

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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JENNIFER WHITE, KATHERINE WEST, CHARLOTTE  
WELLINS and ANNE REMINGTON,

Plaintiffs,

**AFFIRMATION OF  
RICHARD LOMBARDO**

Index No. 5861-16

-against-

HON. ANDREW CUOMO, as Governor of the State  
of New York, and the NEW YORK STATE GAMING  
COMMISSION,

Defendants.

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RICHARD LOMBARDO, an attorney duly licensed to practice  
before the courts of the State of New York, affirms the  
following under penalty of perjury:

1. I am Special Litigation Counsel in the office of ERIC  
T. SCHNEIDERMAN, Attorney General of the State of New York and  
attorney for defendants, Hon. Andrew Cuomo, as Governor of the  
State of New York, and the New York State Gaming Commission.

2. I submit this affirmation in opposition to plaintiffs'  
motion for summary judgment and in support of defendants' cross-  
motion for summary judgment.

**The Pleadings in the Action**

3. Submitted herewith as **Exhibit "A"** is a copy of the  
summons and complaint, which was filed on October 5, 2016.

4. Submitted herewith as **Exhibit "B"** is a copy of  
defendants' verified answer, which was filed on October 5, 2017.

The People's Action against DraftKings and FanDuel

5. On November 17, 2015, the People of the State of New York ("the People"), by the Attorney General, commenced actions against DraftKings, Inc. ("DraftKings") and FanDuel, Inc. ("FanDuel") in Supreme Court, New York County, alleging that daily fantasy sports ("DFS") contests constituted gambling under New York Law and seeking a judgment enjoining DraftKings and FanDuel from violating the laws of the State of New York. The lawsuits also alleged that DraftKings and FanDuel had engaged in deceptive advertising and consumer fraud and sought restitution for customers, penalties, and other relief. Submitted herewith as **Exhibit "C"** is a copy of the People's amended complaint against DraftKings. Submitted herewith as **Exhibit "D"** is a copy of the People's amended complaint against FanDuel.<sup>1</sup>

6. By orders dated December 11, 2015, Supreme Court granted the People's motion for a preliminary injunction. Submitted herewith as **Exhibit "E"** is a copy of the preliminary injunctions against DraftKings and FanDuel.

7. By order dated January 11, 2016, the Appellate Division, First Department stayed Supreme Court's preliminary injunction pending DraftKings and FanDuel's appeals therefrom.

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<sup>1</sup>The amended complaints were filed on December 31, 2015.

A copy of the Appellate Division's January 11, 2016 order is submitted herewith as **Exhibit "F"**.<sup>2</sup>

8. After the enactment of L. 2016 Ch. 237 ("Ch. 237"), on August 12, 2016, the People discontinued those portions of its actions against FanDuel and DraftKings that had alleged, before the enactment of Ch. 237, that DFS contests constituted gambling under New York law. Submitted herewith as **Exhibit "G"** is a copy of the stipulation and order partially discontinuing the People's action against DraftKings. Submitted herewith as **Exhibit "H"** is a copy of the stipulation and order partially discontinuing the People's action against FanDuel.

9. After settling the People's remaining claims against DraftKings and FanDuel,<sup>3</sup> on October 25, 2016, the People discontinued the remaining portions of its actions. Submitted herewith as **Exhibit "I"** is a copy of the stipulation and order discontinuing the People's remaining claims against DraftKings. Submitted herewith as **Exhibit "J"** is a copy of the stipulation and order discontinuing the People's remaining claims against FanDuel.

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<sup>2</sup>On March 23, 2016, DraftKings and FanDuel agreed to suspend their DFS games in New York pending the resolution of the legal status of interactive fantasy sports.

<sup>3</sup>The settlements required DraftKings and FanDuel to pay penalties and costs and implement various reforms to their marketing practices.

L. 2016 Ch. 237

10. On August 3, 2016, while the People's actions against DraftKings and FanDuel were pending, Governor Cuomo signed into law Ch. 237 (a copy of which is submitted herewith as **Exhibit "K"**).

11. Submitted herewith as **Exhibit "L"** is a copy of the transcript of the Assembly debate and vote on June 17, 2016.

12. Submitted herewith as **Exhibit "M"** is a copy of the transcript of the Senate debate and vote on June 17, 2016.

13. Submitted herewith as **Exhibit "N"** is a copy of the report of the history of the bill and the vote tallies of both houses.

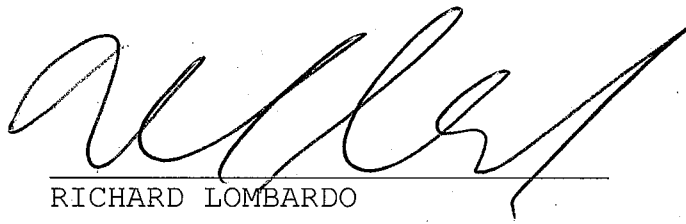
14. Submitted herewith as **Exhibit "O"** is a copy of the Assembly memorandum in support of the bill.

15. Submitted herewith as **Exhibit "P"** is a copy of the Senate memorandum in support of the bill.

16. Submitted herewith as **Exhibit "Q"** is a copy of the notice and transcript of the public hearing conducted on December 8, 2015, by the Assembly Standing Committees on Racing and Wagering and Consumer Affairs and Protection as well as the Legislative Commission on Administrative Regulations Review, to

examine DFS games in New York State and their impact on New York consumers and the State.

Dated: Albany, New York  
March 9, 2018



RICHARD LOMBARDO