.20, defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**FIFTH CAUSE OF ACTION PURSUANT TO
EXECUTIVE LAW § 63(12):
VIOLATION OF NEW YORK PENAL LAW § 225.15**

170. The plaintiff repeats and realleges paragraphs 1 through 169 as if fully set forth herein.

171. Executive Law § 63(12) authorizes the Attorney General to bring an action to enjoin repeated illegal acts or persistent illegality in the carrying on, conducting, or transaction of business.

172. Penal Law § 225.15 prohibits any person from possessing gambling records in the second degree when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise.

173. As set forth above, defendant violates Penal Law § 225.15 by, with knowledge of the contents thereof, possessing any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise.

174. To wit, Defendant maintains a computer system recording hundreds of thousands of illegal wagers.

175. By its actions in violation of Penal Law § 225.15, defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**SIXTH CAUSE OF ACTION PURSUANT TO
EXECUTIVE LAW § 63(12):
REPEATED AND PERSISTENT FRAUDULENT CONDUCT**

176. The plaintiff repeats and realleges paragraphs 1 through 175 as if fully set forth herein.

177. Executive Law § 63(12) authorizes the Attorney General to bring an action to

enjoin repeated or persistent fraudulent conduct.

178. As set forth above, defendant has engaged in repeated and persistent fraudulent acts by conduct, including but not limited to:

- a. Misrepresenting that defendant complies with applicable laws
- b. Misrepresenting the likelihood of a casual player will win a jackpot;
- c. Misrepresenting the degree of skill implicated in the games;
- d. Misrepresenting that defendant's games are not considered gambling; and
- e. Misrepresenting the "Deposit Bonus" promotion and that defendant will double the first deposit of a new user up to \$600.

179. By these actions, defendant has engaged in repeated and persistent fraudulent conduct in violation of Executive Law § 63(12).

**SEVENTH CAUSE OF ACTION PURSUANT TO
VIOLATION OF BUSINESS CORPORATION LAW § 1303**

180. The plaintiff repeats and realleges paragraphs 1 through 179 as if fully set forth herein.

181. BCL § 1303 authorizes the Attorney General to bring an action or special proceeding to enjoin or annul the authority of any foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a cause for its dissolution under section 1101.

182. BCL § 1101(a)(2) provides that where a corporation has exceeded the authority conferred on it by law or abused its powers contrary to the public policy of the state, it is liable to be dissolved.

183. As set forth above, defendant operates an illegal gambling business in violation of the New York State Constitution, New York Penal Law, and other applicable statutes.

184. Defendant has also engaged in repeated and persistent fraudulent acts by conduct, including but not limited to:

- a. Misrepresenting that defendant complies with applicable laws
- b. Misrepresenting the likelihood that a casual player will win a jackpot;
- c. Misrepresenting the degree of skill implicated in the games;
- d. Misrepresenting that defendant's games are not considered gambling; and
- e. Misrepresenting the "Deposit Bonus" promotion and that defendant will double the first deposit of a new user up to \$600.

185. As such, defendant has abused its powers contrary to the public policy of the state, warranting annulment of its authority to do business in this state and an injunction against its continued operation of an illegal gambling business.

**EIGHTH CAUSE OF ACTION PURSUANT TO
GENERAL BUSINESS LAW § 349**

186. The plaintiff repeats and realleges paragraphs 1 through 185 as if fully set forth herein.

187. GBL § 349 prohibits deceptive acts and practices in the conduct of any business, trade, or commerce in the state of New York.

188. As set forth above, defendant has engaged in deceptive acts and practices in violation of GBL § 349 by conduct, including, but not limited to:

- a. Misrepresenting that the defendant complies with applicable laws;
- b. Misrepresenting that a casual player is likely to win a jackpot;

- c. Misrepresenting that DFS is a skill game;
- d. Misrepresenting that defendant's games are not considered gambling; and
- e. Misrepresenting the "Deposit Bonus" promotion and that defendant will double the first deposit of a new user up to \$600.

189. By its actions in violation of GBL § 349, defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**NINTH CAUSE OF ACTION PURSUANT TO
GENERAL BUSINESS LAW § 350**

190. The plaintiff repeats and realleges paragraphs 1 through 189 as if fully set forth herein.

191. GBL § 350 prohibits false advertising in the conduct of any business, trade, or commerce in the state of New York.

192. As set forth above, defendant has engaged in false advertising in violation of GBL § 350 by conduct, including, but not limited to:

- a. Advertising that defendant complies with applicable laws;
- b. Advertising that a casual player is likely to win a jackpot;
- c. Advertising that DFS is a skill game;
- d. Advertising that defendant's games are not considered gambling; and
- e. Advertising the "Deposit Bonus" promotion and that defendant will double the first deposit of a new user up to \$600.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests an order and judgment:

1. Permanently and preliminarily enjoining defendant from violating the laws of the State of New York, including: Executive Law § 63(12); General Business Law §§ 349, 350, and 350-d; Penal Law §§ 225.05, 225.10, 225.15, and 225.20, and Article I, Section 9 of the New York State Constitution;
2. Directing defendant to produce an accounting of monies collected from consumers in New York playing any of its games in violation of Executive Law § 63(12); General Business Law §§ 349, 350, and 350-d; Penal Law §§ 225.05, 225.10, 225.15, and 225.20, and Article I, Section 9 of the New York State Constitution;
3. Directing defendant to disgorge all monies resulting from the fraudulent and illegal practices alleged herein;
4. Directing defendant to pay damages caused, directly or indirectly, by the fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of herein plus applicable pre-judgment interest;
5. Directing defendant to make restitution of all funds obtained from consumers in connection with the fraudulent, deceptive, and illegal acts complained of herein;
6. Directing defendant to pay a civil penalty of up to \$5,000.00 for each violation of GBL Article 22-A, pursuant to GBL § 350-d;
7. Directing such other equitable relief as may be necessary to redress defendant's violations of New York law;

8. Awarding plaintiff costs of \$2,000.00 pursuant to CPLR § 8303(a)(6); and
9. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 31, 2015

Respectfully submitted,

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