

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. 453056/2015

- against -

IAS Part 13
Justice Manuel J. Mendez

FanDuel, 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. FanDuel, Inc. (“FanDuel”) exploits the good will associated with this game. Unlike the season-long competition played mostly for bragging rights or side wagers, FanDuel runs a casino-style gambling operation—dubbed *daily* fantasy sports (“DFS”)—where bettors can wager upwards of \$10,000 per “line-up” and enter for a chance to win jackpots of up to \$1 million.
4. FanDuel uses advertisements to lure New York residents with promises of easy

riches for a lucky few sports fans. The company has spent over \$75 million dollars this year alone on ads urging “*FanDuel’s paying out over \$2 billion dollars this year*” and “*anybody can play, anybody can succeed.*”

5. Other commercials promise: “Even the novice can come in and spend 1 or 2 dollars and win 10, 20 thousand dollars.”



6. But FanDuel 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.” FanDuel specifically encourages DFS players to consult the Vegas betting odds for athlete “prop” bets.

8. The speed of FanDuel’s 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, FanDuel 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; Nevada, Georgia, Illinois, and Michigan, gaming officials have each declared DFS to be gambling or have otherwise raised serious doubt about its legality.

10. FanDuel 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") informed FanDuel that its business violated the law in New York State—which accounts for approximately 5% of FanDuel's active users—and must stop accepting wagers from New York. The letter also served as formal pre-litigation notice, indicating that NYAG would commence an enforcement action if FanDuel failed to abide by the law. It refused, choosing to file an improper lawsuit during the notice period.

12. The State therefore brings this action to enjoin the company from continuing to operate an unlawful gambling business in New York.

JURISDICTION AND PARTIES

13. 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.

14. Defendant FanDuel is a Delaware corporation, with its principal place of business at 19 Union Square West, Ninth Floor, New York, New York 10003.

15. 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

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

17. 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.

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

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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

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

27. 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.

28. 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.

29. 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.

30. 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

31. 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.

32. 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.”

33. 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.”

34. 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.

35. 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”).

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

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

37. 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.

38. 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.

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

40. 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.

41. As FanDuel exhorted on its website, with DFS: “The format simplified. The winning amplified. And the money? Let’s just say your season-long league won’t pay out \$75 million a week.”

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

43. 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.

44. Indeed, FanDuel recognizes that DFS is akin to sports prop betting. FanDuel advises on its website: “By taking into account over-under lines, as well as money lines and player props, FanDuel players gives [*sic*] themselves more opportunities to win.”

45. 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.

46. 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.

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

IV. FanDuel Enters the Sports Gambling Business

48. Early on, FanDuel recognized the potential of DFS as a business model for online betting.

49. As FanDuel sought to grow its business it told one investor its target market was male sports fans who “cannot gamble online legally.” FanDuel observed that its users have a “higher preponderance to gambling”; more than half of respondents to a FanDuel customer survey said they bet or gamble online for real money.

50. FanDuel offers several game styles to appeal to a variety of tastes.

51. Of particular note, FanDuel 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 \$25 per lineup for a chance to win a jackpot of up to \$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 FanDuel takes.

52. FanDuel takes a cut of all wagers, which, using poker slang, FanDuel 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%.

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

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

55. FanDuel 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, and college basketball.

V. How Betting and Scoring on FanDuel Works

56. 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.

57. 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.

58. The FanDuel 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 after a contest is created.

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

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

61. FanDuel's rules for each major sport (professional football, baseball, basketball, and hockey) specify that FanDuel will "wait until all the player statistics have been reported by our third party stats provider. This lets us ensure that the final box scores are complete."

62. 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 FanDuel assigns a given athlete) accurately reflect the expected outcome (*i.e.* how well that athlete will perform in an actual game).

63. 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.

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

VI. FanDuel Marketing Materials Are Fraudulent and Misleading

65. In a bid for players and market share, FanDuel dramatically increased advertising spending this fall. FanDuel spent a reported \$46.9 million on television commercials that aired almost 9,500 times in the month of September alone.

66. At odds with FanDuel’s public assertion that DFS contests constitute a “game of skill,” these advertisements portray DFS as a game that is easy to play and win.

67. In commercial-after-commercial, FanDuel’s advertisements emphasize the ease of winning massive jackpots, including through purported testimonials from ordinary people stating how easy it is to win big.

68. Featuring vignettes of different purported winners, one FanDuel ad provided: “I’ve won over \$29,000 on FanDuel. Nothing special about me. The difference is, is that I played, and they didn’t. . . *Even the novice can come in and spend 1 or 2 dollars and win 10, 20 thousand dollars.*”



69. Another FanDuel advertisement urged: “It’s simple: choose a dollar league or play for more. . . FanDuel pays out over \$75 million a week – more than any other site.”



70. The ease and simplicity of playing and winning is further reinforced on the FanDuel website. On its homepage, FanDuel promises:
- a. “No season-long commitment.”
 - b. “WIN REAL CASH – Paying out expected \$2 Billion in real cash prizes this year. And get instant payouts as soon as contests end.”
71. Elsewhere on its website, FanDuel featured a promotional video for its “High Roller” contest in Las Vegas. Billed as “the ultimate tournament for high rollers,” the promotional video highlights DFS users being showered with cash or with champagne while holding a giant check for one million dollars.



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

73. In particular, FanDuel’s disclaimers highlighted 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 FanDuel, the numbers gave a misleading impression of the average *success* of a FanDuel user.

74. One disclaimer, for example, stated that “Average winnings are \$22.43.” This selective use of numbers misleadingly implied that the average FanDuel user could expect a positive return on the money wagered. In fact, on average, FanDuel users were not net winners; they were net losers who spent more to enter contests than they recouped in contest winnings.

75. FanDuel also made deceptive claims to attract customers in connection with its so-called “Welcome Bonus” promotion.

76. 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 “Welcome Bonus” promotion served as FanDuel’s own version of this tried-and-true

promotional scheme.

77. In marketing on television, the internet, and through its affiliates, FanDuel depicted its “Welcome Bonus” promotion as affording new customers a chance to gamble with free money, offering to double or “match” initial deposits of up to \$200.

78. In urging consumers to enter its contest, for example, FanDuel’s marketing promised:

- a. “Try FanDuel today and we’ll match your first deposit dollar for dollar up to 200 bucks.”
- b. “Try Today \$200 FREE,” and
- c. “UP TO \$200 FREE! 100% MATCHED.”

79. Based on these claims, a consumer would believe that enrolling in the “Welcome Bonus” promotion and depositing \$200 in a FanDuel account would translate into \$400 in immediately available funds, *i.e.* the initial deposit of \$200 and a \$200 match from FanDuel.

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

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

82. Users accrued or “earned” bonuses as a fraction (.04) of the money they spent to enter FanDuel contests, and these bonuses could be used solely to enter future FanDuel contests.

83. 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.

84. In three key respects, FanDuel administered the “Welcome Bonus” promotion in a manner inconsistent with its marketing claims and the expectation of a reasonable consumer.

85. *First*, a new FanDuel user received no bonus or other benefit upon deposit; FanDuel 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 FanDuel contest.

86. *Second*, FanDuel did not immediately match the full amount deposited or wagered with bonus money. In direct conflict with the marketing claims FanDuel used to draw in new customers, on a quiet corner of its website, FanDuel described the “Welcome Bonus” promotion as offering a bonus equivalent to only 4% of wagers:

Deposit bonus is released as real cash at a rate of 4% of the entry fee of the contest you enter. For example, if you enter a \$25 contest, \$1 of deposit bonus will be released into your main funds account.

87. *Third*, the bonuses were not equivalent to cash on a dollar-for-dollar or any other basis. According to FanDuel’s “Terms of Use,” the credits could only be used to enter FanDuel contests, and FanDuel would claw them back in certain circumstances, including where a user attempted to withdraw them as cash without first using the credit to enter a contest.

88. Because FanDuel assigned bonuses to user accounts at the rate of 4% per wager, a new user who enrolled in the “Welcome Bonus” promotion, deposited \$200, and submitted a FanDuel wager of \$200 would receive a credit of just \$8.

89. To receive \$200 worth of bonuses, a user enrolled in the “Welcome Bonus” promotion would need to wager \$5,000.

90. Advertising and other marketing have been critical to FanDuel’s growth and

viability, drawing in new customers to grow their business and replace users who leave. As FanDuel’s CEO, Nigel Eccles, acknowledged, “Advertising was a very natural course. We continue to grow that...It’s fair to say it put us on everyone's radar as we became mainstream.”

91. Facing criticism regarding the dramatic uptick in advertising and the increased scrutiny it generated, Eccles pointed to the company’s success and explained, “I don’t regret that advertising helped us get there.”

VII. FanDuel Operates a Gambling Business

92. 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).

93. 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.”

94. Recognizing that these laws and similar laws in other jurisdictions are directly contrary to the DFS model, FanDuel’s U.S. website maintains that DFS “is considered a game of skill and, therefore, legal.”

95. Yet, in the United Kingdom, where sports gambling is legal, FanDuel has taken the necessary regulatory steps to operate as a legitimate online sports betting company. In an October 30, 2015 article in the Herald Scotland, FanDuel said it planned to launch in the U.K. soon. FanDuel’s application with the U.K. Gambling Commission to operate “gambling software” is listed as in progress on the Commission’s website. In a related statement, a FanDuel spokesperson said the application “is a part of the regulatory compliance process to offer fantasy

sports in the UK market.”

96. When presenting to investors, FanDuel is even more direct about its relationship to gambling.

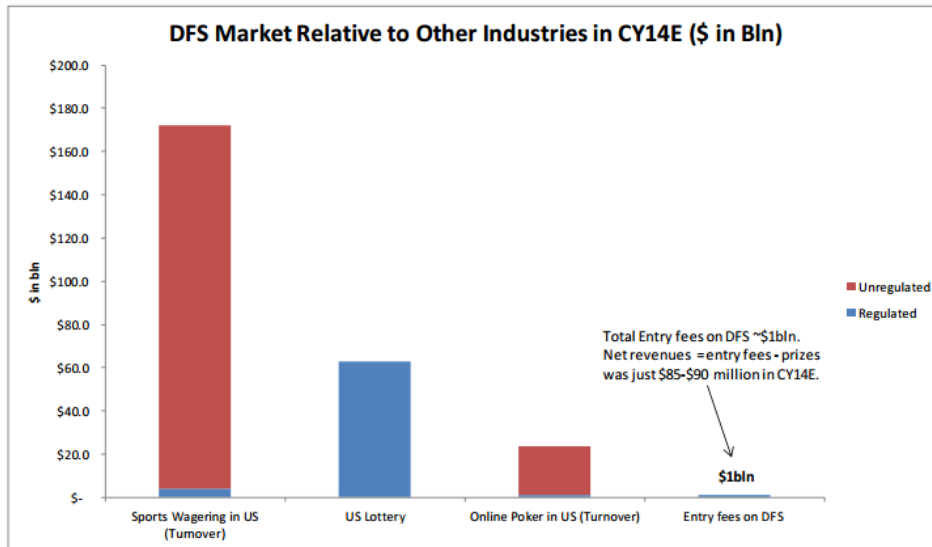
97. For example, in an investor presentation, FanDuel noted it had hired the online poker company Full Tilt’s head of affiliates to help FanDuel acquire new users. Indeed, several of FanDuel’s affiliates are gambling oriented, including companies like Vegas Insider and BetVega, a sports betting and handicapping website and FanDuel’s ninth largest affiliate.

98. Elsewhere, FanDuel conceded to investors that when FanDuel surveyed its users almost twenty-percent of respondents who acknowledged they bet or gamble said their friends would describe them as “a bit of an addict.”

99. The investing community likewise views FanDuel 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.

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100. In an analysis provided to one investor, FanDuel benchmarked its performance to that of Bwin.Party, one of the largest online gambling companies in the world and whose core business is sports gambling. Among other comparisons, the spreadsheets dropped the pretense of referring to the bets on the FanDuel site as “fees,” comparing FanDuel’s total “stakes” by quarter to the equivalent numbers for Bwin.Party’s Sports Betting operation.

101. 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.”

102. 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.

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

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

105. Of the top 10,000 players by cumulative amount wagered, 74% lost money over 2013 and 2014.

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

107. Based on numbers from FanDuel, over 250,000 individual New York residents are registered with the company as of September 2015.

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

108. 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.

109. 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.

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

111. 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.

112. 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.”

IX. FanDuel Attracts Scrutiny as Gambling Business

113. After incorporating in 2009, FanDuel quietly attracted investments, but remained relatively unknown outside of the subculture of DFS players and the investor community.

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

115. 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.”

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

117. The growth in DFS advertising has been as spectacular as it was sudden. For all of 2014, FanDuel spent just over \$2 million on advertising with NBC Universal/Comcast. In just the first ten months of 2015, FanDuel spent over \$12 million with NBC Universal/Comcast.

118. 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.

119. 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.

120. On October 6, 2015, the Office of the New York Attorney General ("NYAG") opened an investigation

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

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

123. For an increasing number of states, the answer appears to be "no."

Washington State

124. 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."

125. 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

126. On September 1, 2015, the Chairman of the Michigan Gaming Control Board

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.

stated that that DFS is “illegal under current Michigan law.”

Georgia

127. 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

128. 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.

129. 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:

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.

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

Illinois

131. 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.

132. 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.

133. 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”)

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

135. 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.

136. 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.

137. FanDuel 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**

138. The plaintiff repeats and realleges paragraphs 1 through 135 as if fully set forth herein.

139. 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.

140. 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.

141. 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.

142. 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**

143. The plaintiff repeats and realleges paragraphs 1 through 140 as if fully set forth herein.

144. 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.

145. 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.

146. 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.

147. 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**

148. The plaintiff repeats and realleges paragraphs 1 through 145 as if fully set forth herein.

149. 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.

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

151. As set forth above, defendant violates Penal Law § 225.05 by knowingly advancing or profiting from unlawful gambling activity.

152. 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**

153. The plaintiff repeats and realleges paragraphs 1 through 150 as if fully set forth herein.

154. 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.

155. 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.

156. 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.

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

158. 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**

159. The plaintiff repeats and realleges paragraphs 1 through 156 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 § 225.15 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.

162. 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.

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

164. 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**

165. The plaintiff repeats and realleges paragraphs 1 through 152 as if fully set forth herein.

166. Executive Law § 63(12) authorizes the Attorney General to bring an action to enjoin repeated or persistent fraudulent conduct.

167. 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 "Welcome Bonus" promotion and that defendant will

match the initial deposit of a new user up to \$200.

168. 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
BUSINESS CORPORATION LAW § 1303**

169. The plaintiff repeats and realleges paragraphs 1 through 166 as if fully set forth herein.

170. Business Corporation Law (“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.

171. 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.

172. 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.

173. 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 “Welcome Bonus” promotion and that defendant will

match the initial deposit of a new user up to \$200.

174. 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**

175. The plaintiff repeats and realleges paragraphs 1 through 172 as if fully set forth herein.

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

177. 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 "Welcome Bonus" promotion and that defendant will match the initial deposit of a new user up to \$200.

178. 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**

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

herein.

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

181. 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 that defendant will match an initial deposit of a new user up to \$200.

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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