SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FANDUEL INC.,	
Plaintiff,	
-against-	
ERIC SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, and the STATE OF NEW YORK,	
Defendants.	

Index No. 161691/2015
Motion Sequence No. 1
IAS Part 13 (Justice Mendez)

AFFIDAVIT OF DAVID DODDS

Note: FanDuel is also filing this affidavit in *People by Schneiderman v. FanDuel, Inc.*, Index No. 453056/2015.

AFFIDAVIT OF DAVID DODDS

STATE OF CALIFORNIA   )
)   ss.:
COUNTY OF PLACER   )

I, David Dodds, being duly sworn, state as follows:

1. I am the CEO of Footballguys, a web site devoted to providing up to date statistics, information, and strategy for players of fantasy sports. I am also a long-time player of fantasy sports and member of the Fantasy Sports Writers Association Hall of Fame. In connection with my work at Footballguys.com, I have helped to create some of the industry's leading web-based fantasy tools. I submit this affidavit to describe the history and variety of fantasy sports, the emergence and growing popularity of daily fantasy sports ("DFS") among sports fans, and the sports knowledge, research, analysis and strategy necessary to be a successful fantasy sport contestant.

A. The Emergence of Fantasy Sports

2. Fantasy sports first gained popularity over 25 years ago. While different varieties of fantasy sports have emerged over time, they *all* share the common characteristic of allowing passionate sports fans to play the role of "general managers," using their sports knowledge and skill to select real athletes in a given sport to make up a "fantasy" lineup or roster. Participants then match their fantasy teams against those of other general managers by accumulating points based on the statistical performance of the athletes on their fantasy teams in real-world sporting events. Fantasy contests have generated an increased interest in sports for many fans, providing them a forum for broadening their knowledge of sports and pitting their sports knowledge and skills in

selecting a fantasy team against those of other sports fans. DFS follows in this rich

tradition, allowing participants to play the role of general managers and test their skill

against other participants on a daily or weekly basis.

3.	One of the early influences in the rise of fantasy sports was strategic sports

games such as Strato-O-Matic. In Strat-O-Matic games, each athlete was represented by

a card, and the game was played on a cardboard "field" to simulate the experience of

managing a real baseball team. Strat-O-Matic was often played in competition with

others, and each contestant was in charge of making strategic and personnel decisions for

his or her own simulated team. Much like modern fantasy sports, the results on the Strat-

O-Matic player cards were determined by a combination of the respective athlete's real-

life statistics for the previous year and independent research of news articles and scouting

reports. Player cards were meticulously developed every year and accounted for nearly

every conceivable variable that a baseball player could be evaluated on (e.g., hitting,

pitching, and defensive play). Sports enthusiasts recognized this emerging interest in

sports-related games and sought to create more sophisticated contests through which

participants could use their knowledge of sports to put together rosters like a general

manager.

4.	As sports fans began to look for new outlets through which they could

engage in this type of strategic management of players and teams, a variety of fantasy

sports contests emerged. One of the earliest and most popular forms of fantasy sports

was season-long Rotisserie League Baseball. In the rotisserie system, participants would

select a team from a list of all active players. Participants' teams would then be ranked

from first to last in each statistical category (e.g., runs scored). Points were then awarded according to a team's ranking in each category, and then totaled across all categories to determine an overall score and league rank. As with all fantasy sports contests, this contest format required participants to make similar decisions to that of real sports team managers, such as predictions about players' playing time, health, and expected performance. Rotisserie-style contests are offered to this day.

5.　　　As fantasy sports grew in popularity, an increasing number of contest formats emerged. These included head-to-head, keep/keeper, dynasty, best-ball, victory-points, and survivor contests, as well as contests of varying duration, ranging from season-long to daily. In head-to-head contests, which have traditionally been the most popular format, a number of fantasy teams would form a league in which each week one fantasy team would be matched up in a "game" against another fantasy team. For each game, the participant with the greater number of cumulative points in each specific statistical category (e.g., points, assists, etc.), would get a "win," which would be reflected in the league standings, thereby simulating the notion of managing a professional team. At the end of the season, the fantasy team with the best record would win the league. Some leagues would even have divisions, and playoffs between division winners just like professional leagues.

6.　　　In keeper and dynasty leagues, participants would keep some or most of their players from one season to the next, thereby simulating a general manager's skill in signing and nurturing rookies and developing players over time. In best-ball leagues, after players have selected athletes in a draft, there are no transactions permitted

thereafter. For example, a participant in a best-ball league cannot trade with another user or add an athlete off of the waiver wire. Instead, each participant's highest scoring players at each position receive the lineup points for that team each week. In victory-point leagues, participants play in weekly head-to-head matchups, but are also awarded a specific number of points for the total amount of points their team scores for the week. In survivor leagues, a certain number of teams are eliminated each week based on a set of pre-announced criteria.

7.   In addition to different contest formats, fantasy sports also developed different types of athlete selection formats for the leagues. These selection formats allowed participants to simulate several distinct aspects of being a real general manager, such as evaluating prospective draft picks and working within the restrictions of a salary cap.

8.   One of the most popular selection formats is a "snake" draft. In snake drafts, the last participant to select an athlete in one round gets the first pick in the next. For example, if a participant has the last pick in the first round, that participant will get the first pick in the second round, and this pattern continues back and forth until each team is filled. The draft order is usually randomly generated when the designated number of participants have signed up for a particular league.

9.   Another selection format is the auction draft. In auction drafts, players are selected through an auction. Each participant is given a set amount of salary cap money to spend on athletes and participants can bid on any player at any time.

10.   A variation of the auction draft is large tournament-style salary cap contests. Similar to auction drafts, these contests require participants to assemble their fantasy teams within the parameters of a salary cap. Such contests, which have existed since the 1980s, often involve entry fees, prize pools, and thousands of participants. The primary distinction between those contests and today's DFS contests is that the prior salary contests would last for a full sports season.

11.   In all of these various selection formats, participants must utilize strategic decisions to decide when to select a particular athlete, or how much money to spend on an athlete.

12.   Much like real general managers, many season-long fantasy sports contests also allow users to make in-season roster adjustments. In many season-long fantasy sports leagues, there are two avenues through which participants can make changes to their roster throughout the season: (1) the waiver wire; and (2) trades. Players that are not drafted are placed on the waiver wire. The waiver wire is essentially a list of available athletes that participants can add to their teams in exchange for dropping another athlete from their team. Any athlete that is dropped by another team during the course of the season will be added to the waiver wire. In addition, participants can trade with other teams. Certain leagues will sometimes set a deadline for when trading players must end, similar to the real trade deadlines in the respective sports.

B.   The Rise in Online Fantasy Sports Contests

13.   From the inception of fantasy sports, participants have relied on contest hosts to track the performance of players and compile team scores based on real-world performances of the athletes on their teams. In the earliest fantasy sports contests,

participants would often perform those tasks themselves through a designated league "commissioner." However, that process was time consuming and a market emerged for third-party services that would do the work for contestants. This process became even more streamlined with the rise of the Internet and personal computers. By the 1990s there were websites that allowed visitors to register accounts and participate in leagues. The sites would provide daily player statistics, tally the contest results, and allow participants to draft their teams and manage their rosters online. Traditionally, those websites would charge a fee in exchange for such services. That model still exists today.

14. As fantasy sports moved into an online platform in the 1990s, the variety of contests, number of users, and size of prize pools continued to grow. For example, one of the earliest high-stakes fantasy contests, titled the World Championship of Fantasy Football ("WCOFF"), held its first contest in 2001. For WCOFF contests participants would pay $1,500 to enter into season-long twelve-person league contests. At the end of the season, WCOFF would offer substantial prize money to the top teams. At present, there are a number of similar high-stakes season-long contests available to users, some of which include multi-million-dollar prize pools.

15. As online and mobile fantasy sports became increasingly popular, a new contest format, DFS, began to emerge. At its core, DFS is fundamentally the same as other fantasy sports contests. Participants act as general managers of their fantasy sports teams, use their sports knowledge to select the athletes for their team, and contest results are based on how each virtual team comparatively performs on the basis of real-world sporting events.

16.   DFS contests usually differ from traditional fantasy sports in one primary way, their duration. Prior to DFS, contests would usually last for a full sports season, or several seasons, but DFS contests typically begin and end in a day or, for NFL games, in a week. This is not true of all DFS contests, however; some DFS sites such as FanDuel offer contests that span more than a day or a week. For example, FanDuel offers an NFL Survivor contest that spans nine weeks for those that make it to the finals. FanDuel also offers a series of NFL contests that have ten weeks of qualifying rounds that lead to a championship in the eleventh week. A participant's chances in the championship depend on her cumulative success at earning qualifying tickets over the previous ten weeks.

17.   Similar to some of the existing forms of season-long fantasy sports contests, DFS contests typically use a fantasy "salary cap" system for the selection of athletes to a fantasy team as opposed to the draft system or auction format that is more typical in traditional fantasy sports. DFS sites such as FanDuel, one of the largest DFS sites, designate a "salary" to each player, and participants select players for their fantasy rosters based on assessments of their prospects in the upcoming week for generating performance points per fraction of the salary cap that they represent. This format of player selection is designed to replicate the rigors and challenges of roster selection experienced by actual general managers of teams.

18.   Like season-long fantasy sports sites, DFS sites such as FanDuel offer a number of different contest formats. These include tournaments, which can have thousands of entries; leagues, which are still only one-day or one-week contests but include between 2 and 99 participants; "multiplier" contests, in which all participants

who finish in, for example, the top 50% or top 30% of contestants will win the same amount; and head-to-head contests, in which two participants compete against one another directly.

19.   Like any other online fantasy sports game operator, DFS sites such as FanDuel perform the administrative functions needed for participants to compete against each other in fantasy sports contests. Those functions include providing statistics that participants can use to research athletes for their fantasy team, setting notional "salaries" for individual athletes and adjusting them from time to time based on players' recent performances, tracking game performance statistics, scoring each selected player's performance points and the total points for all athletes on the roster in that contest, and providing reports on performance and rankings.

20.   Like participants on many other fantasy sports sites, DFS participants typically pay a fixed entry fee to enter cash contests, while there is no entry fee to play in free contests. DFS prizes are made known to participants before the contest begins and the prizes do not change based on the number of entries in the announced contest. For larger contests, such as Guaranteed Prize Pool ("GPP") tournaments, most DFS sites set a maximum number of participants vying for pre-announced prizes. Some contests limit the number of entries a participant can submit; others allow participants to submit multiple entries in a single contest.

21.   Charging entry fees and awarding prizes is nothing new or unique to DFS contests. Historically, the majority of fantasy sports websites charged an entry fee for participants to play. When Yahoo! added fantasy sports in 1999 and offered most of its

games for free, this represented a departure from the traditional business model for fantasy sports. However, the historical practice of charging entry fees has remained the most popular practice.

22. Today, the majority of online fantasy sports websites charge entry fees for users to participate in the offered contests, offer prizes, or both. These sites typically host the leagues, maintain records, tabulate points, and maintain a platform through which participants can communicate with each other. Even when the sponsoring website does not provide prizes, the sites often provide tools designed to help private commissioners of self-selected leagues collect entry fees and award prizes to the highest performers in their leagues.

23. Many of the largest season-long fantasy sites such as Yahoo!, the NFL, CBS, and ESPN offer a large pool of cash or other prizes for winning players at the end of the season. In some instances, larger entry fees are associated with larger prizes. For example, CBS' fantasy football prize leagues consist of twelve teams and include five different entry price points, with entry fees of: $39.99, $99.99, $249.99, $499.99, and $999.99. For these contests, CBS keeps 41%-58% of the entry fees for itself. In addition, other leagues charge an entry of a few thousand dollars for each participant and then award large prices that can be as much as several hundred thousand dollars.

C. All Fantasy Sports Contests Are Games of Skill

24. The strategies of successful fantasy sports participants across all types of contest formats are largely the same. Participants base their player selections on historical performance, statistics, research and trends, all in an effort to strategically assemble individual athletes into an optimal lineup. These core strategies reflect that

fantasy sports is a game of skill, regardless of the contest format. The results of such contests reflect which participants made shrewd choices and which chose poorly. As explained below, the skill required to be successful in DFS contests is even greater due to the challenges inherent in adhering to a salary cap and evaluating all of the real-time information available in a daily contest.

25.   The strategies that fantasy sports participants employ are numerous and varied. Much like a skilled general manager evaluates an enormous amount of data and information before drafting, signing, or trading for a player, fantasy sports participants evaluate similar information. Among other relevant information, participants will look at past performance, injury history, performance trends of statistically comparable players, the particular strength of schedule for an athlete's team, the coaching philosophy of a given athlete's team, and any changes to league rules that might be likely to influence an athlete's statistical performance. In addition to evaluating this vast quantity of information, participants will also make informed decisions about what the league-wide perception of a particular athlete is. In the same way that general managers of real-world sports teams look for potentially undervalued athletes, fantasy sports participants do the same in selecting athletes for their fantasy teams.

26.   Since its inception, fantasy sports strategies have also reflected the particular type of contest format a participant is playing in. For example, in a season-long head-to-head basketball league, a participant might employ a strategy in which he selects athletes that are strong in all statistical categories except for one—for example, free throw percentage. That strategy might be effective in a head-to-head league, but

would be disadvantageous in a rotisserie league, where a low ranking in just one statistical category can hurt a participant's chance of winning. Another example is in a dynasty league where, for example, participants might be inclined to select a rookie with great upside a year or two down the road, whereas in a re-draft league such a strategy would be of no use.

27.   In my opinion, DFS requires an even *greater* number of skill-based judgments than season-long fantasy contests in order to assemble a winning roster. In particular, DFS requires participants to make decisions on a daily or, in the case of football, weekly basis with respect to which athletes to place on their teams. Because each contest allows participants to select from all of the players in a professional sport, participants must evaluate the full universe of relevant information for each athlete in order to make informed selection decisions. Each week participants must take into account an enormous array of information including: team matchups, player matchups, whether an athlete is playing at home or away, injury reports, recent performance trends, any recent trades, news with respect to which players might receive more or less playing time, field conditions, weather forecasts, and changes to coaching personnel. Like the stock market, this data is available to all participants, but a participant's skill is reflected in how a particular player interprets that data.

28.   Furthermore, DFS participants must also employ a more "micro" strategy, dependent on an array of factors specific to that day. For example, a star pitcher in a season long fantasy baseball contest may be a participant's first and most valuable selection because of the pitcher's likelihood of success over the course of an entire

season. But in DFS, if that same star pitcher's strength is his curve ball and he is facing a team of superior curve ball hitters, that pitcher may not be a smart selection.

29.   It is clear from this significant level of strategy, preparation, and skill that is required to participate in DFS, that DFS is not a form of betting on sports. It is a competition among players separate and unto itself, with the results reflecting which players skillfully assemble the best lineup on a given day. Furthermore, DFS is fundamentally distinct from "prop betting" on sporting events. Prop betting is binary and is limited to a simple prediction of whether a single athlete accomplishes a particular statistical feat. DFS is also different from "parlay betting," which is most often limited to betting on the outcome of more than one sporting event. DFS is about playing the role of a general manager or coach, using one's sports knowledge to strategically choose from among numerous possibilities to assemble the optimal fantasy team roster for a particular contest.

30.   Furthermore, in my experience from almost thirty years as a fantasy sports player and founder of a fantasy sports website, fantasy sports attract participants with a passion for sports. These players enjoy the strategy, rigorous preparation and research, and competition against other skilled fantasy sports participants. In addition, participants enjoy the process of watching multiple games and teams and learning about athletes whom they would otherwise not follow. Most importantly, fantasy sports players participate in these contests in order to test their skill and knowledge and to simulate the experience of being a general manager or coach of a team.

D. **Because of the Highly Skilled Competition, Fantasy Sports Players Have Increasingly Utilized Expert Analysis**

31.   Much like real-world general managers, participants often rely on expert services to help make their athlete selections in order to gain an advantage over their skilled opponents. Our Footballguys.com website provides analysis and tools for both season-long and daily fantasy contests for that purpose. Specifically, we provide analysis of mock drafts, strength of schedule, potential trades, historical data, game logs, depth charts, free agents, and many other similar services.

32.   As fantasy sports have grown in popularity, and the fantasy sports competition has risen, participants have increasingly relied on these types of expert resources to help make more informed athlete selection decisions. This is clearly demonstrated by the popularity of the services of the Footballguys.com website. We have nearly 70,000 active subscribers that pay for our services, as well as around 362,000 non-paying members of our site. Each day our site has approximately 564,625 webpage views.

33.   In recognition of DFS' rising popularity, Footballguys.com has entered into advertising agreements with several daily fantasy sports DFS sites, including FanDuel. Under those agreements, Footballguys.com does not receive any associated fees when new users sign up on affiliated fantasy sites.

34.   In addition to our more specialized fantasy sports analysis, ESPN, Fox Sports, Sports Illustrated, USA TODAY, The New York Times, CBS Sports, and Yahoo! have all developed separate sections of their websites that are entirely dedicated to fantasy sports. Furthermore, there are online weekly video presentations, podcasts, blogs

and books that explain fantasy sports and provide day-to-day analysis. There are also daily fantasy sports boot camps that help to train participants to improve their fantasy sports skills.
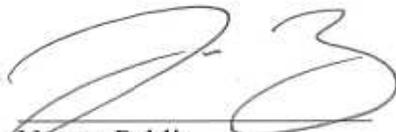
35.   DFS occupies an accepted and mainstream place in the fantasy sports community. In fact, many of the consumers and analysts of traditional fantasy sports are also consumers and analysts of DFS. In addition, many of the writers and analysts that had covered traditional fantasy sports now cover both types of contests, or DFS exclusively. Furthermore, many of the consumers of Footballguys.com's services are season-long fantasy participants as well as DFS participants. Our website offers specific sections on season-long and DFS analysis and based on user web traffic we estimate that 21% of our customers have viewed our DFS content this NFL season.
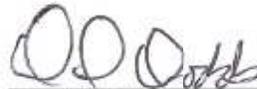
David Dodds

Sworn to before me this
23rd day of November, 2015

Notary Public

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