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15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17 EASTERN DIVISION

18 FRANK MARTIN, on Behalf of
 Himself and All Others Similarly
 19 Situated,

20 Plaintiff,

21 v.

22 DRAFTKINGS, INC., a Delaware
 23 corporation, and FANDUEL, INC., a
 Delaware corporation,

24 Defendants.
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Case No.:

CLASS ACTION COMPLAINT:

- (1) FRAUD;
- (2) CALIFORNIA'S UNFAIR COMPETITION LAW (§17200, *ET SEQ.*);
- (3) CALIFORNIA'S FALSE ADVERTISING LAW (§§17500, *ET SEQ.*);
- (4) NEGLIGENT MISREPRESENTATION
- (5) NEGLIGENCE; AND
- (6) UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Frank Martin ("Plaintiff"), individually and on behalf of all others
2 similarly situated, files this class action against defendants DraftKings, Inc.
3 ("DraftKings") and FanDuel, Inc. ("FanDuel") (collectively, "Defendants"). Plaintiff
4 states and alleges as follows upon information and belief, based upon, inter alia,
5 investigations conducted by and through his attorneys, except as to those allegations
6 pertaining to Plaintiff personally, which are alleged upon knowledge. Plaintiff
7 invokes this Court's jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C.
8 §1332(d).

9 **SUMMARY OF THE ACTION**

10 1. Plaintiff brings this class action individually and on behalf of a class of
11 persons who play "daily fantasy sports" through websites operated by Defendants.
12 Defendants engaged in various unfair business practices that resulted in harm to both
13 California consumers and consumers nationwide.

14 2. For instance, Defendants market themselves offering "more winnings"
15 and paying out more than a billion dollars to consumers. Yet, they fail to disclose
16 that the insiders at their companies have unjustly reaped the earnings from the online
17 competitions by using Class (as defined herein) members' collected information to the
18 insiders' advantage. This conduct—akin to insider trading—allows employees to use
19 statistics to gain a competitive advantage over the average consumer.

20 3. This conduct was recently revealed when it was reported that a
21 DraftKings employee admitted he had prematurely released sensitive data about the
22 site's biggest contest. The same week, he won \$350,000 on FanDuel, something both
23 companies acknowledge.

24 4. The Defendants also misled consumers by promising "bonuses" that
25 supposedly would match Class members' deposits into their account, such as:
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19 5. The Defendants, however, did not pay bonuses as advertised. Instead,
20 the so-called bonuses came with additional conditions before any consumer could
21 access the deposited bonuses. For example, FanDuel releases the money at a 4% rate
22 of the entry fee for every contest a consumer enters. That means to get the "free"
23 \$200, a consumer would have to put \$5,000 in play on FanDuel.¹ DraftKings, in turn,
24 does not give you immediate access to any awarded "bonus." Instead, it releases the
25 deposited bonus in increments—\$1 for every 100 Frequent Player Points earned—so,

26 ¹ Hook, *The Truth About FanDuel's "Up to \$200 Free on Your First Deposit" Welcome Bonus*, Total Sports Blog (Oct. 3, 2014), <http://www.totalsportsblog.com/2014/10/truth-fanduels-200-free-first-deposit-welcome-bonus/>.

1 if a consumer was given a \$200 bonus, the consumer would need to accrue 20,000
2 Frequent Player Points to access the bonus.²

3 6. Defendants' conduct violates numerous state laws, including California,
4 which protects consumers from deceptive acts and practices. Defendants' unfair,
5 deceptive, and misleading course of conduct has caused damages to Plaintiff and the
6 Class. Further, the U.S. Department of Justice and Federal Bureau of Investigation
7 are currently investigating the Defendants.³

8 7. Defendants' material misrepresentations and omissions fraudulently
9 induced Plaintiff and the proposed Class to give Defendants money, which ultimately
10 went to Defendants and their employees through fees and contest prizes.

11 **JURISDICTION AND VENUE**

12 8. This Court has jurisdiction over this action under 28 U.S.C. §1332(d),
13 because this is a class action in which: (i) the matter in controversy exceeds the sum
14 or value of \$5,000,000, exclusive of interest and costs; (ii) members of the proposed
15 Class are citizens of a State different from Defendants; and (iii) the number of Class
16 members is greater than 100.

17 9. Because a substantial portion of the wrongdoing alleged herein occurred
18 in California, the Court has personal jurisdiction over Defendants. Defendants also
19 have sufficient minimum contacts with California and have otherwise intentionally
20 availed themselves of the markets in California through the promotion, marketing,
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22
23 ² Jason Spry, *How to Earn out the DraftKings Bonus*, Daily Fantasy Sports 101
24 (Updated Oct. 14, 2015), <http://www.dailyfantasysports101.com/earn-draftkings-bonus/>.

25
26 ³ Brad Reagan and Devlin Barrett, *FBI, Justice Department Investigating Daily*
27 *Fantasy Sports Business Model*, Wall St. J. (Updated Oct. 15, 2015 7:46 p.m., ET)
28 <http://www.wsj.com/articles/fbi-justice-department-investigating-daily-fantasy-sports-business-model-1444865627>.

1 and sale of products sufficient to render the exercise of jurisdiction by this Court
2 permissible under traditional notions of fair play and substantial justice.

3 10. Venue is proper in this District under 28 U.S.C. §1391(b)(2) and (3)
4 because: (i) a substantial part of the events or omissions giving rise to these claims
5 occurred in this District; (ii) a substantial part of the property that is the subject of this
6 action is situated in this District; and (iii) Defendants are subject to the Court's
7 personal jurisdiction with respect to this action.

8 **THE PARTIES**

9 11. Plaintiff is a citizen of San Bernardino, California. Plaintiff has played
10 daily fantasy sports through the DraftKings' website.

11 12. Defendant DraftKings is a Delaware corporation with its principal place
12 of business in Boston, Massachusetts. DraftKings describes itself as a "leading
13 provider of daily fantasy sports" and reported \$30 million in revenues in 2014.⁴

14 13. Defendant FanDuel is a Delaware corporation with its principal place of
15 business in New York, New York. FanDuel describes itself as "the leader in one-day
16 fantasy sports." FanDuel made over \$57 million in revenues in 2014.⁵

17 **FACTUAL ALLEGATIONS**

18 14. Daily fantasy sports contests evolved from informal fantasy sports
19 games that have been around for several decades. Earlier incarnations of these games
20 involved groups of fans playing games against one another for fun over a full season.
21 Fantasy sports players would assemble hypothetical teams in "drafts," then compete
22

23 ⁴ Scott Kirsner, *DraftKings Puts "Pedal Down" to Become One of Boston's Hottest*
24 *Startups*, beta Boston (June 5, 2015), [http://www.betaboston.com/news/2015/06/05/
draftkings-puts-pedal-down-to-become-one-of-bostons-hottest-startups/](http://www.betaboston.com/news/2015/06/05/draftkings-puts-pedal-down-to-become-one-of-bostons-hottest-startups/).

25 ⁵ Ben Fischer, *FanDuel Quadruples Revenue, Draws 1 Million Users in Football*
26 *Season*, NY Bus. J. (Updated Jan. 13, 2015, 11:22 a.m. ET), [http://www.biz
27 journals.com/newyork/blog/techflash/2015/01/fanduel-triples-revenue-draws-1-
28 million-users-in.html](http://www.bizjournals.com/newyork/blog/techflash/2015/01/fanduel-triples-revenue-draws-1-million-users-in.html).

1 against each other based on the number of points that their teams collected during
2 actual games.

3 15. These fantasy sports games exploded on the Internet in the 1990s, with
4 players gaining ever greater access to statistics and data. Daily fantasy sports games
5 arose from this Internet explosion, with competitions conducted over a much shorter
6 period of time—a single day or single weekend—than the season-long competitions.
7 FanDuel was launched in 2009; DraftKings launched three years later in 2012.
8 Industry studies estimate that daily games will generate around \$2.6 billion in entry
9 fees in 2015 and grow to as much as \$14.4 billion by 2020.

10 16. Defendants are companies that maintain daily fantasy sports websites
11 that permit individuals to play one-day fantasy sports competitions against other
12 players on the same website. Fans pay an entry fee to a website—from as little as
13 \$0.25 up to \$1,000—with prize pools that can pay as much as \$2 million to the
14 winner. In order to participate in the daily fantasy sports contests, players on the
15 websites are required to create an account, place money in it, and then use that money
16 to pay entry fees into each game. At the end of each day, winners of each fantasy
17 sports contest are awarded prize money, which is credited to the individual player's
18 account.

19 17. Defendants take a percentage of the total pot in each daily fantasy sports
20 contest as a fee for hosting the game.

21 18. Defendants advertise and market themselves as games of skill and
22 strategy and, therefore, avoid gambling industry regulations, including the Unlawful
23 Internet Gambling Enforcement Act. In fact, Defendants have spent over \$200
24 million on advertising to reinforce that daily fantasy sports are skill-based games in
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1 order to build billion dollar companies.⁶ The millions of dollars went to ensure
2 consumers were misled and ultimately defrauded by Defendants.

3 19. For instance, a recent DraftKings advertisement encouraged players to
4 "use your knowledge and showcase your skills."⁷ Similarly, FanDuel runs
5 advertisements that urge players to "get paid for [your] knowledge" if you are
6 "smarter than the average fan."⁸

7 20. Real world statistics show, however, that the vast majority of winnings
8 in these daily fantasy sports games go to a very small percentage of players, with as
9 few as 1% of the players taking home over 90% of the prize money.⁹

10 21. Similarly, Defendants engage in false and misleading advertisements
11 concerning allotting bonuses to consumers. Defendants offer to new players a
12 "match" of money that is marketed as a bonus. These bonuses, however, are not
13 immediately available and come with numerous conditions and terms that are not
14 disclosed until after the consumer has paid the initial deposit. Instead, a consumer
15 will be barred from accessing the bonus as it appears in their account.

16
17 ⁶ Tom Kludt, *DraftKings and FanDuel Ads Seems to Be Everywhere on TV Because*
18 *They Are*, CNNMoney (NY) (Oct. 8, 2015, 5:23 p.m. ET), <http://money.cnn.com/2015/10/08/media/fanduel-draftkings-commercials/index.html>.

19 ⁷ DraftKings TV, *DraftKings - "Week 1"*, available at <https://www.youtube.com/watch?v=VDa-cDu8KYg> (last visited Oct. 19, 2015).

20
21 ⁸ *FanDuel Fantasy Football One-Week Leagues TV Commercial, "Get Paid for*
22 *Knowledge"*, available at [http://www.ispot.tv/ad/AVPC/fanduel-com-one-week-](http://www.ispot.tv/ad/AVPC/fanduel-com-one-week-fantasy-football-get-paid-for-knowledge)
23 [fantasy-football-get-paid-for-knowledge](http://www.ispot.tv/ad/AVPC/fanduel-com-one-week-fantasy-football-get-paid-for-knowledge) (last visited Oct. 19, 2015).

24 ⁹ Ed Miller and Daniel Singer, *For Daily Fantasy Sports Operators, the Curse of Too*
25 *Much Skill*, SportsBusiness Daily J. (July 27, 2015), [http://www.sportsbusinessdaily](http://www.sportsbusinessdaily.com/Journal/Issues/2015/07/27/Opinion/From-the-Field-of-Fantasy-Sports)
26 [.com/Journal/Issues/2015/07/27/Opinion/From-the-Field-of-Fantasy-Sports](http://www.sportsbusinessdaily.com/Journal/Issues/2015/07/27/Opinion/From-the-Field-of-Fantasy-Sports); see also
27 Joshua Brustein, *You Aren't Good Enough to Win Money Playing Daily Fantasy*
28 *Football*, Bloomberg Businessweek (Sept, 10, 2015, 5:00 a.m. PT), [http://www](http://www.bloomberg.com/news/articles/2015-09-10/you-aren-t-good-enough-to-win-money-playing-daily-fantasy-football)
[.bloomberg.com/news/articles/2015-09-10/you-aren-t-good-enough-to-win-money-](http://www.bloomberg.com/news/articles/2015-09-10/you-aren-t-good-enough-to-win-money-playing-daily-fantasy-football)
[playing-daily-fantasy-football](http://www.bloomberg.com/news/articles/2015-09-10/you-aren-t-good-enough-to-win-money-playing-daily-fantasy-football).

THE TRUTH IS REVEALED

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2 22. Access to data relating to any particular player, and analytics related to
3 particular strategies that could increase a player's chances of winning, are of
4 significant value to anyone competing in a particular competition. Employees of
5 each of the Defendants are at a particular advantage in this regard, given their access
6 to the inside information, including statistics and analysis on how each competition
7 has unfolded.

8 23. It was recently reported that DraftKings' employees have won at least \$6
9 million playing fantasy sports games on FanDuel.¹⁰ Similarly, FanDuel profiled one
10 of its employees who won \$50,000 playing fantasy sports games on other websites.

11 24. An employee at DraftKings admitted recently to inadvertently releasing
12 data before the start of the third week of National Football League games.¹¹ The
13 employee, a mid-level content manager named Ethan Haskell, won \$350,000 at a
14 rival site, FanDuel, that same week.

15 25. Mr. Haskell's success playing Major League Baseball fantasy games on
16 FanDuel in August of 2015, shows that the vast majority of his winnings began after
17 he started to work—and had access to insider information—at DraftKings.¹²

18 26. FanDuel employee Matt Boccio is ranked by RotoGrinders as one of the
19 top fifty fantasy sports players while playing on only one website. Mr. Boccio
20

21 _____
22 ¹⁰ Cork Gaines, *DraftKings Employees Reportedly Won Nearly \$6 Million Playing*
23 *Daily Fantasy Sports at Rival FanDuel*, Bus. Insider (Oct. 6, 2015, 3:06 p.m.)
<http://www.businessinsider.com/draftkings-daily-fantasy-sports-fanduel-2015-10>.

24 ¹¹ NFL Forum, *DraftKings Ownership Leak*, RotoGrinders, available at [https://](https://rotogrinders.com/threads/draftkings-ownership-leak-850584?page=1#reply-850635)
25 rotogrinders.com/threads/draftkings-ownership-leak-850584?page=1#reply-850635
26 (last visited Oct. 19, 2015).

27 ¹² Larry Brown, *Ethan Haskell: DraftKings Employee Won \$350,000 on FanDuel*,
28 *Larry Brown Sports* (Oct. 5, 2015), <http://larrybrownsports.com/fantasy/ethan-haskell-draft-kings-fanduel-profile/276741>.

1 acquired this ranking while playing from June 16, 2015 to October 3, 2015, a period
2 of less than four months.

3 27. DraftKings founder Paul Liberman admitted that his employees were
4 playing on rival sites in a September 25, 2015 speech, at a Babson College
5 conference. "We have some people who make significantly more money off of our
6 competitors' sites than they do working for DraftKings," Mr. Lieberman told the
7 group.¹³

8 28. DraftKings' Chief Executive Officer, Jason Robins, previously
9 acknowledged that he had "reservations" about allowing employees to participate in
10 competitors' fantasy sports games. Nonetheless, he and his counterparts at FanDuel
11 conspired to allow their employees to continue the practice. Mr. Robins stated, "I, to
12 be honest, did have some reservations about this, and have spoken in the past with
13 some of our competition about whether we should have policies such as this one in
14 place."

15 29. He and his co-founders, Matt Kalish and Paul Liberman now admit that
16 DraftKings employees' participation in fantasy sports games is improper and informs
17 its customers, including Plaintiff, that it has enacted policies "prohibiting DraftKings
18 employees from ... participation in any public daily fantasy sports contests for
19 money" and "employees from any other Daily Fantasy Sports contest operator from
20 participating in games on DraftKings."

21 30. FanDuel similarly announced on its website, "We have permanently
22 banned our employees from playing any daily fantasy games for money, on any site.
23 We will also require all customers to confirm that they are not an employee of any
24
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26 ¹³ Callum Borchers, *DraftKings, FanDuel Team Up to Defend Integrity of Games*,
27 Boston Globe (Oct. 6, 2015) [https://www.bostonglobe.com/business/
28 2015/10/05/draftkings-bans-employees-from-competitors-sites/s36ig5e0eV0OR
9C55R8hwL/story.html](https://www.bostonglobe.com/business/2015/10/05/draftkings-bans-employees-from-competitors-sites/s36ig5e0eV0OR9C55R8hwL/story.html).

1 other third party fantasy site, and if they are, they will not be allowed to access our
2 site."

3 31. However, Defendants had concealed the extent to which its employees
4 were successfully utilizing insider information to advance their competitive status.
5 Had Plaintiff and the Class known the extent to which games they had entered were
6 populated by Defendants' employees with access to relevant, proprietary information,
7 they would not have entered contests on Defendants' websites. Plaintiff and the Class
8 were injured by Defendants' course of fraudulent, misleading, and negligent conduct.

9 **PLAINTIFF'S FANTASY SPORTS PLAY**

10 32. Plaintiff participated in the online fantasy sports games available on
11 DraftKings. Plaintiff deposited an initial sum of money that DraftKings represented
12 would be matched as a bonus. Plaintiff was unable to ever access the "bonus"
13 awarded by DraftKings.

14 33. Plaintiff relied on Defendants' representations that its fantasy sports
15 games are "games of skill." Plaintiff had no knowledge that Defendants' employees
16 used nonpublic information to participate in competitors' fantasy sports games with a
17 competitive advantage. Had Plaintiff known that he was participating in these games
18 at a disadvantage to Defendants' employees, he would not have paid entry fees to
19 Defendants or participated in Defendants' fantasy sports games.

20 **UNCONSCIONABLE TERMS OF USE**

21 **DraftKings**

22 34. Plaintiff and Class members are presented with DraftKings' Terms of
23 Use via a hyperlink during the registration process. No customer can complete the
24 registration process without checking a box indicating agreement to the DraftKings
25 Terms of Use. Plaintiff and Class members were given no opportunity to negotiate
26 the DraftKings Terms of Use. According to DraftKings' Terms of Use, its customers
27 are forced to either accept the Terms of Use in their entirety or reject them and forego
28 using DraftKings' website:

1 You agree to these Terms of Use by accessing or using the Website,
2 registering for Services offered on the Website, or by accepting,
3 uploading, submitting or downloading any information or content
4 from or to the Website. IF YOU DO NOT AGREE TO BE BOUND
5 BY ALL OF THESE TERMS OF USE, DO NOT USE THE
6 WEBSITE.

7 35. As demonstrated below, Plaintiff and Class members could not have
8 procured equivalent services from competitors without being required to agree to
9 similarly restrictive terms of use.

10 36. DraftKings has the unilateral ability to modify its Terms of Use, which
11 provide that "DraftKings reserves the right to amend these Terms of Use at any time
12 and without notice, and it is your responsibility to review these Terms of Use for any
13 changes. If you continue to use the Services after we change the Terms of Use, you
14 accept all changes." Plaintiff and the Class members are not empowered to accept or
15 reject any changes to DraftKings' Terms of Use.

16 37. The Terms of Use also states: "DraftKings reserves the right, in its sole
17 and absolute discretion, to deny any contestant the ability to participate in head-to-
18 head contests for any reason whatsoever." It further "reserve[s] the right to cancel
19 Contests at any time." In addition, "DraftKings may, without prior notice,
20 immediately revoke any or all of your rights granted hereunder." Such a revocation
21 results in users losing all access to the DraftKings website.

22 38. DraftKings' Terms of Use creates a contract of adhesion and does not
23 constitute a valid, mutual agreement. The Terms of Use employed by DraftKings,
24 including the arbitration, class-action waiver, and forum selection clauses,¹⁴ are
25 illusory, oppressive, unconscionable, and unenforceable.

26 _____
27 ¹⁴ A review of prior versions of the DraftKings website indicate that the arbitration
28 Terms of Use, *available at* <http://web.archive.org/web/20140915130255/https://>

1 **FanDuel**

2 39. Plaintiff and Class members are presented with FanDuel's Terms of Use
3 via a hyperlink during the registration process. Customers are not given the option of
4 rejecting or accepting the Terms of Use. Plaintiff and Class members were given no
5 opportunity to negotiate FanDuel's Terms of Use. They were forced to either accept
6 the Terms of Use in their entirety or else reject them and forego using FanDuel's
7 website. Plaintiff and Class members could not have procured equivalent services
8 from competitors without being required to agree to similarly restrictive terms of use.

9 40. The Terms of Use of FanDuel states that it:
10 [R]eserves the right, at its sole discretion, to modify or replace the
11 Terms of Use at any time. The most current version of these Terms
12 will be posted on our Site. You shall be responsible for reviewing and
13 becoming familiar with any such modifications. If a revision to the
14 Terms, in our sole discretion, is material, we will notify you by
15 contacting you through the email address associated with your
16 account. Use of the Services by you after any modification to the
17 Terms constitutes your acceptance of the Terms of Use as modified.

18 Plaintiff and the Class members are not empowered to accept or reject any changes to
19 FanDuel's Terms of Use.

20 41. FanDuel's Terms of Use also states that it "reserves that right to cancel
21 contests, in our sole discretion, without any restrictions." The Terms of Use further
22 provide that "FanDuel may remove any User Content and terminate any FanDuel
23 account at any time for any reason."

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www.draftkings.com/help/terms (last visited Oct. 9, 2015), *with* 7/6/14 Terms of Use,
27 *available at* [http://web.archive.org/web/20140706001849/https://www.draftkings](http://web.archive.org/web/20140706001849/https://www.draftkings.com/help/terms)
28 [.com/help/terms](http://web.archive.org/web/20140706001849/https://www.draftkings.com/help/terms) (last visited Oct. 9, 2015).

1 42. FanDuel's Terms of Use creates a contract of adhesion and does not
2 constitute a valid, mutual agreement. The Terms of Use employed by FanDuel,
3 including the arbitration, class-action waiver, and forum selection clauses added by
4 FanDuel in 2013,¹⁵ are illusory, oppressive, unconscionable, and unenforceable.

5 **CLASS ACTION ALLEGATIONS**

6 43. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
7 23(a) and 23(b)(3).

8 44. Plaintiff seeks certification of the following nationwide class (the
9 "Nationwide Class"):

10 All persons in the United States who deposited money into a
11 DraftKings and/or FanDuel account on or before October 6, 2015, and
12 competed in any daily fantasy sports contest where other entries were
13 made by employees from DraftKings, FanDuel, or any other daily
14 fantasy sports site.

15 45. In the addition, Plaintiff seeks certification of the following subclass (the
16 "California Class") (collectively with the Nationwide Class, the "Class"):

17 All persons in the state of California who deposited money into a
18 DraftKings and/or FanDuel account on or before October 6, 2015, and
19 competed in any daily fantasy sports contest where other entries were
20 made by employees from DraftKings, FanDuel, or any other daily
21 fantasy sports site.

22 46. Excluded from the Class are the Defendants, their parent companies,
23 subsidiaries, and affiliates; any co-conspirators; federal governmental entities and
24 instrumentalities of the federal government; states and their subdivisions, agencies,

25 ¹⁵ Compare 11/29/13 Terms of Use, available at
26 <http://web.archive.org/web/20131129161640/https://www.fanduel.com/terms> (last
27 visited Oct. 9, 2015), with 8/14/13 Terms of Use, available at
28 <http://web.archive.org/web/20130814150029/https://www.fanduel.com/terms> (last
visited Oct. 9, 2015).

1 and instrumentalities; and any judicial officer presiding over this matter and his or her
2 staff.

3 47. **Numerosity.** The Class comprises thousands or more of consumers
4 throughout New York. The Class is so numerous that joinder of all members is
5 impracticable.

6 48. **Commonality and Predominance.** Common questions of law and fact
7 exist as to Plaintiff and the Class and predominate over any questions that affect only
8 individual Class members. These common questions of law and fact include, without
9 limitation:

- 10 (a) the nature, scope, and operations of the wrongful practices of
11 Defendants;
- 12 (b) whether Defendants engaged in a course of unfair, unlawful, fraudulent,
13 and/or deceptive conduct in the daily fantasy sports contests made
14 available on their respective websites;
- 15 (c) whether Defendants knew or should have known their business practices
16 were unfair and fraudulent, as described in this Complaint, in the daily
17 fantasy sports contests made available on their respective websites;
- 18 (d) whether California law governs the Nationwide Class claims;
- 19 (e) whether Defendants owed a duty of care to Plaintiff and the Class;
- 20 (f) whether Defendants made fraudulent and/or misleading representations
21 in connection with offering bonuses to consumers;
- 22 (g) whether Defendants knew or should have known that their
23 representations were fraudulent and/or misleading in connection with
24 offering bonuses to consumers;
- 25 (h) whether Defendants' fraudulent and deceptive conduct harmed Plaintiff
26 and the Class; and
- 27 (i) whether Defendants were unjustly enriched by their deceptive practices.
28

1 49. **Typicality.** Plaintiff's claims are typical of the claims of Class members.
2 Plaintiff and the Class sustained damages arising out of Defendants' common course
3 of conduct in violation of law, as described herein. The damages of each Class
4 member were caused directly by Defendants' unlawful and deceptive conduct.

5 50. **Adequacy.** Plaintiff will fairly and adequately protect the interests of
6 the Class because they share common injuries as a result of Defendants' conduct that
7 is common to all Class members. Plaintiff has no interests adverse to the interests of
8 absent Class members. Plaintiff has retained counsel with substantial experience and
9 success in the prosecution of complex class action and consumer protection litigation.
10 Plaintiff and his counsel are committed to prosecuting this action vigorously on
11 behalf of the Class, and have the financial resources to do so.

12 51. **Superiority.** A class action is superior to other methods of fairly and
13 efficiently adjudicating this litigation. While not inconsequential, the damages as to
14 any individual litigant are such that individual litigation is not feasible. Furthermore,
15 many Class members may not even be aware that they have claims. Accordingly, for
16 Class members, a class action is the only mechanism by which they could reasonably
17 expect to vindicate their rights.

18 52. The prosecution of separate actions by individual Class members would
19 create a risk of inconsistent and varying adjudications concerning the subject of this
20 action.

21 53. Class treatment of predominating common questions of law and fact is
22 superior to multiple individual actions because it would conserve the resources of the
23 Court and the litigants, and further the efficient adjudication of Class members'
24 claims.

25 54. Plaintiff knows of no difficulty to be encountered in the management of
26 this action that would preclude its maintenance as a class action.
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1 **CLAIMS FOR RELIEF**

2 **COUNT I**

3 **FRAUD**

4 **(Brought on behalf of the Nationwide Class and the California Class)**

5 55. Plaintiff repeats and realleges each of the above allegations as if fully set
6 forth herein.

7 56. As is fully alleged above, throughout the class period, Defendants made
8 misrepresentations and material omissions of fact which were false and which
9 Defendants knew to be false. Specifically, Defendants misrepresented that their
10 fantasy sports contests were fair games of skill. Defendants willfully failed to
11 disclose that their employees, agents, and with access to nonpublic statistics and other
12 information could use this information, which gives them a significant competitive
13 advantage, to participate in fantasy sports games on competitors' websites and
14 compete against Plaintiff and the Class members.

15 57. Defendants had superior knowledge regarding their employees' access to
16 statistical information and their employees' ability to use that information to gain a
17 competitive advantage in competitors' fantasy sports games. The knowledge that
18 Defendants' employees were using nonpublic information to gain a competitive
19 advantage in fantasy sports games was not readily available to Plaintiff and the Class
20 members. Failing to disclose this information to Plaintiff and the Class members
21 rendered Defendants' transactions with Plaintiff and the Class members inherently
22 unfair. Defendants therefore had a duty to disclose this information to Plaintiff and
23 the Class members.

24 58. Defendants' misrepresentations and omissions created the illusion that
25 their games were fair games of skill. Defendants' misrepresentations and omissions
26 were made for the purpose of inducing Plaintiff and members of Class to join their
27 websites and pay entry fees to Defendants to participate in their fantasy sports games.
28

1 59. Plaintiff and the Class members justifiably relied on Defendants'
2 misrepresentations and omissions when they joined Defendants' websites, payed
3 Defendants' entry fees, and participated in Defendants' fantasy sports games.
4 Defendants knew, or should have known, that the integrity of the fantasy sports
5 games was a material fact inducing Plaintiff and the Class members to pay entry fees
6 and participate. Plaintiff and the Class members would not have payed entry fees and
7 participated in Defendants' fantasy sports games absent Defendants'
8 misrepresentations and omissions regarding the same.

9 60. As a result of Defendants' fraudulent misrepresentations and omissions,
10 Plaintiff and the Class members were induced into transactions that they otherwise
11 would not have made and suffered financial injury, harm, and damages as described
12 in this Complaint.

13 **COUNT II**

14 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW** 15 **(California Business and Professions Code §§17200, *Et Seq.*)** 16 **(Brought on Behalf of the Nationwide Class and the California Class)**

17 61. Plaintiff repeats and realleges each of the above allegations as if fully set
18 forth herein.

19 62. Plaintiff brings this claim on behalf of himself and the proposed Class.

20 63. California Business and Professions Code §§17200, *et seq.*, prohibits
21 acts of unfair competition, including any "unlawful, unfair or fraudulent business act
22 or practice."

23 64. California Business and Professions Code §§17200, *et seq.*, imposes
24 strict liability. Plaintiff does not have to prove Defendants intentionally or
25 negligently engaged in unlawful, unfair, or fraudulent business acts or practices.
26 Instead, Plaintiff only has to prove such acts or practices occurred.

1 65. Defendants engaged in unlawful business acts and practices in violation
2 of California Business and Professions Code §§17200, *et seq.*, by engaging in unfair,
3 unlawful, and fraudulent business acts or practices as described herein, including but
4 not limited to, failing to disclose: (i) the access their employees had to nonpublic
5 information and would utilize in the online fantasy sports program; and (ii) the true
6 terms and conditions to the offered bonuses prior to signing up for Defendants'
7 services.

8 66. Defendants' practices are likely to deceive, and have deceived, members
9 of the public.

10 67. Defendants knew, or should have known, that their misrepresentations,
11 omissions, failure to disclosure and/or partial disclosures omit material facts and are
12 likely to deceive a reasonable consumer.

13 68. Defendants continued to make such misrepresentations despite the fact
14 they knew, or should have known, that their conduct was misleading and deceptive.

15 69. By engaging in the above-described acts and practices, Defendants
16 committed one or more acts of unfair competition within the meaning of Unfair
17 Competition Law, California Business and Professions Code §§17200, *et seq.*

18 70. Plaintiff reserves the right to identify additional provisions of law
19 violated by Defendants as further investigation and discovery warrants.

20 71. Defendants' misrepresentations, business practices, and their false and
21 misleading advertising constitute "unfair" business acts and practices because such
22 conduct is immoral, unscrupulous, and offends public policy.

23 72. Defendants' misrepresentations, business practices, and their false and
24 misleading advertising constitute "fraudulent" business acts and practices because
25 members of the consuming public, including Plaintiff and the Class members, were
26 and are likely to be deceived thereby.

27
28

1 73. The harm to Plaintiff and members of the Class outweighs the utility, if
2 any, of Defendants' acts and practices described above and, therefore, Defendants'
3 acts and practices constitute an unfair business act or practice.

4 74. Defendants' acts and practices have detrimentally impacted competition
5 and caused substantial harm to Plaintiff, the Class members, and the consuming
6 public. Plaintiff and the Class members were misled and suffered injuries and lost
7 money or property as a direct and proximate result of Defendants' unlawful business
8 acts and practices.

9 75. Defendants knew, or reasonably should have known, their misleading
10 business practices of allowing employees to utilize inside information and by failing
11 to provide the true terms and conditions of their bonuses were likely to deceive
12 reasonable consumers.

13 76. Defendants' misrepresentations and their false and misleading business
14 practices present a continuing threat to consumers in that such advertising will
15 continue to mislead consumers.

16 77. By reason of the foregoing, Defendants should be required to pay
17 damages and/or make restitution to Plaintiff and the Class members and pay for
18 Plaintiff's and the Class members' attorneys' fees.

19 **COUNT III**

20 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**
21 **(California Business and Professions Code §§17500, *Et Seq.*)**
22 **(Brought on Behalf of the Nationwide Class and the California Class)**

23 78. Plaintiff repeats and realleges each of the above allegations as if fully set
24 forth herein.

25 79. Plaintiff brings this claim on behalf of himself and the proposed Class.

26 80. Defendants are disseminating advertising in California and throughout
27 the United States.

28

1 81. California Business and Professions Code §§17500, *et seq.*, provides
2 that:

3 [I]t is unlawful for any ... corporation ... with intent ... to dispose of ...
4 personal property ... to induce the public to enter into any obligation
5 relating thereto, to make or disseminate or cause to be made or
6 disseminated ... from this state before the public in any state, in any
7 newspaper or other publication, or any advertising device, or by
8 public outcry or proclamation, or in any other manner or means
9 whatever, including over the Internet, any statement ... which is untrue
10 or misleading, and which is known, or which by the exercise of
11 reasonable care should be known, to be untrue or misleading....

12 82. When Defendants disseminated the advertising, they knew, or by the
13 exercise of reasonable care should have known, that the statements were untrue or
14 misleading, or omitted to state the truth about their services and related terms, in
15 violation of the False Advertising Law, California Business and Professions Code
16 §§17500, *et seq.* Specifically, Defendants failed to disclose that their employees had
17 access to internal information that created an unfair advantage to the average
18 consumer. Likewise, Defendants knew, or reasonably should have known, their
19 misrepresentations and omissions regarding their bonuses were and are likely to
20 deceive reasonable consumers.

21 83. Plaintiff and the Class members were misled and suffered injuries and
22 lost money or property as a direct and proximate result of Defendants'
23 misrepresentations and their false and misleading statements in violation of California
24 Business and Professions Code §§17500, *et. seq.*

25 84. As a result of Defendants' wrongful conduct, Plaintiff and the Class are
26 entitled to restitution and an order for the disgorgement of the funds by which
27 Defendants were unjustly enriched.
28

1 85. Pursuant to California Business and Professions Code §§17203 and
2 17535, Plaintiff and the members of the Class seek an order of this Court enjoining
3 Defendants from continuing to engage, use, or employ the above-described practices
4 in advertising and marketing their services.

5 86. Likewise, Plaintiff seeks an order requiring Defendants to make full
6 corrective disclosures to correct their prior misrepresentations, omissions, failures to
7 disclose, and partial disclosures.

8 87. On information and belief, Defendants have failed and refused, and in
9 the future will fail and refuse, to cease their deceptive advertising practices, and will
10 continue to do those acts unless this Court orders Defendants to cease and desist
11 pursuant to California Business and Professions Code §17535. The corrective
12 statement by Defendants did not fully address all misrepresentations.

13 88. Plaintiff, individually and on behalf of the Class, seeks restitution,
14 disgorgement, injunctive relief, and all other relief allowable under California
15 Business and Professions Code §§17500, *et seq.*

16 **COUNT IV**

17 **NEGLIGENT MISREPRESENTATION**

18 **(Brought on Behalf of the Nationwide Class and the California Class)**

19 89. Plaintiff repeats and realleges each of the above allegations as if fully set
20 forth herein.

21 90. Plaintiff brings this claim on behalf of himself and the proposed Class.

22 91. Defendants had a duty to disclose to Plaintiff and the Class members that
23 their employees had access to internal information not available to the general public
24 and that the statements that "winners are determined by the individuals who use their
25 skill and knowledge of relevant professional sports information and fantasy sports
26 rules to accumulate the most fantasy points" was misleading. Likewise, Defendants
27 had a duty to disclose the true nature of the bonus awarded to new subscribers.
28

1 92. Defendants negligently and/or carelessly misrepresented, omitted, and
2 concealed from consumers material facts relating to online fantasy sports offered by
3 Defendants.

4 93. These misrepresentations and omissions were material and concerned
5 the specific information that a reasonable consumer would consider in choosing to
6 participate in the online fantasy sports offered by Defendants.

7 94. As a result of Defendants' misstatements and omissions, they were under
8 a duty to disclose the additional facts necessary to avoid any misrepresentation or
9 confusion. Further, Defendants knew of their misrepresentations and omissions.

10 95. At the time, Defendants failed to disclose, conceal, suppress, and/or
11 omitted material information they knew, or by the exercise of reasonable care should
12 have known, that the statements were false and misleading to reasonable consumers.

13 96. Plaintiff and Class members justifiably relied upon Defendants'
14 misrepresentations and omissions. Plaintiff and Class members were unaware of the
15 falsity of Defendants' misrepresentations and omissions and, as a result, justifiably
16 relied on them in participating in the online fantasy sports offered by Defendants.
17 Had Plaintiff and Class members been aware of the truth, they would not have
18 participated in Defendants' programs.

19 97. As a direct and proximate result of Defendants' misrepresentations and
20 omissions of material fact, Plaintiff and Class members have suffered and will
21 continue to suffer damages and losses as alleged herein in an amount to be
22 determined at trial.

23 **COUNT V**

24 **NEGLIGENCE**

25 **(Brought on Behalf of the Nationwide Class and the California Class)**

26 98. Plaintiff repeats and realleges each of the above allegations as if fully set
27 forth herein.

28

1 99. Defendants promise in their Terms of Use that their fantasy sports games
2 are "games of skill" and accepted entry fees from Plaintiff and Class members to
3 participate in those games. According to those same Terms of Use, "winners are
4 determined by the individuals who use their skill and knowledge of relevant
5 professional sports information and fantasy sports rules to accumulate the most
6 fantasy points."

7 100. Defendants owed a duty to Plaintiff and the Class members to use
8 reasonable care to provide true, reliable, and accurate information regarding the
9 administration of their fantasy sports games. Defendants also owe a duty to protect
10 the fairness and integrity of the fantasy sports games being operated on their
11 websites.

12 101. Defendants breached these duties to Plaintiff and the Class members by
13 failing to prevent persons possessing nonpublic information, by virtue of their
14 employment by other fantasy sports websites, from competing against Plaintiff and
15 the Class members. Defendants further breached these duties by allowing their
16 employees to participate in fantasy sports games on competitors' websites.
17 Defendants failed to use reasonable care in communicating the information about
18 safety and security of data, employee access to data, and ability of employees to use
19 material nonpublic data to compete against Plaintiff and the Class members on other
20 websites, or allow employees of other companies with material nonpublic access to
21 compete on the websites where Plaintiff and the Class members competed.

22 102. As a direct and proximate result of Defendants' negligence, Defendants'
23 significantly and materially decreased Plaintiff and the Class members' ability to use
24 their skills to win the fantasy sports games they entered, and Plaintiff and the Class
25 members suffered financial injury, harm, and damages.
26
27
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1 **COUNT VI**

2 **UNJUST ENRICHMENT**

3 **(Brought on Behalf of the Nationwide Class and the California Class)**

4 103. Plaintiff repeats and realleges each of the above allegations as if fully set
5 forth herein.

6 104. Defendants have benefited and been enriched from their unlawful acts
7 by accepting the benefit conferred by Plaintiff and the Class members.

8 105. It would be inequitable for Defendants to be permitted to retain any of
9 the ill-gotten gains resulting from the entry fees paid by Plaintiff and the Class
10 members to participate in Defendants' fantasy sports games.

11 106. Defendants' ill-gotten gains were at the expense of Plaintiff and the Class
12 members through their payment of entry fees to participate in Defendants' fantasy
13 sports games.

14 107. It is against equity and good conscience to permit Defendants to retain
15 their ill-gotten profits.

16 **PRAYER FOR RELIEF**

17 Plaintiff, individually, and on behalf of the Class, prays for judgment and relief
18 against Defendant as follows:

19 A. For an order certifying this case as a class action and appointing Plaintiff
20 and Plaintiff's counsel to represent the Class;

21 B. For a declaratory judgment and injunction prohibiting the use of
22 nonpublic information while participating in fantasy sports games on Defendants'
23 websites;

24 C. For an order awarding, as appropriate, damages, restitution, and/or
25 disgorgement to Plaintiff and the Class members, including all damages to which
26 Plaintiff and the Class are entitled to under California law, and all other statutory
27 penalties.

28 D. For an order awarding attorneys' fees and costs to Plaintiff and the Class;

- 1 E. For an order awarding punitive damages;
- 2 F. For an order awarding pre-judgment and post-judgment interest; and
- 3 G. For an order providing such further relief as this Court deems just and
- 4 proper.

DEMAND FOR JURY TRIAL

6 Plaintiff demands a trial by jury on all issues so triable.

7 Dated: October 20, 2015

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s/Brian J. Robbins

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