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27 **UNITED STATES DISTRICT COURT**  
28 **NORTHERN DISTRICT OF CALIFORNIA**

ZHICHENG ZHEN and JONATHAN SMITH, individually and on behalf of others similarly situated,

Plaintiffs,

vs.

DRAFTKINGS, INC., JASON D. ROBINS, MATTHEW KALISH, PAUL LIBERMAN, CROWN GAMING, INC., AND DOES 1-20,

Defendants.

Case No. 3:25-cv-04618-CRB

Related Cases: 5:25-cv-7211-CRB; 3:25-cv-10473-CRB; 25-cv-5542-CRB

**FIRST AMENDED CLASS ACTION COMPLAINT FOR MONETARY AND INJUNCTIVE RELIEF**

**Jury Trial Demanded**

Hon. Charles R. Breyer

1 **INTRODUCTION**

2 1. For years, Defendant DraftKings, Inc. (“DraftKings”), has been operating mobile  
3 gambling applications and websites within California (collectively, the “Gambling Websites”),  
4 representing to customers and the public that its “Daily Fantasy Sports” contests and “Pick6”  
5 contests are legal forms of gambling in California. They are not.

6 2. Plaintiffs ZhiCheng Zhen and Jonathan Smith (collectively “Plaintiffs”), on behalf  
7 of themselves and the proposed class of similarly situated Californians, bring this lawsuit to stop  
8 the unlawful gambling that occurs on DraftKings’ Gambling Websites in California and to recover  
9 the money that DraftKings and the other Defendants have unlawfully taken from them.

10 **PARTIES**

11 **A. Plaintiffs.**

12 3. At all times relevant to this action, Plaintiff ZhiCheng Zhen was over the age of 18  
13 and was a resident and citizen of Oakland, California.

14 4. At all times relevant to this action, Plaintiff Jonathan Smith was over the age of 18  
15 and was a resident and citizen of California, presently residing in Napa County.

16 **B. Defendants.**

17 5. Defendant DraftKings, Inc. is a Delaware Corporation with its headquarters in  
18 Boston, Massachusetts. DraftKings regularly conducts business within California and this District,  
19 including by running the Gambling Websites that are the subject of this litigation.

20 6. Defendant Jason D. Robins is the Chief Executive Officer and Chairman of the  
21 Board. Robins co-founded DraftKings in December 2011 and served as its Chief Executive Officer  
22 since, and has served as the Chief Executive Officer and Chairman of the Board since April 2020.  
23 Defendant Robins shares a business address with DraftKings Inc.

24 7. Defendant Matthew Kalish is the President, DraftKings North America, and a  
25 director. Kalish co-founded the Company in December of 2011 and served as its Chief Revenue  
26 Officer from 2014 until December 2019. Kalish is on the Board of Directors. Defendant Kalish  
27 shares a business address with DraftKings Inc.

1 8. Defendant Paul Liberman is the President, Global Technology and Product, and a  
2 director. Mr. Liberman co-founded the Company in December 2011 and served as its Chief  
3 Operations Officer (“COO”) from 2015 to December 2019. Liberman is on the Board of Directors.  
4 Defendant Liberman shares a business address with DraftKings Inc.

5 9. Defendant Crown Gaming, Inc. is a Delaware Corporation with its headquarters in  
6 Boston, Massachusetts. Crown Gaming, Inc. regularly conducts business within California and this  
7 District, including by maintaining the Gambling Websites that are the subject of this litigation.

8 10. On information and belief, Does 1-20 are individuals and/or entities who facilitate  
9 DraftKings’ unlawful practices described in this Complaint. The identities of Does 1-20 are not  
10 presently known to Plaintiffs. Defendants DraftKings, Crown Gaming, Robins, Kalish, Liberman,  
11 and the Does are collectively referred to herein as “Defendants.”

12 11. Plaintiffs expressly reserve their right to amend this Complaint to add the Doe  
13 defendants by name, once their identities are known.

14 **JURISDICTION AND VENUE**

15 12. This Court has subject matter jurisdiction over this action pursuant to the Class  
16 Action Fairness Act, 28 U.S.C. § 1332(d), because there exists minimal diversity between class  
17 members and Defendants and because the amount in controversy exceeds \$5,000,000, exclusive of  
18 interest and costs. This Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331  
19 because Plaintiffs assert claims arising under RICO, 18 U.S.C. § 1962(c). The Court has  
20 supplemental jurisdiction over related state-law claims under 28 U.S.C. § 1367(a).

21 13. The United States District Court for the Northern District of California has personal  
22 jurisdiction over the parties in this matter because Plaintiff Zhen resides in Alameda County and  
23 Plaintiff Smith resides in Napa County. DraftKings regularly conducts business within this District,  
24 including by engaging in the unlawful gambling practices that are at the center of this action. The  
25 Court has personal jurisdiction over Defendants Robins, Kalish, and Liberman because they  
26 directed the unlawful gambling practices and services at issue in this case, and directed the  
27 marketing and advertising of these services within and to the state of California, including within  
28 the Northern District. The Court has personal jurisdiction over Defendant Crown Gaming, Inc.

1 because it participated in the unlawful gambling practices and services at issue in this case, and  
2 assisted in the directing the marketing and advertising of these services within and to the state of  
3 California, including within the Northern District.

4 14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) because  
5 Plaintiff Zhen resides in Alameda County and Plaintiff Smith resides in Napa County, and  
6 Defendants’ unlawful actions, which are the subject of this action, occurred in Alameda County  
7 and Napa County, among other locations within California.

8 15. Pursuant to California Civil Code Section 1780(d), a declaration from Plaintiff Zhen  
9 is attached as **Exhibit A**, confirming that venue is proper.

10 **DIVISIONAL ASSIGNMENT**

11 16. Pursuant to Civil L.R. 3-2(c) and 3-5(b), Plaintiffs further state that assignment to  
12 the San Francisco and Oakland Division of this Court is proper because Plaintiff Zhen resides in  
13 Alameda County and Plaintiff Smith resides in Napa County, and many of the events at issue in  
14 this lawsuit occurred in Alameda County and Napa County, which pursuant to Local Rule 3-2(d)  
15 provides for assignment to this Division.

16 **FACTUAL ALLEGATIONS**

17 **A. California’s Longstanding Ban on Gambling.**

18 17. For over 150 years, California has broadly prohibited commercialized gambling.

19 18. For example, in 1872, California enacted Penal Code Section 330, which provides  
20 in relevant part that “[e]very person who . . . conducts, either as owner or employee . . . *any banking*  
21 *or percentage game* played with . . . *any device*, for money, checks, credit, or other representative  
22 of value . . . is guilty of a misdemeanor.” CAL. PENAL CODE § 330 (emphasis added).

23 19. A “banking game” refers to a situation where the “house” is a participant in the  
24 game, taking on all contestants, paying all winners, and collecting from all losers. *See Sullivan v.*  
25 *Fox*, 189 Cal. App. 3d 673, 678 (1987). And a “percentage game” refers to a situation where the  
26 house collects a portion of the bets or wagers made by contestants, but is not directly involved in  
27 game play. *See id. at 679.*

1           20.     Similarly, California Penal Code Section 337a prohibits additional conduct,  
2 including:

- 3           •     “*Pool selling or bookmaking, with or without writing, at any time or place.*”  
4 CAL. PENAL CODE § 337a(a)(1) (emphasis added).
- 5           •     “*[R]eceive[ing], hold[ing], or forward[ing] . . . in any manner whatsoever, any*  
6 *money . . . staked, pledged, bet or wagered, or to be staked, pledged, bet or*  
7 *wagered, or offered for the purpose of being staked, pledged, bet or wagered,*  
8 *upon the result, or purported result, of any trial, or purported trial, or contest, or*  
9 *purported contest, of skill, speed or power of endurance of person or animal, or*  
10 *between persons, animals, or mechanical apparatus, or upon the result, or*  
11 *purported result, of any lot, chance, casualty, unknown or contingent event*  
12 *whatsoever.*” *Id.* at (a)(3) (emphasis added).
- 13          •     “*[A]t any time or place, record[ing], or register[ing] any bet or bets, wager or*  
14 *wagers, upon the result, or purported result, of any trial, or purported trial, or*  
15 *contest, or purported contest, of skill, speed or power of endurance of person or*  
16 *animal, or between persons, animals, or mechanical apparatus, or upon the*  
17 *result, or purported result, of any lot, chance, casualty, unknown or contingent*  
18 *event whatsoever.*” *Id.* at (a)(4) (emphasis added).
- 19          •     “*[O]ffer[ing] or accept[ing] any bet or bets, or wager or wagers, upon the result,*  
20 *or purported result, of any trial, or purported trial, or contest, or purported*  
21 *contest, of skill, speed or power of endurance of person or animal, or between*  
22 *persons, animals, or mechanical apparatus.*” *Id.* at (a)(6) (emphasis added).

23           21.     The terms used in Section 337a have their commonsense meanings. For example,  
24 the California Court of Appeal has explained that “[p]ool selling’ is the selling or distribution of  
25 shares or chances in a wagering pool,” such as when money wagered by all participants is combined  
26 into a single pool and the winnings are distributed based on predetermined rules. *See Finster v.*  
27 *Keller*, 18 Cal. App. 3d 836, 846 (1971) (cleaned up). And “[b]ookmaking’ is the making of a  
28

1 betting book and includes the taking of bets, [and] [t]he taking of one bet is sufficient” to constitute  
2 “bookmaking.” *People v. Thompson*, 206 Cal. App. 2d 734, 739 (1962) (cleaned up).

3 22. Similarly, “bet” and “wager” have their commonsense meanings. For example, the  
4 Judicial Council of California Criminal Jury Instructions (2025 Edition) provides that a “bet is a  
5 wager or agreement between two or more people that if an uncertain future event happens, the loser  
6 will pay money to the winner or give the winner something of value. A bet includes a wager made  
7 on the outcome of any actual or purported event, including but not limited to any kind of sporting  
8 contest.” CALCRIM No. 2993, Receiving or Holding Bets (CAL. PENAL CODE § 337a(a)(3))  
9 (cleaned up).<sup>1</sup>

10 23. “Bets” and “wagers” include entry fees paid in online fantasy sports. *Los Angeles*  
11 *Turf Club v. Horse Racing Labs, LLC*, 2017 WL 11634526, at \*8 (C.D. Cal. May 15, 2017).

12 24. Put simply, a company violates California Penal Code Section 337a when it engages  
13 in pool selling, bookmaking, or accepts or records any bets or wagers on the result of any contest  
14 and/or any unknown or contingent event whatsoever—including, without limitation, bets  
15 associated with the performance of persons, such as in fantasy sports.<sup>2</sup>

16 25. Moreover, various sections of the California Penal Code prohibit “lotteries” and  
17 “games of chance.”

18 26. For example, Penal Code Sections 320 and 321 make the operation of a lottery  
19 unlawful: “Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty  
20 of a misdemeanor”<sup>3</sup> and “[e]very person who sells, gives, or in any manner whatever, furnishes or  
21 transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate,  
22 or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in,  
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24 \_\_\_\_\_  
25 <sup>1</sup> Available online at <https://www.justia.com/criminal/docs/calcrim/2900/2993/> (last visited  
January 20, 2026).

26 <sup>2</sup> While Section 337a does include exemptions in certain circumstances for non-commercial  
27 gambling in amounts below \$2,500, the Section 337a exemptions expressly do “not apply to . . .  
[a]ny bet, bets, wager, wagers, or betting pool or pools made online.” CAL. PENAL CODE §  
336.9(b)(1).

28 <sup>3</sup> CAL. PENAL CODE § 320.

1 or depending upon the event of any lottery, is guilty of a misdemeanor.”<sup>4</sup> Penal Code Section 319  
2 defines a lottery broadly to include “any scheme for the disposal or distribution of property by  
3 chance, among persons who have paid or promised to pay any valuable consideration for the chance  
4 of obtaining such property or a portion of it, or for any share or any interest in such property, upon  
5 any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or  
6 chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be  
7 known.” CAL. PENAL CODE § 319.

8 27. Similarly, Penal Code Section 330a makes it unlawful to own or operate any  
9 “contrivance, appliance, or mechanical device, upon the result of action of which money or other  
10 valuable thing is staked or hazarded . . . [that] is won or lost . . . dependent upon hazard or chance.”  
11 CAL. PENAL CODE § 330a.

12 28. And Penal Code Section 337j makes it unlawful to operate a “game of chance” or  
13 to “receive, directly or indirectly, any compensation” for operating such a game “*without having*  
14 *first procured . . . all federal, state, and local licenses required by law.*” CAL. PENAL CODE § 337j.  
15 (emphasis added).

16 29. In fact, as the legislature re-affirmed in 2008, “no person in this state has a right to  
17 operate a gambling enterprise except as may be expressly permitted by the laws of this state.” Cal.  
18 Bus. & Prof. Code § 19801(d).

19 **B. Supermajorities of the California Electorate Rejected the Gambling Industry’s**  
20 **Attempts to Legalize Sports Betting in 2022.**

21 30. In 2022, two ballot initiatives were put to the California voters to legalize certain  
22 additional forms of gambling in the state, including various forms of sports betting: Proposition 26  
23 and Proposition 27.

24 31. **Proposition 26** was primarily sponsored by California’s Native American tribes,  
25 and, among other things, would have:

- 26 • Legalized in-person sports betting at tribal casinos.

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<sup>4</sup> CAL. PENAL CODE § 321.

1           • Allowed additional gambling at tribal casinos, including roulette and dice games  
2           like craps.

3           • Established certain taxes and fees associated with sports betting.

4           32. Proposition 26, however, was soundly rejected in November 2022, with  
5 approximately 67% of the California electorate voting “no.”

6           33. **Proposition 27** aimed to legalize online sports betting in California, and was  
7 primarily sponsored by the online sports betting industry, with the Washington Post reporting that  
8 “DraftKings, FanDuel and BetMGM alone contributed \$95 million toward supporting the  
9 California [Proposition 27] measure, and the industry ultimately spent \$150 million on political  
10 ads.”<sup>5</sup>

11           34. Among other things, Proposition 27 would have:

12           • Legalized and regulated online sports betting in California.

13           • Established a new division within the California Department of Justice to  
14 set license requirements and oversee the industry.

15           • Imposed a 10% tax on sports betting revenue and established licensing  
16 fees.

17           • Allocated revenue from online gambling to a homelessness prevention.

18           35. Proposition 27 was also soundly rejected in November 2022, with 82% of the  
19 electorate voting “no,” making it one of the largest margins of defeat in California ballot proposition  
20 history.

21 **C. Despite Losing at the Ballot Box, Fantasy Sports Betting Continued to Proliferate in**  
22 **California in the Years that Followed.**

23           36. Despite the resounding defeats at the ballot box, online sports betting operators, like  
24 DraftKings, have continued to operate in California.

25           37. In particular, “daily fantasy sports” betting has proliferated in the state.

26  
27 <sup>5</sup> Gus Garcia-Roberts, *Inside the \$400 million fight to control California sports betting*, WASH.  
28 POST (Nov. 3, 2022), <https://www.washingtonpost.com/sports/2022/11/03/prop-26-27-california-sports-betting/> (last visited January 20, 2026).

1 38. Daily fantasy sports, which are often referred to by the abbreviation “DFS,” are a  
2 subset of fantasy sports games that are generally played online through gambling websites:

3 As with traditional fantasy sports games, [in daily fantasy sports],  
4 players compete against others by building a team of professional  
5 athletes from a particular league or competition while remaining  
6 under a salary cap, and earn points based on the actual statistical  
7 performance of the players in real-world competitions.

8 Daily fantasy sports are an accelerated variant of traditional fantasy  
9 sports that are conducted over short-term periods, such as a week or  
10 single day of competition, as opposed to those that are played across  
11 an entire season.

12 Daily fantasy sports are typically structured in the form of paid  
13 competitions typically referred to as a “contest”; winners receive a  
14 share of a pre-determined pot funded by their entry fees. A portion  
15 of entry fee payments go to the provider as rake revenue.<sup>6</sup>

16 39. According to the California Business Journal, “California residents are estimated to  
17 contribute as much as 10% of the total entries in DFS contests nationwide. This popularity has  
18 translated into substantial revenue, with DFS platforms raking in approximately \$200 million in  
19 entry fees annually [in California].”<sup>7</sup>

20 **D. In July 2025—After this Lawsuit Was Filed—the California Attorney General  
21 Confirmed that Daily Fantasy Sports Betting Violates California Law.**

22 40. In response to these massive ongoing daily fantasy sports betting operations in  
23 California, on or about October 5, 2023, State Senator Scott Wilk wrote to the California  
24 Department of Justice and requested an investigation into daily fantasy sports betting:

25 I write to request a legal opinion as to whether California law  
26 prohibits the offering and operation of daily fantasy sports betting  
27 platforms with players physically located within the State of  
28 California, regardless of whether the operators and associated  
technology are located within or outside of the State.

29 <sup>6</sup> *Daily Fantasy Sports*, Wikipedia, available online at  
[https://en.wikipedia.org/wiki/Daily\\_fantasy\\_sports#cite\\_ref-sg-dk500k\\_1-0](https://en.wikipedia.org/wiki/Daily_fantasy_sports#cite_ref-sg-dk500k_1-0) (last visited January  
20, 2026).

30 <sup>7</sup> *Unfenced Playground: A Peek into California’s Daily Fantasy Sports Landscape*, California  
Business Journal, available online at <https://calbizjournal.com/unfenced-playground-a-peek-into-californias-daily-fantasy-sports-landscape/#:~:text=In%20fact%2C%20California%20residents%20are,million%20in%20entry%20fees%20annually> (last visited January 20, 2026).

1 Pursuant to California law, no one may operate “any game of  
2 chance” without the required federal, state, and local licenses. No one  
3 has “the right to operate a gambling enterprise except as may be  
expressly permitted by the laws of this state and by the ordinances of  
local governmental bodies.”

4 In 2022, California voters overwhelmingly rejected Proposition 27  
5 to legalize online sports wagering. Although sports wagering in all  
6 forms remains illegal in California, online daily fantasy sports  
7 betting is proliferating throughout the state. Through these online  
8 platforms, a participant pays to enter a contest in which they may win  
9 a prize depending on how well athletes perform. Although the  
participant may utilize their knowledge of a particular sport in  
choosing their “team” of players, how well those players perform  
during a game is completely out of the participant’s control. As such,  
*daily fantasy sports appears to be a game of chance not otherwise  
permitted by the laws of California.*

10 (Cleaned up; footnotes omitted; emphasis added).<sup>8</sup>

11 41. Consistent with the Senator’s request, the California Department of Justice directed  
12 the Attorney General’s Opinion Unit to address the following question:

13 Does California law prohibit the offering and operation of daily  
14 fantasy sports betting platforms with players physically located  
15 within the State of California, regardless of whether the operators  
and associated technology are located within or outside of the State?

16 Opinion Request No. 23-1001.<sup>9</sup>

17 42. On July 3, 2025, the California Attorney General released its opinion addressing  
18 Senator Wilk’s request, which confirms the central theory of Plaintiffs’ case: “**California law**  
19 **prohibits the operation of daily fantasy sports games...Such games constitute wagering on**  
20 **sports in violation of Penal Code section 337a.**” (Emphasis added.)<sup>10</sup>

21 43. A true and correct copy of the Attorney General’s Opinion is attached as **Exhibit B**  
22 to this First Amended Complaint.

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25 <sup>8</sup> A copy of the letter is publicly available online at <https://www.legalsportsreport.com/wp-content/uploads/2023/11/OU-23-1001-Sen.-Wilk-request-1.pdf> (last visited January 20, 2026).

26 <sup>9</sup> Available online at <https://oag.ca.gov/opinions/monthly-report> (last visited June 1, 2025).

27 <sup>10</sup> Opinion of the California Attorney General No. 23-1001 (“AG Opinion”) at 1, available online  
28 at <https://oag.ca.gov/system/files/attachments/press-docs/23-1001.pdf> (last visited January 20, 2026).

1 **E. Since Nearly the Inception of Statehood, California Has Allowed for the Recovery of**  
2 **Gambling Losses through the Statute of Anne.**

3 44. In 1710, the Parliament of the United Kingdom passed the Gaming Act of 1710  
4 (“Gaming Act”). The Gaming Act did two important things. First, Section One of the Gaming Act  
5 voided and outlawed all contracts relating to gambling contracts to extend money or credit to those  
6 gambling and outlawed their recovery. Second, Section Two of the Gaming Act specifically  
7 allowed those who lost money gambling to bring suit for losses incurred within the prior three  
8 months from the winners of that money.

9 45. Section Two of the Gaming Act—commonly referred to as the Statute of Anne—  
10 was carried over from the United Kingdom in many states in the form of gambling loss recovery  
11 statutes.

12 46. California was one of those states.

13 47. Specifically, in 1850, California enacted a statute that the “[t]he common law of  
14 England, so far as it is not repugnant to or inconsistent with the Constitution of the United States,  
15 or the Constitution or laws of this State, is the rule of decision in all the courts of the state.” That  
16 enactment remains the law of California and is currently codified at Civil Code § 22.2.

17 48. A recent binding decision of the Court of Appeal confirms that the Statute of Anne  
18 was carried over as part of the 1850 enactment of Civil Code Section 22.2: “California imported  
19 not only the whole body of judge-made decisional law of the English courts, but also the written  
20 statutes enacted by Parliament. Among the enactments of Parliament adopted as California  
21 common law was the Statute of Anne, which declared all gambling debts utterly void, frustrate, and  
22 of none effect, to all intents and purposes whatsoever.” *Tak Chun Gaming Promotion Co. v. Long*,  
23 96 Cal. App. 5th 1027, 1033 (2023) (cleaned up).<sup>11</sup>

24 49. Accordingly, in California, all gambling losses that exceed 10 British pounds—  
25 about 13 US dollars—are recoverable as a matter of right in California.

26  
27  
28 <sup>11</sup> While other cases have stated without analysis that California lacks a Statute of Anne, those  
authorities do not discuss the import of Civil Code § 22.2.

1 **F. DraftKings’ California Gambling Operations.**

2 50. DraftKings has been operating in California since approximately 2012 through the  
3 Gambling Websites, which consist of at least the DraftKings Daily Fantasy mobile apps for  
4 Android and IOS and the DraftKings website, DraftKings.com, and associated subpages. The  
5 primary sports gambling services that DraftKings currently offers in California are “Daily Fantasy  
6 Sports” and “Pick6.” DraftKings consistently and explicitly represents to its customers that both  
7 Daily Fantasy Sports and Pick6 are legal in the state. They are not.

8 **1. Daily Fantasy Sports.**

9 **a. Traditional Daily Fantasy Sports.**

10 51. A fantasy sport is a game where participants assemble imaginary teams composed  
11 of real professional sports players. These imaginary teams “compete” based on the statistical  
12 performance of those players in actual games, such as rushing yards, receiving yards, or points  
13 scored. This performance is converted into points that are compiled and totaled according to rules  
14 agreed to amongst the players.<sup>12</sup>

15 52. Traditional fantasy sports were played with friends and family over the course of a  
16 sports season, for small amounts of collectively pooled money or for no money at all. In traditional  
17 fantasy games involving money, one participant may have held money for the group to payout at  
18 the end of the season, but all participant money was distributed to other players (and not any third-  
19 party) at the end of the season.<sup>13</sup>

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26 <sup>12</sup> See generally, *Daily Fantasy Sports*, Wikipedia, available online at  
[https://en.wikipedia.org/wiki/Daily\\_fantasy\\_sports#cite\\_ref-sg-dk500k\\_1-0](https://en.wikipedia.org/wiki/Daily_fantasy_sports#cite_ref-sg-dk500k_1-0) (last visited January  
27 20, 2026).

28 <sup>13</sup> This type of non-commercialized, small scale fantasy sports betting is exempted from many of  
the criminal law prohibitions discussed in Section A, above. See also Cal. Penal Code § 336.9(b)(1).

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**b. The Daily Fantasy Sports Offered by DraftKings in California.**

53. On the Gambling Websites, DraftKings describes its Daily Fantasy Sports contests as follows:

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**What is daily fantasy sports?**

Daily Fantasy Sports (DFS) mirrors season-long fantasy sports but condenses it into a shorter, more sweat-inducing format. Heart-thrilling contests range from a day to a week depending on the sport. Competitors draft a player roster and those athletes earn points based on their in-game performance. Sweat the sweat each and every play. Test your skills with friends or with other fans nationally and let victory chase you for a change.

DraftKings DFS is legal in most US states. Check out [where DraftKings DFS is legal](#).

54. DraftKings makes the representation that “DraftKings DFS is legal in most US states” on DraftKings website(s).<sup>14</sup>

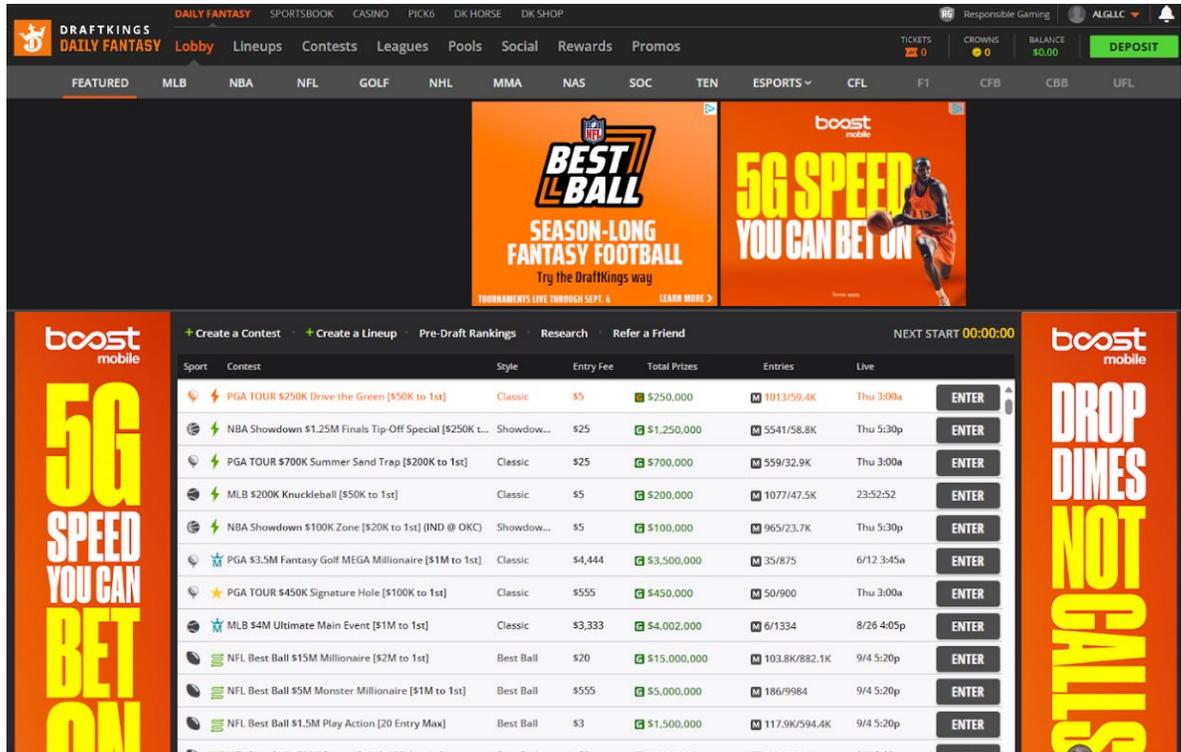
55. In short, according to DraftKings, Daily Fantasy Sports are similar to traditional fantasy sports, but the reality is that there are many critical differences.

56. First, unlike traditional fantasy sports that are played between friends and family, DraftKings Daily Fantasy Sports sets up contests between strangers through its Gambling Websites. Many of the Daily Fantasy Sports contests offered by DraftKings include hundreds, thousands, or tens of thousands of participants, as compared to traditional fantasy sports, that might have had around a dozen participants.

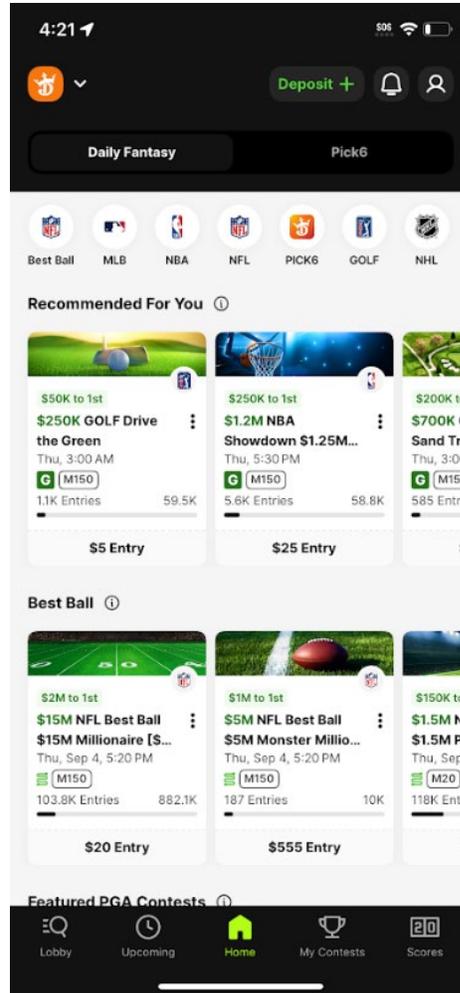
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<sup>14</sup> <https://www.draftkings.com/how-to-play> (last visited January 20, 2026).

1 57. Here is an example of how the Daily Fantasy Sports interface appears on desktop,  
 2 reflecting some of the available contests in California, with total participant positions ranging from  
 3 several hundred to over half a million:



1           58.     And here is an example of how the Daily Fantasy Sports interface appears on  
 2 mobile, reflecting some of the available contests in California, with total participant positions  
 3 ranging from 10,000 to over 882,000:



20           59.     Second, unlike traditional fantasy sports, in Daily Fantasy Sports, DraftKings  
 21 receives, pools, documents (i.e., books), and holds all participant bets and wagers until the end of  
 22 the contest, when DraftKings uses its records (i.e., DraftKings' betting book) to distribute a portion  
 23 of the pooled bets and wagers to the winner(s).

24           60.     Third, unlike traditional fantasy sports, in Daily Fantasy Sports, DraftKings takes a  
 25 portion of each pool of bets and wagers, even though it is not a direct participant in the game. In  
 26 this way, DraftKings itself is also a winner as it receives a portion of each pool of bets and wagers  
 27 from the losers of its daily fantasy sports services.  
 28

1           61. Fourth, unlike traditional fantasy sports, in Daily Fantasy Sports, the size of the bets  
2 and wagers, the number of participants, the pool size of bets and wagers, the prize pools made  
3 available as “winnings,” and the portions of the bets, wagers, and pools kept by DraftKings are all  
4 set by DraftKings.

5           62. Fifth, unlike traditional fantasy sports, in Daily Fantasy Sports, the size of the bets  
6 and wagers, the number of participants, the pool sizes of bets and wagers collected, the prize pools  
7 made available as “winnings,” and the portions of the bets, wagers, and pools kept by DraftKings  
8 vary dramatically, even when betting on the same underlying professional sporting event.

9           63. For example, on May 2025, DraftKings offered thousands of Daily Fantasy Sports  
10 contests in California, with varied bet and wager amounts, pool sizes, and rakes percentages paid  
11 to DraftKings. Here are the terms on three fantasy contests DraftKings offered in California on the  
12 New York Knicks versus the Indiana Pacers NBA basketball game:

13           a. “NBA Showdown Single Entry \$5 Double Up (NYK @ IND).” There  
14 were 229 participant slots available, each for a \$5 wager, forming a  
15 pool of \$1,145. However, only \$1,000 in “Total Prizes” were available  
16 to be distributed to participants, with DraftKings keeping \$145 of the  
17 pool for itself. That \$145 rake represents a percentage take of 12.7%.

18           b. “NBA Showdown \$30k Showtime [Single Entry] (NYK @ IND).”  
19 There were 334 participant slots available, each for a \$100 wager,  
20 forming a pool of \$33,400. However, only \$30,100 in “Total Prizes”  
21 were available to be distributed, with DraftKings keeping \$3,300 of  
22 the pool for itself. That \$3,300 rake represents a percentage take of  
23 approximately 10%.

24           c. “NBA Showdown \$500k Shootaround [\$100k to 1<sup>st</sup>] (NYK @ IND).”  
25 There were 29,411 participant slots available, each for a \$20 wager,  
26 forming a pool of \$588,220. However, only \$500,000 in “Total  
27 Prizes” were available to be distributed to participants, with  
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DraftKings keeping \$88,220 of the pool for itself. That \$88,220 rake represents a percentage take of approximately 15%.

d. Sixth, unlike traditional fantasy sports, in Daily Fantasy Sports, DraftKings maintains records of all bets and wagers placed on Daily Fantasy Sports, and uses those records (i.e., the betting books) to calculate post-contest payouts to participants from the pool of bets and wagers.

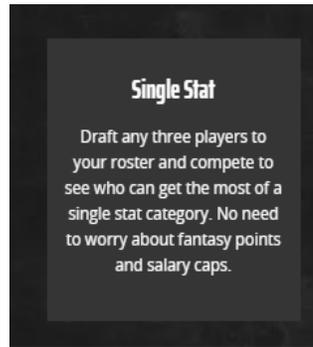
64. Seventh, unlike traditional fantasy sports, which generally last throughout an entire sports season (e.g., the NFL regular football season), Daily Fantasy Sports, as the name suggests, generally involve short periods of participation and are designed to entice multiple rounds of repeat betting over the course of a day, a weekend, or a week.<sup>15</sup>

65. Eighth, unlike traditional fantasy sports, DraftKings offers a number of contest types simultaneously, including:



<sup>15</sup> In fact, DraftKings is facing lawsuits across the country related to the addictive nature of its online betting platforms. While those claims are not at issue in this lawsuit, because California law categorially prohibits Daily Fantasy Sports under the Penal Code, the California legislature has also expressly noted the addictive nature of gambling: “Gambling can become addictive and is not an activity to be promoted or legitimized as entertainment for children and families.” Cal. Bus. & Prof. Code § 19801(c).

1 66. Ninth, DraftKings, offers services that it calls Daily Fantasy Sports, which are  
2 actually just direct bets on player statistics:



9 67. Finally, unlike traditional fantasy sports, in Daily Fantasy Sports, DraftKings offers  
10 users the opportunity to enter contests across a multitude of sporting types at the same time. For  
11 example, in May 2025, DraftKings offered Daily Fantasy Sports contests for MLB, the WNBA,  
12 the NBA, NHL, NFL, UFC, Soccer, NASCAR, and the PGA Tour, among others, on the Gambling  
13 Websites in California. Indeed, DraftKings even offered (in fact, enticed) California customers in  
14 May to make early bets and wagers on sports that would not be in season for months, including  
15 bets on the fall season of the NFL.

16 68. Ultimately, regardless of which Daily Fantasy Sports contest-type DraftKings  
17 customers select, they have no control over the outcome of the fantasy game they have wagered on.  
18 The outcome is determined entirely based on athletes' actual in-game performances (i.e., the  
19 athletes' performances in the actual sporting events) and are entirely outside the control of the  
20 participants of Daily Fantasy Sports.<sup>16</sup>

21 69. Moreover, “[c]hance affects the result not only as to the person or persons to receive  
22 the pool proceeds, but as to the amount received by any winning player, since more than one player  
23 may have selected the [same winning combination on] a particular day.” *Finster*, 18 Cal. App. 3d  
24 at 845.

25  
26 <sup>16</sup> Plaintiffs note that they are specifically authorized by Federal Rule of Civil Procedure Rule  
27 8(d)(2) to make their allegations in the alternative, and accordingly, allege that the gambling  
28 contests offered in California by DraftKings constitute games of “chance” for purposes of those  
Penal Code Sections that prohibit lotteries and/or other games of chance, and constitute games of  
skill, to the extent skill is found to be a necessary element of certain claims made under Penal Code  
Section 337a or otherwise.

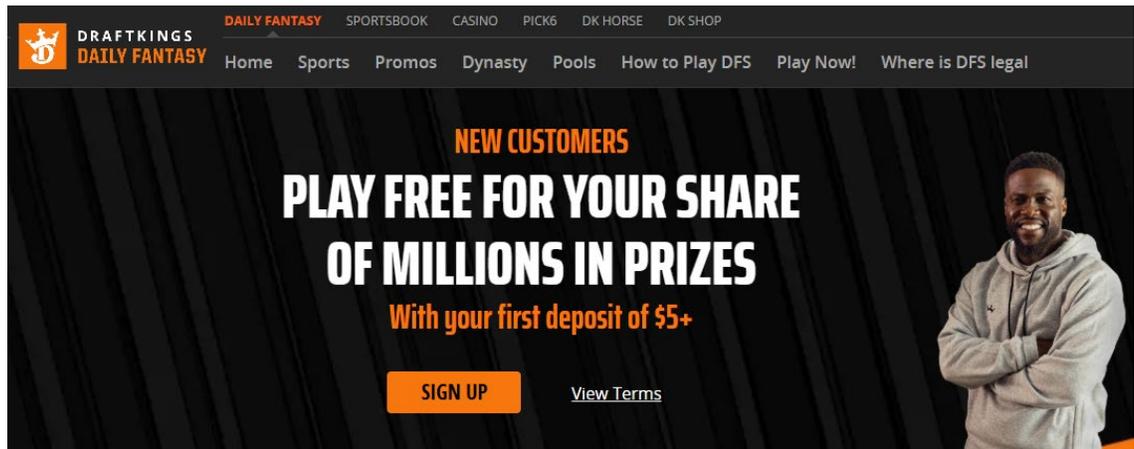
1 70. Put simply, the outcomes of the Daily Fantasy Sports contests are contingent and  
2 unknown at the time the bets and wagers are collected, recorded (i.e., booked), and pooled by  
3 DraftKings. And as a result, DraftKings’ Daily Fantasy Sports violate California Penal Code  
4 Sections 319, 320, 321, 330, 330a, 337a, and 337j.

5 **c. DraftKings Falsely Assures Customers that Daily Fantasy Sports**  
6 **Are Legal in California.**

7 71. DraftKings misleads California consumers into making illegal gambling contracts  
8 engaging in prohibited sports betting by misrepresenting that its services are permissible under  
9 California law when they are not.

10 72. Well aware that customers would refuse to play its Daily Fantasy Sports contests if  
11 they knew and understood those contests violated California criminal law, on its Daily Fantasy  
12 Sports website, DraftKings repeatedly assures prospective customers that Daily Fantasy Sports are  
13 legal in California.

14 73. For example, on the main DraftKings landing page, DraftKings.com, one of the  
15 featured “above the fold” menu options is a “Where is DFS legal” button:



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1 74. If a California user follows the link to “where is DFS legal,” they are taken to a  
2 page<sup>17</sup> which displays the following information, reflecting that Daily Fantasy Sports are legal in  
3 California, among many other states:



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15 75. DraftKings further represents on this page that it carefully monitors state and federal  
16 law and regulations to ensure that its practices are in compliance with applicable law<sup>18</sup>:

17  
18 **Experience DraftKings Daily Fantasy Sports for yourself.**

19 DraftKings is a global sports technology and entertainment company whose Daily Fantasy  
20 Sports contests are governed by both federal and state law. Federal law specifically exempts  
21 fantasy sports contests from the prohibitions of the Unlawful Internet Gambling Enforcement  
22 Act, or UIGEA. At the state level, legislation and regulation vary state-to-state. In recent years,  
23 many state legislatures have passed laws confirming and clarifying the legality of Daily Fantasy  
24 Sports contests. DraftKings monitors new developments and acts quickly to ensure it is in  
25 compliance with the laws in any jurisdiction where it operates. As laws change or regulations  
26 are implemented, DraftKings will take steps to ensure its continued compliance, and changes  
27 to this site may take place to reflect any such new laws or regulations.

28  
<sup>17</sup> <https://www.draftkings.com/where-is-draftkings-legal> (last visited January 20, 2025).

<sup>18</sup> *Id.*

1 76. DraftKings next includes a list of states where Daily Fantasy Sports are (supposedly)  
 2 legal, which expressly identifies California as a “legal” jurisdiction<sup>19</sup>:

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**DraftKings Daily Fantasy Sports is legal in the following US states and Canadian provinces / territories:**

Alabama	North Carolina
Alaska	North Dakota
Arizona	Ohio
Arkansas	Oklahoma
California	Pennsylvania
Colorado	Rhode Island
Connecticut	South Carolina
Delaware	South Dakota
Florida	Tennessee
Georgia	Texas
Illinois	Utah
Indiana	Vermont
Iowa	Virginia
Kansas	West Virginia
Kentucky	Wisconsin
Louisiana	Wyoming
Maine	Alberta
Maryland	British Columbia
Massachusetts	Manitoba
Michigan	New Brunswick
Minnesota	Newfoundland and Labrador
Mississippi	Northwest Territories
Missouri	Nova Scotia
Nebraska	Nunavut
New Hampshire	Prince Edward Island
New Jersey	Quebec
New Mexico	Saskatchewan
New York	Yukon

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28 <sup>19</sup> *Id.*

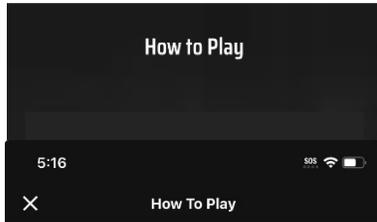
1 77. Substantively identical representations were and/or<sup>20</sup> are made to customers on the  
 2 “DraftKings Fantasy” mobile app:



6 **What is daily fantasy sports?**

7 Daily Fantasy Sports (DFS) mirrors season-long  
 8 fantasy sports but condenses it into a shorter,  
 9 more sweat-inducing format. Heart-throbbing  
 10 contests range from a day to a week depending on  
 11 the sport. Competitors draft a player roster and  
 12 those athletes earn points based on their in-game  
 13 performance. Sweat the sweat each and every  
 14 play. Test your skills with friends or with other fans  
 15 nationally and let victory chase you for a change.

16 DraftKings DFS is legal in most US states. Check out  
 17 [where DraftKings DFS is legal](#).



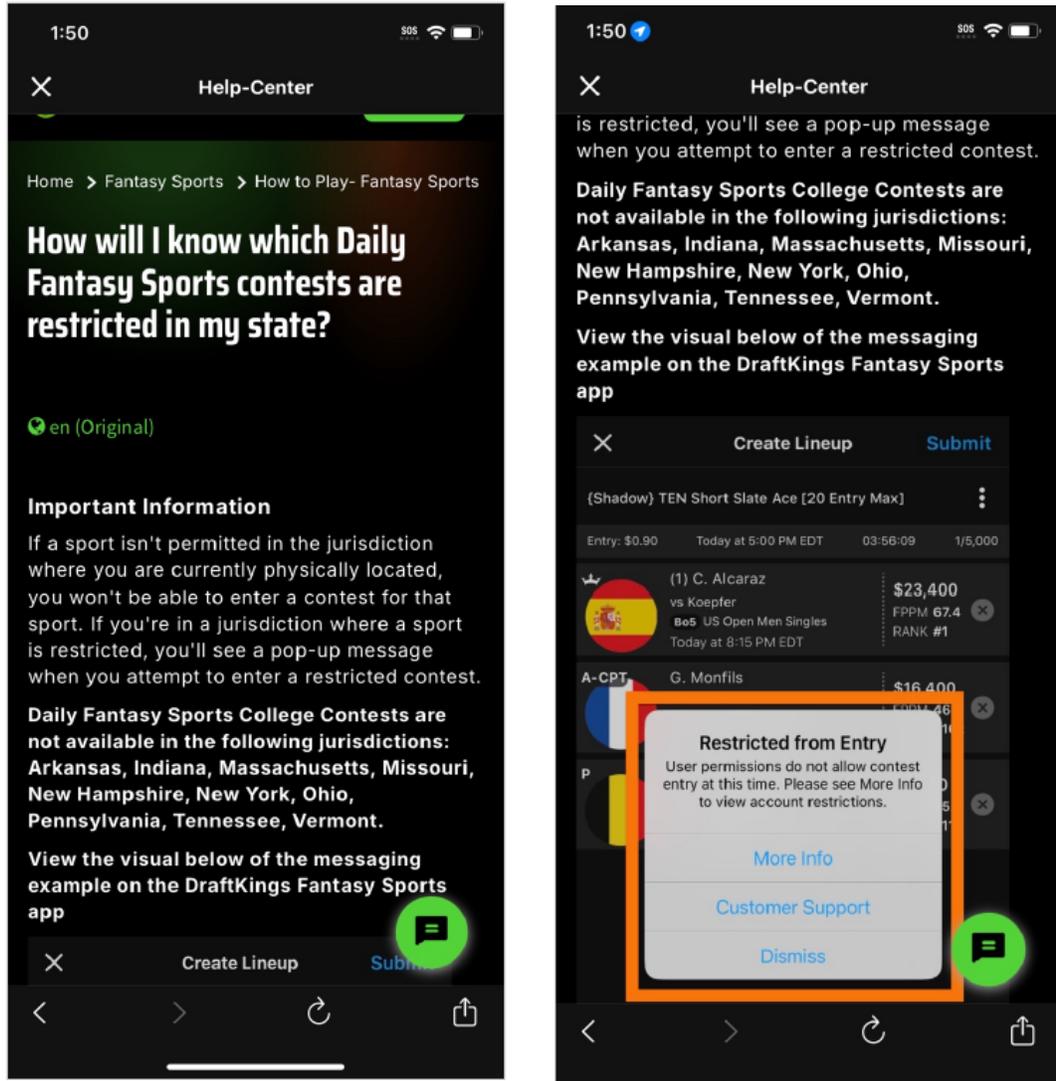
25 **Experience DraftKings Daily Fantasy  
 26 Sports for yourself.**

27 DraftKings is a global sports  
 28 technology and entertainment  
 company whose Daily Fantasy Sports  
 contests are governed by both federal  
 and state law. Federal law specifically  
 exempts fantasy sports contests from  
 the prohibitions of the Unlawful  
 Internet Gambling Enforcement Act, or  
 UIGEA. At the state level, legislation  
 and regulation vary state-to-state. In  
 recent years, many state legislatures  
 have passed laws confirming and  
 clarifying the legality of Daily Fantasy  
 Sports contests. DraftKings monitors  
 new developments and acts quickly to  
 ensure it is in compliance with the laws  
 in any jurisdiction where it operates.  
 As laws change or regulations are  
 implemented, DraftKings will take  
 steps to ensure its continued  
 compliance, and changes to this site  
 may take place to reflect any such new  
 laws or regulations.



<sup>20</sup> Between filing the Complaint and First Amended Complaint, DraftKings made certain changes to the mobile application.

1 78. On DraftKings’ mobile application, in a section named “How will I know which  
 2 Daily Sports Contests are restricted in my state?”, DraftKings makes the following representations:



20 **2. DraftKings Pick6.**

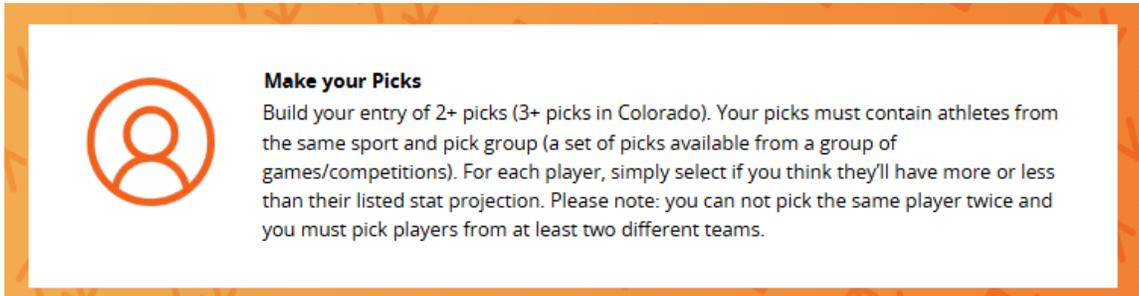
21 **a. DraftKings Pick6 Contests.**

22 79. DraftKings “Pick6” is a proprietary contest that DraftKings developed, on  
 23 information and belief, in an attempt to circumvent state laws that prohibited traditional sports  
 24 betting while still allowing participants to place bets on whether individual professional athletes  
 25 will either meet the “under” or the “over” in certain statistical categories.  
 26  
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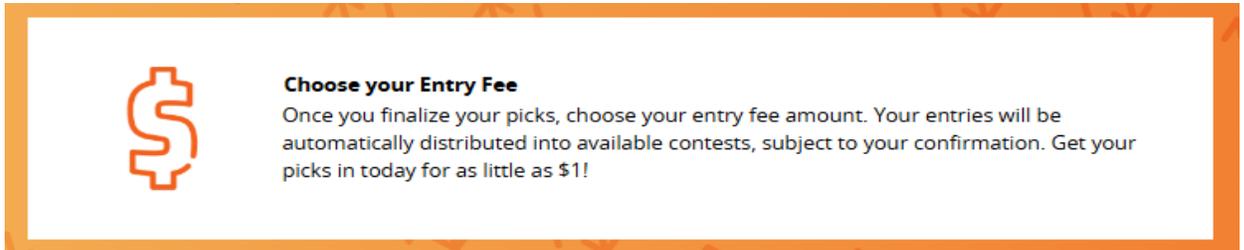
1 80. DraftKings describes its Pick6<sup>21</sup> contests as a “fantasy game where you build an  
2 entry of 2+ players (3+ in Colorado) and select whether or not you believe each will outperform  
3 their listed stat projection. Once you craft your picks and choose your entry fee, your picks are  
4 entered into Pick6 contests to compete against those of other users. Get enough picks correct and  
5 win a share of huge cash prizes!”:



11 81. On the same informational webpage, DraftKings also provides step by step  
12 information on “how to play” Pick6. First, a user makes selects his players and whether they will  
13 perform “over” or “under” a particular statistical category<sup>22</sup>:



19 82. Next, the user chooses how much to bet and wager<sup>23</sup>:



25

26 <sup>21</sup> <https://pick6.draftkings.com/how-to-play-pick6> (last visited June 1, 2025). DraftKings has since  
27 updated this page since Plaintiffs filed their initial complaint and it is available here:  
<https://pick6.draftkings.com/how-to-play-pick6> (last visited January 20, 2026).

28 <sup>22</sup> *Id.*

<sup>23</sup> *Id.*

1 83. Third, the user is encouraged to follow his bets and wagers in real time to see how  
2 the bets and wagers perform<sup>24</sup>:

3

4  **Sweat your Picks**  
5 When the games go live, use the My Picks tab to follow your picks in real time to track  
6 how your players are performing against their projections and how they stack up against  
7 other users. View your estimated prizing update in real time as picks in your contests are  
8 graded as wins or losses!

8 84. Finally, DraftKings notes the available prize pools collected and paid from  
9 participant bets and wagers<sup>25</sup>:

10

11  **Compete for Prizes**  
12 Get enough correct picks and win a share of the contests' guaranteed prizes. Any prizes  
13 won will be credited to your DraftKings account after contests are finalized. View our  
14 [Pick6 Prizes page](#) to see what customers have won in recent days!

15

16 85. Pick6 contests offered by DraftKings in May 2025 included events on MLB, the  
17 WNBA, the NBA, NHL, UFC, Soccer, NASCAR, and the PGA Tour, among others.

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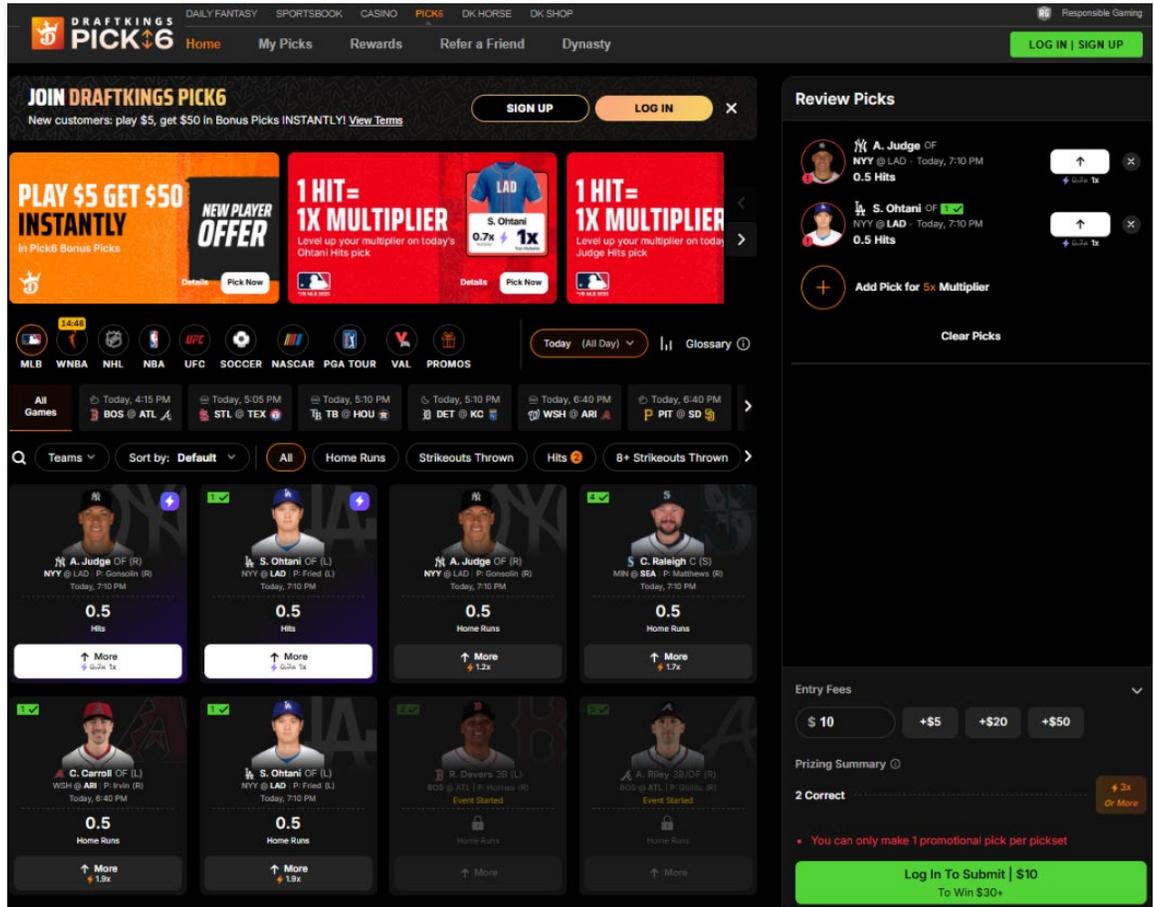
27

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28 <sup>24</sup> *Id.*

<sup>25</sup> *Id.*

1 86. Here is an example of how the Pick6 user interface appeared in California on  
 2 desktop in May 2025,<sup>26</sup> with two sample players: selected from the MLB tab:<sup>27</sup>



18 ///

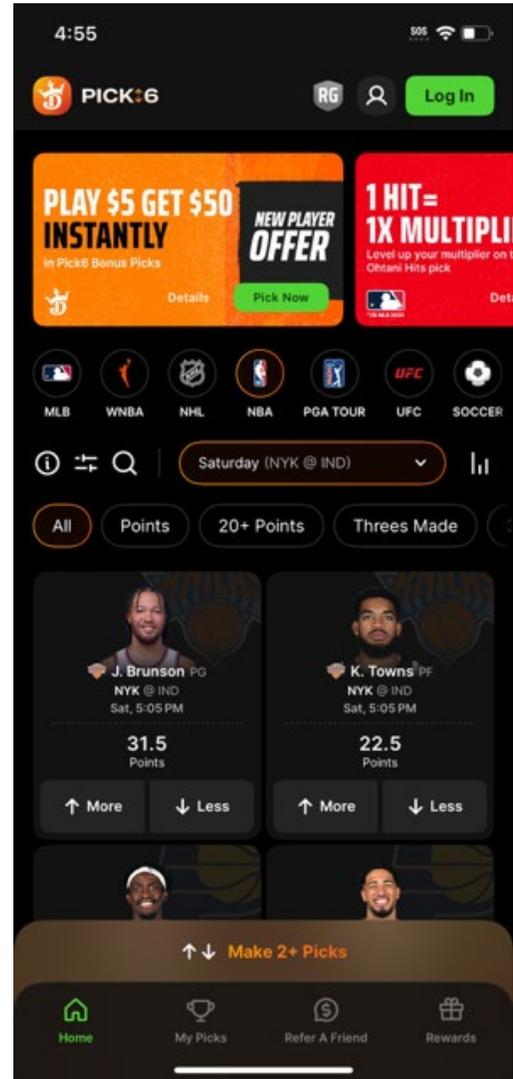
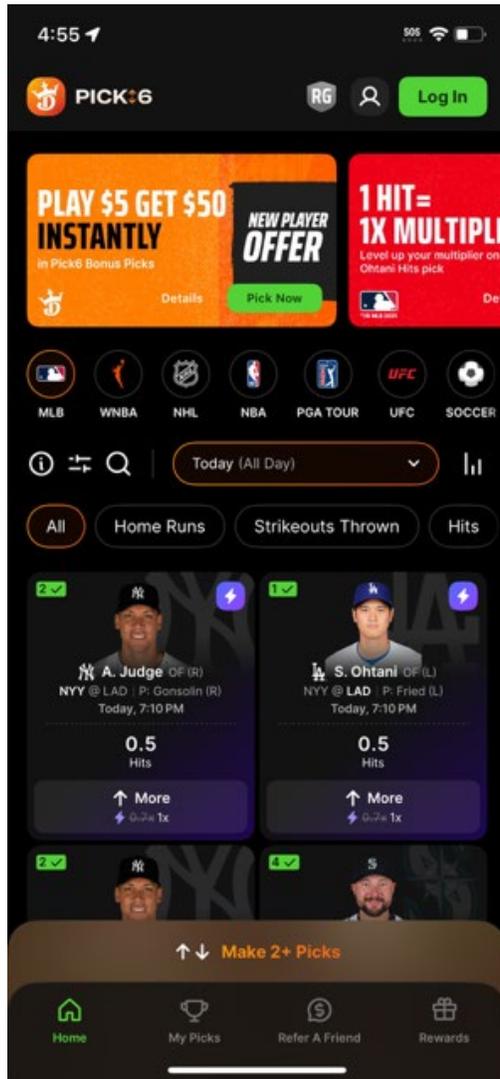
19 ///

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25 <sup>26</sup> <https://pick6.draftkings.com/> (last visited May 31, 2025). The page looks substantially the same as of Plaintiffs filing of the First Amended Complaint.

26 <sup>27</sup> Despite advertising that bets can be placed for \$1 on earlier DraftKings webpages, DraftKings  
 27 instead defaults the users into a higher dollar value bets, here \$10. In the fine print (which the user  
 28 most scroll down and click through to see), the interface notes that the \$10 bet will actually be  
 divided into ten \$1 entries, meaning there is no reason (other than to induce higher levels of betting)  
 for the DraftKings interface to default to \$10 instead of \$1.

87. And here are examples of how Pick6 displayed on the DraftKings mobile app in California in May 2025 from the MLB and NBA tabs:



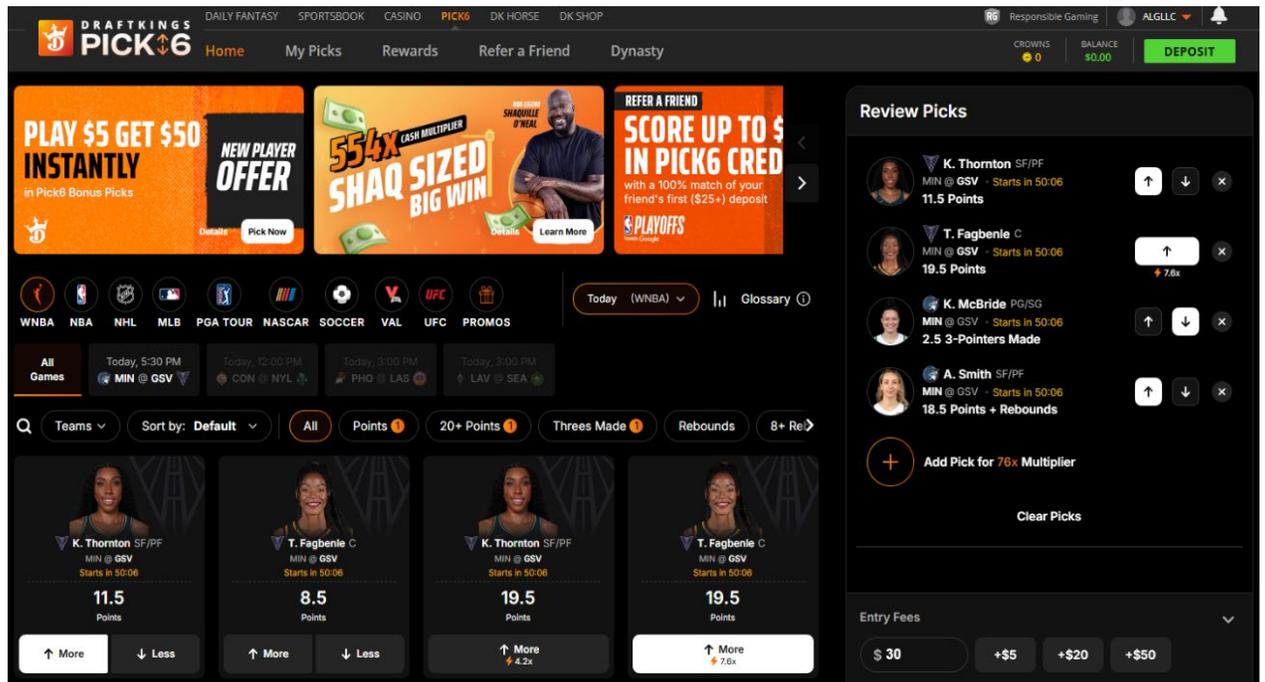
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1 88. Here is a step-by-step example of a Pick6 transaction conducted on desktop. The  
 2 mobile app interface is materially identical.

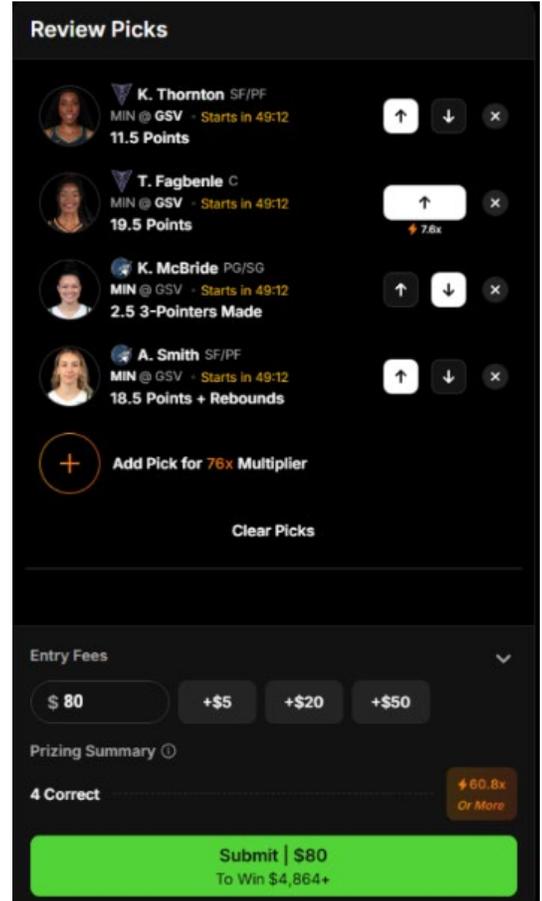
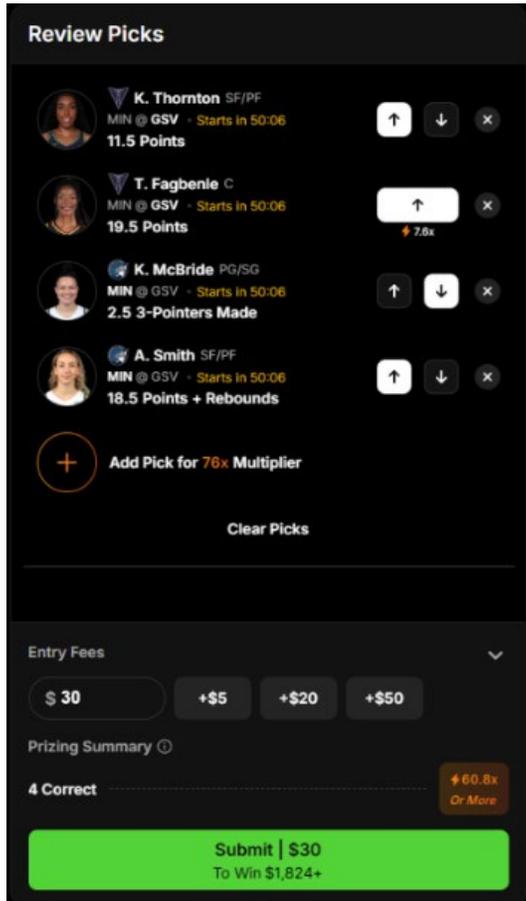
3 89. **First**, the user selects a sporting type (e.g., NBA, WNBA), specific athletes, and  
 4 whether to bet the “over” or “under” on each athlete. Here the user has selected the WNBA, the  
 5 “over” on Thornton, the “over” on Fagbenle, the “under” on McBride, and the “over” on Smith:



17 90. The statistical line for each player that the user is betting the “over” or “under” on  
 18 is pre-determined by DraftKings.

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 21 ///

1 91. **Second**, the user chooses how much to bet. It is only after the wager amount is  
 2 selected that the user is informed of the potential pooled prize that is available based on the bet.  
 3 Here are two examples, one reflecting a potential bet of \$30 resulting in potential winnings of  
 4 \$1,824, and the second reflecting a wager of \$80 resulting in potential winnings of \$4,864:

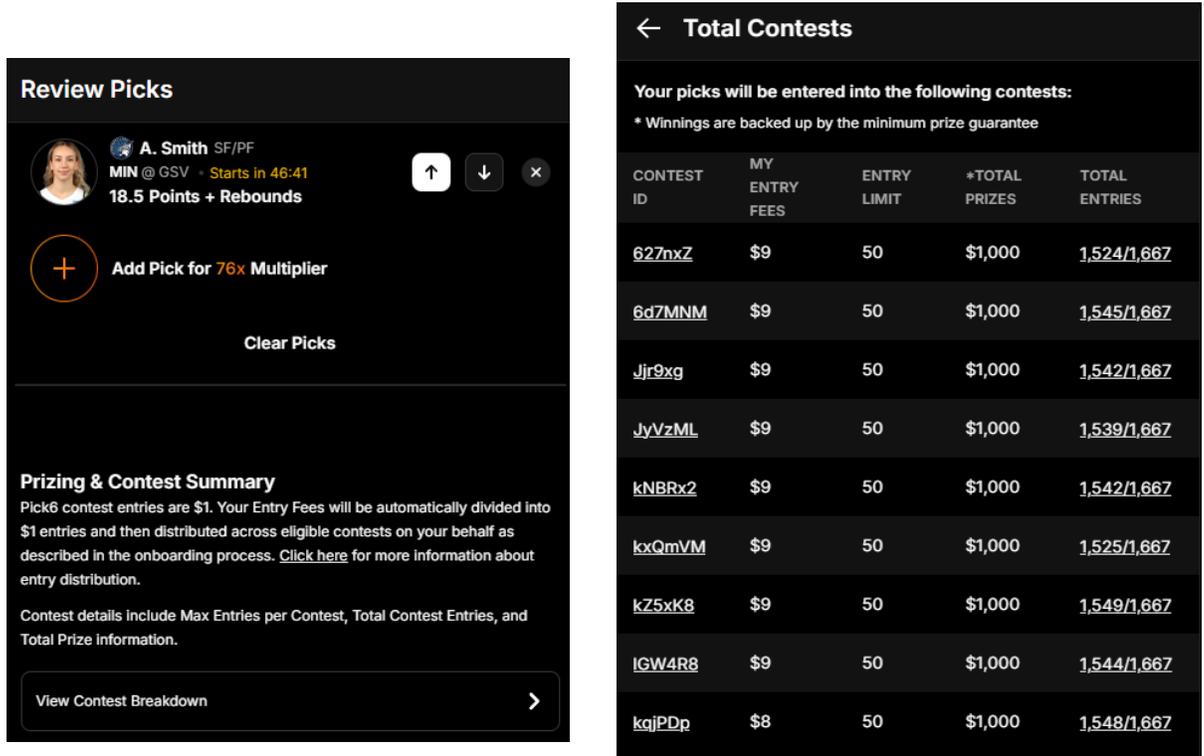


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92. **Third**, if the user scrolls to the fine print (which requires scrolling in a specific section of the screen where no scroll bar is provided), the user learns that regardless of how much he bets, in reality, his wager will be entered as a series of \$1 bets, across multiple contests. The user must select “View Contest Breakdown” to learn the specific details of where and how the bets are distributed:

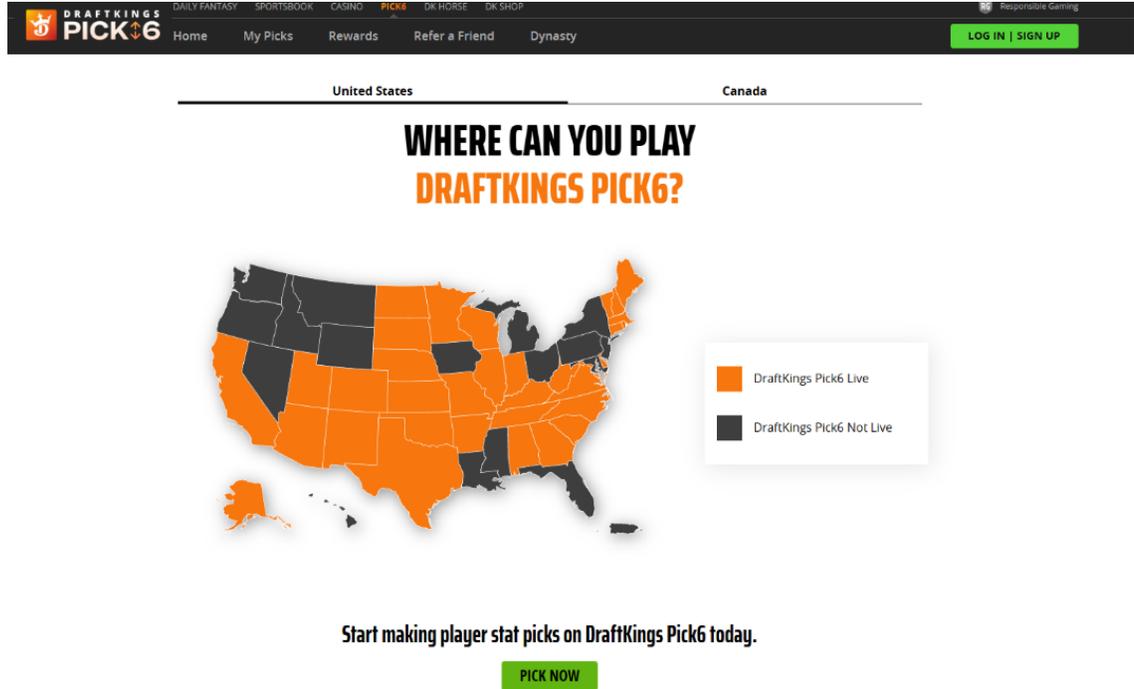


93. In this example from June 2025, if “View Contest Breakdown” was selected, the user would learn that his bets are being spread across nine separate Pick6 contests, with each of the nine contests having 1,667 participant slots, with a total prize pool of \$1,000 per contest, meaning that DraftKings would take a rake on each contest of \$667, representing 40% of the total pool of funds collected. The user has no control over which specific pools his bets and wagers were entered into or who he is playing against. DraftKings selects both for him.

94. **Fourth**, if the user then completes the wager, he has a chance to win from the pooled funds. However, because multiple users could choose the same combination of players in a given contest, “[c]hance affects the result not only as to the person or persons to receive the pool proceeds, but as to the amount received by any winning player, since more than one player may have selected the [same winning combination].” *Finster*, 18 Cal. App. 3d at 845.

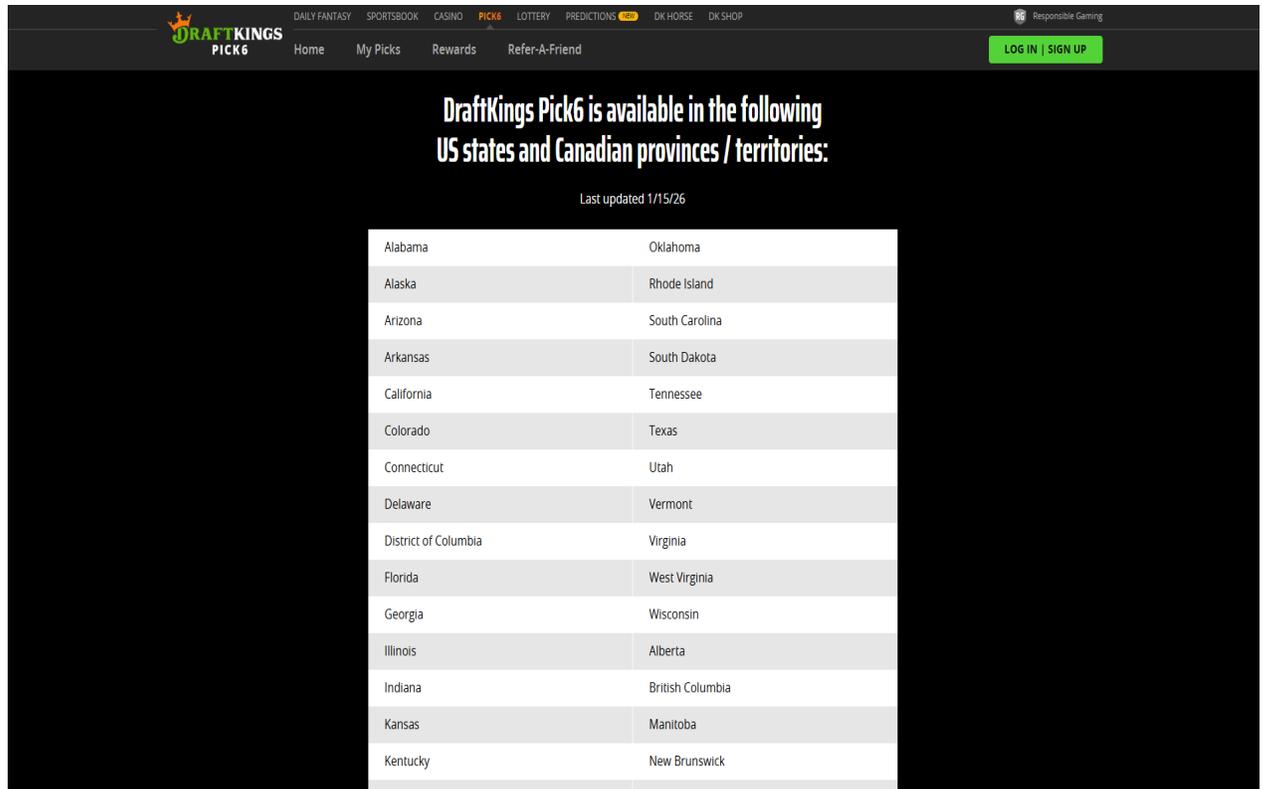


1 99. For example, if a California user follows the link to “Where is Pick6 Available” he  
2 is taken to a page<sup>29</sup> which displays the following information, reflecting that Pick6 is available in  
3 California, among many other states:



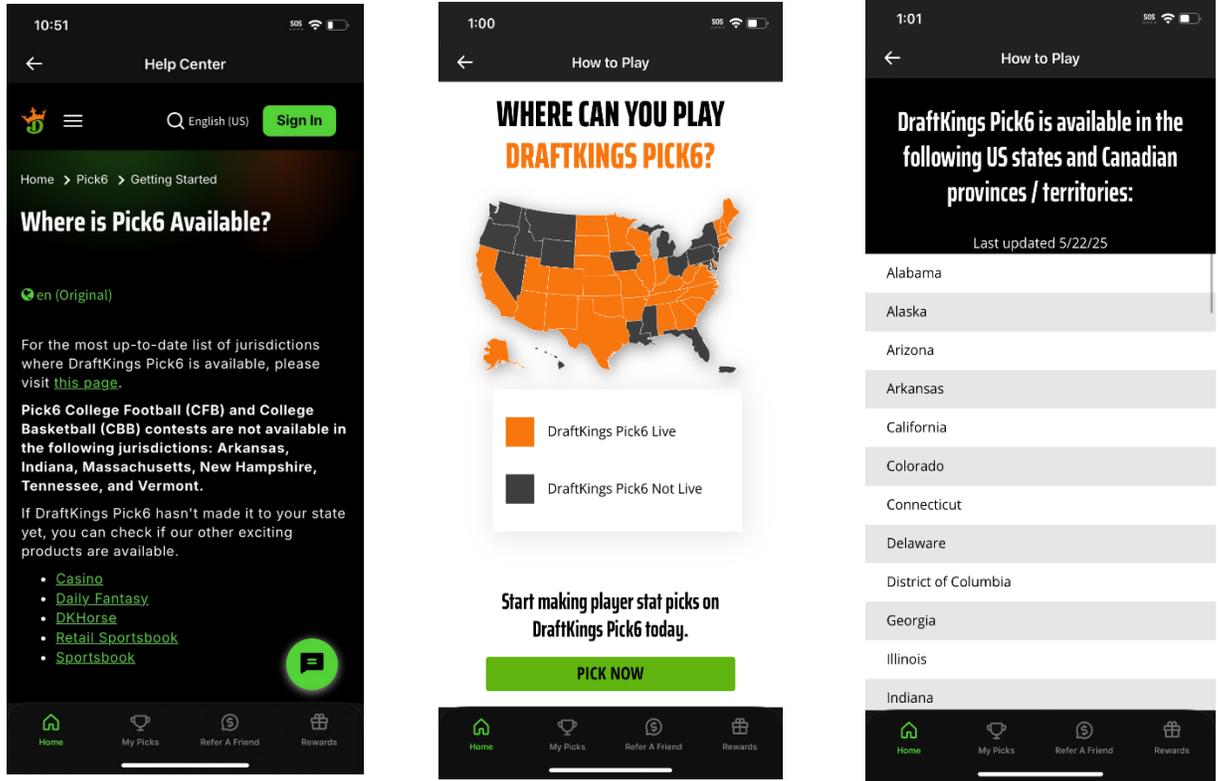
29 <https://pick6.draftkings.com/where-is-pick6-available> (last visited January 19, 2026).

1 100. DraftKings next includes a list of states where Daily Fantasy Sports are available,  
 2 which expressly identifies California as an “available” jurisdiction, leading users—even as recently  
 3 as January 19, 2026<sup>30</sup>—to believe use of Pick6 is legal in California:



28 <sup>30</sup> *Id.*

1 101. Substantively identical representations are made to customers on the “DraftKings  
 2 Fantasy” mobile app, with the “Where is Pick6 Available?” page (far left image) redirecting to the  
 3 map reflected in the central image, where California is listed as a legal jurisdiction:



17 **G. DraftKings’ Half-Billion Dollar Advertising Budget.**

18 102. According to Scaleo.com, DraftKings is estimated to spend between \$500 to \$600  
 19 million per year on advertising and marketing, among the highest spends in the industry.<sup>31</sup>

20 103. The reason DraftKings spends hundreds of millions of dollars each year on  
 21 advertisements and marketing is to expand and maintain its userbase, including within California.

22 104. Examples of DraftKings’ advertising and marketing tactics within California  
 23 include:

- 24 a. Sponsorship of Established Sports Leagues: According to its own  
 25 website, “DraftKings is both an official daily fantasy and sports  
 26

27 <sup>31</sup> *How Much Sportsbooks Spend on Marketing (2025 Updated Stats!)*, available online at  
 28 <https://www.scaleo.io/blog/how-much-sportsbooks-spend-on-marketing-2024-updated-stats/> (last visited January 19, 2026)

1 betting partner of the NFL, NHL, PGA TOUR, and UFC, as well as  
2 an official daily fantasy partner of NASCAR, an official sports betting  
3 partner of the NBA and an authorized gaming operator of MLB.”<sup>32</sup>

- 4 b. Traditional TV Ads: DraftKings runs extensive traditional TV  
5 advertisements featuring celebrities and promotional products and  
6 offers to attract new customers.<sup>33</sup>
- 7 c. Digital Marketing: DraftKings invests heavily in online digital  
8 advertising, including Google Ads and social media advertising to  
9 target specific demographics and interests.
- 10 d. Promotional Offers: DraftKings uses new user bonuses, deposit  
11 matches, and referral programs, among other tactics, to incentivize  
12 sign-ups.
- 13 e. Seasonal Campaigns: DraftKings strategically times ad campaigns  
14 around major sporting events (e.g., the NBA Finals) to maximize  
15 potential reach and engagement.
- 16 f. User Interface Design and Personalization: On information and belief,  
17 DraftKings utilizes data analytics to personalize marketing messages  
18 and platform experiences based on user preferences.
- 19 g. Loyalty Programs: DraftKings incentivizes repeat engagement and  
20 loyalty through rewards programs, exclusive contests, and  
21 promotions.
- 22 h. Content Creation: DraftKings provides content like sports news,  
23 player updates, expert analysis, and tips to drive potential customer  
24 engagement with its services.

25  
26 <sup>32</sup> *DraftKings Becomes an Official Sports Betting and Daily Fantasy Partner of the WNBA*,  
available online at <https://www.draftkings.com/draftkings-becomes-an-official-sports-betting-and-daily-fantasy-partner-of-the-wnba> (last visited January 19, 2026).

27 <sup>33</sup> For example, DraftKings ran the following ad featuring Kevin Hart during the 2024 Super Bowl:  
28 [https://www.youtube.com/watch?v=SLZ8DI\\_G7k4](https://www.youtube.com/watch?v=SLZ8DI_G7k4) (last visited January 19, 2025).

- 1 i. Direct Customer Marketing: DraftKings sends emails, texts, and push-  
2 notifications to its existing customers, particularly when existing  
3 customers decrease their use of the Gambling Websites.

4 105. Further, DraftKings has expanded its marketing efforts in California to include co-  
5 branded products, including products that can be purchased and used by minors.

6 106. For example, here is a picture of a DraftKings advertisement on a bag of Ruffles  
7 potato chips:



16 107. Put simply, DraftKings has a comprehensive marketing and customer solicitation  
17 plan, that it spends approximately a half-billion dollars a year on, designed to entice new and  
18 existing customers to use the DraftKings services, including the Gambling Websites within  
19 California.

20 108. Those advertisements continue to this day, including during 2026 NFL playoff  
21 football that is currently being watched by millions of Californians, including children.

## 22 **H. Plaintiffs' Experiences.**

### 23 **3. Plaintiff ZhiCheng Zhen's Experience.**

24 109. At all times relevant to this action, Plaintiff ZhiCheng Zhen has resided in Alameda  
25 County, California.

26 110. In or about May 2024, in response to advertisements he saw online and while  
27 watching NBA games on TV in California, Plaintiff Zhen created an account with DraftKings.  
28 DraftKings represented to Plaintiff Zhen that the services it offered in California were legal.

1 111. Since the time of account creation, DraftKings has continued to represent to Plaintiff  
2 Zhen, including on the Gambling Websites themselves, that its services are legal in California.

3 112. In setting up and using his DraftKings account, Plaintiff Zhen expressly relied upon  
4 DraftKings' representations that the services it provides in California are legal. Plaintiff Zhen  
5 believed that DraftKings' Gambling Websites were lawful in California, and did not discover that  
6 DraftKings' Gambling Websites were not legal in California until May 2025 when he engaged  
7 counsel.

8 113. If DraftKings had honestly and accurately disclosed the unlawful nature of its  
9 gambling operations in California, Plaintiff Zhen would not have created an account with  
10 DraftKings in California and would not have placed bets while in California through the DraftKings  
11 Gambling Websites.

12 114. Since May of 2024, Plaintiff Zhen has lost approximately \$1,000 to DraftKings  
13 while in California.

14 115. If DraftKings had not solicited bets and wagers from Plaintiff Zhen while  
15 representing that such activities were legal in California (when, unknown to Plaintiff Zhen at the  
16 time, they in fact were not legal), he would not have made any of those bets or wagers and would  
17 not have paid any money to DraftKings.

18 116. In Plaintiff Zhen's experience, DraftKings pools together all bets and wagers from  
19 participants, documenting the bets and wagers that were placed, and then pays out prizes from the  
20 bet and wager pool, less the amount DraftKings collects and keeps for itself. The difference between  
21 the total bets and wagers collected and the prizes paid out is DraftKings' take.

22 117. Plaintiff Zhen has gambled with DraftKings as recently as February 12, 2025, while  
23 in California, playing NBA Pick6 and lost around \$400.

24 118. While Plaintiff Zhen has now discontinued the use of DraftKings while in  
25 California, he remains interested in online gambling in California, and if it becomes legal, he would  
26 continue to gamble online in California. Plaintiff Zhen may be tricked by DraftKings in the future  
27 into engaging in unlawful gambling in California if DraftKings continues to claim that its practices  
28 are legal.

1 119. Plaintiff Zhen’s sole reason for setting up an account with DraftKings and  
2 purportedly consenting to DraftKings’ terms of service (which he did not review and was not aware  
3 he was purportedly agreeing to at the time of account creation or otherwise) was to gain access to  
4 the gambling services in California offered by DraftKings that he now understands violate  
5 California law.

6 120. Said differently, to the extent a contract was formed between Plaintiff Zhen and  
7 DraftKings, the sole purpose of the contract was to facilitate the unlawful gambling activities that  
8 are at issue in this Complaint.

9 121. Accordingly, Plaintiff Zhen’s supposed contract with DraftKings was based  
10 exclusively on illegal and invalid consideration and no contract with DraftKings was ever formed.  
11 *See* Cal Civ. Code §§ 1607, 1608, 1667.

12 **4. Plaintiff Jonathan Smith’s Experience.**

13 122. At all times relevant to this action, Plaintiff Jonathan Smith has resided in California,  
14 presently residing in Napa County.

15 123. In or about 2019, in response to advertisements he had seen on television while  
16 watching the NBA, Plaintiff Smith created an account with DraftKings. DraftKings represented to  
17 Plaintiff Smith that the services it offered in California were legal. Smith placed bets every year on  
18 DraftKings between 2019 until May 2025.

19 124. Since that time, DraftKings has continued to represent to Plaintiff Smith—including  
20 on the Gambling Websites themselves—that its services are legal in California.

21 125. In setting up and using his DraftKings account, Plaintiff Smith expressly relied upon  
22 DraftKings’ representations that the services it provides in California are legal. Plaintiff Smith  
23 believed that DraftKings’ Gambling Websites were lawful in California, and did not discover that  
24 DraftKings’ Gambling Websites were not legal in California until May 2025 when he engaged  
25 counsel.

26 126. If DraftKings had honestly and accurately disclosed the unlawful nature of its  
27 gambling operations in California, Plaintiff Smith would not have created an account with  
28

1 DraftKings in California and would not have placed bets while in California through the DraftKings  
2 Gambling Websites.

3 127. Since May of 2019, Plaintiff Smith, has lost a total of approximately \$1,700 to  
4 DraftKings while in California, including losses in excess of 10 British pounds as recently as May  
5 2025.

6 128. If DraftKings had not solicited bets and wagers from Plaintiff Smith while  
7 representing that such activities were legal (when, unknown to Plaintiff Smith at the time, they in  
8 fact were not legal), he would not have made any of those bets or wagers and would not have paid  
9 any money to DraftKings.

10 129. Among other gambling options offered by DraftKings in California, Plaintiff Smith  
11 has played Daily Fantasy Sports through DraftKings while in California and lost money to  
12 DraftKings.

13 130. In Plaintiff Smiths' experience, DraftKings pools together all bets and wagers from  
14 participants, documenting the bets and wagers that were placed, and then pays out prizes from the  
15 bet and wager pool, less the amount DraftKings collects and keeps for itself. The difference between  
16 the total bets and wagers collected and the prizes paid out is DraftKings' take.

17 131. While Plaintiff Smith has now discontinued the use of DraftKings while in  
18 California, he remains interested in online gambling in California, and if it becomes legal, he would  
19 continue to gamble online in California. Plaintiff Smith may be tricked by DraftKings in the future  
20 into engaging in unlawful gambling in California if DraftKings continues to claim that its practices  
21 are legal.

22 132. Plaintiff Smith's sole reason for setting up an account with DraftKings and  
23 purportedly consenting to DraftKings' terms of service (which he did not review and was not aware  
24 he was purportedly agreeing to at the time of account creation) was to gain access to the gambling  
25 services in California offered by DraftKings that he now understands violate California law.

26 133. Said differently, to the extent a contract was formed between Plaintiff Smith and  
27 DraftKings, the sole purpose of the contract was to facilitate the unlawful gambling activities that  
28 are at issue in this Complaint.

1 134. Accordingly, Plaintiff Smith’s supposed contract with DraftKings was based  
2 exclusively on illegal and invalid consideration and no contract with DraftKings was ever formed.  
3 See Cal Civ. Code §§ 1607, 1608, 1667.

4 **I. Continued, Ongoing Threat**

5 135. DraftKings’ continuous, coordinated, and ongoing scheme to offer illegal gambling  
6 services in California is continuing and has operated since at least 2012: operating an illegal  
7 gambling website, profiting from sales of illegal gambling services, illegally routing, concealing  
8 and distributing gambling funds; and continuing to falsely advertise supposed “DFS” and “Pick6”  
9 as legal in California, despite full knowledge and awareness that “DFS” and “Pick6”, and more  
10 specifically, DraftKings’ fantasy sports operation is operating illegally in California.

11 136. Plaintiffs and the class members will continue to be harmed by the illegal  
12 advertisements and gambling operations in California.

13 137. Historical screenshots of DraftKings’ website and terms of service reflect the long  
14 term, and continuous scheme in California.

15 138. On April 18, 2019, DraftKings’ terms of service indicate an age requirement based  
16 on the “Jurisdictions, territories, and locations where the minimum age for permissible use” is met,  
17 but fails to “exclude” California for eligibility despite knowing its services were not legal in  
18 California:

19 **ELIGIBILITY**

20 You must be at least eighteen (18) years of age to open an account, participate in contests, or win prizes offered by the  
21 Website. In jurisdictions, territories, and locations where the minimum age for permissible use of the Website is greater  
22 than eighteen (18) years old, you must meet the age requirement in your local jurisdiction or territory. You must be at  
23 least nineteen (19) years of age at time of account creation if you are a legal resident of Alabama or Nebraska or twenty-  
24 one (21) years of age if you are a legal resident of Massachusetts. Legal residents physically located in any of the fifty (50)  
25 states and Washington, DC, excluding Alabama, Arizona, Hawaii, Idaho, Iowa, Louisiana, Montana, Nevada and  
26 Washington (the “Excluded States”) are eligible to open an account and participate in contests offered by the Website.  
27 Legal residents of the Excluded States are eligible to open and maintain accounts on the Website for use only in games  
28 that do not offer prizes. However, legal residents of Alabama or Idaho who are physically located outside of the Excluded  
States are eligible to deposit funds, enter contests and earn prizes offered by the Website. Legal residents of Canada are  
eligible to open an account and participate in contests offered by the Website.

139. DraftKings’ website reflected the following on May 3, 2019 (when Plaintiff Smith  
started using DraftKings) regarding the “legality” of DraftKings and stated that DraftKings  
“monitors new developments and acts quickly to ensure it is in compliance with the laws in any  
state where it operates”, despite knowing that California does not permit paid daily fantasy sports:

## LEGALITY

DraftKings is a pioneering American company operating in an innovative space where discussions of appropriate legal regulations are ongoing. Both federal and state laws govern DraftKings and its DFS contests. DraftKings operates in compliance with federal law, including a statute called the Unlawful Internet Gambling Enforcement Act, or UIGEA, which exempts fantasy sports contests from its regulation. State law regarding DFS contests varies by state, and is currently dynamic, with some states expressly regulating DFS contests while others continue to evaluate the legality of DFS contests and potential regulation of the industry. In some states, the legality of DFS contests has never been questioned. In states where politicians or other officials (and not the legislature) have made statements about the legality of DFS contests, DraftKings may ask a state's courts to clarify its right to operate. Some state legislatures have already passed laws confirming the legality of DFS contests. Still other legislatures are actively debating and considering laws and regulations. DraftKings monitors new developments and acts quickly to ensure it is in compliance with the laws in any state where it operates. As any changes in the law take place or regulations are implemented, DraftKings will take steps to ensure its continued compliance, and changes to this site may take place to reflect any such new laws or regulations.

140. Even after the California Attorney General issued the July 3, 2025 legal opinion, DraftKings has continued to represent that its “Daily Fantasy Sports” services are legal in California, for example, based on Web Archives, DraftKings made this representation on October 27, 2025.—and continues to do so, today.<sup>34</sup>

141. In response to the California Attorney General Opinion issued on July 3, 2025, DraftKings said in a statement to ESPN that DraftKings disagrees with the Attorney General’s opinion and that it would continue to offer its contests in California as it has done for over 13 years.<sup>35</sup>

<sup>34</sup> <https://web.archive.org/web/20251027010831/https://www.draftkings.com/where-is-draftkings-legal> (last visited January 19, 2026).

<sup>35</sup> David Purdum, *California attorney general says daily fantasy sports illegal in state*, ESPN.com, July 3, 2025, [https://www.espn.com/sports-betting/story/\\_/id/45661944/california-attorney-general-says-daily-fantasy-illegal-state](https://www.espn.com/sports-betting/story/_/id/45661944/california-attorney-general-says-daily-fantasy-illegal-state) (last visited January 19, 2026).

1 142. DraftKings has not indicated any intention to cease operations in California  
2 regarding paid daily fantasy sports competitions, or the advertisements concerning the same in  
3 California.

4 143. It also has not added any representations to the Gambling Websites that Plaintiffs  
5 were able to readily identify regarding the California Attorney General's finding of illegality.

6 **J. DraftKings' Affirmative Misrepresentations Have Tolloed the Statute of Limitations.**

7 144. As detailed above, DraftKings has consistently and explicitly represented to the  
8 public and its customers, including Plaintiffs and the Class (as defined below), that its operation of  
9 the Gambling Websites in California is legal.

10 145. Among other things, DraftKings has held itself out as being an expert on gambling  
11 law and regulations, and induced Plaintiffs and the Class to rely on its affirmative false  
12 representations and statements in order to secure Plaintiffs' and the Class's use of the Gambling  
13 Websites and to keep Plaintiffs and the Class using the unlawful Gambling Websites in California.

14 146. As a direct and proximate result of DraftKings' affirmative misrepresentations and  
15 statements, Plaintiffs and the Class believed DraftKings' contests were lawful in California and did  
16 not know that DraftKings' Gambling Services were unlawful at the time the fees were paid.

17 147. Plaintiffs and the Class members did not discover, and could not reasonably  
18 discover, that DraftKings' Gambling Services were unlawful or illegal until the filing of this lawsuit  
19 and the California Attorney General's July 3, 2025 opinion. Previously, Plaintiffs and the Class  
20 members had no reason to investigate California gambling laws given DraftKings' affirmative  
21 representations, and were not aware of any prior litigation, regulatory actions, or public information  
22 to suggest the Gambling Services were not lawful.

23 148. When Plaintiffs did finally learn the true unlawful nature of the Gambling Websites'  
24 operation in or about May of 2025 after retaining counsel, Plaintiffs promptly filed this lawsuit.  
25 Since Plaintiffs and the Class members became aware that DraftKings' Gambling Website was  
26 unlawful and illegal, DraftKings continued to operate the Gambling Website in California and  
27 represent to Californian's that its contests were lawful, causing ongoing harm, risk of inducing  
28 additional California consumers, and a continuing violation of California law.

1 **K. DraftKings Acted with Malice, Oppression, and Fraud.**

2 149. As detailed in this Complaint, DraftKings has acted with malice, oppression, and  
3 fraud.

4 150. DraftKings acted with malice, because, among other reasons and as otherwise  
5 detailed in this Complaint, DraftKings' conduct was despicable and was done with a willful and  
6 knowing disregard of the rights of the public, Plaintiffs, and the Class (as defined below) because  
7 DraftKings knew (or should have known) that its gambling operations in California were illegal,  
8 but despite that induced Plaintiffs and the Class to gamble and lose money through its Gambling  
9 Websites while in California. As the California legislature has repeatedly made clear, "no person  
10 in this state has a right to operate a gambling enterprise except as may be expressly permitted by  
11 the laws of this state." Cal. Bus. & Prof. Code § 19801(d).

12 151. DraftKings' conduct was oppressive because, among other reasons and as otherwise  
13 detailed in this Complaint, it was despicable and subjected Plaintiffs and the Class to cruel and  
14 unjust hardship in knowing disregard of their rights, including by falsely inducing them to lose  
15 significant sums of money through the illegal gambling enterprise that DraftKings held out as being  
16 legal in California.

17 152. DraftKings' conduct was fraudulent, because, among other reasons and as otherwise  
18 detailed in this Complaint, DraftKings intentionally misrepresented and concealed the true nature  
19 of its unlawful gambling enterprise from Plaintiffs and the Class by affirmatively representing that  
20 the Gambling Websites and associated contests were legal in California when DraftKings knew (or  
21 should have known) that such contests were not.

22 **L. The RICO Enterprises**

23 153. Plaintiffs' complaint alleges RICO claims involving two distinct groups of RICO  
24 "persons" and "enterprises."

25 154. The first is the Natural Person Enterprise, which consists of the following RICO  
26 persons: Defendants Robins, Kalish, and Liberman, and the RICO enterprise, DraftKings, Inc.,  
27 which is not a named defendant for purposes of the Natural Person Enterprise.  
28

1 155. The second is the Legal Entities Enterprise, an association in fact enterprise, which  
2 consists of the following RICO persons: Defendant DraftKings, Inc., Defendant Crown Gaming,  
3 Inc. and Defendants Robins, Kalish, and Liberman. The Legal Entities Enterprise exists outside of  
4 the respective entities' business activities and was formed between them as separate legal entities  
5 and persons for the purposes of carrying on an illegal gambling enterprise.

6 156. Both enterprises are discussed immediately below.

7 **1. The Natural Person Enterprise**

8 157. In operating DraftKings and the Gambling Websites, Defendants Robins, Kalish,  
9 and Liberman, work in concert to perpetuate an illegal gambling enterprise throughout the state of  
10 California where it is clear that DraftKings' daily fantasy sports services are illegal. To be clear,  
11 DraftKings' services can be offered legally in jurisdictions that permit the daily fantasy sports and  
12 Pick6 gambling services DraftKings offers (subject to appropriate registration and regulatory  
13 filings), but DraftKings also offers its daily fantasy sports and Pick6 services in jurisdictions where  
14 their services are not legally permitted, such as California, despite knowing that their services are  
15 not legal.

16 158. Defendants Robins, Kalish, and Liberman work in concert and together to play a  
17 specific role in the enterprise.

18 159. The enterprise itself exists through DraftKings, Inc. While DraftKings, Inc. exists  
19 as an entity that undertakes business offering legal gambling services in states that have allowed  
20 such services into their markets, Defendants Robins, Kalish, and Liberman have used DraftKings,  
21 Inc., to offer illegal gambling services in California and as such DraftKings, Inc. is an "enterprise"  
22 as defined under 18 U.S.C. § 1961(4). Defendants Robins, Kalish, and Liberman use DraftKings,  
23 Inc. to undertake their illegal gambling enterprise in a way that is distinct from DraftKings'  
24 operations in states where they are legally allowed to offer their Daily Fantasy Sports and Pick6  
25 services. Defendants Robins, Kalish, and Liberman use DraftKings, Inc. (and have used it for years)  
26 in California to perpetuate their illegal gambling enterprise, including by using DraftKings, Inc. to:  
27 (i) offer illegal gambling services in California, (ii) make representations regarding the legality of  
28

1 its services in California as detailed in this complaint, and (iii) spend millions of dollars advertising  
2 the legality and availability of its illegal gambling services within California.

3 160. Jason D. Robins is the Chief Executive Officer and Chairman of the Board. Robins  
4 co-founded DraftKings in December 2011 and served as its Chief Executive Officer since, and has  
5 served as the Chief Executive Officer and Chairman of the Board since April 2020.

6 161. Mr. Robins DraftKings' biography states "Mr. Robins oversees the Company's  
7 strategy and operations, while also driving financings and strategic initiatives. . . Mr. Robins has  
8 led efforts at DraftKings to work with policy makers and regulators to pass fantasy sports, sports  
9 betting and iGaming legislation."<sup>36</sup>

10 162. Mr. Robins has made specific efforts to target California consumers with  
11 DraftKings' illegal services. For example, he has conceded in an interview that he does not believe  
12 that sports betting would be legal in California by 2024 (at a time when DraftKings was operating  
13 in California as described above), and stated his opinion that "it's just self-evident that this is  
14 something California *should* be doing," (emphasis added), i.e., legalizing sports betting like the  
15 activities described herein.<sup>37</sup> Mr. Robins has actively promoted sports betting in California,  
16 admitting that it is not currently legal there while continuing to promote DraftKings services within  
17 California borders.<sup>38</sup>

18 163. Matthew Kalish is the President, DraftKings North America, and a director. Kalish  
19 co-founded the Company in December of 2011 and served as its Chief Revenue Officer from 2014  
20 until December 2019. Kalish is on the Board of Directors.

21 164. Mr. Kalish DraftKings' biography states "Mr. Kalish's areas of responsibility have  
22 grown consistently to now oversee the performance of DraftKings' Sportsbook, iGaming, Daily

23  
24 <sup>36</sup> Biography of Jason D. Robins, <https://draftkings.gcs-web.com/board-member/jason-robins> (last  
visited January 19 2026).

25 <sup>37</sup> [https://www.legalsportsreport.com/108148/legal-ca-sports-betting-could-take-years-draftkings-  
robins/](https://www.legalsportsreport.com/108148/legal-ca-sports-betting-could-take-years-draftkings-robins/) (last visited January, 19 2026).

26 <sup>38</sup> See *id.*; see also, <https://gamingamerica.com/news/14229/ceo-special-jason-robins-the-sequel>  
27 (last visited 1/15/2026); [https://www.marketwatch.com/story/draftkings-ceo-says-california-  
sports-betting-revenue-could-help-address-homelessness-and-mental-health-  
11645214820?gaa\\_at=eafs&gaa\\_n=AWetsqf4JK\\_c\\_y1itW5BJn-  
adtPRfjsrIrcz7NlqGniMPwXxMX6f2oN99tZQtDKVYYY%3D&gaa\\_ts=6966c6b1](https://www.marketwatch.com/story/draftkings-ceo-says-california-sports-betting-revenue-could-help-address-homelessness-and-mental-health-11645214820?gaa_at=eafs&gaa_n=AWetsqf4JK_c_y1itW5BJn-adtPRfjsrIrcz7NlqGniMPwXxMX6f2oN99tZQtDKVYYY%3D&gaa_ts=6966c6b1) (last visited  
28 (1/15/2026).

1 Fantasy Sports and Marketplace offerings, and he leads DraftKings’ operations, marketing and  
2 customer experience departments. Mr. Kalish focuses on developing and managing high-  
3 performing offerings and promotions that users love, and brining those offerings to market in order  
4 to drive user base growth and loyalty.”<sup>39</sup> And further, “[u]nder Mr. Kalish’s oversight, DraftKings  
5 has grown to offer a broad variety of sports and game variants in Daily Fantasy Sports, as well as  
6 highly competitive Sportsbook and iGaming offerings, which have resulted in DraftKings  
7 achieving a market leadership position in the rapidly expanding U.S. real-money gaming  
8 landscape.”<sup>40</sup>

9 165. Paul Liberman is the President, Global Technology and Product, and a director. Mr.  
10 Liberman co-founded the Company in December 2011 and served as its Chief Operations Officer  
11 (“COO”) from 2015 to December 2019. Liberman is on the Board of Directors.

12 166. Mr. Liberman’s DraftKings’ biography states “[h]e oversees our product  
13 development while leading efforts in maintain the Company’s current product offerings. . . Under  
14 his leadership, Mr. Liberman’s team has developed award-winning, stand-alone apps and product  
15 offerings including DraftKings’ DK Live and Leagues, DraftKings Daily Fantasy Sports app, and  
16 most recently, the DraftKings Sportsbook and iGaming platforms.”<sup>41</sup>

#### 17 **a. The Racketeering Acts**

##### 18 **(1) Violation of Federal Anti-Gambling Laws**

19 167. Defendants Robins, Kalish, and Liberman, by and through the enterprise, have  
20 engaged in multiple racketeering acts within the past ten years (and currently), including violating  
21 numerous federal statutes prohibiting gambling.

22 168. From its inception, Robins, Kalish, and Liberman have engaged in an enterprise to  
23 violate federal gambling laws in California and offer DraftKings, Inc.’s Daily Fantasy Sports  
24 service—and later its Pick6 service—in California. California law has always prohibited daily  
25

26 <sup>39</sup> Biography of Matthew Kalish, <https://draftkings.gcs-web.com/board-member/matthew-kalish>  
27 (last visited January 19, 2026).

28 <sup>40</sup> *Id.*

<sup>41</sup> Biography of Paul Liberman, <https://draftkings.gcs-web.com/board-member/paul-liberman> (last  
visited January 19, 2026).

1 fantasy sports gambling—but to the extent there was any uncertainty in the state of California law  
2 (there was not), any such uncertainty was definitively resolved with the release of the California  
3 Attorney General Opinion plainly stating that Daily Fantasy Sports services are illegal in California.

4 169. Despite this, Defendants Robins, Kalish, and Liberman used DraftKings, Inc., to  
5 continue to violate federal gambling statutes anyway by continuing to offer DraftKings, Inc.’s daily  
6 fantasy sports services in California, despite the Attorney General’s opinion. In fact, not only did  
7 Defendants Robins, Kalish, and Liberman offer DraftKings’ illegal Daily Fantasy Sports services  
8 in California for years, Robins, Kalish, and Liberman introduced additional illegal gambling  
9 services into California—the Pick6 service—furthering their illegal enterprise through DraftKings,  
10 Inc.

11 170. Prior to the Attorney General releasing his opinion, Defendant Robins was clear in  
12 the enterprise’s intention to enter the California sports gambling market to offer additional illegal  
13 sports gambling services. After championing Prop 27, Defendant Robins conducted an interview  
14 with Joe Pompliano on YouTube where he expressed his views as an officer of DraftKings on  
15 California’s failure to pass Prop 27 and the future of sports gambling in California: “I don’t see this  
16 being a short-term thing. It’s the biggest prize [getting DraftKings into the California market], so  
17 not surprisingly it’s going to be the hardest battle.”<sup>42</sup> And “it is self-evident that this is something  
18 [legalizing sports betting] California should be doing.”<sup>43</sup> Despite this interview occurring on March  
19 17, 2023, mere months later in December 2023, DraftKings announced that it would be launching  
20 a new service in California, the Pick6 service, despite no change in law authorizing the Pick6  
21 service.<sup>44</sup>

22 171. On information and belief, at least between Mr. Robins March 2023 interview where  
23 he acknowledged California’s refusal to legalize sports betting and December 2023, Mr. Robins as

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24  
25 <sup>42</sup> Matthew Kredell, *CA Tribes Respond to DraftKings Retreat on '24 California Sports Betting*,  
26 PlayUSA, <https://www.playusa.com/news/draftkings-ceo-comments-california-sports-betting/>  
(last visited January 20, 2026). See also <https://www.youtube.com/watch?v=VSSV-jJS3Sk> at  
31:12-31:20 (last visited January 20, 2026).

27 <sup>43</sup> *Id.*

28 <sup>44</sup> Adam Hensley, *DraftKings Adds Pick’Em Offering in CA Despite Grim Legal Outlook*,  
PlayCA, <https://www.playca.com/4015116/draftkings-expands-offerings-california/> (last visited  
January 20, 2026).

1 CEO, Mr. Kalish as President of DraftKings North America and overseer of DraftKings' daily  
2 fantasy sports operations, and Mr. Liberman as President of Global Technology and Product,  
3 devised the Pick6 service, decided they would offer the illegal Pick6 service in California as well  
4 as continuing to offer their illegal daily fantasy sports service. And, even after the Attorney  
5 General's opinion in July 2025, they continued this course of conduct despite the clear illegality.

6 172. Defendants Robins, Kalish, and Liberman's conduct and enterprise violate a host of  
7 federal law as explained below.

8 173. First, Defendants Robins, Kalish, and Liberman have violated 18 U.S.C. § 1084,  
9 which prohibits those engaged in the business of betting or wagering from knowingly using a wire  
10 communication facility for the transmission in interstate or foreign commerce of bets or wagers or  
11 information assisting in the placing of bets or wagers on any sporting event or contest where the  
12 bet or wager is illegal in the state where the bet or wager is placed.

13 174. As discussed herein, Defendants Robins, Kalish, and Liberman are engaged in the  
14 business of betting or wagering as they offer a gambling service through DraftKings, Inc., namely  
15 their Gambling Websites, which facilitate illegal gambling on fantasy sports. Defendants Robins,  
16 Kalish, and Liberman as owners and officers of DraftKings knowingly use wire communication  
17 facilities—including the internet—in interstate commerce to transmit bets and/or wagers through  
18 DraftKings. DraftKings is based in Massachusetts and Plaintiffs and the Class are based in  
19 California. Therefore, Defendants Robins, Kalish, and Liberman transmitted bets in interstate  
20 commerce when DraftKings transmitted bets for offer in California, accepted bets from California  
21 residents, and paid California residents who won bets on DraftKings' illegal gambling services.  
22 Specifically, Defendants Robins, Kalish, and Liberman through DraftKings transmitted the "lines"  
23 users could wager against relating to numerous sporting contests, accepted bets, and paid out bets,  
24 all using the internet to facilitate the same. As such, Defendants Robins, Kalish, and Liberman  
25 violated 18 U.S.C. § 1084.

26 175. Second, Defendants Robins, Kalish, and Liberman have engaged in running an  
27 illegal gambling business in violation of 18 U.S.C. § 1955, which provides that whoever conducts,  
28 finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be

1 fined or imprisoned (not more than five years) or both. An illegal gambling business is one that “(i)  
2 is a violation of the law of a State or political subdivision in which it is conducted; (ii) involves five  
3 or more persons who conduct, finance, manage, supervised, direct, or own all or part of such  
4 business; and (iii) has been or remains in substantially continuous operation for a period in excess  
5 of third days or has a gross revenue of \$2,000 in any single day.” 18 U.S.C. § 1955(b).

6 176. Defendants Robins, Kalish, and Liberman engaged in running an illegal gambling  
7 business as follows. Defendants Robins, Kalish, and Liberman manage, direct, and in some cases  
8 own all or part of DraftKings, which offers its illegal Daily Fantasy Sports and Pick6 services in  
9 California. As detailed extensively in this Amended Complaint and the Attorney General’s  
10 Opinion, DraftKings’ Daily Fantasy Sports and Pick6 services are illegal in California. DraftKings  
11 has more than five individuals who conduct, finance, manage, supervise, direct, or own all or part  
12 of DraftKings.<sup>45</sup> Additionally, DraftKings has been in operation for more than thirty days (in fact  
13 for over a decade) in California, and has gross revenue from California alone of more than \$2,000  
14 per day. Because DraftKings offers gambling services (namely, engaging in pool-selling and/or  
15 bookmaking, among others) that are illegal in the state of California, its business involves five or  
16 more persons who finance, manage, supervise, direct, or own all or part of DraftKings, and  
17 DraftKings has been in continuous operations for more than thirty-days and/or has gross revenues  
18 of more than \$2,000 in a single day, Robins, Kalish, and Liberman are engaged in an illegal  
19 gambling business under 18 U.S.C. §1955.

20 177. Third, Defendants Robins, Kalish, and Liberman have engaged in the interstate  
21 transportation of wagering paraphernalia through DraftKings in violation of 18 U.S.C. § 1953,  
22 which provides that “whoever . . . knowingly carries or sends in interstate or foreign commerce  
23 any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used,  
24 or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) *wagering pools with*

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27 <sup>45</sup> See DraftKings Board of Directors page, which identifies more than five individuals who  
28 conduct, finance, manage, supervise, direct, and/or own all or part of DraftKings, including the  
named individual Defendants. <https://draftkings.gcs-web.com/governance/board-of-directors> (last  
visited January 19, 2026).

1 *respect to a sporting event*; or (c) in a numbers, policy, bolita or similar game shall be fined under  
2 this title or imprisoned for not more than five years, or both.” (emphasis added).

3 178. Defendants Robins, Kalish, and Liberman violated this provision by knowingly  
4 sending in interstate commerce through DraftKings writings and other devices used or designed for  
5 use in wagering pools with respect to a sporting event. Specifically, Defendants Robins, Kalish,  
6 and Liberman, designed a website and mobile application, which were designed to allow  
7 participation in wagering pools with respect to sporting events. DraftKings website and mobile  
8 application facilitate the illegal Daily Fantasy Sports and Pick6 services DraftKings offers to users,  
9 which are wagering pools on sporting events. As detailed herein, users can bet on the outcome of  
10 sporting events based on the line DraftKings sets, and Defendants Robins, Kalish, and Liberman  
11 knowingly transmits these bets and betting information through interstate commerce through  
12 DraftKings to facilitate user participating in the wagering pools, which is a violation of 18 U.S.C §  
13 1953.

#### 14 (2) **Wire Fraud**

15 179. In addition to DraftKings’ illegal gambling operations, Defendants Robins, Kalish,  
16 and Liberman also, by and through DraftKings (the enterprise), engage in a systematic and ongoing  
17 scheme with the intent to defraud, deceive, and/or mislead the public, Plaintiffs, and others who  
18 used DraftKings services to illegally gamble. Defendants Robins, Kalish, and Liberman knowingly  
19 devised and/or knowingly participated in a scheme or artifice to defraud its users, namely falsely  
20 representing to its users DraftKings Daily Fantasy Sports and Pick6 services were legal through  
21 statements communicated through DraftKings, or to obtain money or property of its users by means  
22 of false or fraudulent pretenses or representation in violation of 18 U.S.C. § 1343.

23 180. Defendants Robins, Kalish, and Liberman’s facilitation of illegal gambling and  
24 other business practices described herein are contrary to public policy and/or fail to measure up to  
25 the reflection of moral uprightness, fundamental honesty, fair play, and right dealing in general and  
26 business life of members of society in violation of 18 U.S.C. § 1343.

1 181. Defendants Robins, Kalish, and Liberman could foresee and in fact did foresee that  
2 the interstate wires would be used “for the purpose of” advancing, furthering, executing,  
3 concealing, conducting, participating in, or carrying out the scheme, within the meaning of 18  
4 U.S.C. § 1343.

5 182. Defendants Robins, Kalish, and Liberman acting singularly and in concert, through  
6 the enterprise (DraftKings), used the interstate wires or caused the interstate wires to be used “for  
7 the purpose of” advancing, furthering, executing, concealing, conducting, participating in, or  
8 carrying out a scheme to defraud the victims, within the meaning of 18 U.S.C. § 1343.

9 183. By way of example, Defendants Robins, Kalish, and Liberman through DraftKings  
10 specifically used the interstate wires or caused the interstate wires to do the following:

11 (a) Transmitting information relating to an illegal gambling business across state  
12 lines.

13 (b) Transmitting information relating to the legality of its illegal gambling  
14 business across state lines.

15 (c) Accepting wagers related to an illegal gambling business and paying out  
16 “winnings” to those that placed illegal bets.

17 (d) Accepting money from users related to their illegal gambling.

18 184. All of the wire communications described above crossed interstate and international  
19 borders by reason of the technology used to transmit the communications, namely the internet.

20 185. It is not possible for Plaintiffs to plead with particularly all instances of wire fraud  
21 that advanced, furthered, executed, and concealed the scheme because the particulars are within the  
22 exclusive control and within the knowledge of Defendants Robins, Kalish, and Liberman and other  
23 presently unknown individuals.

24 186. Each and every use of interstate wires described above was committed by  
25 Defendants Robins, Kalish, and Liberman with the specific intent to defraud users or to obtain the  
26 property of users by means of false or fraudulent pretenses, representations, or promises.  
27 Defendants Robins, Kalish, and Liberman’s acts of wire fraud in violation of 18 U.S.C. 1343  
28 constitute racketeering activity as defined by 18 U.S.C. § 1961.

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**b. Effect on Interstate Commerce**

187. During the period applicable to this lawsuit, Defendants Robins, Kalish, and Liberman by and through DraftKings marketed, promoted, and distributed its illegal gambling services across state lines and throughout the United States, including by operating illegal Gambling Websites in contravention of state and federal law.

188. To effectuate their illegal gambling scheme, Defendants Robins, Kalish, and Liberman by and through DraftKings transmitted funds, contracts, invoices, and other types of business transactions or communications, in a continuous flow of commerce across state lines and throughout the United States. Every time a user placed a bet on DraftKings, Defendants Robins, Kalish, and Liberman used interstate electronic communications to process the transaction by and through DraftKings. These thousands of communications in furtherance of their fraudulent scheme constitute wire fraud under federal law.

189. Defendants’ illegal gambling scheme and related activities were within the flow of and had substantial effects on domestic, import, and interstate commerce.

**2. The Legal Entity Enterprise<sup>46</sup>**

190. Defendant DraftKings, Inc., Defendant Crown Gaming, Inc. and Defendants Robins, Kalish, and Liberman operate as an association-in-fact enterprise to perpetuate an illegal gambling scheme throughout the state of California where it is clear that the enterprises’ gambling services are illegal.

191. Defendants DraftKings, Inc. and Crown Gaming, Inc. (collectively the “Entity Defendants”), work in concert and together to play a specific role in the association-in-fact enterprise. Plaintiffs understand that the Entity Defendants came together for the purposes of conducting their affairs through a RICO prohibited course of conduct, namely offering gambling products in violation of federal law outlawing those engaged in the business of betting or wagering

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<sup>46</sup> Plaintiffs note that they are specifically authorized by Federal Rule of Civil Procedure Rule 8(d)(2) to make their allegations in the alternative, and accordingly, Plaintiffs allege the existence of two separate RICO enterprises. To the extent finds that there is a conflict between the allegations, Plaintiffs request the right to amend.

1 from knowingly using a wire communication facility for the transmission of bets and wagers,  
2 illegally transporting wagering paraphernalia, running an illegal gambling business, and wire fraud.

3 192. The Entity Defendants associated for a common purpose of engaging in a course of  
4 conduct, perpetuating an illegal gambling scheme throughout the state of California.

5 193. As described throughout this complaint, Defendant DraftKings, Inc., is a  
6 corporation that offers gambling services throughout the United States, including its Daily Fantasy  
7 Sports and Pick6 services in California.

8 194. Defendant Crown Gaming, Inc. is an entity that offers software solutions to facilitate  
9 gambling services. While Defendant Crown Gaming, Inc. is a subsidiary of DraftKings, Inc. it is  
10 its own legal entity and maintains a separate corporate form. Crown Gaming, Inc. has previously  
11 entered into contracts with third-parties to assist it in designing and maintaining software solutions  
12 to offer gambling services.<sup>47</sup> Crown Gaming, Inc. uses these third-party contracts as well as its own  
13 proprietary technology to create infrastructure necessary for gambling services.

14 195. The two entities associated with one another for the purpose of offering gambling  
15 services to California users that the enterprise marketed as being legal for the purpose of attracting  
16 new users, including Plaintiffs, to use their gambling services to engage in illegal gambling and  
17 thus directly profit from the services the enterprise offered. Defendant DraftKings, Inc.'s role in  
18 the enterprise is to be consumer facing, advertise the enterprises' services, interface with users, and  
19 complete the functions necessary to pay-out wagers to users. Defendant Crown Gaming, Inc.'s role  
20 in the enterprise to be product-facing, maintaining and implementing software to allow users to  
21 participate in the enterprise's illegal California gambling operations.

22 196. The Entity Defendants' operation is ongoing as the Entity Defendants continue to  
23 associate together to offer illegal gambling products within the state of California. As detailed  
24 herein, the gambling services at issue are still available in California.

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26 <sup>47</sup> See [https://www.sec.gov/Archives/edgar/data/1772757/000110465920039031/tv538896\\_ex10-5.htm](https://www.sec.gov/Archives/edgar/data/1772757/000110465920039031/tv538896_ex10-5.htm), the initial agreement between Sports Information Services Limited and Crown Gaming, Inc. (last visited January 20, 2026); see also [https://draftkings.gcs-web.com/static-files/0dd5d1d2-a6e8-4c21-9c14-aba57f1880ac#tm2025487d3\\_ex10-1.htm](https://draftkings.gcs-web.com/static-files/0dd5d1d2-a6e8-4c21-9c14-aba57f1880ac#tm2025487d3_ex10-1.htm), an addendum between the parties (last visited January 20, 2026).

1 197. Defendants Robins, Kalish, and Liberman role in the Legal Entity Enterprise is  
2 substantially the same as their role in the Natural Persons Enterprise, as alleged above.

3 **a. The Racketeering Acts**

4 **(1) Violation of Federal Anti-Gambling Laws**

5 198. Defendants, by and through their associated-in-fact enterprise, have engaged in  
6 multiple racketeering acts within the past ten years, including violating numerous federal statutes  
7 prohibiting gambling.

8 199. Since at least 2018 (when Crown Gaming, Inc. was incorporated), the Entity  
9 Defendants associated with each other as an enterprise to violate federal gambling laws in  
10 California and offer the enterprises gambling services in California. California law has always  
11 prohibited daily fantasy sports gambling—but to the extent there was any uncertainty in the state  
12 of California law (there was not), any such uncertainty was definitely resolved with the release of  
13 the California Attorney General Opinion plainly stating that Daily Fantasy Sports services are  
14 illegal in California.

15 200. As discussed herein, on July 3, 2025, the Attorney General of California released a  
16 report confirming that California law prohibits the operation of daily fantasy sports games as they  
17 constitute wagering on sports in violation of Penal Code section 337a. *See* Section D.

18 201. Despite this, the Entity Defendants continue to use their associated-in-fact enterprise  
19 to offer Daily Fantasy Sports and Pick6 services to California residents, despite the clear  
20 proclamation that such services were illegal under California law. To be clear, the Entity  
21 Defendants were engaged in the same conduct prior to the Attorney General’s opinion.

22 202. The Entity Defendants illegal gambling enterprise violates a host of federal law as  
23 explained below.

24 203. First, the Entity Defendants have violated 18 U.S.C. § 1084, which prohibits those  
25 engaged in the business of betting or wagering from knowingly using a wire communication facility  
26 for the transmission in interstate or foreign commerce of bets or wagers or information assisting in  
27 the placing of bets or wagers on any sporting event or contest where the bet or wager is illegal in  
28 the state where the bet or wager is placed.

1           204. Defendants DraftKings, Inc. and Crown Gaming, Inc. are engaged in the business  
2 of bettering or wagering as Defendant DraftKings, Inc. is the entity offering the services to  
3 consumers and Crown Gaming, Inc. is the entity building, maintaining, and implementing the  
4 technological infrastructure necessary for users to engage in the gambling services.

5           205. To ensure that their services could work and that users could gamble, the Entity  
6 Defendants utilized the Gambling Websites to transmit bets and/or wagers for the enterprise. Both  
7 entities are based in Massachusetts and Plaintiffs and the Class are based in California. Therefore,  
8 the Entity Defendants transmitted bets in interstate commerce when the enterprise transmitted bets  
9 for offer in California, accepted bets from California residents, paid California residents who won  
10 bets on the enterprises' illegal gambling services, and worked in concert to set-up the technological  
11 infrastructure to facilitate the same. Specifically, the Entity Defendants transmitted the "lines" users  
12 could wager against relating to numerous sporting contests, accepted bets, and paid out bets, all  
13 using the internet to facilitate the same.

14           206. Second, the Entity Defendants have engaged in running an illegal gambling business  
15 in violation of 18 U.S.C. § 1955, which provides that whoever conducts, finances, manages,  
16 supervises, directs, or owns all or part of an illegal gambling business shall be fined or imprisoned  
17 (not more than five years) or both. An illegal gambling business is one that "(i) is a violation of the  
18 law of a State or political subdivision in which it is conducted; (ii) involves five or more persons  
19 who conduct, finance, manage, supervised, direct, or own all or part of such business; and (iii) has  
20 been or remains in substantially continuous operation for a period in excess of third days or has a  
21 gross revenue of \$2,000 in any single day." 18 U.S.C. § 1955(b).

22           207. The Entity Defendants engage in running an illegal gambling business (as the  
23 conduct is ongoing) as follows. Defendants DraftKings, Inc. and Crown Gaming, Inc. manage and  
24 direct the enterprise, which offers illegal gambling services in California (the Daily Fantasy Sports  
25 and Pick6 services). As detailed extensively in this Amended Complaint and the Attorney General's  
26 Opinion, the enterprise's Daily Fantasy Sports and Pick6 services are illegal in California. The  
27 enterprise has more than five individuals who conduct, finance, manage, supervise, direct, or own  
28 all or part of the enterprise as both of the Entity Defendants have individuals who conduct, manage,

1 supervise, direct, or own all or part of them. Additionally, the enterprise has been in operation for  
2 more than thirty days in California, and has gross revenue from California alone of more than  
3 \$2,000 per day. Because the enterprise offers gambling services (namely, engaging in pool-selling  
4 and/or bookmaking, among others) that are illegal in the state of California, its business involves  
5 five or more persons who finance, manage, supervise, direct, or own all or part of the enterprise,  
6 and the enterprise has been in continuous operations for more than thirty-days and/or has gross  
7 revenues of more than \$2,000 in a single day, the Entity Defendants are engaged in an illegal  
8 gambling business under 18 U.S.C. §1955.

9 208. Third, the Entity Defendants have engaged in the interstate transportation of  
10 wagering paraphernalia through the enterprise in violation of 18 U.S.C. § 1953, which provides  
11 that whoever . . . knowingly carries or sends in interstate or foreign commerce any record,  
12 paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be  
13 used, or adapted, devised, or designed for use in (a) bookmaking; or (b) *wagering pools with respect*  
14 *to a sporting event*; or (c) in a numbers, policy, bolita or similar game shall be fined under this title  
15 or imprisoned for not more than five years, or both.” (emphasis added).

16 209. The Entity Defendants violated this provision by knowingly sending in interstate  
17 commerce writing and other devices used or designed for use in wagering pools with respect to a  
18 sporting event. Specifically, the Entity Defendants maintain certain Gambling Websites, which  
19 allows for participation in wagering pools with respect to sporting events. As detailed herein, users  
20 can bet on the outcome of sporting events based on the line the enterprise sets, and the Entity  
21 Defendants used the Gambling Websites to knowingly transmit these bets and betting information  
22 through interstate commerce to facilitate user participation in wagering pools, which is a violation  
23 of 18 U.S.C. § 1953.

## 24 (2) Wire Fraud

25 210. In addition to the enterprise’s illegal gambling operations, the Entity Defendants  
26 also engage in a systematic and ongoing scheme with the intent to defraud, deceive, and/or mislead  
27 the public, Plaintiffs, and others who used the enterprises services to illegally gamble. The Entity  
28 Defendants knowingly devised and/or knowingly participated in a scheme or artifice to defraud its

1 users, namely falsely representing to users that the gambling services were legal through statements  
2 communicated within the Gambling Websites the Entity Defendants utilize and maintain, or to  
3 obtain money or property of its users by means of false or fraudulent pretenses or representation in  
4 violation of 18 U.S.C. § 1343.

5 211. The Entity Defendants facilitation of illegal gambling and other business practices  
6 described herein are contrary to public and/or fail to measure up to the reflection of moral  
7 uprightness, fundamental honesty, fair play, and right dealing in general and business life of  
8 members of society in violation of 18 U.S.C. § 1343.

9 212. By way of example, the Entity Defendants specifically used interstate wires or cause  
10 interstate wires to do the following:

11 (a) Transmitting information relating to an illegal gambling business across state  
12 lines.

13 (b) Transmitting information relating to the legality of its illegal gambling business  
14 across state lines.

15 (c) Accepting wagers related to an illegal gambling business and paying out  
16 “winnings” to those that placed illegal bets.

17 (d) Accepting money from users related to their illegal gambling.

18 213. All of the wire communications described above crossed interstate and international  
19 borders by reason of the technology used to transmit the communications, namely the internet.

20 214. It is not possible for Plaintiffs to plead with particularly all instances of wire fraud  
21 that advanced, furthered, executed, and concealed the scheme because the particulars are within the  
22 exclusive control and within the knowledge of the Entity Defendants and other presently unknown  
23 individuals.

24 215. Each and every use of interstate wires described above was committed by the Entity  
25 Defendants with the specific intent to defraud users or to obtain the property of users by means of  
26 false or fraudulent pretenses, representations, or promises. The Entity Defendants acts of wire fraud  
27 in violation of 18 U.S.C. 1343 constitute racketeering activity as defined by 18 U.S.C. § 1961.  
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**b. Effect on Interstate Commerce**

216. During the period applicable to this lawsuit, the Entity Defendants marketed, promoted, and distributed its illegal gambling services across state lines and throughout the United States, including by operating illegal Gambling Websites in contravention of state and federal law.

217. To effectuate their illegal gambling scheme, the Entity Defendants transmitted funds, contracts, invoices, and other types of business transactions or communications, in a continuous flow of commerce across state lines and throughout the United States. Every time a user placed a bet through the enterprise, the Entity Defendants used interstate electronic communications to process the transaction by and through the enterprise. These thousands of communications in furtherance of their fraudulent scheme constitute wire fraud under federal law.

218. The Enterprise Defendants’ illegal gambling scheme and related activities were within the flow of and had substantial effects on domestic, import, and interstate commerce.

219. The Enterprise Defendants illegal gambling scheme and related activities were within the flow of and had substantial effects on domestic, import, and interstate commerce.

**M. Plaintiffs and the Class Lack an Adequate Remedy at Law**

220. Plaintiffs and the Class (defined below) have suffered an injury in fact resulting in the loss of money and/or property as a proximate result of Defendants’ violation of law and wrongful conduct alleged herein, and they lack an adequate remedy at law to address the unfair conduct at issue here. Legal remedies available to Plaintiffs and Class are inadequate because they are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not as equally certain as restitution because the standard that governs restitution is different than the standard that governs damages. As such, the Court may award restitution even if it determines that Plaintiffs and the Class fail to sufficiently adduce evidence to support an award of damages. Further, damages and restitution are not the same amount. Unlike damages, restitution is not limited to the amount of money a defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including restitution, entitles a plaintiff to recover all profits from the wrongdoing, even where the original funds have grown far greater than the legal rate of interest would recognize. In

1 short, significant differences in proof and certainty establish that any potential legal claim cannot  
2 serve as an adequate remedy at law.

3 221. Equitable relief is appropriate because Plaintiffs and the Class may lack an adequate  
4 remedy at law if, for instance, damages resulting from their use of the Gambling Websites is  
5 determined to be an amount less than paid to use the Gambling Websites. Without compensation  
6 for the full amount paid, Plaintiffs and the Class would be left without the remedy they are entitled  
7 to in equity.

8 222. Injunctive relief is needed to halt DraftKings' illegal operations in California.  
9 DraftKings' continuous, ongoing scheme, which has continued through despite failing to secure  
10 express legalization of sports betting in 2024, will continue to harm California consumers  
11 otherwise. And Plaintiffs have standing to seek an injunction despite now knowing now that  
12 DraftKings' services are illegal; if learning of the illegality deprived a party of standing to seek a  
13 public injunction, the issue would permanently evade review. Only permanent injunctive relief will  
14 protect California consumers from DraftKings' misrepresentations and predatory practices.

15 223. Plaintiffs explicitly plead those equitable claims in the alternative to their legal  
16 claims as Plaintiffs are permitted to do under Fed. R. Civ. P. 8(d) to the extent required.

17 **CLASS ALLEGATIONS**

18 224. This action is brought and may properly proceed as a class action pursuant to Federal  
19 Rule of Civil Procedure Rule 23, including, without limitation, Sections (b)(1), (b)(2), and (b)(3)  
20 of Rule 23.

21 225. Plaintiffs seek certification of the following class (the "Class"):

22 All residents of California who placed a bet or wager on the  
23 Gambling Websites while in California.

24 226. The following people are excluded from the Class: (1) any Judge or Magistrate  
25 presiding over this action, members of their staffs (including judicial clerks), and members of their  
26 families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any  
27 entity in which the Defendants or its parents have a controlling interest, and their current or former  
28 employees, officers and directors; (3) persons who properly execute and file a timely request for

1 exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on  
2 the merits or otherwise released; (5) Plaintiffs' counsel and Defendants' counsel, and non-attorney  
3 employees of their firms; and (6) the legal representatives, successors, and assigns of any such  
4 excluded persons.

5 227. DraftKings' practices have resulted in actual injury and harm to the Class members  
6 in the amount of deposits made with DraftKings and/or losses incurred on the Gambling Websites  
7 for bets or wagers placed while in California.

8 228. Plaintiffs explicitly reserve their right to amend, add to, modify, and/or otherwise  
9 change the proposed class definition as discovery in this action progresses.

10 229. **Numerosity.** Plaintiffs are informed and believe that there are hundreds of  
11 thousands or potentially millions of members of the Class. The Class is so large that the joinder of  
12 all of its members is impracticable. The exact number of members of the Class can be determined  
13 from information in the possession and control of DraftKings.

14 230. **Commonality.** DraftKings has acted or refused to act on grounds that apply  
15 generally to the Class. Absent certification of the Class, the relief sought herein creates the  
16 possibility of inconsistent judgments and/or obligations imposed on DraftKings and/or Plaintiffs  
17 and the Class. Numerous common issues of fact and law exist, including, without limitation:

- 18 a. What gambling contests DraftKings offers in California.
- 19 b. What mediums (e.g., website, app, in person, etc.) DraftKings offers its  
20 gambling contests through in California.
- 21 c. The dates and number of gambling contests offered by DraftKings in  
22 California.
- 23 d. Whether DraftKings violates California Penal Code Section 319 by  
24 operating the Gambling Websites in California and allowing California  
25 residents to place bets and wagers on the Gambling Websites.
- 26 e. Whether DraftKings violates California Penal Code Section 320 by  
27 operating the Gambling Websites in California and allowing California  
28 residents to place bets and wagers on the Gambling Websites.

- 1 f. Whether DraftKings violates California Penal Code Section 321 by
- 2 operating the Gambling Websites in California and allowing California
- 3 residents to place bets and wagers on the Gambling Websites.
- 4 g. Whether DraftKings violates California Penal Code Section 330 by
- 5 operating the Gambling Websites in California and allowing California
- 6 residents to place bets and wagers on the Gambling Websites.
- 7 h. Whether DraftKings violates California Penal Code Section 330a by
- 8 operating the Gambling Websites in California and allowing California
- 9 residents to place bets and wagers on the Gambling Websites.
- 10 i. Whether DraftKings violates California Penal Code Section 337a by
- 11 operating the Gambling Websites in California and allowing California
- 12 residents to place bets and wagers on the Gambling Websites.
- 13 j. Whether DraftKings violates any additional sections of the California Penal
- 14 Code or other applicable California law and/or regulation by operating the
- 15 Gambling Websites in California and allowing California residents to place
- 16 bets and wagers on the Gambling Websites.
- 17 k. Whether DraftKings' violations of the California Penal Code give rise to
- 18 liability under California's unfair competition law.
- 19 l. Whether DraftKings is a "person" within the meaning of Section 1761(c) of
- 20 the California Consumer Legal Remedies Act ("CLRA").
- 21 m. Whether Plaintiffs are "consumers" within the meaning of Section 1761(d)
- 22 of the CLRA.
- 23 n. Whether DraftKings' practices violate the following CLRA Sections, among
- 24 others:
  - 25 i. "Misrepresenting the source, sponsorship, approval, or certification
  - 26 of goods or services" (a)(2);
  - 27 ii. "Misrepresenting the affiliation, connection, or association with, or
  - 28 certification by, another" (a)(3);

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- iii. “Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have” (a)(5);
- iv. “Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another” (a)(7);
- v. “Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law” (a)(14);
- vi. “Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction” (a)(17);  
and
- vii. “Inserting an unconscionable provision in the contract” (a)(19).
- o. Whether DraftKings’ operation of the Gambling Websites should be enjoined in California.
- p. The appropriate damages model for calculating restitution, disgorgement, and/or damages for violation of the unfair competition law and/or the CLRA.
- q. Whether DraftKings’ affirmative misrepresentations that the Gambling Websites are legal tolled any otherwise applicable statutes of limitations.
- r. Whether any subset of claims held by the Class are barred by the statute of limitations.
- s. Whether Defendants violated 18 U.S.C. § 1955 concerning the prohibition of illegal gambling businesses.
- t. Whether Defendants violated 18 U.S.C. § 1952, which prohibits the interstate transportation of wagering paraphernalia.

- 1 u. Whether Defendants violated 18 U.S.C. § 1084, which prohibits
- 2 knowingly using a wire communication facility to transmit betting
- 3 information concerning a sporting event or contest.
- 4 v. Whether Defendants committed wire fraud in violation of 18 U.S.C.
- 5 § 1343.
- 6 w. Whether Defendants violated RICO.
- 7 x. Whether Defendants DraftKings, Inc. and Crown Gaming, Inc.
- 8 violated 18 U.S.C. § 1955 concerning the prohibition of illegal
- 9 gambling businesses.
- 10 y. Whether Defendants DraftKings, Inc. and Crown Gaming, Inc.
- 11 violated 18 U.S.C. § 1952, which prohibits the interstate
- 12 transportation of wagering paraphernalia.
- 13 z. Whether Defendants DraftKings, Inc. and Crown Gaming, Inc.
- 14 violated 18 U.S.C. § 1084, which prohibits knowingly using a wire
- 15 communication facility to transmit betting information concerning a
- 16 sporting event or contest.
- 17 aa. Whether Defendants DraftKings, Inc. and Crown Gaming, Inc.
- 18 violated RICO.
- 19 bb. The appropriate model for calculating damages, equitable restitution,
- 20 and/or equitable disgorgement.
- 21 cc. Whether DraftKings’s affirmative misrepresentations that the
- 22 Gambling Websites tolled any otherwise applicable statutes of
- 23 limitations.
- 24 dd. Whether any subset of claims held by the Class are barred by the
- 25 statute of limitations.

26 231. **Predominance.** These common issues predominate over individualized inquiries in  
27 this action because DraftKings’ liability can be established as to all members of the Class as  
28 discussed herein.

1           232. **Typicality.** Plaintiffs' claims against DraftKings and experience with DraftKings  
2 are typical, if not identical, to the claims and experiences of members of the Class because, among  
3 other reasons, Plaintiffs' claims arise from DraftKings' practices that are applicable to the entire  
4 Class.

5           233. **Adequacy.** Plaintiffs will fairly and adequately represent and protect the interests  
6 of the Class and have retained counsel competent and experienced in complex litigation and class  
7 actions. Plaintiffs' claims are representative of the claims of the other members of the Class, as  
8 Plaintiffs and each member of the Class lost money to DraftKings. Plaintiffs also have no interests  
9 antagonistic to those of the Class, and DraftKings has no defenses unique to Plaintiffs. Plaintiffs  
10 and their counsel are committed to vigorously prosecuting this action on behalf of the Class and  
11 have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse  
12 to the Class.

13           234. **Superiority.** There are substantial benefits to proceeding as a class action that  
14 render proceeding as a class action superior to any alternatives, including that it will provide a  
15 realistic means for members of the Class to recover damages; the damages suffered by members of  
16 the Class may be relatively small; it would be substantially less burdensome on the courts and the  
17 parties than numerous individual proceedings; many members of the Class may be unaware that  
18 they have legal recourse for the conduct alleged herein; and because issues common to members  
19 of the Class can be effectively managed in a single proceeding. Plaintiffs and their counsel know  
20 of no difficulty that could be encountered in the management of this litigation that would preclude  
21 its maintenance as a class action.

22           235. Plaintiffs reserve the right to revise each of the foregoing allegations based on facts  
23 learned through additional investigation and in discovery.

**CAUSES OF ACTION**

**A. First Cause of Action: Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, (“UCL”) on Behalf of Plaintiffs and the Class Against Defendant DraftKings.**

236. Plaintiffs incorporate by reference all allegations contained in this First Amended Complaint.

237. DraftKings, Plaintiffs, and Class are “persons” within the meaning of the UCL.

238. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice,” each of which is separately actionable.

239. DraftKings’ practices of operating the Gambling Websites within California are “unlawful” within the meaning of the UCL because, among other things, the operation of the Gambling Websites violates California Penal Code Sections 319, 320, 321, 330, 330a, 337a, and 337j because, among other reasons, in the course of business and in the course of trade and commerce, DraftKings has:

- a. Operated illegal lotteries and/or games of chance in violation of Penal Code Sections 319, 320, 321, 330a, and 337j by operating the Daily Fantasy Sports contests and Pick6 gambling contests in California.<sup>48</sup>
- b. Operated banking and/or percentage gambling games in violation of Penal Code Section 330 by operating the Daily Fantasy Sports contests and Pick6 gambling contests in California.
- c. Engaged in pool selling in violation of Penal Code Section 337(a)(1) by operating the Daily Fantasy Sports contests and Pick6 gambling contests in California.

<sup>48</sup> Plaintiffs note that they are specifically authorized by Federal Rule of Civil Procedure Rule 8(d)(2) to make their allegations in the alternative, and accordingly, allege that the gambling contests offered in California by DraftKings constitute games of “chance” for purposes of those Penal Code Sections that prohibit lotteries and/or other games of chance, and constitute games of skill, to the extent skill is found to be a necessary element of certain claims made under Penal Code Section 337a or otherwise.

- 1 d. Engaged in bookmaking in violation of Penal Code Section 337(a)(1)
- 2 by operating the Daily Fantasy Sports contests and Pick6 gambling
- 3 contests in California.
- 4 e. Violated Penal Code Section 337(a)(3) by “receiv[ing], hold[ing], or
- 5 forward[ing] . . . money . . . staked, pledged, bet or wagered . . upon
- 6 the result, or purported result, of any trial, or purported trial, or
- 7 contest, or purported contest, of skill, speed or power of endurance of
- 8 person or animal, or between persons, animals, or mechanical
- 9 apparatus, or upon the result, or purported result, of any lot, chance,
- 10 casualty, unknown or contingent event whatsoever” by operating the
- 11 Daily Fantasy Sports contests and Pick6 gambling contests in
- 12 California.
- 13 f. Violated Penal Code Section 337(a)(4) by “record[ing], or
- 14 register[ing] any bet or bets, wager or wagers, upon the result . . . of
- 15 any trial, or purported trial, or contest, or purported contest, of skill,
- 16 speed or power of endurance of person or animal, or between persons,
- 17 animals, or mechanical apparatus, or upon the result, or purported
- 18 result, of any lot, chance, casualty, unknown or contingent event
- 19 whatsoever” by operating the Daily Fantasy Sports contests and Pick6
- 20 gambling contests in California.
- 21 g. Violated Penal Code Section 337(a)(6) by “[o]ffer[ing] or accept[ing]
- 22 any bet or bets, or wager or wagers, upon the result . . . of any trial, or
- 23 purported trial, or contest, or purported contest, of skill, speed or
- 24 power of endurance of person or animal, or between persons, animals,
- 25 or mechanical apparatus” by operating the Daily Fantasy Sports
- 26 contests and Pick6 gambling contests in California.
- 27 h. Engaged in racketeering in violation of 18 U.S.C. Section 1962(c), by
- 28 and through an enterprise, by conducting and participating in the

1 conduct of the enterprise by operating an illegal gambling business,  
2 transmitting illegal bets and wagering information, transporting  
3 gambling paraphernalia in interstate commerce, and engaging in wire  
4 fraud.

5 i. Conspired to violate 18 U.S.C. Section 1962(c).

6 j. Violated Cal. Penal Code Section 496 by obtaining, retaining, and  
7 possessing money obtained by theft and/or fraudulent means, by  
8 receiving, concealing, and withholding funds obtained from Plaintiffs  
9 and class members through unlawful and fraudulent gambling  
10 transactions, knowing that such funds were obtained through conduct  
11 constituting theft.

12 k. Recovered gambling losses in violation of California Civil Code  
13 Section 22.2 and by extension the Statute of Anne.

14 240. DraftKings' operation of the Gambling Websites is also unlawful within the  
15 meaning of the UCL because DraftKings has violated the CLRA, as alleged in the Second Cause  
16 of Action, below.

17 241. DraftKings' operation of the Gambling Websites is also unlawful within the  
18 meaning of the UCL because DraftKings has violated the California Business and Professions  
19 Code, because "no person in this state has a right to operate a gambling enterprise except as may  
20 be expressly permitted by the laws of this state." Cal. Bus. & Prof. Code § 19801(d).

21 242. The acts and practices of DraftKings as alleged herein also constitute "unfair"  
22 business acts and practices under the UCL because DraftKings' conduct is unconscionable,  
23 immoral, deceptive, unfair, illegal, unethical, oppressive, and/or unscrupulous. Further, the gravity  
24 of DraftKings' conduct outweighs any conceivable benefit of such conduct.

25 243. DraftKings has, in the course of business and in the course of trade or commerce,  
26 undertaken and engaged in unfair business acts and practices by tricking consumers into believing  
27 operation of the Gambling Websites is lawful in California, when in fact, it is not, causing Plaintiffs  
28 and the Class to be tricked out of tens of millions of dollars.

1           244. Plaintiffs and the Class have suffered injury in fact—in the form of all amounts paid  
2 to DraftKings and/or the total of net losses on the Gambling Websites run by DraftKings—as a  
3 result of DraftKings’ unlawful and unfair business acts and practices and are at substantial risk of  
4 continuing to lose money and be injured by those acts and practices if the practices are not enjoined.

5           245. Plaintiffs and the Class seek an order providing restitution and disgorgement in the  
6 form of all amounts paid to DraftKings by Plaintiffs and the Class and/or the total of net losses on  
7 the Gambling Websites by Plaintiffs and the Class.

8           246. Plaintiffs and the Class further seek their attorneys’ fees and costs pursuant to  
9 California Code of Civil Procedure Section 1021.5 because Plaintiffs and the Class seek to enforce  
10 “an important right affecting the public interest” in bringing this cause of action.

11 **B. Second Cause of Action: Violation of California’s Consumer Legal Remedies Act,**  
12 **California Civil Code §§ 1750 *et seq.*, on Behalf of Plaintiffs and the Class Against**  
13 **Defendant DraftKings.**

14           247. Plaintiffs incorporate by reference all allegations contained in this First Amended  
15 Complaint.

16           248. At all relevant times, Plaintiffs and Class members were “consumers” within the  
17 meaning of the CLRA, as they were individuals seeking or acquiring, by purchase or lease, goods  
18 or services for personal, family, or household purposes.

19           249. DraftKings’ actions and conduct constituted transactions for the sale or lease of  
20 goods or services to consumers under the terms of the CLRA, namely the selling of the unlawful  
21 gambling goods and services that are at issue in this action through the Gambling Websites.

22           250. DraftKings violated the CLRA by, among other things:

- 23           a. “Misrepresenting the source, sponsorship, approval, or certification of goods  
24 or services” (a)(2);
- 25           b. “Misrepresenting the affiliation, connection, or association with, or  
26 certification by, another” (a)(3);
- 27           c. “Representing that goods or services have sponsorship, approval,  
28 characteristics, ingredients, uses, benefits, or quantities that they do not have

1 or that a person has a sponsorship, approval, status, affiliation, or connection  
2 that the person does not have” (a)(5);

3 d. “Representing that goods or services are of a particular standard, quality, or  
4 grade, or that goods are of a particular style or model, if they are of another”  
5 (a)(7);

6 e. “Representing that a transaction confers or involves rights, remedies, or  
7 obligations that it does not have or involve, or that are prohibited by law”  
8 (a)(14);

9 f. “Representing that the consumer will receive a rebate, discount, or other  
10 economic benefit, if the earning of the benefit is contingent on an event to  
11 occur subsequent to the consummation of the transaction” (a)(17); and

12 g. “Inserting an unconscionable provision in the contract” (a)(19).

13 251. DraftKings’ actions and misrepresentations were material, and DraftKings’  
14 violations of the CLRA were a substantial factor in causing Plaintiffs and the Class to lose money.

15 252. As a direct and proximate consequence of these actions, Plaintiffs and the Class  
16 suffered injury.

17 253. DraftKings’ conduct was malicious, fraudulent, and wanton in that it intentionally  
18 and knowingly provided misleading information to Plaintiffs and the Class for Defendants’ own  
19 benefit to the detriment of Plaintiffs and the Class.

20 254. The CLRA provides robust enforcement tools for consumers, including:

21 a. Prohibiting the waiver of any substantive rights provided for under the  
22 CLRA. *Id.* § 1750.

23 b. Requiring that the CLRA “shall be liberally construed and applied to  
24 promote its underlying purposes, which are to protect consumers against  
25 unfair and deceptive business practices and to provide efficient and  
26 economical procedures to secure such protection.” *Id.* § 1760.

27 c. Establishing a substantive right to litigate in the forum where the transaction  
28 occurred. *Id.* § 1780(d).

- 1 d. Establishing a substantive right to pursue class claims. *Id.* § 1781; *see also*
- 2 *id.* § 1752.
- 3 e. Authorizing injunctive relief. *Id.* § 1780(a)(2)
- 4 f. Authorizing actual damages. *Id.* § 1780(a)(1).
- 5 g. Authorizing restitution of unlawfully taken sums. *Id.* § 1780(a)(3).
- 6 h. Authorizing punitive damages. *Id.* § 1780(a)(4).
- 7 i. Authorizing statutory damages of \$1,000 per violation. *Id.* § 1780(a)(1).
- 8 j. Authorizing statutory damages of \$5,000 per injured individual, where the
- 9 unlawful conduct was directed against the elderly or the disabled. *Id.* §
- 10 1780(b)(1).
- 11 k. Requiring that the Court “shall award court costs and attorney’s fees to a
- 12 prevailing plaintiff in litigation.” *Id.* § 1780(e).

13 255. On June 20 2025, Plaintiffs’ provided the pre-suit notice contemplated by the  
14 CLRA. A true and correct copy of that notice is attached to this Complaint as **Exhibit C**. DraftKings  
15 did not substantively respond to the notice and did not materially modify its California operations  
16 to cure the deficiencies identified in the notice.

17 256. Plaintiffs seek all available remedies under the CLRA, including monetary relief for  
18 actual, punitive, and statutory damages.

19 257. DraftKings violated the CLRA by marketing and representing the gambling services  
20 as legal. In reality, the gambling services were not legal, and DraftKings’ actions,  
21 misrepresentations, and omissions were falsely, deceptively, and unlawfully marketing gambling  
22 services to conceal this fact.

23 258. DraftKings committed these acts with full awareness of the harm it would cause and  
24 engaged in such unfair and deceptive conduct despite this knowledge.

25 259. DraftKings knew or should have known that its representations violated numerous  
26 regulations and laws, including consumer protection laws, and that these statements would be relied  
27 upon by Plaintiffs and Class Members.

28

1           260. As a direct and proximate result of DraftKings’ violations of the CLRA, Plaintiffs  
2 and Class Members suffered harm by paying for the gambling services, which they would not have  
3 purchased had they known that the services were unlawfully, falsely, unfairly, and deceptively  
4 marketed as legal, when the gambling services were not legal.

5           261. Plaintiffs and the Class members suffered monetary harm as a result of DraftKings’  
6 conduct because: (a) they would not have purchased the services on the same terms had it not been  
7 for Defendant’s unlawful, unfair, and deceptive actions as set forth herein; and/or (b) they paid a  
8 price premium for the services or chose them over competing services due to Defendant’s  
9 marketing misrepresentations and deceptive labeling, as discussed herein.

10           262. Plaintiffs were therefore harmed because their money was taken by Defendants as a  
11 result of Defendants’ false, unlawful, unfair, and deceptive misrepresentations regarding the  
12 gambling services. These unlawful actions include misrepresenting the legality of sports betting in  
13 California, among numerous other states.

14           **C. Third Cause of Action: Violation of RICO, 18 U.S.C. §§ 1962(c) and 1964(c), on Behalf**  
15           **of Plaintiffs and the Class Against Defendants Robins, Kalish, and Liberman.**

16           263. Plaintiffs incorporate by reference all allegations contained in this First Amended  
17 Complaint.

18           264. Defendants Robins, Kalish, and Liberman are all persons within the meaning of 18  
19 U.S.C. § 1961(3) as they are all capable of holding a legal or beneficial interest in property.

20           265. DraftKings constitutes an “enterprise” within the meaning of 18 U.S.C. § 1961(4)  
21 and § 1962(c), as it is a corporation. The enterprise consists of DraftKings and any other participants  
22 in Defendants Robins, Kalish, and Liberman’s scheme.

23           266. The enterprise has an existence separate and distinct from the pattern of racketeering  
24 activity in which Defendants Robins, Kalish, and Liberman engaged as Defendants Robins, Kalish,  
25 and Liberman offers DraftKings’ services in states where it is permissible to do so under the specific  
26 and distinct laws of those states. The corporate entity DraftKings was formed for the legitimate  
27 purpose of offering gambling services in states where it was permitted by law to do so, but  
28 Defendants Robins, Kalish, and Liberman—all employed and/or associated with DraftKings—have

1 also used the enterprise (DraftKings) to conduct and participate in the conduct of the enterprise  
2 through a pattern of racketeering activity.

3 267. Defendants Robins, Kalish, and Liberman directed, conducted, and/or participated  
4 in the conduct of the enterprise's affairs through a pattern of racketeering activity within the  
5 meaning of 18 U.S.C. § 1962(c), consisting of multiple predicate acts, including operating an illegal  
6 gambling business as discussed above (*see* 18 U.S.C. § 1955(a)), illegally transmitting betting or  
7 wagering information as discussed above (*see* 18 U.S.C. § 1084), and illegally transmitting  
8 gambling paraphernalia as discussed above (*see* 18 U.S.C. § 1953).

9 268. Defendants Robins, Kalish, and Liberman through the enterprise committed  
10 additional predicate acts in the form of wire fraud (18 U.S.C. § 1343). Defendants Robins, Kalish,  
11 and Liberman devised and executed a scheme to defraud Plaintiffs and Class members by, among  
12 other things:

- 13 a. Transmitting information relating to an illegal gambling business  
14 across state lines.
- 15 b. Accepting wagers related to an illegal gambling business and paying  
16 out "winnings" to those that placed illegal bets.
- 17 c. Accepting money from users related to their illegal gambling.

18 269. Defendants Robins, Kalish, and Liberman committed at least two predicate acts of  
19 racketeering activity within a ten-year period. In fact, Defendants Robins, Kalish, and Liberman  
20 have committed thousands of predicate acts, as they have operated an illegal gambling business for  
21 years in California and committed wire fraud repeatedly in the furtherance of their scheme.

22 270. The predicate acts constitute a "pattern of racketeering activity within the meaning  
23 of 18 U.S.C. § 1961(5) because, among other things:

- 24 a. The acts are related to each other as part of Defendants Robins, Kalish,  
25 and Liberman's overarching scheme to run an illegal gambling  
26 business.
- 27 b. The acts have the same or similar purposes, results, participants,  
28 victims, and methods of commission.

1 c. The acts are continuous and ongoing, having occurred regularly over  
2 several years with the threat of continued criminal conduct.

3 271. By engaging in violations of 18 U.S.C. § 1962(b), Defendants Robins, Kalish, and  
4 Liberman damaged Plaintiffs and the putative class by depriving them of money that they believed  
5 was being used to legally gamble in DraftKings' Daily Fantasy Sports and Pick6 services while all  
6 the while engaging in an illegal gambling enterprise designed to part users with their money.

7 272. By reason of the violations of 18 U.S.C. § 1962(c), Plaintiffs and Class members  
8 are entitled to treble damages, costs, and attorneys' fees pursuant to 18 U.S.C. § 1964(c).

9 **D. Fourth Cause of Action: Violation of RICO, 18 U.S.C. §§ 1962(d) and 1964(c), on**  
10 **Behalf of Plaintiffs and the Class Against Defendants Robins, Kalish, and Liberman.**

11 273. Plaintiffs incorporate by reference all allegations contained in this First Amended  
12 Complaint.

13 274. Defendants Robins, Kalish, and Liberman have conspired to violate 18 U.S.C. §  
14 1962(d) by agreeing to conduct and participate in the conduct of the enterprise's affairs through a  
15 pattern of racketeering activity.

16 275. Defendants Robins, Kalish, and Liberman knew that they and their co-conspirators  
17 were engaging in a pattern of racketeering activity and agreed to facilitate that pattern of  
18 racketeering activity. Robins, Kalish, and Liberman agreed that a conspirator would commit at least  
19 two acts of racketeering activity as Robins, Kalish, and Liberman agreed before launching services  
20 in California that they would offer their gambling services in California while knowing California  
21 law prohibits their illegal gambling services at issue in this action.

22 276. Defendants Robins, Kalish, and Liberman's overt acts in furtherance of the  
23 conspiracy include the following, without limitation:

- 24 a. Developing the Gambling Websites where users are enticed to engage  
25 in illegal gambling.
- 26 b. Sharing profits from Defendants' illegal gambling scheme;
- 27 c. Making false representations to its users regarding the legality of their  
28 Gambling Websites; and

1 d. Concealing the true nature of their operations from users.

2 e. As a direct and proximate result of Defendants' conspiracy, Plaintiffs  
3 and the Class members have been injured as described above.

4 277. By engaging in violations of 18 U.S.C. § 1962(d), Defendants Robins, Kalish, and  
5 Liberman damaged Plaintiffs and the putative class by depriving them of money that they believed  
6 was being used to legally gamble in DraftKings' Daily Fantasy Sports and Pick6 services while  
7 conspiring to engage in an illegal gambling enterprise designed to part users with their money.

8 278. By reason of the violations of 18 U.S.C. § 1962(d), Plaintiffs and Class members  
9 are entitled to treble damages, costs, and attorneys' fees pursuant to 18 U.S.C. § 1964(c).

10 **E. Fifth Cause of Action: Violation of Violation of RICO, 18 U.S.C. §§ 1962(c) and**  
11 **1964(c), on Behalf of Plaintiffs and the Class Against All Defendants.**

12 279. Plaintiffs incorporate by reference all allegations contained in this First Amended  
13 Complaint.

14 280. Defendants DraftKings, Inc. and Crown Gaming, Inc. Robins, Kalish, and Liberman  
15 are all persons within the meaning of 18 U.S.C. § 1961.

16 281. Defendants DraftKings, Inc., Crown Gaming, Inc., Robins, Kalish, and Liberman  
17 formed "enterprise" within the meaning of 18 U.S.C. § 1961(4) as they are associated in fact though  
18 not a legal entity. The enterprise is an ongoing organization and continuing as it continues to offers  
19 its gambling services within California.

20 282. The enterprise has an existence separate and distinct from the pattern of racketeering  
21 activity in which Defendants engaged as Defendants provide gambling services in states where it  
22 is permissible to do so, but Defendants have also used the enterprise to engage in a pattern of  
23 racketeering activity.

24 283. Defendants directed, conducted, and/or participated in the conduct of the  
25 enterprise's affairs through a pattern of racketeering activity within the meaning of 18 U.S.C. §  
26 1962(c), consisting of multiple predicate acts, including operating an illegal gambling business as  
27 discussed above (*see* 18 U.S.C. § 1955(a)), illegally transmitting betting or wagering information  
28

1 as discussed above (*see* 18 U.S.C. § 1084), and illegally transmitting gambling paraphernalia as  
2 discussed above (*see* 18 U.S.C. § 1953).

3 284. Defendants through the enterprise committed additional predicate acts in the form  
4 of wire fraud (18 U.S.C. § 1343). Defendants devised and executed a scheme to defraud Plaintiffs  
5 and Class members by, among other things:

- 6 a. Transmitting information relating to an illegal gambling business  
7 across state lines.
- 8 b. Accepting wagers related to an illegal gambling business and paying  
9 out “winnings” to those that placed illegal bets.
- 10 c. Accepting money from users related to their illegal gambling.

11 285. Defendants committed at least two predicate acts of racketeering activity within a  
12 ten-year period. In fact, the Entity Defendants have committed thousands of predicate acts, as they  
13 have operated an illegal gambling business for years in California and committed wire fraud  
14 repeatedly in the furtherance of their scheme.

15 286. The predicate acts constitute a “pattern of racketeering activity within the meaning  
16 of 18 U.S.C. § 1961(5) because, among other things:

- 17 a. The acts are related to each other as part the Entity Defendants’  
18 overarching scheme to run an illegal gambling business.
- 19 b. The acts have the same or similar purposes, results, participants,  
20 victims, and methods of commission.
- 21 c. The acts are continuous and ongoing, having occurred regularly over  
22 several years with the threat of continued criminal conduct.

23 287. By engaging in violations of 18 U.S.C. § 1962(b), Defendants damaged Plaintiffs  
24 and the putative class by depriving them of money that they believed was being used to legally  
25 gamble in the enterprises Daily Fantasy Sports and Pick6 services while all the while engaging in  
26 an illegal gambling enterprise designed to part users with their money.

27 288. By reason of the violations of 18 U.S.C. § 1962(c), Plaintiffs and Class members  
28 are entitled to treble damages, costs, and attorneys’ fees pursuant to 18 U.S.C. § 1964(c).

1 **F. Sixth Cause of Action: Violation of RICO, 18 U.S.C. §§ 1962(d) and 1964(c), on Behalf**  
2 **of Plaintiffs and the Class Against All Defendants.**

3 289. Plaintiffs incorporate by reference all allegations contained in this First Amended  
4 Complaint.

5 290. Defendants have conspired to violate 18 U.S.C. § 1962(d) by agreeing to conduct  
6 and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity.

7 291. Defendants knew that they and their co-conspirators were engaging in a pattern of  
8 racketeering activity and agreed to facilitate that pattern of racketeering activity. Defendants agreed  
9 that a conspirator would commit at least two acts of racketeering activity as Robins, Kalish, and  
10 Liberman agreed before launching services in California that they would offer their gambling  
11 services in California while knowing California law prohibits their illegal gambling services at  
12 issue in this action.

13 292. Defendants' overt acts in furtherance of the conspiracy include the following,  
14 without limitation:

- 15 a. Developing the Gambling Websites where users are enticed to engage  
16 in illegal gambling.
- 17 b. Sharing profits from the illegal gambling scheme;
- 18 c. Making false representations to its users regarding the legality of the  
19 Gambling Websites; and
- 20 d. Concealing the true nature of their operations from users.
- 21 e. As a direct and proximate result of the Entity Defendants' conspiracy,  
22 Plaintiffs and the Class members have been injured as described  
23 above.

24 293. By engaging in violations of 18 U.S.C. § 1962(d), Defendants damaged Plaintiffs  
25 and the putative class by depriving them of money that they believed was being used to legally  
26 gamble in DraftKings' Daily Fantasy Sports and Pick6 services while conspiring to engage in an  
27 illegal gambling enterprise designed to part users with their money.

28

1 294. By reason of the violations of 18 U.S.C. § 1962(d), Plaintiffs and Class members  
2 are entitled to treble damages, costs, and attorneys’ fees pursuant to 18 U.S.C. § 1964(c).

3 **G. Seventh Cause of Action: Violation of Cal. Civ. Code § 22.2 and the Statute of Anne,**  
4 **on Behalf of the California Class Against Defendant DraftKings.**

5 295. Plaintiffs incorporate by reference all allegations contained in this First Amended  
6 Complaint.

7 296. Like many U.S. states, in the early days of statehood, California looked to the  
8 English common law to model its state law on.

9 297. On April 13, 1850, the California passed an “Act adopting the Common Law,”  
10 which read: “The Common Law of England, so far as it is not repugnant to or inconsistent with the  
11 Constitution of the United States, or the Constitution or laws of the State of California, shall be the  
12 rule of decision in all Courts of this State.”

13 298. Since 1850, California continues to maintain the Act, and it is currently codified at  
14 Cal. Civ. Code § 22.2. Cal. Civ. Code § 22.2 currently provides: “The common law of England, so  
15 far as it is not repugnant to or inconsistent with the Constitution of the United States, or the  
16 Constitution or laws of this State, is the rule of decision in all courts of this State.” Courts have  
17 determined that when California imported the English common law that California imported not  
18 only the “whole” “body of judge-made” decision law of the English courts, but “also the written  
19 statutes enacted by Parliament.” *Tak Chun Gaming Promotion Co. Ltd. v. Long*, 314 Cal. Rptr. 3d  
20 890, 895 (2023), as modified on denial of reh’g (Nov. 17, 2023) (cleaned up).<sup>49</sup>

21 299. One of the statutes of Parliament that was effective in 1850 (and therefore  
22 incorporated into California law) was the Gaming Act of 1710, commonly referred to as the “Statute  
23 of Anne.” Section II of the Gaming Act of 1710 reads as follows:

24 “And be it further enacted by the Authority aforesaid, That from and  
25 after the said first Day of May one thousand seven hundred and  
26 eleven, any Person or Persons whatsoever, who shall at any Time or

27 <sup>49</sup> The California Supreme Court cases addressing gambling debts as “off limits” did not consider  
28 the applicability of Civil Code Section 22.2, and the more accurate, recent, and comprehensive  
statement of the law is provided in *Tak Chun Gaming Promotion Co. Ltd. v. Long*, 314 Cal. Rptr.  
3d 890, 895 (2023), as modified on denial of reh’g (Nov. 17, 2023).

1 Sitting, by playing at Cards, Dice, Tables, or other Game or Games  
 2 whatsoever, or by betting on the Sides or Hands of such as do play at  
 3 any of the Games aforesaid, lose to any one or more Person or  
 4 Persons of playing or betting in the whole, the Sum or Value of ten  
 5 Pounds, and shall pay or deliver the same or any Part thereof, the  
 6 Person or Persons, so losing and paying or delivering the same, shall  
 7 be at Liberty within three Months then next, to sue for and recover  
 8 the Money or Goods so lost, and paid or delivered or any Part thereof,  
 9 from the respective Winner and Winners thereof, with Costs of Suit,  
 10 by Action of Debt founded on this Act, to be prosecuted in any of her  
 11 Majesty's Courts of Record, in which Actions or Suits no Effoin,  
 12 Protection, Wager or Law, Privilege of Parliament, or more than one  
 13 Imparlance shall be allowed; in which Action it shall be sufficient for  
 14 the Plaintiff to allege, that the Defendant or Defendants are indebted  
 15 to the Plaintiff, or received for the Plaintiff's Use, the Money so lost  
 16 and paid, or converted the Goods won of the Plaintiff to the  
 17 Defendant's Use, whereby the Plaintiff's Action accrued to him,  
 according to the Form of this Statute, without setting forth the  
 Special Matter; and in café the Person or Persons who shall lose such  
 Money or other Thing aforesaid, shall not within the Time aforesaid,  
 really and bona fide, and without Covin or Collusion, sue, and with  
 Effect prosecute for the Money or other Thing, so by him or them  
 lost, and paid or delivered as aforesaid, it shall and may be lawful to  
 and for any Person or Persons, by such Action or Suit aforesaid, to  
 sue for and recover the same, and treble the Value thereof, with Costs  
 of Suit, against such Winner or Winners as aforesaid; the one Moiety  
 thereof to the Use of the Person or Persons that will sue for the same,  
 and the other Moiety to the use of the Poor of the Prish where the  
 Offense shall be committed."

18 300. Within the meaning of the Statute of Anne and by extension Cal. Civ. Code § 22.2,  
 19 DraftKings is the "winner" as they received all or part of the money lost by Plaintiffs in Defendants'  
 20 gambling services.

21 301. Within the meaning of the Statute of Anne and by extension Cal. Civ. Code § 22.2,  
 22 Plaintiffs are "Persons" as they all lost money to Defendants using their gambling services.  
 23 Defendants received all or part of the money Plaintiffs lost to Defendants. Plaintiffs have not  
 24 colluded with any other individuals in bringing this action.

25 302. Plaintiffs and the class members all lost more than "ten Pounds" during the "playing  
 26 or betting in the whole, the Sum of Value" within "three Months" as provided within the meaning  
 27 of Cal. Civ. Code § 22.2, and by extension the Statute of Anne.  
 28

1 **H. Eighth Cause of Action: Violation of Cal. Penal Code § 496, on behalf of Plaintiffs and**  
2 **the Class against DraftKings.**

3 303. Plaintiffs incorporate by reference all allegations contained in this First Amended  
4 Complaint.

5 304. Cal. Penal Code § 496 provides that every person who buys or receives any property  
6 that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing  
7 the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing,  
8 selling, or withholding any property from the owner, knowing the property to be so stolen or  
9 obtained, shall be punished by imprisonment in a county jail for not more than one year. If the value  
10 of the property does not exceed \$950, the offense shall be a misdemeanor, punishable only by  
11 imprisonment in a county jail not exceeding one year, subject to certain statutory conditions.  
12 Further, Cal. Penal Code § 496(c) provides that any person who has been injured by a violation of  
13 the foregoing may bring an action for three times the amount of actual damages, if any, sustained  
14 by the plaintiff, costs of suit, and reasonable attorney's fees.

15 305. What constitutes "theft" under the Penal Code is enumerated in Cal. Penal Code §  
16 484. For purposes of the Penal Code "theft" is defined as any person who shall feloniously steal,  
17 take, carry, lead, or drive away the personal property of another, or who shall fraudulently  
18 appropriate property which has been entrusted to him or her, or who shall knowingly and  
19 designedly, by any false or fraudulent representation or pretense, defraud any other person of  
20 money, labor or real or personal property, or who causes or procures others to report falsely of his  
21 or her wealth or mercantile character and thus imposing upon any person, obtains credit and thereby  
22 fraudulently gets or obtains possession of money, or property, or obtains labor or services of  
23 another.

24 306. DraftKings has violated Cal. Penal Code § 496 as DraftKings received property  
25 (money) from Plaintiffs in a manner that constitutes theft. DraftKings knowingly designed their  
26 website and mobile application in a way that warranted to California residents that they were taking  
27 place in a legal gambling game in California when they used DraftKings' services. For example,  
28 DraftKings displayed to California users, and members of the putative California class, a map

1 showing that their games could be played in California. However, these representations were false  
2 as DraftKings’ services have never been legal in California. As such, DraftKings knowingly, and  
3 by design, using fraudulent misrepresentations, defrauded Plaintiffs and the Class of their money  
4 by inducing them to pay for a service they understood to be legal while offering them an illegal  
5 service.

6 **I. Ninth Cause of Action: Declaratory Judgment, 28 U.S.C. §§ 2201, on Behalf of**  
7 **Plaintiffs and the Class against Defendant DraftKings.**

8 307. Plaintiffs incorporate by reference all allegations contained in this First Amended  
9 Complaint.

10 308. The Declaratory Judgement Act, 28 U.S.C. § 2201, provides that “any court of the  
11 United States, upon the filing of an appropriate pleading, may declare the rights and other legal  
12 relations of any interested party seeking such declaration, whether or not further relief is or could  
13 be sought.”

14 309. An actual, present, and justiciable controversy has arisen between Plaintiff and the  
15 Class (on the one hand) and DraftKings (on the other hand) regarding whether: (1) DraftKings’  
16 operation of the Gambling Websites within California, including DraftKings’ Daily Fantasy Sports  
17 and Pick6 services, violate California Penal Code Sections 319, 320, 321, 330, 330a, 337a, and  
18 337j; and (2) DraftKings’ contracts with Plaintiff and the Class (to the extent any were formed) are  
19 void or voidable, including, without limitation, pursuant to California Civil Code Section 1667.

20 310. Plaintiffs seek a declaration in their favor on behalf of themselves and the Class that:  
21 (i) DraftKings’ operation of the Gambling Websites within California, including DraftKings Daily  
22 Fantasy Sports and Pick6 services violate California Penal Code Sections, 319, 320, 321, 330, 330a,  
23 337a, and 337j; and (2) DraftKings’ contracts with Plaintiffs and the Class (to the extent any were  
24 formed) are void or voidable, including, without limitation, pursuant to California Civil Code  
25 Section 1667.

26 **PRAYER FOR RELIEF**

27 311. Plaintiffs, individually and on behalf of all others similarly situated, respectfully  
28 request that this Court enter an Order:

- 1 a. Certifying the proposed Class pursuant to Rule 23, appointing
- 2 Plaintiffs as Class Representatives, and appointing Plaintiffs' counsel
- 3 as Class Counsel;
- 4 b. Public injunctive relief, including:
  - 5 i. Cease representing paid daily fantasy sports as lawful in California
  - 6 ii. Cease California residents from entering paid daily fantasy sports
  - 7 contests
  - 8 iii. Establish geo-blocking to prevent California residents from entering
  - 9 paid daily fantasy sports contests
- 10 c. Declaring that DraftKings is financially responsible for notifying the
- 11 Class members of the pendency of this suit;
- 12 d. Declaring that DraftKings has committed the violations of law alleged
- 13 herein;
- 14 e. An Order awarding Plaintiffs damages, treble damages, costs of suit,
- 15 and attorneys' fees for Defendants Robins, Kalish, and Liberman's
- 16 RICO violations.
- 17 f. Declaring that Defendants Robins, Kalish, and Liberman have
- 18 committed the violations of law alleged herein;
- 19 g. An Order awarding Plaintiffs damages, treble damages, costs of suit,
- 20 and attorneys' fees for Defendants DraftKings, Inc. and Crown
- 21 Gaming, Inc.'s RICO violations.
- 22 h. An Order declaring that DraftKings' conduct violated the CLRA,
- 23 California Civil Code §§ 1750, et seq., and awarding injunctive relief
- 24 pursuant to Cal. Civ. Code § 1780(a) and (b);
- 25 i. An Order declaring that DraftKings' conduct violated California's
- 26 Unfair Competition Law, California Business & Professions Code §§
- 27 17200, et seq; and awarding injunctive relief pursuant to Bus. & Prof.
- 28 Code § 17203;

- 1           j.     An Order requiring Defendant DraftKings to disgorge all monies,  
2                     revenues, and profits obtained by means of any wrongful act or  
3                     practice;
- 4           k.     An Order requiring the imposition of a constructive trust and/or  
5                     disgorgement of DraftKings’ ill-gotten gains, compelling DraftKings  
6                     to pay restitution to Plaintiffs and all members of the Class, and to  
7                     restore to Plaintiffs and the Class all funds acquired through any act  
8                     or practice declared by this Court to be unlawful, fraudulent, unfair,  
9                     or deceptive; in violation of laws, statutes, or regulations; or  
10                    constituting unfair competition, along with pre- and post-judgment  
11                    interest thereon;<sup>50</sup>
- 12          l.     For pre and post-judgment interest on all amounts awarded;
- 13          m.     For an order of restitution and all other forms of equitable monetary  
14                    relief, as pleaded, including awarding such relief pursuant to Bus. &  
15                    Prof. Code § 17535; and/or Bus. & Prof. Code § 17203;
- 16          n.     That DraftKings be enjoined from continuing the wrongful conduct  
17                    alleged herein and required to comply with all applicable laws;
- 18          o.     Providing for any other equitable monetary relief the Court deems  
19                    appropriate;
- 20          p.     Punitive damages including under Cal. Civ. Code § 3294;
- 21          q.     General and compensatory damages in an amount to be determined at  
22                    trial;
- 23          r.     Awarding monetary relief, including but not limited to restitution in  
24                    an amount that the Court or jury will determine, in accordance with  
25                    applicable law;
- 26

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27     <sup>50</sup> Plaintiffs seek restitution related to the “rake” and fees related to DraftKings withdrawals,  
28     notwithstanding the total lost by Plaintiffs and the class members as a result of entering into the  
   transaction.

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- s. Awarding Plaintiffs their reasonable costs and expenses of suit, including attorney’s fees;
- t. Declaring and resolving the disputed points raised in the Seventh Cause of Action;
- u. Awarding pre- and post-judgement interest to extent the law allows; and
- v. Providing such further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs, on behalf of themselves and the putative Class, hereby respectfully demand a trial by jury on all claims for which a jury trial is available.

Dated: January 20, 2026

By: /s/ Charles B. Stevens

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*Counsel for Plaintiffs and the Class*

# **EXHIBIT A**

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**DECLARATION REGARDING VENUE**

I, ZhiCheng Zhen, declare as follows:

1. I am a plaintiff in *Zhen v. DraftKings, Inc. et al.*, and make this declaration based on my personal knowledge. I could and would testify competently to the statements contained herein if called upon to do so.

2. I am a resident of Alameda County and have used DraftKings’ gambling products and services while in Alameda County, California.

3. DraftKings regularly conducts business in Alameda County, including by advertising and operating its online and app-based gambling products and services, including the taking of gambling bets and wagers from California-based customers.

I declare under penalty of perjury that the foregoing is true and accurate. Executed on January 14, 2026, in Alameda County.

  
ZhiCheng Zhen (Jan 14, 2026 09:55:25 PST)  
ZhiCheng Zhen

# **EXHIBIT B**

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

ROB BONTA  
Attorney General

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OPINION	:	
	:	
of	:	No. 23-1001
	:	
	:	July 3, 2025
ROB BONTA	:	
Attorney General	:	
	:	
KARIM J. KENTFIELD	:	
Deputy Attorney General	:	

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The HONORABLE TOM LACKEY, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on a question relating to the legality of “daily fantasy sports” games.

**QUESTION PRESENTED AND CONCLUSION**

Does California law prohibit the operation of daily fantasy sports games with players physically located within California, regardless of whether the operators and associated technology are located outside the State?

Yes, California law prohibits the operation of daily fantasy sports games with players physically located within California, regardless of where the operators and associated technology are located. Such games constitute wagering on sports in violation of Penal Code section 337a.

## BACKGROUND

California and other States have long regulated attempts to win money based on the outcome of sporting events.<sup>1</sup> This opinion concerns a modern variation on that activity, known as daily fantasy sports, in which participants try to win money based on the performance of selected professional or collegiate athletes in real-world sports games. To place daily fantasy sports in context, we will first describe traditional forms of sports wagering—which California law generally prohibits, but many other States now allow.<sup>2</sup> We will then describe the operation of daily fantasy games.

### Traditional Sports Betting

In traditional sports wagering, participants pay for the chance to win money based on the performance of third-party athletes. Modern sportsbooks allow wagering on a variety of sports. In Nevada, for instance, bettors can wager on football, basketball, baseball, golf, tennis, and horse racing, among other professional and collegiate sports.<sup>3</sup>

Once a sport is selected, wagering can focus on any game attribute. Bettors may attempt to predict which player or team will win, or by how many points.<sup>4</sup> Or they can place what is known as a “proposition” bet, where they predict results other than the final score.<sup>5</sup> In basketball, for instance, a bettor might predict whether a particular player will score at least 20 points in a game, or whether a player in one game will collect more rebounds than a player in a different game. Online sportsbooks also offer a wide array of “in-game” proposition bets, in which bettors act in real time to predict the result of an upcoming play.<sup>6</sup>

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<sup>1</sup> See generally Davies & Abram, *Betting the Line: Sports Wagering in American Life* (2001) (*Betting the Line*).

<sup>2</sup> See generally American Gaming Association, *State of the States 2024* (May 2, 2024), p. 2, <https://www.americangaming.org/wp-content/uploads/2024/05/AGA-State-of-the-States-2024.pdf> (sports wagering is legal in dozens of States).

<sup>3</sup> See Cabot & Miller, *Sports Wagering in America: Policies, Economics, and Regulation* (2018) pp. 1-5 (*Sports Wagering in America*).

<sup>4</sup> See *id.* at pp. 5-17; *Betting the Line, supra*, at p. 172.

<sup>5</sup> See *Sports Wagering in America, supra*, at p. 22; *Betting the Line, supra*, at p. 176.

<sup>6</sup> See generally Funt, *Watching the Super Bowl? Bettor Beware*, *Wall Street Journal* (Feb. 11, 2023) (reporting analyst’s prediction that in-game betting would soon account for the “overwhelming majority” of U.S. sportsbook revenue).

Bets may also be stacked into a “parlay” wager, where a bettor makes multiple predictions.<sup>7</sup> Horse-race wagering, for example, offers “exotic” parlay bets such as the “daily double” and “pick six,” which require the bettor to predict the winners of two or six races, respectively.<sup>8</sup> Sportsbooks may also offer long-term “futures bets,” such as predicting which team will win the championship at the end of a season.<sup>9</sup>

Sports bettors may wager against the sportsbook operator itself or against other bettors. In bets placed against the operator, the sportsbook has a financial stake in the outcome: if the player wins the bet, then the operator loses, and vice versa.<sup>10</sup> Payouts are commonly fixed by the operators in advance based on their assessment of likely outcomes.<sup>11</sup> Alternatively, bettors may wager against other participants. In pari-mutuel betting on horse races, for example, the operator acts as a neutral facilitator: collecting bets from all players, retaining a portion for itself, and paying out the remainder to the winners.<sup>12</sup> Payouts in the pari-mutuel system fluctuate based on the amounts wagered and the number of participants who select the winning outcome.<sup>13</sup>

As these examples illustrate, traditional sports wagering can take many forms. Indeed, to satisfy the public’s desire for “product diversity and new forms of wagering,” sportsbooks “have increasingly offered their customers a veritable smorgasbord of wagering gimmicks.”<sup>14</sup> Whatever the formula, the determination of who wins or loses is “based on a future contingent event”—namely, the “outcome of the sports competition”—that is “not under the control of the sportsbook or the bettor.”<sup>15</sup>

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<sup>7</sup> See *Betting the Line*, *supra*, at p. 172 (“A parlay is a series of two or more bets set up in advance so that the original bet plus its winnings are risked on successive bets”).

<sup>8</sup> *Sports Wagering in America*, *supra*, at p. 25.

<sup>9</sup> See *Betting the Line*, *supra*, at pp. 178-179.

<sup>10</sup> See *id.* at p. 171 (explaining that if the sportsbook does not manage its risk properly across all wagers, then it “is at risk for a loss—sometimes major”).

<sup>11</sup> See *Sports Wagering in America*, *supra*, at pp. 5-23 (discussing different types of wagers and payout structures); *Betting the Line*, *supra*, at pp. 170-179 (same). For example, in a parlay bet requiring the participant to correctly predict the results of three different football games—a difficult task—the sportsbook might promise to pay a winner \$600 for every \$100 wagered.

<sup>12</sup> See *Sports Wagering in America*, *supra*, at pp. 25-26.

<sup>13</sup> See *ibid.*; *Betting the Line*, *supra*, at pp. 169-170.

<sup>14</sup> *Betting the Line*, *supra*, at p. 174; see, e.g., *id.* at pp. 174-176 (describing “teaser” and “pleaser” parlay bets).

<sup>15</sup> *Sports Wagering in America*, *supra*, at p. 5.

## Daily Fantasy Sports

Like traditional sports wagering, daily fantasy sports games enable participants to win or lose money based on the outcome of sporting events played by third-party athletes. Many daily fantasy sports variations are available. We will focus on the two most popular formats: “draft style” games and “pick’em” games.<sup>16</sup>

***Draft Style Games.*** In traditional draft style fantasy sports games, each player selects a team of real-world athletes from a designated sports league, such as the National Football League or the National Basketball Association. In drafting their team, fantasy players may face constraints. For example, they may have to select athletes from different positions or different real-world teams. Once drafting is complete, players accumulate fantasy points based on their selected athletes’ performance in real-world sporting events—such as runs batted in by a baseball player, or rebounds collected by a basketball player. Players compete against each other to accumulate the highest aggregate point total. As in traditional sports wagering, fantasy players do not compete in sporting events themselves and are not permitted to influence the sports competitions that determine the game winners.

Fantasy sports originated with season-long competitions, often organized among friends with low financial stakes.<sup>17</sup> In this type of game, players select a roster of professional athletes before the sports season begins. Each week of the season, players then select a subset of their athletes as their “starting lineup” and earn fantasy points based on their lineup’s performance that week. Players may be able to alter their roster during the season by acquiring new athletes, or trading athletes with other players. The winning player is determined at the end of the season.

The request here concerns a newer game variation known as daily fantasy sports. As with the season-long version, daily fantasy players seek to win prizes by selecting a team of real-world athletes with the strongest performance in upcoming sporting events. Unlike season-long contests, however, daily fantasy competitions are decided by each athlete’s performance in a single game. As a result, daily fantasy winners can often be determined in a few days to a week.

Draft style daily fantasy games may use various methods for players to draft their roster of athletes. One common method is a “salary cap draft,” in which the operator assigns each athlete a salary based on the athlete’s expected performance. Each daily

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<sup>16</sup> Our description of daily fantasy game mechanics is based on the information provided to us by various game operators.

<sup>17</sup> See generally Berry, *Untold stories of 40 years of fantasy baseball*, ESPN (Mar. 4, 2020), [https://www.espn.com/fantasy/baseball/story/\\_/id/28838799/untold-stories-40-years-fantasy-baseball](https://www.espn.com/fantasy/baseball/story/_/id/28838799/untold-stories-40-years-fantasy-baseball).

fantasy player then selects a team of athletes whose total salary in the aggregate is below a specified limit, the “salary cap.” Players draft their teams independently, and a given athlete may be selected by multiple players. In other games, players may select athletes using a different procedure such as a “snake draft” or an “auction draft.”<sup>18</sup> Whatever method is used, once a player has picked athletes, those selections are locked in and there are no further decisions to make. The winning players are then determined by the on-field performance of the selected athletes in their next single sporting event.

Multiple service providers currently offer draft style daily fantasy games in California. Those providers hold games on their websites, and players access them via computer or mobile device. Game formats vary widely. Some games allow hundreds or thousands of entrants, while others are limited to two players competing “head-to-head.” Games may pay large prizes to only the highest-scoring players—sometimes as large as \$1 million—or they may pay small prizes to a greater percentage of participants. Game operators typically charge a fixed entry fee, which may range from a few dollars to hundreds or even thousands of dollars. And they typically pay pre-announced prizes, regardless of how many players enter. The prize payouts reflect the total expected entry fees paid minus a fee retained by the operator.<sup>19</sup>

***Pick’em Games.*** In recent years, a second style of daily fantasy contest known as pick’em has emerged. In this variation, a player selects a “team” of real-world athletes, typically two to five. The player must then predict each athlete’s performance in a single upcoming game on a specified metric, such as points scored or rebounds collected in a basketball game. The operator provides a threshold number in the selected category—for example, 20 points or 7 rebounds—and the player must predict whether the athlete will perform above or below that threshold. Players typically must select athletes from multiple real-world teams and cannot use the same athlete in multiple predictions.

In traditional pick’em games, players compete “against the house”—the operator—not against other players as in the draft style games. Players pay an entry fee of any amount and win a prize if they make all predictions correctly (or almost all, in certain variations). The operator calculates prizes based on the size of the entry fee and

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<sup>18</sup> In a “snake draft,” players select athletes in a specified order, with the draft order reversing every round. In an “auction draft,” players are given a fictional budget to bid on athletes.

<sup>19</sup> The following example, based on a real draft style daily fantasy game offered on July 12, 2024, is illustrative. The operator charged a \$15 entry fee and set a maximum of 7,843 entrants. Each player could enter up to 150 separate times. The operator guaranteed that \$100,000 in prizes would be distributed, regardless of the number of entrants. Prizes began at \$20,000 for first place, decreasing to \$35 for finishing between 701st and 1835th place. If the operator sold all available entries, it would have retained approximately 15% of the entry fees after paying all prizes.

the number of predictions attempted. For example, in one operator’s game, paying a \$100 entry fee will win \$300 for two correct predictions, \$500 for three correct predictions, and \$1,000 for four correct predictions.

This opinion request asks whether California law prohibits offering daily fantasy sports games to players physically located within the State. Because the request does not specify any particular daily fantasy variant, we will focus our analysis on the widely available game formats described above.

## ANALYSIS

Since becoming a State, California has regulated gambling activities.<sup>20</sup> Today, Article IV, section 19 of the state Constitution prohibits lotteries and the sale of lottery tickets, subject to exceptions including the California State Lottery, charitable bingo games, and nonprofit raffles.<sup>21</sup> Section 19 also directs the Legislature to prohibit “casinos of the type currently operating in Nevada and New Jersey.”<sup>22</sup> But section 19 authorizes the Governor to negotiate compacts with federally recognized Indian tribes to operate certain gambling activities on tribal lands.<sup>23</sup> And section 19 also authorizes the Legislature to regulate horse racing and horse-race wagering.<sup>24</sup>

Consistent with the Constitution, the Legislature has “prohibited certain forms of gambling and allowed others.”<sup>25</sup> Subject to various exceptions, the Penal Code prohibits “three key forms of gambling”: “gaming, lotteries and betting.”<sup>26</sup> “Gaming may be defined as the playing of any game for stakes hazarded by the players.”<sup>27</sup> “A lottery may be defined as a distribution of prizes by lot or chance” for consideration.<sup>28</sup> And betting “may be defined as promises to give money or money’s worth upon the determination of an uncertain or unascertained event in a particular way, and (unlike a lottery) may

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<sup>20</sup> See 71 Ops.Cal.Atty.Gen. 139, 141 (1988).

<sup>21</sup> See Cal. Const., art. IV, § 19, subds. (a), (c), (d), (f).

<sup>22</sup> *Id.*, subd. (e).

<sup>23</sup> *Id.*, subd. (f).

<sup>24</sup> *Id.*, subd. (b).

<sup>25</sup> 71 Ops.Cal.Atty.Gen., *supra*, at p. 141.

<sup>26</sup> *Western Telcon, Inc. v. California State Lottery* (1996) 13 Cal.4th 475, 484, internal quotation marks omitted (*Western Telcon*); see Penal Code, Part 1, Title 9, Chapters 9-10.

<sup>27</sup> *Western Telcon, supra*, 13 Cal.4th at p. 484, internal quotation marks omitted; see Penal Code, § 330 et seq.

<sup>28</sup> *Western Telcon, supra*, 13 Cal.4th at pp. 484-485, internal quotation marks omitted; see Penal Code, § 319 et seq.

involve skill or judgment.”<sup>29</sup> Gambling activities that are not prohibited by the Penal Code are permitted in compliance with state and local regulation.<sup>30</sup>

We received numerous public comments arguing that daily fantasy sports either are or are not prohibited by various constitutional and statutory provisions. In line with most comments, we will focus on two provisions: (1) Penal Code section 337a, which prohibits wagering on sports, and (2) Penal Code section 319 et seq., which prohibit lotteries. We conclude that daily fantasy sports games constitute sports wagering and therefore violate section 337a. While we are unable to conclude whether such games *also* violate the lottery prohibition—because that analysis would require making factual determinations outside the scope of an Attorney General legal opinion—it is unnecessary to resolve the latter question in light of our conclusion that California law independently prohibits such games under section 337a.<sup>31</sup>

### **Daily Fantasy Sports Games Violate Penal Code Section 337a Because They Involve Betting on Sports**

California law prohibits betting or wagering on sporting events.<sup>32</sup> Under Penal Code section 337a(a)(6), it is a crime if a person

[l]ays, makes, offers or accepts any bet or bets, or wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus.

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<sup>29</sup> *Western Telcon, supra*, 13 Cal.4th at p. 485, internal quotation marks and alterations omitted; see Penal Code, § 337a.

<sup>30</sup> See generally Bus. & Prof. Code, § 19800 et seq. (Gambling Control Act); *Western Telcon, supra*, 13 Cal.4th at p. 482, fn. 2, citing *In re Hubbard* (1964) 62 Cal.2d 119, 123-128 (state law does not preempt all local regulation of gambling activities).

<sup>31</sup> Similarly, given our conclusion that section 337a prohibits daily fantasy sports games, we need not consider whether they might violate other legal provisions that regulate gambling activities. (See, e.g., Cal. Const., art. IV, § 19, subd. (e) [“The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey”]; Penal Code, § 330 [prohibiting “any banking or percentage game played with cards, dice, or any device, for money”]; *id.*, §§ 330a, 330b, 330.1 [prohibiting certain gambling devices].)

<sup>32</sup> As an exception, California law permits pari-mutuel wagering on horse races. (See Bus. & Prof. Code, § 19400 et seq.) Although section 337a originally prohibited all forms of sports betting including wagering on horse races, the voters later amended the state Constitution to permit horse-race wagering. (See Cal. Const., art. IV, § 19, subd. (b).)

The California Supreme Court has defined bets or wagers “as promises to give money or money’s worth upon the determination of an uncertain or unascertained event in a particular way.”<sup>33</sup> And “unlike a lottery,” which as discussed below requires that chance predominate over skill, betting “may involve skill or judgment.”<sup>34</sup> Section 337a also prohibits related offenses, such as recording bets and bookmaking.<sup>35</sup>

We conclude that participants in both types of daily fantasy sports games—pick’em and draft style games—make “bets” on sporting events in violation of section 337a. We discuss the two game formats in turn.

### *Pick’em Games*

In pick’em, players try to win money by predicting the performance of individual athletes in a single real-world game—for example, whether Steph Curry will score more or fewer than 20 points, or whether Jimmy Butler will grab more or fewer than 7 rebounds. We conclude that pick’em violates section 337a because the game’s entry fees are “bets” or “wagers” placed “upon the result . . . of [a] trial . . . or contest . . . of skill, speed or power of endurance of person . . . or between persons.”<sup>36</sup>

As with many traditional sportsbook bets, pick’em players place a bilateral wager against the game operator. The player and operator each “promise[] to give money . . . upon the determination of an uncertain or unascertained event” (the sports competitions) being resolved “in a particular way” (whether the player’s predictions of athletic

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<sup>33</sup> *Western Telcon, supra*, 13 Cal.4th at p. 485, internal quotation marks and alterations omitted; see also *Ex parte McDonald* (1927) 86 Cal.App. 362, 367 (citing Black’s Law Dictionary to define a “bet” as “an agreement between two or more persons that a sum of money or other valuable thing shall become the sole property of one or more of them on the happening in the future of an event at present uncertain”); *ibid.* (“bet” and “wager” are synonyms); CALCRIM No. 2996 (defining “bet” as an “agreement between two or more people that if an uncertain future event happens, the loser will pay money to the winner or give the winner something of value”; a “bet includes a wager made on the outcome of any actual or purported event, including . . . any kind of sporting contest”).

<sup>34</sup> *Western Telcon, supra*, 13 Cal.4th at p. 485, internal quotation marks omitted; see *post*, fns. 161-167 (discussing lottery elements).

<sup>35</sup> See Penal Code, § 337a, subd. (a)(1)-(5); CALCRIM No. 2990 (“*Bookmaking* includes the taking of bets, either orally or recorded in writing”); CALCRIM No. 2994 (“*Recording* a bet means making a notation on paper, or using any other material or device, to allow winnings on the bet to be distributed in the future”); *People v. Lomento* (1957) 155 Cal.App.2d 740, 742.

<sup>36</sup> Penal Code, § 337a, subd. (a)(6).

performance are correct).<sup>37</sup> Like other kinds of wagers, both parties have a financial stake “in the outcome of the game, because the amount of money the operator will have to pay out depends upon whether each of the individual [player’s] bets is won or lost.”<sup>38</sup> And the real-world sporting events clearly constitute “trial[s]” or “contest[s] . . . of skill, speed or power of endurance of person . . . or between persons.”<sup>39</sup> Section 337a(a)(6) therefore applies. Indeed, pick’em appears materially indistinguishable from a classic form of sports wagering: a “parlay” or combination of proposition bets over different game outcomes.<sup>40</sup>

Our conclusion is consistent with the view of out-of-state regulators. Regulators in Virginia, Arizona, Wyoming, and Florida, for example, have all concluded that state laws regulating sports wagering apply to pick’em.<sup>41</sup> As the Arizona Department of Gaming explained, the games are simply a type of “proposition bet[ting].”<sup>42</sup> We are not aware of any out-of-state regulator to reach a contrary conclusion.

The pick’em operators offer several arguments that section 337a does not apply, but we are not persuaded. First, the operators contend that skill predominates over chance in pick’em—that is, that success in pick’em depends more on skill and judgment than luck or chance. As discussed below, this argument is directly relevant to a lottery analysis: for a game to be prohibited as a lottery under California law, chance must predominate over skill.<sup>43</sup> But that is not a requirement for a “bet” or “wager” under section 337a: the California Supreme Court has explained that, “unlike a lottery,” betting or wagering “may involve skill or judgment.”<sup>44</sup> The operators have not cited a single authority construing section 337a(a)(6) to require that chance predominates.<sup>45</sup> Nor are

<sup>37</sup> *Western Telcon, supra*, 13 Cal.4th at p. 485, internal quotation marks omitted; see *ante*, fn. 33 (citing similar definitions of a “bet” or “wager”).

<sup>38</sup> *Western Telcon, supra*, 13 Cal.4th at p. 488 (distinguishing a bilateral wager from a prize, where the operator has no financial stake in who wins).

<sup>39</sup> Penal Code, § 337a, subd. (a)(6).

<sup>40</sup> See *ante*, fns. 5-8 (describing traditional proposition bets and parlays).

<sup>41</sup> See, e.g., 2023 Ops.Va.Atty.Gen. 133 (Dec. 12, 2023); Wyoming Gaming Commission, letter to PrizePicks, July 5, 2023, on file; Florida Gaming Control Commission, letter to Betr, Sept. 19, 2023, on file.

<sup>42</sup> Arizona Department of Gaming, letter to Arizona Fantasy Sports Contest Operators, Nov. 1, 2023, on file.

<sup>43</sup> See *post*, fns. 161-167.

<sup>44</sup> *Western Telcon, supra*, 13 Cal.4th at p. 485, internal quotation marks omitted.

<sup>45</sup> The primary authorities cited by the operators do not even concern section 337a. (See, (continued...))

we aware of any authorities imposing such a requirement, either in California or any other State with similar laws.<sup>46</sup> Rather, the essential requirement of a “bet” or “wager” is that participants win or lose based on the outcome of an uncertain future event, such as a sports competition, even if skilled bettors consistently come out ahead.<sup>47</sup>

That understanding reflects the statute’s purpose. The Legislature enacted section 337a in 1909 out of concern that horse-race wagering had resulted in addiction and financial ruin.<sup>48</sup> The statute’s proponents denounced “the ruinous effect of . . . racetrack gambling,” which led some patrons to “steal[] from their employers in order to gamble at the races.”<sup>49</sup> Proponents likened racetrack betting to an “infectious disease,” “easily

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e.g., *Knowles v. O’Connor* (1968) 266 Cal.App.2d 31, 33 [discussing the chance requirement for slot machines under Penal Code sections 330b and 330.5].)

<sup>46</sup> See, e.g., CALCRIM No. 2996 (jury instructions for a section 337a(a)(6) violation, which do not require proving that chance dominates); *People v. Postma* (1945) 69 Cal.App.2d Supp. 814, 817-818 (concluding that horse-race wagering constituted betting without deciding whether skill or chance predominated).

<sup>47</sup> See Penal Code, § 337a, subd. (a)(6); *ante*, fn. 33.

<sup>48</sup> See Stats. 1909, ch. 28, § 1, p. 21 (enacting section 337a); see also Stats. 1911, ch. 7, § 1, p. 4 (amending § 337a to add former subd. 6., now subd. (a)(6)). Although we are not aware of any legislative history from section 337a’s enactment, the statute’s purpose is well documented in the historical record. (See *post*, fns. 49-51; e.g., *People v. Martinez* (2023) 15 Cal.5th 326, 350, fn. 16 [relying on work of historians and contemporaneous newspaper articles to aid in interpretation of a California regulation]; *Comm. of the Rts. of the Disabled v. Swoap* (1975) 48 Cal.App.3d 505, 511 [courts can consider the “historical background” of statutes]; *McGarrahan v. Maxwell* (1865) 28 Cal. 75, 95 [courts may look “to the public history of the time in which [a statute] was passed”].) Section 337a’s purpose is also reflected in case law preceding its enactment. (E.g., *Gridley v. Dorn* (1880) 57 Cal. 78, 79 [betting on horse races was “against good morals or sound public policy” because betting “tends directly to beget a desire of possessing another’s money or property”]; *Hankins v. Ottinger* (1896) 115 Cal. 454, 458 [the “gain and loss between the parties” in betting can “excite a spirit of cupidity,” internal quotation marks and italics omitted]; cf. *Tak Chun Gaming Promotion Co. v. Long* (2023) 96 Cal.App.5th 1027, 1039 [common law anti-gambling rules were intended to discourage the “financially ruinous consequences” of gambling debts].) And although the Legislature has amended section 337a on a few occasions—for example, to modify the penalties—it has not altered the section’s substantive reach in any relevant respect. Accordingly, authorities from the era when the section was enacted continue to illuminate the Legislature’s intent.

<sup>49</sup> *To Fight Gambling On Races*, Los Angeles Evening Express (Dec. 17, 1908) p. 1, (continued...)

caught and exceedingly hard to shake off.”<sup>50</sup> And they cautioned that bettors who lost might wager increasing amounts in a futile attempt to recover their losses.<sup>51</sup> These adverse outcomes are all possible even if sports wagering is a skill-dominant activity, such as if success depends on skillfully analyzing prior athlete performance, matchups, or weather conditions. Indeed, if skill did predominate, concerns about bettors chasing their losses to financial ruin would be exacerbated because less skillful bettors would consistently lose. Moreover, some authorities have concluded that skill predominates in racetrack betting and other types of traditional sports wagering.<sup>52</sup> Reading section 337a to apply only if chance predominates could therefore risk legalizing forms of ordinary sports betting that the Legislature intended to prohibit. For these reasons, whether or not skill predominates in wagering on horse races, football games, or pick’em, section 337a(a)(6) applies.<sup>53</sup>

Second, the operators emphasize that pick’em game winners are determined not based on the overall winner of sports games, but by other game attributes—such as an individual athlete’s point total or rebounds collected. They argue that section 337a(a)(6)

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col. 7, p. 2, col. 2 (quoting Arthur Letts); see Kilner, Arthur Letts, 1862-1923 (1927) pp. 230-232 (documenting work of Letts and his Business Men’s Anti-Racetrack Gambling League of Southern California to spearhead law’s enactment); see also *Out To Fight Gambling At Race Tracks*, Los Angeles Herald (Dec. 28, 1908) p. 8, cols. 1-2.

<sup>50</sup> *Racetrack Gambling*, San Jose Mercury News (Jan. 11, 1909) p. 6, col. 1 (editorial); see *The Gambling Evil*, Los Angeles Herald (Apr. 18, 1909) p. 4, col. 2 (editorial supporting statute) (“Race track gambling . . . has been responsible for broken hearts, wrecked homes, ruined lives. It has made defaulters and criminals of men who . . . [were] gripped by the gambling fascination”).

<sup>51</sup> *To Fight Gambling On Races*, Los Angeles Evening Express, *supra*, p. 2, cols. 2-3 (“A man goes innocently to see the races . . . . He bets a dollar and loses it, and then he has two up. Next he is betting his employer’s money in the mad hope that he will get back what he has lost”); see also *Dangers In All Forms of Gambling*, Los Angeles Evening Express (Feb. 13, 1909) p. 1, col. 7, p. 4, col. 1 (Arthur Letts) (“The temptation is so great. It is so easy to begin . . . . The loss is slight at first, but it grows and grows, and the loser, bent on regaining his losses, strains every energy to win”).

<sup>52</sup> See, e.g., *People v. Postma*, *supra*, 69 Cal.App.2d Supp. at p. 817 (describing the majority view of out-of-state authorities that skill predominates in betting on horse races); Ops.W.Va.Atty.Gen., 2016 WL 3857081, 5-6 (July 7, 2016) (describing prior Attorney General opinion that skill predominates in traditional sports betting).

<sup>53</sup> Accord, e.g., Ops.Miss.Atty.Gen., 2016 WL 695680, \*2, \*4 (Jan. 29, 2016) (the existence of skill in picking a fantasy team was irrelevant to whether daily fantasy violated state law prohibiting sports wagering); Nev.Atty.Gen.Memo., *Legality of Daily Fantasy Sports Under Nevada Law*, at pp. 6-7 (Oct. 16, 2015) (similar).

therefore does not apply because the statute prohibits betting only on the “result” of a sporting event. We disagree. Dictionaries define “result” as a “consequence or outcome.”<sup>54</sup> In our view, a sports competition has many “consequences” or “outcomes.” Some of those outcomes determine the game winner, such as the relative point totals scored by each team. Many other outcomes do not determine the game winner, such as the points scored by individual players. The operators have not provided any definition of “result” that would limit the term to the former type of “consequence” or “outcome,” but not the latter. Nor have they cited any authority construing section 337a or any similar statute to prohibit wagering on only the game winner or loser—that is, to allow proposition betting.<sup>55</sup>

Such a reading would also be inconsistent with both common understanding and statutory purpose. As described above, proposition betting on game results other than the winner is a widely available form of traditional sports wagering. By one estimate, in-game proposition betting—such as predicting the result of the next play—may soon account for a majority of online sportsbook revenues.<sup>56</sup> In our view, if the Legislature had intended to allow such an enormous category of traditional sports wagering, it would have done so more clearly. That conclusion is also consistent with the statute’s policy concerns: to prevent addiction and financial harm.<sup>57</sup> We are not aware of any authority indicating that these risks are materially different for proposition betting than for other forms of sports wagering. If anything, the rapid nature of in-game proposition betting—where bets are placed on an upcoming play and resolved in minutes, if not seconds—might make addiction risks especially acute.

Third, the operators cite an out-of-state decision, *Las Vegas Hacienda, Inc. v. Gibson*, where the Nevada Supreme Court held that a golf course that offered a prize to any person who paid an entry fee and shot a hole in one did not engage in wagering.<sup>58</sup>

<sup>54</sup> American Heritage Dict. (5th ed. 2018) p. 1497 [“result”]; see also, e.g., Oxford English Dict. (updated through June 2025) [“result”] (“The effect, consequence, or outcome of some action, process, or design, etc.”).

<sup>55</sup> Section 337a can also be understood to prohibit proposition betting in a different way. The section prohibits wagering “upon the result . . . of *any trial . . . or contest . . . of skill, speed or power of endurance of person . . . or between persons.*” (Penal Code, § 337a, subd. (a)(6), italics added.) Nothing in the statute limits the relevant “trial” or “contest” to the overall event winner. Rather, a sports game could involve many “trial[s] . . . of skill . . . of person,” such as whether Steph Curry will score more or fewer than 20 points, or Jimmy Butler will collect more or fewer than 7 rebounds. A proposition bet on the “result” of such a trial would then fall within the statute’s reach.

<sup>56</sup> See *ante*, fn. 6.

<sup>57</sup> See *ante*, fns. 48-53.

<sup>58</sup> *Las Vegas Hacienda, Inc. v. Gibson* (1961) 77 Nev. 25, 29.

The Court reasoned that the prize was a “reward or recompense for some act done” (the golf shot) and therefore not a “wager,” which is “a stake upon an uncertain event.”<sup>59</sup> Analogizing to *Gibson*, the operators argue that the prizes in pick’em are also awarded as a “reward or recompense for some act done”: the “act” of correctly predicting the outcome of third-party sports games.<sup>60</sup> But applying that reasoning, *any* bilateral wager could be reconstrued as a “reward” for the “act” of correctly forecasting an uncertain event.<sup>61</sup> That would effectively legalize all wagering, contrary to the Legislature’s intent in enacting section 337a. Accordingly, even assuming that a court applying California law to a hole-in-one prize would reach the same conclusion as *Gibson*, the reasoning of that case cannot be extended to pick’em games. The Office of the Nevada Attorney General has similarly concluded that fantasy sports are distinguishable from the game at issue in *Gibson*.<sup>62</sup>

Fourth, the operators cite a federal statute, the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).<sup>63</sup> “UIGEA makes it illegal for a ‘person engaged in the business of betting or wagering’ knowingly to accept certain financial payments from an individual who is engaged in ‘unlawful Internet gambling.’”<sup>64</sup> Although the statute defines a “bet or wager” to include “risking . . . something of value upon the outcome of . . . a sporting event . . . upon an agreement . . . [to] receive something of value in the event of a certain outcome,” it excludes from the definition participation in “fantasy or simulation sports game[s]” meeting certain criteria.<sup>65</sup> The operators argue that the pick’em games fall within that exclusion.

But UIGEA’s definition of “bet or wager” has no bearing on Penal Code section 337a. UIGEA expressly states that “[n]o provision of [the statute] shall be construed as

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<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> See Nev. Atty. Gen. Memo., *supra*, at p. 11 (“In the case of daily fantasy sports, the primary ‘act’ at issue is that of choosing a lineup. The completion of this ‘act’ will not, in itself, result in any prize. The payouts in daily fantasy sports are not awarded to owners who simply set a lineup, they are awarded to the owners whose lineups receive the highest total score (which is dependent upon the *uncertain* outcomes associated with sporting events). Accordingly, even applying *Gibson*, wagers are present in daily fantasy sports”). Although the Nevada Attorney General’s Office distinguished *Gibson* in the context of analyzing draft style games, analogous reasoning applies to pick’em.

<sup>63</sup> See 31 U.S.C. § 5361 et seq.

<sup>64</sup> *State of California v. Iipay Nation of Santa Ysabel* (9th Cir. 2018) 898 F.3d 960, 965, quoting 31 U.S.C. § 5363.

<sup>65</sup> 31 U.S.C. § 5362, subd. (1)(A), (E)(ix).

altering, limiting, or extending any Federal or State law . . . prohibiting . . . gambling within the United States.”<sup>66</sup> As the Nevada Attorney General’s Office observed, “UIGEA neither made legal nor illegal any form of gambling” but instead provided “new mechanisms for enforcing gambling laws on the Internet.”<sup>67</sup> Consistent with that view, UIGEA’s author has explained that although the statute exempts daily fantasy games from the new obligations UIGEA created, it “does not exempt fantasy sports companies from any other obligation to any other law”—including state betting prohibitions like section 337a.<sup>68</sup> And as discussed below, other federal laws regulating “wagers” have been construed to apply to daily fantasy sports, notwithstanding UIGEA.<sup>69</sup>

Fifth, the operators invoke the rule of lenity, “whereby courts must resolve doubts as to the meaning of a statute in a criminal defendant’s favor.”<sup>70</sup> “The rule of lenity exists to ensure that people have adequate notice of the law’s requirements.”<sup>71</sup> As the California Supreme Court has explained, however, “the rule applies only when two reasonable interpretations of a penal statute stand in relative equipoise. Although true ambiguities are resolved in a defendant’s favor, an appellate court should not strain to interpret a penal statute in defendant’s favor if it can fairly discern a contrary legislative

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<sup>66</sup> 31 U.S.C. § 5361, subd. (b).

<sup>67</sup> Nev. Atty. Gen. Memo., *supra*, at p. 7, quoting 31 U.S.C. § 5361, subd. (a)(4), alterations and emphasis omitted.

<sup>68</sup> Dahlberg, *Former congressman says [Daily Fantasy Sports] is “cauldron of daily betting,”* Associated Press (Oct. 12, 2015), <https://apnews.com/united-states-house-of-representatives-united-states-government-house-elections-united-states-congress-general-news-7b3af0d8b0c04f059e8b301adf8b1784>. In the UIGEA author’s view, “it is sheer chutzpah for a fantasy sports company to cite the law as a legal basis for existing”; there “is no credible way fantasy sports betting can be described as not gambling.” (*Ibid.*)

<sup>69</sup> See Internal Revenue Service, Office of Chief Counsel, Memorandum No. AM 2020-009, at pp. 8-9 (July 23, 2020) (concluding that daily fantasy sports entry fees are “wagers” under federal excise tax and rejecting claim that UIGEA affects the analysis), discussed *post*, fn. 112.

<sup>70</sup> *People ex rel. Green v. Grewal* (2015) 61 Cal.4th 544, 565, internal quotation marks omitted.

<sup>71</sup> *Ibid.*

intent.”<sup>72</sup> Here, “there is no relative equipoise.”<sup>73</sup> In our view, pick’em participants clearly place bets on the outcome of sporting events in violation of section 337a.<sup>74</sup>

Finally, it is not relevant that the game operators or associated technology may be located outside the State. “Under California law, gambling activities are illegal in this state even though they are performed in connection with activities in another state or country where gambling is legal.”<sup>75</sup> Accordingly, we have previously opined that a person who is physically present in California would violate section 337a by placing bets over the telephone, regardless of whether the bets are legal where accepted.<sup>76</sup> Likewise, a person physically present in California would violate section 337a by placing bets over the Internet on daily fantasy sports games.

### ***Draft Style Games***

In draft style games, players compete against each other to see whose team of selected athletes has the strongest aggregate performance on designated metrics in each athlete’s next real-world sports game. We conclude that draft style games also involve betting on sports under section 337a(a)(6). The game entry fees satisfy the definition of a “bet” or “wager” because players “promise[] to give money” based on “the determination of an uncertain or unascertained event” (the sports competitions) “in a particular way” (the relative aggregate performance of each player’s selected team of athletes).<sup>77</sup> As with pick’em, each player’s financial success depends on the outcome of the underlying sports games.<sup>78</sup> The sports games themselves constitute “contest[s] . . . of skill, speed or power

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<sup>72</sup> *Ibid.*, internal quotation marks and alterations omitted; see also Penal Code, § 4 (“The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice”).

<sup>73</sup> *People ex rel. Green v. Grewal, supra*, 61 Cal.4th at p. 565.

<sup>74</sup> We are told that some operators offer pick’em as a peer-to-peer competition, in which participants compete against each other to make the highest number of correct predictions. In our view, this version of pick’em also constitutes sports wagering because the entry fees satisfy the definition of a “bet” or “wager” under section 337a. (See *post*, fns. 77-157 [explaining why the peer-to-peer draft style games violate section 337a].)

<sup>75</sup> 80 Ops.Cal.Atty.Gen. 98, 99 (1997), citing *Finster v. Keller* (1971) 18 Cal.App.3d 836, 849; *People v. Jones* (1964) 228 Cal.App.2d 74, 92.

<sup>76</sup> 80 Ops.Cal.Atty.Gen., *supra*, at p. 99.

<sup>77</sup> *Western Telcon, supra*, 13 Cal.4th at p. 485, internal quotation marks omitted; see also *ante*, fn. 33 (citing similar definitions of a “bet” or “wager”).

<sup>78</sup> See *Western Telcon, supra*, 13 Cal.4th at p. 489 (explaining that the California State  
(continued...))

of endurance . . . between persons.”<sup>79</sup> And players accrue fantasy points based on the game “result[s],” namely each athlete’s in-game performance.<sup>80</sup>

Our conclusion is again consistent with the view of out-of-state regulators.<sup>81</sup> As the West Virginia Attorney General explained, state regulators have unanimously concluded that draft style daily fantasy games violate laws “prohibit[ing] wagers on any games of skill or sport.”<sup>82</sup> In the words of the Mississippi Attorney General:

When a player places a wager and picks a lineup for a [draft style] Daily Fantasy Sports contest, each selection is locked-in once the chosen athletes begin[] their real world competition. . . . [W]inners are selected based on the tally of points earned by the athletes. This method of play is similar to betting on a horse race or making a parlay bet . . . . It is different from betting on the outcome of a regular football game only in that the player can choose from any number of hypothetical “teams” which the player can possibly pick or create, rather than being limited to picking from the teams available as they actually exist in the NFL.<sup>83</sup>

To be sure, in some of these States, the Legislature has subsequently legalized draft style games. We are told that 24 States have amended their laws to expressly allow designated fantasy sports activities.<sup>84</sup> But the policy decision to treat fantasy sports differently from other sports wagering does not undercut the reasoning of the above

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Lottery wagered on an uncertain event because its “financial success . . . depend[ed] . . . on the [event’s] outcome”).

<sup>79</sup> Penal Code, § 337a, subd. (a)(6).

<sup>80</sup> *Ibid.*; see *ante*, fns. 54-57 (explaining that the “result” of a sports game under section 337a includes game attributes beyond the winner or loser).

<sup>81</sup> See, e.g., Nev.Atty.Gen.Memo., *supra*, at pp. 8-12; Ga.Atty.Gen.Memo., Re: Daily fantasy sports games, at p. 3 (Feb. 26, 2016) (a draft style game entry fee “clearly constitutes a ‘bet’”); Ops.Tex.Atty.Gen. No. KP-0057, at pp. 3-7 (2016).

<sup>82</sup> Ops.W.Va.Atty.Gen., 2016 WL 3857081, *supra*, at p. 13 (citing regulator action in Arizona, Illinois, Florida, North Dakota, and Vermont).

<sup>83</sup> Ops.Miss.Atty.Gen., 2016 WL 695680, *supra*, at p. \*2; see also Nev.Atty.Gen.Memo., *supra*, at p. 9 (“[D]aily fantasy sports owners pay money to play the simulated games and compete with each other based on their total scores. If an owner wins, the owner gets money back. If an owner loses, the owner loses the bet made. When owners play against each other, some will win and some will lose. Thus, because owners risk money on an occurrence for which the outcome is uncertain, wagers are present”).

<sup>84</sup> See, e.g., 2023 Ops.Va.Atty.Gen., *supra*, at p. 135 (under Virginia law, conduct “that otherwise would constitute illegal gambling is permitted in some circumstances” by statute, including betting on fantasy sports).

Attorney General opinions. Under the ordinary meaning of state laws prohibiting sports betting, entry fees in draft style games constitute bets or wagers on sports—unless and until the state Legislature or the electorate change those laws. We are not aware of a single state or federal regulator concluding that a statute like section 337a that prohibits all types of sports betting does not bar draft style games.

We find nothing in case law to alter our conclusion that section 337a applies to the draft style games. In several cases, courts have held that certain contest entry fees did not constitute bets or wagers. In *Hankins v. Ottinger*, for example, the California Supreme Court considered horse owners who paid an entry fee to enter their own horse in a racing contest that awarded prizes.<sup>85</sup> The Court held that the entry fee was not a bet or wager, but a fee paid for the privilege of participating in the race. “Trials of speed between horses,” the Court explained, “are not in themselves” legally disfavored.<sup>86</sup> As a result, the “giving of purses or premiums by associations . . . not themselves competing, for the purpose of encouraging such contests,” was not forbidden either.<sup>87</sup> “Were these things unlawful,” the Court reasoned, many local agricultural competitions would also be prohibited, as offering a prize “for the fastest racehorse is not distinguishable” from awarding prizes for other desirable livestock qualities.<sup>88</sup> But the Court distinguished racing contests among horse owners from *wagering* on such contests: the law did not disfavor the races themselves, but it did disfavor “betting or wagering on” those races.<sup>89</sup>

Applying *Hankins*, California courts have distinguished between *participating* in a contest and *wagering* on a contest. In *Ex parte McDonald*, for example, a racetrack ran two simultaneous contests based on a single horse race: a contest among horse owners to win the race, and a contest among spectators to predict the race winner.<sup>90</sup> Both contests awarded prizes paid out of the same pool funded in part by entry fees, with the owners’ prizes awarded first in an amount determined by the contest judges, and the spectators’ prizes awarded second.<sup>91</sup> The Court of Appeal noted that, under *Hankins*, a contest among horse owners to win a race did not constitute betting, even if the prizes were

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<sup>85</sup> *Hankins v. Ottinger, supra*, 115 Cal. at p. 456.

<sup>86</sup> *Id.* at p. 458.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Id.* at pp. 458-459.

<sup>89</sup> *Ibid.*; see also, e.g., *Brown v. Bd. of Police Comm’rs of City of Los Angeles* (1943) 58 Cal.App.2d 473, 477-479 (applying *Hankins* to hold that paying an entry fee to participant in a ball-tossing carnival game, which awarded cigars and other pre-announced prizes, did not involve betting or wagering).

<sup>90</sup> *Ex parte McDonald, supra*, 86 Cal.App. at pp. 363-366.

<sup>91</sup> *Ibid.*

funded in part by entrance fees.<sup>92</sup> But the contest among spectators to *predict* the result of the race was illegal betting under section 337a.<sup>93</sup>

Courts in other States have similarly distinguished between participating in contests and wagering on the result of contests undertaken by others. In *State v. American Holiday Association, Inc.*, for example, the Arizona Supreme Court held that fees paid to enter a mail-in word game did not constitute bets under an Arizona statute prohibiting wagering on games of skill or chance.<sup>94</sup> “It would be patently absurd,” the Court explained, to conclude that the mere “combination of an entry fee and a prize equals gambling.”<sup>95</sup> If that were so, then spelling bees, “golf tournaments, bridge tournaments, . . . rodeos or fair contests, and even literary or essay competitions are all illegal gambling operations” under Arizona law.<sup>96</sup> Paying a reasonable entry fee to participate in these types of contests did not constitute betting, the Court held, if the sponsor did not compete for the prizes and prizes were pre-announced and did not depend on the entry fees paid.<sup>97</sup>

But the Court distinguished participating in a contest and wagering on a contest of others. “Spelling bees [and] golf tournaments,” the Court explained, “are not like most bookmaking operations because prizes are not awarded on the basis of *the outcome of some event involving third parties*.”<sup>98</sup> Rather, the “prize offered is paid only to participants and the participants themselves determine the outcome.”<sup>99</sup> In contrast, winning money by predicting the result of a horse or dog race involved betting because the entrant “is not a participant” in the race itself.<sup>100</sup> The “money laid down” in these activities “is not an entrance fee but a wager between parties who are not contestants and *whose gain or loss will be determined by the results of a game played by others*.”<sup>101</sup>

<sup>92</sup> *Id.* at p. 366.

<sup>93</sup> *Id.* at pp. 366-368.

<sup>94</sup> *State v. Am. Holiday Ass’n, Inc.* (1986) 151 Ariz. 312; see *id.* at p. 313, citing A.R.S. § 13-3307, subd. (A) (“[N]o person may engage for a fee . . . in the business of accepting, recording or registering any bet . . . [or] wager . . . with respect to the result . . . of any race, sporting event, contest or other game of skill or chance”).

<sup>95</sup> *State v. Am. Holiday Ass’n, Inc.*, *supra*, 151 Ariz. at p. 314, internal quotation marks omitted.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Id.* at pp. 315-316.

<sup>98</sup> *Id.* at p. 314, italics added.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Id.* at p. 317.

<sup>101</sup> *Ibid.*, italics added.

Thus, while paying an entry fee to compete in a spelling bee was not wagering, betting “on the winner of the national spelling bee” would be.<sup>102</sup>

Here, we conclude that draft style games do not fall within the contest-participant exception because players do not participate in sporting events but wager on the athletic performance of others. Unlike participating in a basketball tournament or spelling bee, where “prizes are not awarded on the basis of the outcome of some event involving third parties,” a player’s “gain or loss” in daily fantasy sports is “determined by the results of . . . [sports] game[s] played by others.”<sup>103</sup> Daily fantasy games are thus like other “bookmaking operations,” such as wagering on “horse racing and dog racing.”<sup>104</sup> They are akin to wagering on the result of a golf tournament or spelling bee, not participating in one. Draft style game entry fees therefore do not fall within the contest-participant exception but instead constitute wagers on sports under the general definition.

The draft style games are similar to wagering on a contest in other respects as well. Generally, an individual who enters a golf tournament or a spelling bee can only compete in one (potentially lengthy) contest at a time. In contrast, for both traditional sports betting and daily fantasy games, an individual can bet or wager on numerous sporting events simultaneously or in rapid succession. Indeed, some daily fantasy operators allow an individual player to submit hundreds of separate entries for a single draft style game.<sup>105</sup> As a result, the risks of addiction and large losses—the chief concerns underlying section 337a—are particularly acute. And because the entry fees in draft style games vary from a few dollars to hundreds or even thousands of dollars, losing players can risk increasing amounts to try to recover their losses, further implicating the Legislature’s concerns.<sup>106</sup>

Our conclusion that the draft styles games do not fall within the contest-participant exception is again consistent with the views of all other state and federal regulators who

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<sup>102</sup> *Id.* at p. 314; accord, *Faircloth v. Cent. Fla. Fair, Inc.* (1967) 202 So.2d 608, 609 (Florida statute prohibited “wagering” on the results of ball games, races, prize fights and the like as opposed to “playing” those games); *Grant v. State* (1947) 75 Ga.App. 784, 788 (distinguishing playing a baseball game and betting on the result of a baseball game; “a wager is not a game but a bet of stakes upon the results of a game”).

<sup>103</sup> *State v. Am. Holiday Ass’n, Inc.*, *supra*, 151 Ariz. at pp. 314, 317.

<sup>104</sup> *Ibid.*

<sup>105</sup> See, e.g., *ante*, fn. 19 (describing example of daily fantasy game with \$15 entry fee that allowed 150 entries per person, for a maximum of \$2,250 wagered).

<sup>106</sup> See *ante*, fn. 51 (describing concerns about bettors chasing losses).

have examined similar questions.<sup>107</sup> As the Mississippi Attorney General explained, “*participating* in foosball and pool tournaments for prizes is not prohibited” by a state law barring betting on game results, but “*betting* on” foosball or pool tournaments played by others “would be.”<sup>108</sup> The draft style games fall into the latter category: they “involve[] a wager upon the performance of others,” even if they are “in the form of a tournament or contest amongst players to pick the best teams.”<sup>109</sup> Similarly, the Ohio Attorney General explained that a “fundamental distinction” between golf tournaments or spelling bees and daily fantasy sports is that daily fantasy “participants have no direct link to the professional athletes whose performances ultimately determine whether a . . . participant wins or loses money.”<sup>110</sup> And the IRS Office of Chief Counsel reached the same conclusion in construing a federal statute that imposes an excise tax on any “wager.”<sup>111</sup> The Chief Counsel reasoned that playing a draft style game is not like *entering* a puzzle-solving contest, but instead is akin to *wagering* on the result of a puzzle-solving contest completed by others.<sup>112</sup>

That conclusion is also consistent with the Restatement of Contracts, which California courts have frequently looked to in construing state law.<sup>113</sup> Section 520 of the

<sup>107</sup> See, e.g., Nev.Atty.Gen.Memo., *supra*, at p. 11 (draft style games involve wagering, in contrast to the hole-in-one golf shot in *Las Vegas Hacienda Inc. v. Gibson*, discussed *ante*, fns. 58-62); Ops.Tex.Atty.Gen. No. KP-0057, *supra*, at pp. 6-7 (distinguishing daily fantasy participants, “who pay entry fees for a chance to win a prize from *forecasting* the outcome of [sporting] events,” from the “athletes [who] actually compet[e] in the sporting events,” italics added); Ga.Atty.Gen.Memo., *supra*, at p. 4 (distinguishing between competing in a sporting event for a prize and betting on the result of a sporting event played by others, which describes daily fantasy sports); see also, e.g., Ops.Haw.Atty.Gen. No. 16-1, at pp. 6-7 (2016) (draft style games violated prohibition on “risk[ing] something of value upon the outcome of . . . a future contingent event not under [a person’s] control or influence,” the state law barring sports gambling).

<sup>108</sup> Ops.Miss.Atty.Gen., 2016 WL 695680, *supra*, at p. \*4, italics added.

<sup>109</sup> *Ibid.*

<sup>110</sup> Oh.Atty.Gen.Memo., Daily Fantasy Sports Websites, at p. 7 (June 30, 2016).

<sup>111</sup> See 26 U.S.C. § 4401(a)(1)-(2).

<sup>112</sup> Internal Revenue Service, Office of Chief Counsel, Memorandum No. AM 2020-009, *supra*, at p. 8 (daily fantasy is not like entering a puzzle-solving contest but is like “choos[ing] a person or persons from a field of puzzle solvers who the contestant believed had the greatest chance of solving the most puzzles and . . . wagering based on that person or persons’ expected performance”).

<sup>113</sup> See, e.g., *Martinez v. Socoma Companies, Inc.* (1974) 11 Cal.3d 394, 400-402; *Drennan v. Star Paving Co.* (1958) 51 Cal.2d 409, 413-416; *Autry v. Republic Prods.*,

(continued...)

Restatement defines a “wager” as a “bargain in which a promisor undertakes that, upon the existence or happening of a condition he will render a performance . . . for which there is no agreed exchange.”<sup>114</sup> “Generally this condition will be a fortuitous event such as . . . a horse-race.”<sup>115</sup> Section 521 then recognizes that paying a fee to enter certain contests for prizes—such as cattle-exhibition or bread-making contests—does not constitute wagering if the sponsor does not compete for the prize and the entrance fees are not divided among the contestants.<sup>116</sup> But section 521 expressly requires that “success in [the competition] does *not depend on a fortuitous event*,” such as a horse race open to third-party wagering.<sup>117</sup> So competing in a golf tournament is not wagering. But competing in a contest to predict the result of a golf tournament is wagering because “success . . . depend[s] on a fortuitous event”: the golf tournament played by others.<sup>118</sup> Likewise, because “success” in daily fantasy “depend[s] on [the] fortuitous event” of third-party athletic competitions, entry fees are wagers.

Our analysis is also consistent with *Los Angeles Turf Club v. Horse Racing Labs, LLC*, where a federal district court in the Central District of California held that the entry fees in a fantasy horse racing contest were bets.<sup>119</sup> Much like draft style game players,

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*Inc.* (1947) 30 Cal.2d 144, 148-149. The Restatement’s publication in 1932, in the same era that section 337a was enacted in 1909, makes it a useful resource in construing “wager” under section 337a. We note that the Restatement addressed the meaning of a “wager” because wagering contracts were often unenforceable. (See Rest., Contracts, § 512.) The Restatement Second of Contracts, published in 1981, omitted the topic because it had become “largely governed by legislation.” (Rest.2d Contracts, Ch. 8, Intro. Note.)

<sup>114</sup> Rest., Contracts, § 520. The definition also requires that the agreement “does not indemnify or exonerate the promisee or a beneficiary of the bargain for a loss caused by the existence or happening of the condition.” (*Ibid.*) So, for example, an insurance contract is not a “wager” because it indemnifies the insured “for a loss.” (*Ibid.*)

<sup>115</sup> *Id.*, com. c.

<sup>116</sup> See Rest., Contracts, § 521 (“An accepted offer of a prize to the winner in a competition, success in which does not depend on a fortuitous event, is not a wager, if the promisor does not compete for the prize, or derive a profit or a chance of profit from payments by the contestants, and if entrance fees are not divided among the contestants”); see *id.*, illus. 1.

<sup>117</sup> Rest., Contracts, § 521, italics added; see Rest., Contracts, § 520, com. c (a “fortuitous event” includes a horse race or an election or other event outside the control of the wagering parties).

<sup>118</sup> Rest., Contracts, § 521.

<sup>119</sup> *Los Angeles Turf Club v. Horse Racing Labs, LLC*, No. CV 15-09332, 2017 WL 11634526 (C.D. Cal. May 15, 2017).

contest entrants drafted a fantasy team of six or more horses, then earned points based on each selected horse's performance in a single real-life horse race.<sup>120</sup> The contest charged fixed entry fees and awarded pre-announced prizes that did not depend on the number of entrants.<sup>121</sup> The court held that the contest entry fees were “wager[s] . . . with respect to the outcome of a horserace.”<sup>122</sup> It analogized the contest's prizes to the “pot” won by the winner of a poker game, an activity that constitutes betting under California law.<sup>123</sup> The contest entry fees, the court explained, “fill[ed]” the pot, with the contest sponsor contributing additional funds only if it failed to sell enough entries to pay the guaranteed prizes.<sup>124</sup> The court acknowledged the skill involved in the fantasy game—noting that participants won “by virtue of their superior selection of horses”—but held that this was not inconsistent with treating the fantasy game as a type of “wagering.”<sup>125</sup>

*Los Angeles Turf Club* is significant not only because the court concluded that a fantasy sports contest involved “bets” or “wagers,” but because it illustrates the consequences if we were to reach a contrary conclusion here. As noted above, the California Legislature has authorized pari-mutuel wagering on horse races, in which participants compete against each other to predict race results.<sup>126</sup> In doing so, the Legislature “guarantee[d] . . . protection[s]” to the public by carefully regulating betting activities—restricting, for example, where betting can take place and the amount of bets that must be returned to winners.<sup>127</sup> Any “betting” or “wagering” that does not comply with these restrictions remains prohibited.<sup>128</sup> But if daily fantasy games like the ones at issue in *Los Angeles Turf Club* did not involve “bets” or “wagers,” then they could

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<sup>120</sup> *Id.* at p. \*3 (points were awarded based on payoff amounts at racetracks where the real-life races were held).

<sup>121</sup> *Ibid.*

<sup>122</sup> *Id.* at p. \*9. The overarching issue was whether the fantasy horse-racing contests violated a federal law, the Interstate Horseracing Act, which depended on whether the contest entry fees were bets or wagers. (See *id.* at pp. \*1, \*5-\*6.)

<sup>123</sup> *Id.* at p. \*8, citing *Bell Gardens Bicycle Club v. Dep't of Just.* (1995) 36 Cal.App.4th 717.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> See Bus. & Prof. Code, § 19590; 36 Ops.Cal.Atty.Gen. 150 (1960); *ante*, fn. 32.

<sup>127</sup> 36 Ops.Cal.Atty.Gen., *supra*, at p. 153; 66 Ops.Cal.Atty.Gen. 94 (1983); *Youst v. Longo* (1987) 43 Cal.3d 64, 81 (“[T]he Legislature has enacted a comprehensive scheme of legislation designed to regulate almost every aspect of legalized horse racing and wagering,” internal quotation marks and italics omitted).

<sup>128</sup> See Bus. & Prof. Code, § 19595 (“Any form of wagering or betting on the result of a horse race other than that permitted by this chapter is illegal”).

potentially operate free from any of those regulations. Games might be offered in any location, including over the Internet, and they could return any amount of money to winners. Operators could also effectively circumvent other significant protections, including prohibitions on “wagering” by race officials, jockeys, and minors.<sup>129</sup> In our view, it is unlikely that the Legislature intended that result.

Notwithstanding these authorities, the operators argue that the contest-participant exception applies because draft style game players participate in their *own* contest—the fantasy contest—separate from the underlying sports competitions. But as regulators in Georgia and Texas have explained, this argument could allow the contest-participant “exception to swallow the rule” because any wager can be recharacterized as its “own” contest, distinct from the underlying uncertain event.<sup>130</sup> Even the most ordinary sports bet—whether one team will win by at least 5 points, or whether a player will collect 7 rebounds—could be seen as a distinct contest between the sportsbook and the bettor. The operators’ argument thus threatens to collapse the distinction between participating in a contest, on the one hand, and wagering on a contest, on the other.

The operators fail to identify any persuasive argument for treating draft style games as their own competition.<sup>131</sup> First, the operators argue that draft style games are their own contest because they are skill-dominant activities. In support, they cite to *White v. Cuomo*, where the New York Court of Appeals held in a 4-3 decision that a state statute authorizing draft style daily fantasy games did not violate the state Constitution’s “gambling” prohibition under a highly deferential standard of review.<sup>132</sup> The Court acknowledged that daily fantasy is “distinct from spelling bees, golf tournaments, and essay competitions” because those contests “do not involve the performance of a third party.”<sup>133</sup> But it reasoned that daily fantasy entrants nonetheless “engage in a distinct

<sup>129</sup> See Cal. Code Regs., tit. 4, §§ 1968-1971.

<sup>130</sup> Ga. Atty. Gen. Memo., *supra*, at p. 4; see Ops. Tex. Atty. Gen. No. KP-0057, *supra*, at p. 7.

<sup>131</sup> See Comment, *Flushed From the Pocket: Daily Fantasy Sports Businesses Scramble Amidst Growing Legal Concerns* (2016) 69 SMU L.Rev. 501, 522 (“[C]ourts have drawn a distinction between ‘actually participating’ in a contest and being able to control or affect its outcome versus ‘forecasting’ the result of a contest involving others. It intuitively makes much more sense to say that [daily fantasy] participants merely forecast the result of a contest involving others than to say that their wagering against other participants is the contest itself,” internal quotation marks and italics omitted).

<sup>132</sup> See *White v. Cuomo* (2022) 38 N.Y.3d 209. Because the issue was the constitutionality of a statute enacted by the Legislature, New York law required the Court to apply an “‘exceedingly strong presumption of constitutionality’” and uphold the law unless it was unconstitutional “‘beyond a reasonable doubt.’” (*Id.*, at pp. 216-217.)

<sup>133</sup> *Id.* at p. 227.

game of their own” because the outcome of a fantasy contest turns “on whether the participant has *skillfully* composed and managed a virtual roster so as to garner more fantasy points than rosters composed by other participants.”<sup>134</sup>

As Justice Wilson persuasively explained in dissent, however, the “purported ‘skill’ involved” in daily fantasy is simply “a skill in betting.”<sup>135</sup> Although “some [daily fantasy] bettors ‘draw from their knowledge of the relevant sport, player performance and histories, offensive and defensive strengths of players and teams, team schedules, coaching strategies,’” and related statistics “to exercise considerable judgment in selecting virtual players,” “the same would be true of persons placing a bet on the number of touchdowns an individual football player would score in tomorrow’s game.”<sup>136</sup> Just as racetrack wagering is betting, “even if skill in picking . . . horses greatly affects the chance of winning,” daily fantasy is betting regardless of the skill involved because success depends on forecasting “future contingent events over which the bettors have no control.”<sup>137</sup> In our view, the same reasoning applies to section 337a.<sup>138</sup>

Second, some of the operators argue that draft style game players participate in their own contest simply because the games are structured as peer-to-peer competitions, in which players compete against each other for pre-announced prizes that do not depend

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<sup>134</sup> *Ibid.*, italics added.

<sup>135</sup> *Id.* at p. 248 (dis. opn. of Wilson, J.).

<sup>136</sup> *Ibid.*, quoting *id.* at p. 224 (maj. opn.); see *ibid.* (distinguishing “[s]omeone who owns a horse, trains it, and enters it into a competition in which the owner is rewarded based on the horse’s performance” from a fantasy player “who assembles a slate of horses”); accord, *Ex parte McDonald*, *supra*, 86 Cal.App. at pp. 366-368 (racing contest among horse owners did not violate section 337a but contest among spectators to predict race winner did); *Los Angeles Turf Club v. Horse Racing Labs, LLC*, *supra*, 2017 WL 11634526, at pp. \*6-\*9 (entry fees in fantasy horse racing contest were bets).

<sup>137</sup> *White v. Cuomo*, *supra*, 38 N.Y.3d at p. 249 (dis. opn. of Wilson, J.); see Ops.Miss.Atty.Gen., 2016 WL 695680, *supra*, at p. \*2 (fantasy sports constitute wagering on a contingent event regardless of whether “the amount of skill [needed to win] is greater than that needed to pick which real sports team will win a particular game, or to win a game of poker, or to pick the best horse in a race”); Internal Revenue Service, Office of Chief Counsel, Memorandum No. AM 2020-009, *supra*, at p. 8 (“[T]he ‘skill’ involved in selecting fantasy players is similar to the skill involved in selecting winners of individual professional sports games, horse races, or other traditional sports gambling activities”).

<sup>138</sup> See *ante*, fns. 43-53 (explaining that section 337a prohibits betting or wagering even if they are skill-dominant activities).

on the number of entrants.<sup>139</sup> That may be a necessary condition for the contest-participant exception to apply.<sup>140</sup> But it is not in itself a sufficient one. As the Arizona Supreme Court has persuasively reasoned in construing a statute similar to section 337a, the exception also requires that “prizes are not awarded on the basis of the outcome of some event involving third parties.”<sup>141</sup> Were the rule otherwise, any type of ordinary sports betting could be made legal if it were offered in a peer-to-peer format, dramatically reducing section 337a’s coverage. Instead of offering an against-the-house wager to predict the winner of a football game, for example, a sportsbook could offer a two-person, head-to-head contest to predict the game winner, matching entrants who wished to make opposing predictions. We see no evidence that the Legislature intended to allow these types of games, which mimic traditional bilateral wagering and pose similar risks of addiction and financial injury. In our view, a contest to determine who is the best sports bettor still involves sports betting.<sup>142</sup>

To be sure, the peer-to-peer format of the draft style games means that players do not bet against the game operators. Where an operator offers a prize that it will always distribute to one of the participants, the operator itself is not “betting”; its gain or loss does not depend on the outcome of the uncertain future event.<sup>143</sup> But just because the operator is not betting against the players does not mean that the players are not betting against each other.<sup>144</sup> Pari-mutuel wagering on horses, for example, is operated on a peer-to-peer basis, yet participants clearly bet against one another.<sup>145</sup> We have previously concluded that participants in a lottery also place “bets” or “wagers” on the

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<sup>139</sup> Cf. *Humphrey v. Viacom, Inc.*, No. 06-CV-2768, 2007 WL 1797648 (D.N.J. June 20, 2007) (concluding that season-long fantasy sports contest did not involve betting under New Jersey law due in part to peer-to-peer contest structure).

<sup>140</sup> See, e.g., *State v. Am. Holiday Ass’n, Inc.*, *supra*, 151 Ariz. at pp. 314-316; Rest., Contracts, § 521; compare *Las Vegas Hacienda, Inc. v. Gibson*, *supra*, 77 Nev. at pp. 27-30 (hole-in-one golf shot was not betting even though the contest was not operated on a peer-to-peer basis), discussed *ante*, fns. 58-62.

<sup>141</sup> *State v. Am. Holiday Ass’n, Inc.*, *supra*, 151 Ariz. at p. 314, discussed *ante*, fns. 94-102; see Rest., Contracts, § 521, discussed *ante*, fns. 113-118.

<sup>142</sup> Cf. *Tschetschot v. Comm’r* (Tax Ct. 2007) 93 T.C.M. (CCH) 914, \*3 (rejecting the argument that, unlike regular poker, a poker *tournament* did not involve “betting” or “wagering”; “simply because a sport or activity is played or conducted in a tournament setting does not transform the underlying activity into something different”).

<sup>143</sup> See *Western Telcon*, *supra*, 13 Cal.4th at pp. 485-489.

<sup>144</sup> See Nev. Atty. Gen. Memo., *supra*, at pp. 9, 11.

<sup>145</sup> See *ante*, fns. 12-13, 32, 128.

game result by buying lottery tickets.<sup>146</sup> And the federal district court in *Los Angeles Turf Club* likewise concluded that players who competed in a peer-to-peer fantasy contest to win pre-announced prizes engaged in wagering.<sup>147</sup> Similarly, players in draft style games place bets on the outcome of the third-party athletic events.

Third, the operators argue that draft style games are their own contest because winners are not determined by “the outcome of any particular real-life athlete’s performance or on the score sheet of any sporting event” but instead based on multiple real-world game statistics, combined pursuant to a designated formula.<sup>148</sup> But as explained above, section 337a prohibits wagering on any type of game attribute, not just the ultimate winner.<sup>149</sup> And many forms of sports wagering turn on complex combinations of game statistics.<sup>150</sup> Horse-race wagering, for example, offers “exotic” parlay bets that award prizes based on myriad combinations of predicted race results.<sup>151</sup> In sum, daily fantasy may “involve betting on the performances of a collection of

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<sup>146</sup> See 105 Ops.Cal.Atty.Gen. 76 (2022) (concluding that lottery tickets constitute amounts “staked, pledged, bet or wagered . . . upon the result . . . of any lot, chance, [or] casualty” under section 337a(a)(3)); 82 Ops.Cal.Atty.Gen. 87 (1999) (same). We note that a lottery’s prize pool may either be made up of pooled entry fees, as in pari-mutuel horse racing, or it “may involve fixed prizes” determined “in advance of the draw,” like in the draft style games. (*Western Telcon, supra*, 13 Cal.4th at p. 490.)

<sup>147</sup> See *Los Angeles Turf Club v. Horse Racing Labs, LLC, supra*, 2017 WL 11634526, at pp. \*8-\*9 (refusing to follow *Humphrey v. Viacom, Inc.*, discussed *ante*, fn. 139).

<sup>148</sup> *White v. Cuomo, supra*, 38 N.Y.3d at p. 227.

<sup>149</sup> See *ante*, fns. 54-57.

<sup>150</sup> See, e.g., 36 Ops.Cal.Atty.Gen., *supra*, at p. 153 (“The difference between selecting the winners in one, two, three or six races is one of degree and not of kind”); *Betting the Line, supra*, at p. 176 (noting the “hundreds of proposition bets” offered around major football matches, “from those that reflect the evaluation of playing skills (will John Elway of the Denver Broncos complete more passes than Chris Chandler of the Atlanta Falcons?), . . . to the ludicrous (will the total points scored by both teams plus 16 points equal the number of strokes Tiger Woods takes in a golf tournament played the same day?)”).

<sup>151</sup> See *White v. Cuomo, supra*, 38 N.Y.3d at p. 249 (dis. opn. of Wilson, J.) (the “same arguments made to urge that [daily fantasy sports are] not gambling could have been made about horse racing” given the many complex horse-race wagers—such as the “trifecta box,” the “pick six,” and the “exacta part wheel,” which require predicting different combinations of the first, second, or third place results of one or more races).

individual players, rather than the performance of a real team.”<sup>152</sup> But it nevertheless “involve[s] betting on sports outcomes.”<sup>153</sup>

Finally, some operators argue that the draft style games are their own contest because they fall within the Business and Professions Code’s definition of a regulated “contest.”<sup>154</sup> Games falling within that definition are subject to disclosure requirements, but are not prohibited.<sup>155</sup> The statute broadly defines a “contest” to include “any game” in which participants pay consideration to “compete for . . . prizes” where winning is “determined by skill or any combination of chance and skill.”<sup>156</sup> But the statute makes clear that it shall not “be construed to permit any contest . . . that is prohibited by any other provision of law.”<sup>157</sup> As a result, whether draft style games qualify as “contests” or not, they are prohibited by section 337a because they involve wagering on sports.<sup>158</sup>

### **We Cannot Opine as to Whether Daily Fantasy Sports Games Are a Lottery**

Although we conclude that section 337a prohibits daily fantasy sports games, we cannot determine whether they are also barred by California’s prohibition of lotteries. The California Constitution provides that the “Legislature has no power to authorize lotteries, and shall prohibit the sale of lottery tickets in the State.”<sup>159</sup> Consistent with that

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<sup>152</sup> *Id.* at p. 242 (dis. opn. of Wilson, J.).

<sup>153</sup> *Ibid.*; see Oh.Atty.Gen.Memo., *supra*, at p. 7 (“[W]hile [daily fantasy] may be a more sophisticated form of sports betting—in that the outcome is based on the statistics of individual participants rather than the outcome of the game itself—it appears to be betting under Ohio law nonetheless”); accord, *Edgewood Am. Legion Post No. 448 v. United States* (7th Cir. 1957) 246 F.2d 1, 4-5 (contest to predict the number of runs scored in baseball games throughout a season constituted “wagering” under federal excise wagering tax, even though success did not turn “on the result of any particular game”; the winner was “determined by reference to the happenings of a sports event,” so the “particular manner in which such event was used in determining the winner [was] beside the point”).

<sup>154</sup> Bus. & Prof. Code, § 17539.3, subd. (e).

<sup>155</sup> See Bus. & Prof. Code, § 17539 et seq.

<sup>156</sup> Bus. & Prof. Code, § 17539.3, subd. (e).

<sup>157</sup> *Id.*, subd. (c).

<sup>158</sup> The opinion request asks only about the legality of *daily* fantasy sports games. We therefore need not consider whether *season-long* fantasy sports fall outside of section 337a, such as whether the greater degree of player interaction in those games suggests that players are participating in their own contest.

<sup>159</sup> Cal. Const., art. IV, § 19, subd. (a).

directive, the Penal Code prohibits lotteries and lottery-ticket sales.<sup>160</sup> A “lottery is defined by three elements”: consideration, a prize, and distribution by chance.<sup>161</sup> Consideration “is the fee . . . that a participant pays the operator for entrance.”<sup>162</sup> A prize “encompasses property that the operator offers to distribute to one or more winning participants and not to keep for himself.”<sup>163</sup>

Relevant here, distribution by chance “means that winning and losing depend on luck and fortune rather than, or at least more than, judgment and skill.”<sup>164</sup> When a game combines elements of skill and chance, the question is which is “the dominating factor in determining the result.”<sup>165</sup> In making that determination, courts look to “the character of the game as revealed by its rules.”<sup>166</sup> Applying these principles, California courts have reached a series of fact-specific conclusions. For example, courts have held that skill predominates in archery and chess, but chance predominates in a game determined by drawing tickets from a container.<sup>167</sup>

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<sup>160</sup> See Penal Code, § 319 et seq; *Hotel Emps. & Rest. Emps. Int’l Union v. Davis* (1999) 21 Cal.4th 585, 591. As noted above, state law contains several exceptions not relevant here. (See *ante*, fn. 21.)

<sup>161</sup> *Hotel Emps. & Rest. Emps. Int’l Union v. Davis*, *supra*, 21 Cal.4th at p. 592; see Penal Code, § 319 (“A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known”); see also 71 Ops.Cal.Atty.Gen., *supra*, at p. 145.

<sup>162</sup> *Hotel Emps. & Rest. Emps. Int’l Union v. Davis*, *supra*, 21 Cal.4th at p. 592.

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

<sup>165</sup> *Finster v. Keller*, *supra*, 18 Cal.App.3d at p. 844.

<sup>166</sup> *Bell Gardens Bicycle Club v. Dep’t of Just.*, *supra*, 36 Cal.App.4th at p. 722.

<sup>167</sup> See 71 Ops.Cal.Atty.Gen., *supra*, at pp. 146-148 (collecting cases); see, e.g., *In re Allen* (1962) 59 Cal.2d 5, 7 (bridge is a game of skill); *Brown v. Bd. of Police Comm’rs of City of Los Angeles*, *supra*, 58 Cal.App.2d at p. 477 (“[S]hooting at a target is a game of skill”); *id.* at pp. 477-479 (ball-tossing carnival game was a game of skill); *Finster v. Keller*, *supra*, 18 Cal.App.3d at pp. 844-846 (contest to predict the winner of six horse races was a game of chance); *Bell Gardens Bicycle Club v. Dep’t of Just.*, *supra*, 36 Cal.App.4th at pp. 747-753 (chance predominated in jackpot feature of poker game);

(continued...)

Here, we are unable to opine as to whether daily fantasy games satisfy the distribution-by-chance requirement. Attorney General opinions under Government Code section 12519 are limited to “question[s] of law.”<sup>168</sup> But whether skill or chance predominates is a question of fact.<sup>169</sup> Although the answer will sometimes be clear, games like daily fantasy sports that combine elements of skill and chance pose a closer question.<sup>170</sup> Resolving the issue here, for example, might require evaluating expert statistical analyses—a fact-intensive undertaking far outside our purview.<sup>171</sup> And the answer might also vary by game, given differences in rules or administration.<sup>172</sup> Because we cannot determine whether skill or chance predominates, we cannot opine as to whether daily fantasy sports are also prohibited as lotteries under Penal Code section 319 et seq.<sup>173</sup>

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*People v. Shira* (1976) 62 Cal.App.3d 442, 462 (chance predominated in “RINGO” game that combined chance elements of Bingo and skill elements of a ring toss); see also 17 Ops.Cal.Atty.Gen. 63, 64 (1951) (Bingo game variations involving relatively minor skill elements were games of chance); Cal.Atty.Gen., Indexed Letter, No. I.L. 74-145 (Aug. 9, 1974) (Attorney General Indexed Letter concluding that backgammon is a game of skill, despite chance element from dice rolls).

<sup>168</sup> Gov. Code, § 12519; see also 62 Ops.Cal.Atty.Gen. 150, 163 (1979) (“The function of this office is not to resolve factual disputes, or disputes as to conflicting inferences which may arise from such facts, but to render opinions on legal questions”); 105 Ops.Cal.Atty.Gen. 39, 39 (2022).

<sup>169</sup> See *Cossack v. City of Los Angeles* (1974) 11 Cal.3d 726, 732 (whether skill or chance dominates is a “fact question for the trial court”); *People v. Settles* (1938) 29 Cal.App.2d Supp. 781, 787 (where game has elements of both skill and chance, the question of which dominates “is ordinarily one of fact”).

<sup>170</sup> See *State ex Inf. McKittrick v. Globe-Democrat Pub. Co.* (1937) 341 Mo. 862, 875 (“Whether the chance factor is dominant or subordinate is often a troublesome question”).

<sup>171</sup> See *post*, fn. 184; see, e.g., *Brown v. Bd. of Police Comm’rs of City of Los Angeles*, *supra*, 58 Cal.App.2d at p. 479 (appellate court was “unable to say as a matter of law” whether skill or chance predominated; question “was for the trial court to determine”).

<sup>172</sup> See *post*, fns. 185-186.

<sup>173</sup> See Nev.Atty.Gen.Memo., *supra*, at p. 16 (“[T]he vast majority of daily fantasy sports require some level of skill on the part of the owners. Because the level of skill involved is a question of fact, each individual simulated game must be examined by a finder of fact, who will determine this issue on a case-by-case basis”); but see Ops.R.I.Atty.Gen., Daily Fantasy Sports, p. 2 (Feb. 4, 2016) (concluding that skill predominates in daily fantasy sports, without considering whether the issue is one of fact or law).

Given the considerable interest here, however, we will describe the principal contentions on both sides of the skill-versus-chance debate to clarify the issues. To begin with, the daily fantasy sports operators argue that skill predominates in daily fantasy sports because successful players act like virtual talent scouts or general managers, carefully analyzing the underlying athletic events. “Participants draw from their knowledge of the relevant sport, player performance and histories, offensive and defensive strengths of players and teams, team schedules, coaching strategies, how certain players on opposing teams perform against each other, [and] statistics” in making their roster selections.<sup>174</sup> Participants may also consider the fantasy scoring system, as well as the likely draft choices of other players.<sup>175</sup>

Other comments we received, in contrast, argue that chance predominates in daily fantasy sports because winners are determined based on a single sporting event per athlete. And a host of factors can influence an athlete’s single-game performance, including unexpected weather conditions, last-minute injuries, player ejections, referee decisions, and athlete well-being.<sup>176</sup> For these and other reasons, an athlete’s performance can vary widely from game to game. A basketball player who averages six rebounds per game, for instance, could collect as few as zero or as many as eleven rebounds in an individual game—such that the athlete’s fantasy-point contributions will vary significantly as well.

Both sides also analogize to California case law. The operators emphasize *In re Allen*, where the Supreme Court held that bridge is a game where skill predominates.<sup>177</sup> The Court acknowledged the “element of chance resulting from the deal of the cards.”<sup>178</sup> But it reasoned that skill nonetheless dominated given the complexity of bridge technique; the importance of “deductive analysis, psychology, [and] alertness”; and the “large amount of literature” devoted to improving skill at the game.<sup>179</sup> Commenters on the other side analogize to *Finster v. Keller*, where the Court of Appeal held that chance

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<sup>174</sup> *White v. Cuomo, supra*, 38 N.Y.3d at p. 224; see Ops.W.Va.Atty.Gen., 2016 WL 3857081, *supra*, at pp. 9-11 (enumerating skill elements in daily fantasy, which are “similar” to the skill elements in ordinary sports betting).

<sup>175</sup> *White v. Cuomo, supra*, 38 N.Y.3d at p. 224.

<sup>176</sup> See Ops.Tex.Atty.Gen. No. KP-0057, *supra*, at pp. 4-6 (enumerating chance elements in daily fantasy); accord, *Com. v. Laniewski* (1953) 173 Pa.Super. 245, 250 (traditional sports bettors can forecast results based on “[p]ast records, statistics and other data,” but “[n]o one knows what may happen once the game has begun” due to the “many unpredictable elements” of competition).

<sup>177</sup> *In re Allen, supra*, 59 Cal.2d at p. 7.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*, internal quotation marks omitted.

predominated in a contest to pick the winner of six horse races.<sup>180</sup> The court cited statistics suggesting the difficulty of forecasting multiple race results.<sup>181</sup> And it distinguished *Allen* on the basis that bridge players “continue to make their individual judgments until the hand has been played,” thereby exercising “some control over the outcome,” whereas in the horse racing contest, “all opportunity for the player to exercise judgment ceases when the” first relevant race began.<sup>182</sup> “The actual outcome of any race then depends upon elements wholly beyond the control of the player.”<sup>183</sup>

Next, the operators cite a series of empirical studies—many sponsored by the companies themselves—concluding that skill plays a role in daily fantasy sports.<sup>184</sup> As noted above, we are not in a position to evaluate the methodology or validity of these studies. We note, though, that one study suggests that the degree of skill in some daily fantasy sports formats may vary considerably between games. In the draft style games that employ a salary cap draft, one source of skill is to identify athletes whose fantasy salaries are low relative to their average performance: if an athlete’s salary is less than “the expected payoff,” “skilled fantasy players can capitalize.”<sup>185</sup> But whether athletes are undervalued, and by how much, may vary significantly based on the operator’s algorithm for pricing salaries. As a result, the degree of skill in these games may vary widely between operators. Indeed, one of the operators’ studies concluded that if a game employs “perfect pricing”—where each athlete’s salary “exactly mirrors their expected payoff”—then “there is no strategy in assembling a lineup (other than to get as close to the salary cap as possible) and the outcome of the fantasy game is determined purely by luck.”<sup>186</sup>

Finally, the operators cite two out-of-state cases considering skill in daily fantasy sports, but both have important limitations. First, in *Dew-Becker v. Wu*, the Illinois Supreme Court concluded that skill predominates in daily fantasy sports games, relying

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<sup>180</sup> *Finster v. Keller*, *supra*, 18 Cal.App.3d at pp. 844-846.

<sup>181</sup> See *id.* at pp. 841, 845.

<sup>182</sup> *Id.* at p. 844.

<sup>183</sup> *Ibid.*

<sup>184</sup> See, e.g., Gaming Laboratories International, Skill Simulation of *DraftKings Daily Fantasy Basketball Contest* (June 25, 2015) (concluding that fantasy athlete rosters selected at random underperformed rosters chosen by skilled players); Daniel Getty et al., Luck and the Law: Quantifying Chance in Fantasy Sports and Other Contests, 60 SIAM Rev. No. 4, 869 (Jan. 2018) (Luck and the Law) (concluding that skill predominates in some fantasy sports variants).

<sup>185</sup> Luck and the Law, *supra*, at p. 884.

<sup>186</sup> *Ibid.*

on the above studies.<sup>187</sup> But the studies received no adversarial testing: they were not included “in the record” or cited by either party, and the Court itself did not “engage in its own analysis of the studies’ validity or credibility.”<sup>188</sup> The California Supreme Court has declined to rely on statistical studies in similar circumstances.<sup>189</sup>

Second, in *White v. Cuomo*, discussed above, the New York Court of Appeals held in a 4-3 decision that a state statute authorizing daily fantasy sports games did not violate the State Constitution’s “gambling” prohibition.<sup>190</sup> The Court relied in part on the operators’ studies, which it interpreted to “show[] that skilled [daily fantasy] players achieve significantly more success.”<sup>191</sup> But New York law required the Court to apply an “exceedingly strong presumption” that the statute was constitutional and uphold it if there could “be discovered any state of facts . . . which could reasonably be assumed to afford support for the legislative decision.”<sup>192</sup> Because this opinion request poses no comparable questions under the California Constitution, the case provides limited guidance on the issues of California law presented here.

In sum, we agree with one commentator that “it is difficult to predict with certainty whether a court would find skill or chance to predominate” in daily fantasy sports.<sup>193</sup> Such an inquiry could “rely heavily upon expert testimony and a fact intensive investigation,” and the result could “vary based on the specific nature of each individual contest.”<sup>194</sup> For these reasons, resolving the issue of whether daily fantasy sports games constitute illegal lotteries is outside the scope of an Attorney General legal opinion under Government Code section 12519. But we reiterate that this circumstance has no bearing

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<sup>187</sup> *Dew-Becker v. Wu* (Ill. 2020) 178 N.E.3d 1034, 1040-1041. In dissent, Justice Karmeier concluded that chance predominates in daily fantasy sports games because “the outcome of the contest relies entirely on a contingent event that the participant lacks all control over, and there is no subsequent opportunity for the participant to overcome the chance involved.” (*Id.* at p. 1045; see *id.* at pp. 1042-1045 [collecting cases to support the dissent’s analytical framework].)

<sup>188</sup> *Id.* at p. 1042 (dis. opn. of Karmeier, J.).

<sup>189</sup> See *People v. Hardin* (2024) 15 Cal.5th 834, 862 (“adversarial testing” of statistical studies provides “insight into [both] the methodology employed [and] the ultimate accuracy or significance of the results”).

<sup>190</sup> See *White v. Cuomo*, *supra*, 38 N.Y.3d at p. 212.

<sup>191</sup> *Id.* at p. 223.

<sup>192</sup> *Id.* at pp. 217, 224-225, internal quotation marks omitted; see *ante*, fn. 132.

<sup>193</sup> Edelman, *Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law* (2016) 2016 U.Ill. L.Rev. 117, 132.

<sup>194</sup> *Id.* at pp. 132-133.

on our independent determination that such games violate California law under section 337a's prohibition against betting on sports.

### **CONCLUSION**

We conclude that daily fantasy sports games, including both pick'em and draft style games, are prohibited by section 337a because they involve betting on sporting events.

# **EXHIBIT C**

# ALMEIDA LAW GROUP

3550 Watt Ave., Ste. 140  
Sacramento, California 95821  
916-241-3084

June 20, 2025

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED, U.S. MAIL & EMAIL**

DraftKings, Inc.  
c/o Coblentz Patch Duffy & Bass LLP  
Attn: Clifford Yin ([cyin@coblentzlaw.com](mailto:cyin@coblentzlaw.com))  
One Montgomery Street, Suite 3000  
San Francisco, CA 94104

**Re: DraftKings' Violation of California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, and Other Consumer Protection Laws**

To Whom It May Concern:

I am writing to DraftKings, Inc. ("DraftKings" or "You") on behalf of my clients Brandon Moore, ZhiCheng Zhen, and Jonathan Smith ("Plaintiffs") to notify You that DraftKings' operation of mobile gambling applications and gambling websites within California (collectively, "Gambling Websites") violates the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, ("CLRA"), among other provisions of California law, and to demand that DraftKings promptly (and in any event, not later than July 21, 2025) issue all impacted California consumers, including Plaintiffs, full refunds of any and all amounts deposited and/or lost on the Gambling Websites.

The CLRA provisions that DraftKings' practices violate include, but are not limited to:

- "Misrepresenting the source, sponsorship, approval, or certification of goods or services" (a)(2);
- "Misrepresenting the affiliation, connection, or association with, or certification by, another" (a)(3);
- "Representing that goods or services have . . . characteristics . . . that they do not have" (a)(5);
- "Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another" (a)(7);

Re: Violations of California's Consumers Legal Remedies Act  
Page 2 of 2

- “Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law” (a)(14);
- “Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction” (a)(17); and
- “Inserting an unconscionable provision in the contract” (a)(19).

A copy the Complaint filed by Plaintiffs against You in *Moore vs. DraftKings, Inc.*, United States District Court for the Northern District of California Case No. 3:25-cv-4618 further detailing Your CLRA violations and other violations of California law is attached as **Exhibit 1** to this letter.

Pursuant to California Civil Code Section 1782(a), Plaintiffs hereby demand that by July 21, 2025, DraftKings refund all impacted California consumers all amounts deposited and/or lost on the Gambling Websites. Plaintiffs further demand payment of their counsel's reasonable attorneys' fees and costs associated with the investigation of this matter, the preparation of the Complaint, the preparation of this demand letter, and any other legal work that becomes necessary to secure a complete resolution of this matter.

If it would be helpful to speak, I can be reached at 530-490-3178 or [wes@almeidagroup.com](mailto:wes@almeidagroup.com).

Sincerely,

/s/ Wesley M. Griffith

Wesley M. Griffith

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the Northern District of California

ZHICHENG ZHEN and JONATHAN SMITH, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

Civil Action No. 3:25-cv-04618-CRB

DRAFTKINGS, INC., JASON D. ROBINS, MATTHEW KALISH, PAUL LIBERMAN, CROWN GAMING, INC., AND DOES 1-20

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Crown Gaming, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange St. Wilmington, DE 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Wesley M. Griffith ALMEIDA LAW GROUP LLC 111 W. Ocean Blvd. Ste. 426 Long Beach, CA 90802

Margot P. Cutter CUTTER LAW P.C. 401 Watt Avenue Sacramento, CA 95864

F. Peter Silva II TYCKO & ZAVAREEI LLP 333 H Street, Ste. 5000 Chula Vista, CA 91911

James Bilsborrow WEITS 7 LUXENBERG PC 700 Broadway New YUork, NY 10003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

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DRAFTKINGS, INC., JASON D. ROBINS, MATTHEW KALISH, PAUL LIBERMAN, CROWN GAMING, INC., AND DOES 1-20

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Jason D. Robins
222 Berkeley Street, 5th Floor
Boston, MA 02116

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Wesley M. Griffith
ALMEIDA LAW GROUP LLC
111 W. Ocean Blvd. Ste. 426
Long Beach, CA 90802

Margot P. Cutter
CUTTER LAW P.C.
401 Watt Avenue
Sacramento, CA 95864

F. Peter Silva II
TYCKO & ZAVAREEI LLP
333 H Street, Ste. 5000
Chula Vista, CA 91911

James Bilsborrow
WEITS 7 LUXENBERG PC
700 Broadway
New YUork, NY 10003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

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Civil Action No. \_\_\_\_\_

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This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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DRAFTKINGS, INC., JASON D. ROBINS, MATTHEW KALISH, PAUL LIBERMAN, CROWN GAMING, INC., AND DOES 1-20

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Matthew Kalish
222 Berkeley Street, 5th Floor
Boston, MA 02116

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Wesley M. Griffith
ALMEIDA LAW GROUP LLC
111 W. Ocean Blvd. Ste. 426
Long Beach, CA 90802

Margot P. Cutter
CUTTER LAW P.C.
401 Watt Avenue
Sacramento, CA 95864

F. Peter Silva II
TYCKO & ZAVAREEI LLP
333 H Street, Ste. 5000
Chula Vista, CA 91911

James Bilsborrow
WEITS 7 LUXENBERG PC
700 Broadway
New YUork, NY 10003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

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Civil Action No. \_\_\_\_\_

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was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
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Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Paul Liberman
222 Berkeley Street, 5th Floor
Boston, MA 02116

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Wesley M. Griffith
ALMEIDA LAW GROUP LLC
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F. Peter Silva II
TYCKO & ZAVAREEI LLP
333 H Street, Ste. 5000
Chula Vista, CA 91911

James Bilsborrow
WEITS 7 LUXENBERG PC
700 Broadway
New YUork, NY 10003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: