

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

)
AKEEM DANIELS,)
)
and ALL OTHERS)
SIMILARLY SITUATED,)
)
Plaintiffs,)
v.)
)
DRAFTKINGS, INC.,)
)
Defendant.)
)

CLASS ACTION COMPLAINT

Plaintiff Akeem Daniels, by his counsel, brings this Class Action against Defendant DraftKings Inc. (“DraftKings”) for himself and for all others similarly situated, alleging as follows:

NATURE OF ACTION

1. It is estimated that the daily fantasy sports (“DFS”) industry generated \$2.6 billion in customer entry fees in 2015.¹ In the operation and sale of online daily fantasy college football and basketball gaming products, Defendant has knowingly and improperly exploited the accomplishments, and expected future accomplishments, of former Northern Illinois University football player Akeem Daniels, along with as many as 2,000 other college football and basketball players whose names Defendant has purported to market and sell as “fantasy” athletes available for sale to members of the general public. These athletes play or have played basketball or football

¹ See “Yahoo Will Enter Daily Fantasy Sports Market,” July 8, 2015, NEW YORK TIMES, <http://www.nytimes.com/2015/07/09/technology/yahoo-will-enter-daily-fantasy-sports-market.html? r=0> (citing study by Eilers Research).

for colleges and universities typically affiliated with one of several conferences, including the Atlantic Coast Conference, the Big Ten Conference, the Big 12 Conference, the Pacific-12 Conference, the Mid-American Conference, and the Southeastern Conference. Through a comprehensive advertising campaign and in its daily fantasy college football and basketball contests, Defendant routinely use the names and likenesses of these college players to promote Defendant's commercial enterprise, amassing millions of dollars in revenues from entry fees, without the athletes' authorization. Plaintiff and the proposed Class Members have not given their consent to Defendant's blatant misappropriation of their names and attendant rights. Nevertheless, Defendant continues to promote and to operate its daily fantasy college football and basketball contests on the backs of college players, whose popularity and performance make the Defendant's commercial daily fantasy college football and basketball product possible.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Akeem Daniels is an individual who played college football from 2010 to 2014 in DeKalb, Illinois for the Northern Illinois Huskies and was a starting tailback for the team. He matriculated at Northern Illinois in August 2010 and graduated from the university in December 2014 with a Bachelor of Science degree in Business/Corporate Communications.

3. Plaintiff worked arduously to attain his positions as a member of the varsity football team for Northern Illinois University, practicing for thousands of hours dating to his adolescence.

4. This case involves Defendant's implementation of a business plan designed to profit on Plaintiff's name and on-field athletic successes and efforts, and those of other college athletes, without compensating them.

5. Defendant DraftKings is a Delaware corporation, based in Boston, MA, that has created online fantasy games that seek to capitalize on the names, likenesses, and performances of

Plaintiff and other college athletes both as part of their fantasy contests and to promote the fantasy contests.

7. The Court has jurisdiction under 28 U.S.C. § 1331.

8. Under the Class Action Fairness Act of 2005, this Court has jurisdiction as the amount of damages sustained by the Class exceeds five million dollars.

9. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business in the district.

10. Venue is proper in this district under 28 U.S.C. § 1391 because Defendant transacts substantial business in this district and acts alleged herein, including the trading upon Plaintiff's name, took place within this District.

FACTS

11. The daily fantasy sports commercial market is a multi-billion-dollar industry.

12. DraftKings is one of the two largest companies in the DFS industry, as measured by revenue.

13. Upon information and belief, Defendant has over 200 employees.

14. Defendant runs online interactive games in a fashion that the New York State Attorney General has likened to a "casino-style gambling operation."² The Attorney General of Illinois has also concluded that Defendant's operations constitute illegal gambling.³ In the Defendant's games, a customer pays Defendant an entry fee and in exchange is given virtual Defendant currency to use during the online game to purchase the services of individual players and thereby build a virtual or "fantasy" team of college athletes.

² See http://www.ag.ny.gov/pdfs/DK_Complaint.pdf, at ¶ 3.

³ See <http://www.legalsportsreport.com/wp-content/uploads/2015/12/Illinois-DFS.pdf>.

15. Division I college basketball and football players' names and publicity rights are being sold by the Defendant. The Defendant's customers use those purchases to compete against other users in Defendant's online games. At the conclusion of each day, a given customer is monetarily rewarded—or on the other side of the spectrum, can lose money—based on the college players' performance in real-life games against collegiate opponents.

**Defendant's Business Model for Selling College Players' Services
and Trading on College Players' Names**

16. DraftKings was founded in January 2012.

17. Defendant's entire business model is predicated on trading upon the Class Members' names and predicted future athletic success, much in the manner of trading stocks on the New York stock exchange.

18. DraftKings advises customers of the following rationale for depositing money with their site⁴:

ONE

100% Legal.

TWO

Top-notch payment processing—Winnings paid out promptly!

THREE

No commitment — get your sweat on in the industry's highest paying guaranteed
tournaments.

FOUR

Build your team in only minutes and watch your scores update live online.

⁴ <https://www.draftkings.com/help/why-is-it-legal> (last visited Dec. 4, 2015).

FIVE

Industry leading customer support.

19. As described below, in daily fantasy college football and basketball, each college player whose name appears on Defendant's websites as someone who is eligible to be "owned" by a DraftKings customer (*i.e.*, each Class Plaintiff) is equally integral to the Defendant's implementation of their unlawful scheme.

20. Pursuant to the Defendant's scheme, Defendant sells purported 'ownership' stakes in the players themselves, and the Defendant's customers benefit, financially, from the asserted ownership of the players.

21. Defendant's customers access a personal account with Defendant, created and maintained by Defendant on a server, through an Internet browser or through Defendant-created mobile platforms.

22. After a user has activated his account and paid to enter a Defendant-managed college basketball or football contest, he or she can compile a roster of college players by "purchasing" currently active college athletes according to their name, position, university, and the "salary" amount assigned to the athlete (discussed below).

23. In Defendant's college daily fantasy college football and basketball games, the customer wins or loses money based upon the performance that same day of the athletes selected by the customer.

24. Thus, in the Defendant's college football and basketball contests, Defendant purports to offer its users the opportunity to purchase the services of college players for the

Defendant's customers' daily fantasy teams under a Defendant-created "salary cap"⁵ for that day. For each fantasy contest, the Defendant assigns each college player (including Plaintiff) a "salary" based on the college player's performance and popularity. This player-specific "salary" consists of a dollar amount, typically ranging from \$1,000 to \$10,000, which, to the extent the DraftKings customer selects such player, counts against the DraftKings user's overall "salary cap" for that day.

25. The Defendant has created an elaborate point system for rewarding its customers based on the performance of the Class Members in inter-collegiate athletic contests. The system awards "points" to a customer when a college athlete scores a touchdown (in football), or scores a basket (in basketball), or performs other statistically-recorded feats. The Defendant's customers select players for a limited number of pre-defined spots on a "roster" consisting of positions such as Guard and Forward in basketball, and Quarterback and Wide Receiver in football, to construct an entire "team." Customers are eligible to win cash prizes if the performance of the players selected for their "team" exceeds the performance of other customers competing for those prizes—as measured by the point system devised and implemented by Defendants.

26. Given these two variables— the Defendant's fixed "salary cap" and the Defendant's performance-based point system— the prerogative of a DraftKings customer to "shop" from among a vast array of college players as potential lineup choices lies at the heart of the Daily Fantasy Sports value proposition itself.

⁵ "Salary cap" is a term of art specific to professional sports. A salary cap is "a limit on the amount of money a team can spend on player salaries, either as a per-player limit or a total limit for the team's roster (or both). Several sports leagues have made salary caps mandatory, both as a method of keeping overall costs down, and in order to balance the league so a wealthy team cannot become dominant simply by buying all the top players. Salary caps are often the major issue in negotiations between management and players' unions." <http://www.investordictionary.com/definition/salary-cap#sthash.8EoRCodU.dpuf>. There is no such thing as a "salary cap" in college sports.

27. To wit, the customer is seeking to maximize the overall “return” (measured in points) he or she can obtain by virtue of their player selections. If a customer selects one or two of the more “expensive” college athletes (as measured by those athletes’ “salaries”), the customer is then constrained (by the Defendant-imposed “salary cap) to select less “expensive” college players for the remainder of their fantasy team— as measured, again, by the “salaries” assigned by the Defendant to those less “expensive” college athletes.

28. In the words of one observer, “The DraftKings...salary caps place limits on the number of upper-tier players a fantasy owner can put on a roster, so the key to maximizing roster production is figuring out which relatively low-cost players are worth putting in the lineup and which are better to avoid.”⁶

29. The composition of the “roster” of players assembled by each of Defendant’s customers on a given day when engaged in the Defendant’s on-line games is, in almost all cases, not an accurate reflection of reality. That is to say, except for those highly isolated instances in which one of Defendant’s customers elects to assemble their entire fantasy ‘roster’ from athletes that play for the same university, customers usually create, and compete with, rosters consisting of players from different universities. This transmutes reality in that the different athletes, including Plaintiff, are not actually the teammates of the individuals selected as such by Defendant’s customers.

30. The Defendant’s college football fantasy gaming contests have names such as “C[ollege] F[oot]b[all] Homecoming,” and the “C[ollege] F[oot]b[all] RedShirt” contest, and offer customers the opportunity to win cash prizes ranging into the tens of thousands of dollars. The

⁶ See http://espn.go.com/college-football/story/_/id/12098850/overvalued-undervalued-players-daily-fantasy-games-college-football-playoff (last visited Dec. 12, 2015).

Defendant's college basketball fantasy gaming contests have names such as the "Full Court Press" contest, the "Buzzer Beater" contest, and the "Storm the Court" contest.

31. Capitalizing directly on college players' popularity and performance, Defendant promotes and operates its daily fantasy sports contests using college players' names and likenesses.

32. Plaintiff Daniels' name was invoked by Defendant on its website, *inter alia*, on October 3, 2014, when the Defendant profiled Mr. Daniels on its site in order to assist "fantasy managers [*i.e.*, Defendant's customers]... when setting their Week 6 [fantasy] lineups":

Player news never sleeps. It's a vicious never-ending circle.

Below, we do our best to corral this week's news, notes and injury updates that DFS players and season-long fantasy managers should take into consideration when setting their Week 6 lineups... and beyond...[:]

Northern Illinois: RB Akeem Daniels is probabl[e] to play vs. Kent State with an undisclosed injury.

See <http://playbook.draftkings.com/cfb/cfb-week-6-news-notes-injuries/> (last visited January 18, 2016).

33. During that same week, upon information and belief, Mr. Daniels' name appeared on the DraftKings site as a player whose services a DraftKings customer could profit from. Specifically, DraftKings offered its customers the right to add Mr. Daniels to the customer's "roster" in its fantasy college football gaming contests in advance of Northern Illinois' October 4, 2014 game against Kent State University. During that week, Mr. Daniels was one of among dozens of players, not only from NIU but also among other colleges, from whom DraftKings customers could select for a "salary" as players for their fantasy 'rosters.' Third party speculators offered tips and recommendations for optimization of DraftKings college football fantasy "lineups" that

week.⁷ The Defendant offered its own detailed “value pick” recommendations of players to select for that week.⁸

34. Mr. Daniels did in fact play against Kent State on October 4, 2014. Mr. Daniels did not consent to Defendant’s use of Plaintiff’s name. Nor did Plaintiff consent to any of Defendant’s representations, visual depictions, or associated “salary” figures and commentary, with respect to Mr. Daniels, nor the offering of opportunities for Defendant’s customers to profit from Plaintiff’s services.

35. Upon information and belief, the Defendant made similar representations, visual depictions, with associated numeric figures and commentary, with respect to Mr. Daniels’ name, and offered attendant opportunities for its customers to profit from Mr. Daniels’ services, in advance of several other intercollegiate football games during Fall 2014.

36. Similarly, current Northern Illinois player Jordan Huff’s name appeared on the DraftKings site routinely during the 2015 college football season, as a player whose services a DraftKings customer could profit from. In one such example, DraftKings offered its fantasy gaming customers the right to add Mr. Huff to the customer’s “roster” in advance of Northern Illinois’ December 4, 2015 game against Bowling Green University. Among the contests in which Mr. Huff’s name and services were so offered was the “C[ollege] F[oot]b[all] Homecoming” contest, which promised \$2,000 to the winner. In this contest, Mr. Huff was one of among dozens of players, not only from NIU but also among other colleges, from whom DraftKings customers could select as players for their fantasy ‘rosters.’ DraftKings posted the following information on

⁷ See, e.g., DAILY FANTASY COLLEGE FOOTBALL: DRAFTKINGS LINEUP – WEEK 6, <http://xnsports.com/2014/10/03/daily-fantasy-college-football-draftkings-lineup-week-6/> (Oct. 3, 2014) (last visited January 18, 2016).

⁸ See <http://playbook.draftkings.com/cfb/cfb-week-6-value-picks/> (last visited January 18, 2016).

Game Date	Opponent	DraftKings “Salary”
September 12, 2015	Murray State Racers	\$3,100
September 19, 2015	Ohio State Buckeyes	\$3,000
October 24, 2015	Eastern Michigan Eagles	\$3,400
November 3, 2015	Toledo Rockets	\$3,800
November 11, 2015	Buffalo Bulls	\$4,500

39. A total of thirteen Northern Illinois players’ names appeared on the DraftKings site during the 2015 season as athletes whose names and services a DraftKings customer could profit from (with specific assigned “salaries” for each week the player’s name and services were offered by the Defendant on its site): Kenny Golladay; Ryan Graham; Joel Bouagnon; Tommylee Lewis, Aregeros Turner, Juwan Brescacin, Chad Beebe, Desroy Maxwell, D.J. Brown, Tommy Fiedler, Ezra Saffold, Clayton Glasper, and Mr. Huff.

40. On numerous documented occasions, third party speculators have opined concerning Plaintiff’s fantasy “value,” including in the following instances:

- DRAFT KINGS: WEEK 13 (EARLY SATURDAY SLATE) – BREAKDOWN, (Nov. 20, 2014), <http://collegefantasyfootballnews.com/tag/week/> (“...Akeem Daniels has 31 carries for 199 yards but hasn’t recorded a touchdown.”);
- [PLAYER RANKINGS--WEEK 1 \(Aug. 2014\) \(“Running Backs”\) \(ranking Mr. Daniels as No. 50 for fantasy purposes among running backs nationally\), http://thecffsite.com/pages/week1rbrankings;](http://thecffsite.com/pages/week1rbrankings)
- [PLAYER RANKINGS--WEEK 3 \(Sept. 2014\) \(“Running Backs”\) \(ranking Mr. Daniels as No. 66 for fantasy purposes among running backs nationally\), http://thecffsite.com/pages/runningbackrankings--week3-2014;](http://thecffsite.com/pages/runningbackrankings--week3-2014)
- MAC FANTASY PREVIEW: NORTHERN ILLINOIS' LYNCH-PIN (Aug. 16, 2013) <http://searchwww.databasefootball.com/cfootball/showArticle.htm?id=18092> (“TEAM-BY-TEAM FANTASY STARS...Northern Illinois Huskies[:] Akeem Daniels”);

- MID-AMERICAN FANTASY PREVIEW: FALCONS LOOKING TO SOAR (Aug. 18, 2014) <http://admin1.rotowire.com/cfootball/showArticle.htm?id=21027> (“Fantasy Sleepers...Akeem Daniels, RB, Northern Illinois[:] Daniels missed all last season with a foot injury, but he is line for a significant role as a senior with a new quarterback in place for the Huskies. He had nine touchdowns while averaging 6.6 yards per carry in 2012, so with more carries all but certain Daniels carries instant value in deep leagues. If Cameron Stingily struggles or gets injured, Daniels would have excellent upside as Northern Illinois' No. 1 running back.”);
- ROTOWIRE: YOUR PREMIUM SOURCE FOR FANTASY SPORTS, <http://www.rotowire.com/cfootball/player.htm?id=11993> (“Akeem Daniels...Past News Updates...October 22, 2014[:] Daniels (undisclosed) is hopeful to return for Saturday’s matchup with Eastern Michigan.”);
- COLLEGE FOOTBALL CHEAT SHEETS (Dec. 2013) <https://rotogrinders.com/pages/college-football-cheat-sheets-158450> (“Running Backs to Avoid[:]...Akeem Daniels”).

41. DraftKings advertises that it will pay out “\$1 BILLION THIS YEAR!” in prize money to participants in its college basketball fantasy gaming contests.⁹



⁹ See www.draftkings.com/fantasy-college-basketball (last visited December 1, 2015).

42. Within the Defendant’s “Full Court Press” college basketball gaming contest, on December 1, 2015, users had the ability to select Northwestern Wildcat players Bryant McIntosh and Tre Demps, among others:

The screenshot shows the DraftKings website interface for a college basketball gaming contest. At the top, there is a navigation bar with links for 'Lobby', 'My Lineups', 'My Contests', 'League Hub', and 'Promotions'. A user profile for 'wcholmes' with a balance of '\$0.00' is visible, along with a 'DEPOSIT' button. The main content area features a contest banner for 'CBB \$6K FULL COURT PRESS [\$6,000 GUARANTEED]'. The banner includes details: 'Entries: 123/253', 'Entry Fee: \$27', 'Total Prize: \$6,000', and 'FPP Reward: 108'. A countdown timer shows '06:42:29' remaining until the contest goes live on Tuesday, Dec 1, 2015, at 7:00 PM EST. Below the banner is a 'Full Contest Details' section with buttons for selecting games from various colleges like MICH, NW, RICH, VU, UV, NDSU, and MIA. The main area contains a player selection table and a 'LINEUP' section.

POS	PLAYER	OPP	OPRK	FPPG	SALARY
G	Malcolm Brogdon	UV@OSU	29.6	\$7,700	+
G	Marcus Paige	MD@UNC	0.0	\$7,600	+
F	Michael Young	PUR@PITT	36.9	\$7,500	+
F	Kennedy Meeks	MD@UNC	30.5	\$7,600	+
F	A.J. Hammons	PUR@PITT	23.8	\$7,500	+
G	Josh Hart	VU@STJOE	30.0	\$7,500	+
F	Marc Loving	UV@OSU	29.3	\$7,500	+
G	Bryant McIntosh	NW@VT	33.1	\$7,500	+
G	S. McClellan	MIA@NEB	27.3	\$7,400	+
G	Justin Jackson	MD@UNC	28.2	\$7,400	+

The 'LINEUP' section on the right is currently empty, with columns for POS, PLAYER, OPP, FPPG, and SALARY. Below the player selection table are buttons for 'EXPORT TO CSV', 'CLEAR', 'RESERVE', 'IMPORT', and 'SUBMIT'. A checkbox for 'AUTO ADVANCE POSITION' is located at the bottom left of the interface.

https://www.draftkings.com/contest/draftteam/16285631

We are currently investigating issues related to inbound email traffic. Please follow the Status Page for the latest.

Lobby My Lineups My Contests League Hub Promotions Balance: \$0.00 DEPOSIT \$

CBB \$6K FULL COURT PRESS [\$6,000 GUARANTEED] Contest Goes Live In

30 BRYANT MCINTOSH Northwestern | #30 G
 DraftKings Salary: \$7,500
 Next Game: NW@VT (12/01 7:00 PM ET)

2015-2016 SEASON STATS

FFG	ERD	APO	STLPG	FFPG
17.3	3.0	6.2	1.3	33.1

DRAFT PLAYER >>

AT A GLANCE SPLITS 10 GAME LOG

	G	MPG	FGM-FGA	FG%	3PM-3PA	3P%	FTM-FTA	FT%	RPG	APG	BLKPG	STLPG	FFPG	TOPG	PPG	FFPG
Last Game	1	27.0	5-9	.556	1-3	.333	2-2	1.000	3.0	7.0	1.0	1.0	0.0	1.0	13.0	31.3
Last Ten Days	4	33.5	24-49	.490	9-15	.600	15-17	.882	2.8	6.0	0.3	1.0	1.5	3.3	18.0	32.4
2015-2016 Season	6	33.5	37-75	.493	13-25	.520	17-19	.896	3.0	6.2	0.2	1.3	1.8	2.7	17.3	33.1

LATEST PLAYER NEWS

November 24 (11:02:17 AM ET)
UPDATE: McIntosh had 14 points (8-for-9 from the line) with nine assists and two rebounds Monday night against North Carolina.
ANALYSIS: McIntosh is now averaging 19.5 points, 7.0 assists and 3.0 rebounds per game this season. He and Tre Demps have been one of the more productive backcourts in the country in the early stage of the season.

November 21 (12:09:46 AM ET)

AROUND COLLEGE BASKETBALL

JAY BILAS
 Nineteen freshmen are averaging over 15 ppg this season. Florida State is the only team with two (Dwayne Bacon, Malik Beasley). 41 minutes ago

ANDY KATZ
 College Hoops Power Rankings: Here comes Sparty <https://1.co/1HPVp0> via @sancbb 2 hours ago

B. MCINTOSH | BASKETBALL | 27.3 | \$7,400 | +
 ANDY KATZ | BASKETBALL | 26.2 | \$1,400 | +

REPORT TO DRAFT

CLEAR RESERVE \$ REPORT \$ SUBMIT >>

AUDIO ADVANCE POSITION

https://www.draftkings.com/contest/draftteam/16285631

We are currently investigating issues related to inbound email traffic. Please follow the Status Page for the latest.

Lobby My Lineups My Contests League Hub Promotions Balance: \$0.00 DEPOSIT \$

CBB \$6K FULL COURT PRESS [\$6,000 GUARANTEED] Contest Goes Live In

14 TRE DEMPS Northwestern | #14 G
 DraftKings Salary: \$7,300
 Next Game: NW@VT (12/01 7:00 PM ET)

2015-2016 SEASON STATS

FFG	ERD	APO	STLPG	FFPG
16.0	2.3	3.7	0.8	26.3

DRAFT PLAYER >>

AT A GLANCE SPLITS 10 GAME LOG

	G	MPG	FGM-FGA	FG%	3PM-3PA	3P%	FTM-FTA	FT%	RPG	APG	BLKPG	STLPG	FFPG	TOPG	PPG	FFPG
Last Game	1	26.0	7-14	.500	2-6	.333	0-0	-	1.0	5.0	0.0	3.0	1.0	1.0	16.0	31.3
Last Ten Days	4	36.8	28-58	.483	11-23	.478	5-8	.625	2.8	4.0	0.0	1.3	1.0	2.0	18.0	30.3
2015-2016 Season	6	37.0	35-83	.422	12-35	.343	14-20	.700	2.3	3.7	0.0	0.8	1.0	1.5	16.0	26.3

LATEST PLAYER NEWS

November 28 (11:12:56 PM ET)
UPDATE: Demps had 14 points (8-for-8 on three-pointers) with five assists, three steals and one rebound against New Orleans on Saturday night.
ANALYSIS: Demps scored right to his per game average so far this season, and he is now averaging 3.7 assists and 2.3 rebounds per game.

November 25 (8:36:34 AM ET)

AROUND COLLEGE BASKETBALL

JAY BILAS
 Nineteen freshmen are averaging over 15 ppg this season. Florida State is the only team with two (Dwayne Bacon, Malik Beasley). 42 minutes ago

ANDY KATZ
 College Hoops Power Rankings: Here comes Sparty <https://1.co/1HPVp0> via @sancbb 2 hours ago

REPORT TO DRAFT

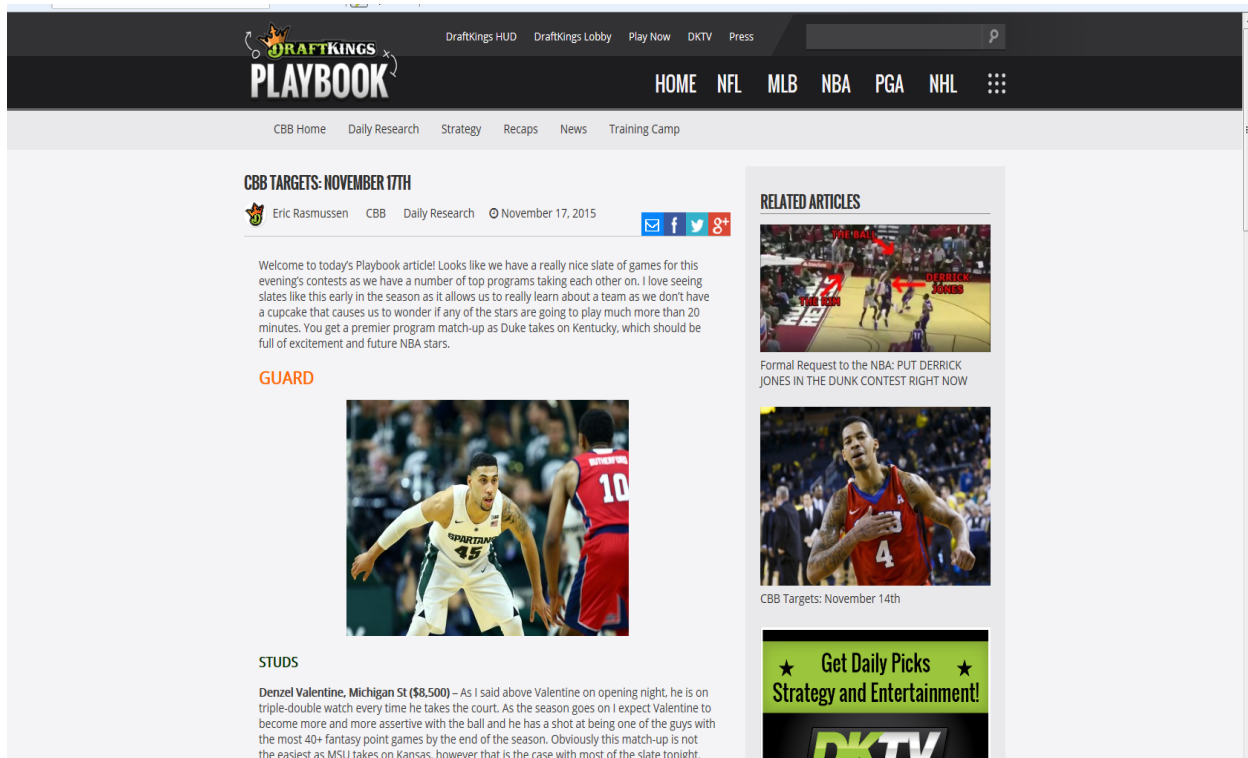
CLEAR RESERVE \$ REPORT \$ SUBMIT >>

AUDIO ADVANCE POSITION

43. Defendant attracts users to its contests through sophisticated marketing campaigns.

44. Defendant broadly advertises its daily fantasy sports website and contests on television and online, including broadcast and cable networks, YouTube, and in other forums.

45. To induce people to buy into the games, Defendant also promotes the success customers will have if they follow Defendant’s recommendations, again using players’ names and likenesses in the marketing, without permission. For example, DraftKings deemed college basketball players Denzel Valentine, Michigan St, Demetrius Jackson, Notre Dame, Fred VanVleet, Wichita St, and D’Vauntes Smith-Rivera, Georgetown as “Studs” in a Nov. 17, 2015 posting to their website advising all users on players to “Target.”¹⁰ Andrew White of Nebraska, Jared Nickens of Maryland, and Pat Birt of Tulsa were deemed “Values.”



Denzel Valentine, Michigan St (\$8,500) – As I said above Valentine on opening night, he is on triple-double watch every time he takes the court. As the season goes on I expect Valentine to become more and more assertive with the ball and

¹⁰ <http://playbook.draftkings.com/cbb/cbb-targets-november-17th/>.

he has a shot at being one of the guys with the most 40+ fantasy point games by the end of the season. Obviously this match-up is not the easiest as MSU takes on Kansas, however that is the case with most of the slate tonight. Valentine has done it in big games his entire college career.

Demetrius Jackson, Notre Dame (\$8,100) – Jackson looked like he has taken a huge step forward as he was absolutely spectacular to begin the season and I would think that Notre Dame runs all over what should be a very gassed UW-Milwaukee team as they are playing their 4th game in 5 nights to begin the 2015-2016 season. The early season “tournaments” are a cool thing, however I think they could do a better job of setting them up as UW-Milwaukee had to win 3 games in 3 nights to take down a small tournament in So-Cal and after traveling, they get to take on the Irish in Notre Dame.

Fred VanVleet, Wichita St (\$7,700) – This play is definitely a GPP play as Van Vleet has struggled with a hamstring injury this fall and played just 3 minutes in the opener. He has said he is playing against Tulsa and I have to believe the senior. The safe approach is to go look at Ron Baker and expect him to take on a big roll, however I am a huge fan of FVV and will be rostering him quite frequently this season. This game should provide some excitement as I expect it to be pretty high scoring.

D’Vauntes Smith-Rivera, Georgetown (\$7,600) – Smith-Rivera is one of those guys that gets stronger and stronger as the game goes on and I always love watching him shoot me up the leader-boards of a GPP late in the game. He is one of the best players in the country in the last 10 minutes of a game as he finds a way to just take over down the stretch. I always want to target players that can get me points in bunches and Smith-Rivera is definitely one of those players.

46. DraftKings similarly offers a “Targets” column of college basketball athlete “studs” and “values” several times per week.

Defendant Has Injured Plaintiff and the Class Members.

47. College athletes perform a valuable service when they compete in intercollegiate athletic contests. Such services are highly valued, *inter alia*, by the colleges which the athletes attend, which routinely confer scholarships to the athletes in exchange for their services.

48. College athletes’ names are valuable property.

49. For over four years and as of the date of this lawsuit, Defendant has willfully represented various “salaries” for the Class Members—each an *amateur* collegiate athlete— even

though the athletes will not earn *any* salary for the subject games, or at any time during the subject season.

50. Neither Plaintiff nor any of the Class Members have consented to Defendant's use of their names or likenesses to promote or to operate Defendant's daily fantasy sports contests.

51. Neither Plaintiff nor any of the Class Members have consented to Defendant's publication of Defendant-created "salaries" for each athlete, much less to their "purchase" (as though they were goods in a grocery store check-out counter) by DraftKings customers.

52. The Nevada Gaming Commission, the Attorney General of Illinois, and the New York State Attorney General are of the opinion that DFS comprises a form of gambling.¹¹ Of DraftKings, the New York State Attorney General has opined that DraftKings "runs a casino-style gambling operation—dubbed *daily* fantasy sports ('DFS')—where bettors can wager up to \$10,000 per 'line-up' and enter for a chance to win jackpots of more than \$1 million."¹²

53. Discussing daily fantasy sports and their potential impact on college athletics, the International Business Times has noted the widespread concern, notably among college administrators, that "legalized sports gambling would open up athletics to corruption in the form of fixed outcomes and point-shaving."¹³

¹¹ See "Nevada Says It Will Treat Daily Fantasy Sports Sites as Gambling," NEW YORK TIMES, Oct. 15, 2015, *available at* http://www.nytimes.com/2015/10/16/sports/gambling-regulators-block-daily-fantasy-sites-in-nevada.html?_r=0 (last visited December 1, 2015); "Attorney General Tells DraftKings and DraftKings to Stop Taking Entries in New York," NEW YORK TIMES, Nov. 10, 2015, *available at* <http://www.nytimes.com/2015/11/11/sports/football/draftkings-DraftKings-new-york-attorney-general-tells-fantasy-sites-to-stop-taking-bets-in-new-york.html> (last visited December 3, 2015); <http://www.legalsportsreport.com/wp-content/uploads/2015/12/Illinois-DFS.pdf>.

¹² See http://www.ag.ny.gov/pdfs/DK_Complaint.pdf (emphasis in the original), at ¶ 3.

¹³ Thomas Barrabi, *NCAA Cracks Down On Daily Fantasy Sports, Gambling, Even As Pro Leagues, Media Partners Embrace Them*, INTERNATIONAL BUSINESS TIMES (Sept. 23, 2015), *available at* <http://www.ibtimes.com/ncaa-cracks-down-daily-fantasy-sports-gambling-even-pro-leagues-media-partners-2110610> (last visited Jan. 18, 2016).

54. Defendant has received the benefit of Plaintiff's services without paying for them.

55. Defendant's regular use of Plaintiff's name on their website is likely to create confusion among potential users as to Plaintiff's sponsorship or approval of Defendant and its daily fantasy college football and basketball gaming products.

56. Defendant knowingly exploits Plaintiff Daniels and Class Members' valuable publicity rights for its own financial gain through its far-reaching advertising campaigns and various daily fantasy sports products.

57. Since its inception, Defendant's wide-ranging promotional efforts have prompted a substantial volume of customers to use its fantasy sports products. According to ESPN, DraftKings attained over 4 million customer entries for its on-line games during one week in October 2015.¹⁴

58. When DraftKings takes in money from a customer, upon information and belief, roughly 90% of the monies deposited by the customer are re-allocated to contest winners, with DraftKings retaining the remainder as net revenues to its own company account. According to ESPN, DraftKings netted weekly company revenues for two weeks in October 2015 of \$1.9 million and \$2.6 million, respectively.¹⁵ DraftKings netted these revenues on total (weekly) customer entry fees of \$20.6 million and \$25.0 million, respectively.¹⁶

59. Defendant derives significant, tangible financial benefit from Plaintiff's athletic efforts, but without Plaintiff's consent, and without compensating Plaintiff for the benefits Defendant has received. Defendant derives its success operating daily fantasy college football and

¹⁴ See http://espn.go.com/chalk/story/_/id/13869135/daily-fantasy-sites-draftkings-DraftKings-take-highest-number-entries-nfl-season (last visited December 7, 2015).

¹⁵ *Id.*

¹⁶ *Id.*

basketball contests on college players, like Plaintiff and the Class Members, whose names and likenesses make Defendant's games possible. Without the athletes and their on-the-field success, Defendant's daily fantasy college football and basketball contests would not exist.

60. As a result of Defendant's knowing misappropriation and willful exploitation of Plaintiff's and Class Members' publicity rights, extensive use of Plaintiff's and Class Members' names, athletic profiles, and false "salary" artifices to create false endorsements for Defendant's fantasy contests, and retention of financial benefits from Plaintiff's and Class Members' athletic services without compensating for those services, Plaintiff and the Class Members have suffered extensive damages.

CLASS ACTION ALLEGATIONS

61. Plaintiff sues on his own behalf and on behalf of a class of persons under Rule 23 of the Federal Rules of Civil Procedure. Subject to modification after discovery and case development, the putative Class is tentatively defined as:

All college football and basketball players on a college roster since 2012 whose names and/or likenesses Defendant used to operate its fantasy sports gaming contests from January 26, 2013 through the present.

62. Excluded from the Class are the following individuals and/or entities: Defendant and their parents, subsidiaries, affiliates, officers and directors, current or former employees, and any entity in which Defendant has a controlling interest; all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; any and all federal, state or local governments; and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

63. In connection with its scheme, Defendant has misappropriated Plaintiff's name in commerce and used the Plaintiff's name without authorization to generate money for themselves, and their customers, on a weekly basis.

64. Questions of law and fact common to the Class Members predominate over questions affecting only individual members, including:

- a. Whether Defendant uses college players' names and/or likenesses to promote its gaming contests;
- b. Whether Defendant uses college players' names and/or likenesses in its daily fantasy sports gaming contests;
- c. Whether such use is unlawful;
- d. Whether such use causes confusion;
- e. Whether Defendant's conduct infringes upon Class Members' publicity rights;
- f. Whether Defendant's conduct violates 15 U.S.C. § 1125;
- g. Whether Defendant's customers have profited from the Class Members' rendering of services;
- h. Whether Defendant has profited from Class Members' rendering of services;
- i. Whether Plaintiff and the Class Members have been damaged by Defendant's conduct and the amount of such damage;
- j. Whether Defendant should disgorge all gross profits on its college football and basketball gaming contests and the amount of such gross profits.

65. Separate actions by individual members would risk inconsistent or varying judgments, which would establish incompatible standards of conduct for Defendant and impair or impede Class Members' ability to pursue their claims to resolution.

66. Defendant has acted on grounds generally applicable to the Class, making final injunctive relief and corresponding declaratory relief with respect to the Class as a whole appropriate.

67. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

68. The class is so numerous that joinder of all members is impracticable. Upon information and belief, there are more than 2,000 members in the United States. The precise number of separate individuals who are members of the Class is identifiable and ascertainable based on Defendant's records.

69. Each Defendant engaged in a course of conduct giving rise to violations of the legal rights sought to be enforced uniformly by the Class Members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Therefore, individual questions, if any, pale in comparison to the numerous common questions presented.

70. The representative Plaintiff's claims are typical of those of the Class, as all members of the Class are similarly affected by Defendant's uniform conduct as alleged.

71. The injuries sustained by members of the Class flow, in each instance, from a common nucleus of operative facts. Plaintiff's claims are typical of the Class claims, as they arise out of the same course of conduct and the same legal theories. Plaintiff challenges Defendant's practices and conduct as to the Class as a whole.

72. Given the similar nature of the Class Members' claims and the absence of material differences in the statutes and common laws upon which the Class Members' claims are based, a nationwide class will be easily managed by the Court and the parties.

73. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, supporting the imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class.

74. The class representatives have no interests which conflict with or are adverse to those of the other Class Members.

75. Plaintiff reserve the right to revise the above class definition based on facts learned in discovery.

**COUNT I – Violation of § 43 of the Lanham Act,
15 U.S.C. § 1125(a)(1)**

76. Plaintiff incorporates by reference the allegations set forth above in paragraphs 1 through 75.

49. Defendant has utilized Plaintiff’s name to generate revenues for itself, and “gaming” (*i.e.*, gambling) profits for others. Indeed, Defendant has predicated their entire business models on the notion that commercial value attends to the Plaintiff and Class Members’ names, assigning “salaries” to each Class Member— even though the Class Members did not draw any salary of any type for playing their collegiate sport.

77. Though Defendant has, upon information and belief, assigned Plaintiff “salaries” in varying amounts ranging up to \$10,000 per athletic contest, Defendant has failed to actually confer any “salary” or monies of any kind to Plaintiff.

78. None of the Class Members consented to the subject “salary” information being associated with their names, much less utilized without consent by third parties to generate profits on the strength of Class Members’ athletic endeavors.

79. Defendant has exploited Plaintiff's, and the Class Members', names and likenesses without their consent to promote its daily fantasy college football and basketball gaming product, to solicit users to its website, and ultimately to collect entry fees.

80. Defendant's use of Plaintiff's and the Class Members' names and likenesses is likely to confuse Defendant's potential consumers about any connection or association between Plaintiff and Defendant or as to Plaintiff's and Class Members' sponsorship or approval of Defendant DraftKings and its daily fantasy college football and basketball gaming products.

81. As a result of Defendant's conduct, Plaintiff and the Class Members have been injured. To obtain the Plaintiff and Class Members' consent to implement its otherwise unlawful business model, Defendant would have to compensate Plaintiff and all Class Members financially, directly or indirectly, for making a market on Plaintiff and Class Members' names and for the use of Plaintiff's and Class Members' names, and, further, to trade on Plaintiff's and Class Members' rendering of services.

82. Plaintiff has, additionally, been injured because Defendant's conduct has harmed Plaintiff and the Class Members by putting them in an unwanted state of fear and concern of the risk of being contacted by speculators who have a financial interest in Plaintiff's and Class Members' performance in a particular athletic contest. Such speculators range in ages and hail from both Plaintiff's and Class Members' fellow student bodies (*i.e.*, walk around the same campuses) as well as the walls outside campus. By creating a class of millions of speculators in the U.S. whose financial fortunes in the Defendant's virtual stock market rise and fall in direct proportion with the Plaintiff's and Class Members' endeavors, Defendant has immeasurably altered the college football and basketball environment in which Plaintiff and Class Members compete. In addition to the reasonable concern that speculators may urge that Plaintiff and Class

Members adjust their performance in response to the speculators' stated desires, Defendant's unlawful business model puts Plaintiff and Class Members at unwanted risk of contact with speculators whose interests align with "corruption in the form of fixed outcomes and point-shaving."¹⁷

COUNT II – Right of Publicity (Massachusetts Law) (Mass. Gen. Laws ch. 214, § 3A)

83. Plaintiff incorporates by reference the allegations set forth above in paragraphs 1 through 83.

84. Defendant has infringed upon Plaintiff's and Class Members' right of publicity.

85. As detailed above, Defendant, acting from its offices in Massachusetts, has made use of Plaintiff's and Class Members' names for purposes of operation of its website, and in Massachusetts and numerous other states for advertising purposes.

86. Defendant has used Plaintiff's and Class Members' names and in numerous other states for purposes of trade.

87. The Plaintiff, like the other Class Members, never consented to "salaries" being associated with their names on behalf of, and for the benefit of, the Defendant or Defendant's customers.

88. The Plaintiff, like the other Class Members, never consented to their names being used on behalf of, and for the benefit of, the Defendant or Defendant's customers.

¹⁷ Thomas Barrabi, *NCAA Cracks Down On Daily Fantasy Sports, Gambling, Even As Pro Leagues, Media Partners Embrace Them*, INTERNATIONAL BUSINESS TIMES (Sept. 23, 2015), available at <http://www.ibtimes.com/ncaa-cracks-down-daily-fantasy-sports-gambling-even-pro-leagues-media-partners-2110610> (last visited Jan. 18, 2016).

89. Defendant has used Plaintiff's and Class Members' names, as well as likenesses, in Massachusetts and in numerous other states, including Illinois, for advertising purposes and for purposes of trade without obtaining Plaintiff's and the Class Members' prior written consent.

90. Plaintiff and the Class Members seek to prevent and restrain any further use by Defendant of Plaintiff or Class Members' names, and to prevent and restrain any further use by Defendant of Plaintiff or Class Members' likenesses, and also seek damages for injuries sustained by reason of Defendant's use.

91. The trading of Plaintiff's and the Class Members' names, the use of Plaintiff's and Class Members' names and images for promotion of Defendant's site, and the purported grant of "ownership" in Plaintiff and the Class Members, damages and is likely to damage Plaintiff and the Class Members by depriving them of compensation for the Defendant's use of their names and likenesses, by putting them in an unwanted state of fear and concern of the risk of being contacted by speculators who have a financial interest in Plaintiff and the Class Members' performance in a particular athletic contest, by associating them unwittingly with sites deemed as gambling sites in multiple jurisdictions, and, further, by commoditizing Plaintiff and the Class Members against their will.

92. Plaintiff and the Class Members seek full restitution of Defendant's gross profits acquired as a result of its infringement upon Plaintiff's and Class Members' rights of publicity.

COUNT III – Unjust Enrichment

93. Plaintiff incorporates by reference the allegations set forth above in paragraphs 1 through 93.

94. Defendant has engaged in a scheme of purporting to sell ‘ownership’ stakes in the players and their exploits for one day periods, and without Plaintiff’s or the Class Members’ authorization.

95. The Plaintiff, like the other Class Members, never consented to perform services on behalf of, and for the benefit of, the Defendant or Defendant’s customers.

96. Plaintiff and the other Class Members never consented to their names and likenesses being used on behalf of, and for the benefit of, the Defendant or Defendant’s customers.

97. The Plaintiff, like the other Class Members, never consented to “salaries” being associated with their names on behalf of, and for the benefit of, the Defendant or Defendant’s customers.

98. The Defendant, and its customers, have benefited from its use of Plaintiff’s and Class Members’ names and likenesses, and the Plaintiff’s and Class Members’ rendering of services.

99. The Defendant both appreciates and has knowledge of the benefits conferred by the Plaintiff and Class Members to Defendant.

100. Plaintiff and the Class Members have suffered detriment as a result of Defendants’ unjust enrichment. The trading of Plaintiff’s and the Class Members’ names, the use of Plaintiff’s and Class Members’ names and images for promotion of Defendant’s site, and the purported grant of “ownership” in Plaintiff and the Class Members has harmed Plaintiff and the Class Members in several fashions. These practices have deprived Plaintiff and the Class Members of compensation for the Defendant’s use of their names and likenesses, put them in an unwanted state of fear and concern of the risk of being contacted by speculators who have a financial interest in Plaintiff’s and Class Members’ performance in a particular athletic contest, and associated them unwittingly

with sites deemed as gambling sites in multiple jurisdictions, and, further, commoditized the Class Members against their will.

101. It would be inequitable under the circumstances to allow Defendant to retain the foregoing noted benefits without payment for the value of those benefits to Class Members.

102. Plaintiff and the Class Members seek full restitution of Defendant's gross profits attained from Class Members' services and from Defendant's use of Class Members' names.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests relief from this Court as follows:

- a. An award of damages for Defendant's violations of 15 U.S.C. § 1125;
- b. Certification of the action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure, appointment of Plaintiff as Class Representative, and appointment of counsel of record as Class Counsel;
- c. An award of damages for Defendant's violations of Plaintiff's and the Class Members' rights of publicity;
- d. An award of exemplary damages for Defendant's knowing violations of Class Members' rights of publicity;
- e. An award for disgorgement of all gross profits earned by Defendant from its operation of its daily fantasy sports contests using Plaintiff's and Class members' names and/or likenesses;
- f. Treble damages for knowing, prohibited and unlawful misuse of Plaintiff's and Class Members' names, consistent with Massachusetts law;
- g. An award of damages for Defendant's unjust enrichment derived from uncompensated financial rewards attributable to Class Members' services;
- h. An injunction enjoining Defendant from the future use of Plaintiff's and Class Members' names and/or likenesses in conjunction with any aspect of its operation of its daily fantasy sports contests;
- i. Treble damages, prejudgment interest, and costs, as per the Lanham Act;
- j. An award for Plaintiff's costs and attorneys' fees in bringing this action; and

