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Angry Daily Fantasy Users Lay Out Claims In MDL Complaint

By **Zachary Zagger**

Law360, New York (July 1, 2016, 10:05 PM ET) -- Disgruntled daily fantasy sports players unveiled a wide-ranging consolidated class action complaint in Massachusetts federal court Thursday that lays out over 20 consumer protection claims against industry leaders DraftKings and FanDuel and payment processors including Visa that will frame the legal fight moving forward.

The 273-page complaint comes after the Judicial Panel on Multidistrict Litigation pulled together dozens of proposed consumer class actions filed amid DraftKings Inc.'s and FanDuel Inc.'s advertising blitz during last fall's NFL season into a **sweeping nationwide multidistrict case** in Massachusetts federal court. Not much had occurred in the MDL as several plaintiffs fought inclusion, but with the new complaint, the litigation is set to begin in earnest.

"This is the first round of what is going to be a major war," Hunter Jay Shkolnik of Napoli Shkolnik PLLC, one of the lead counsel for the plaintiffs, told Law360 Friday.

The complaint alleges 24 separate causes of action in three main areas: claims over alleged bonus fraud; so-called "insider" claims alleging employees used inside information to win money on rival daily fantasy sports sites; and illegal gambling and false advertising claims over the companies' advertisements that the contests are "100% legal, easy, and games of skill that anyone could win."

"As it turned out, none of those representations were true, and DraftKings and FanDuel knew these representations were not true," the consolidated complaint says. "DraftKings and FanDuel also failed to disclose material information to consumers and acted in concert to defraud consumers about the true nature of their products."

As such, the complaint alleged DraftKings and FanDuel perpetrated an illegal enterprise in violation of the federal Racketeer Influenced and Corrupt Organizations Act.

The plaintiffs have further narrowed the other targeted defendants down to two banks, J.P. Morgan Chase & Co. and Capital One Financial Corp., three credit card companies or so-called facilitator defendants, Visa Inc., MasterCard Inc. and American Express Credit Corp., and two payment processors, Aysafecard.com USA Inc. and Vantiv Inc.

Over 30 of the other investors who were targeted in the constituent proposed class actions, including affiliates of sports leagues, television networks and venture capital and private equity firms, were not named as defendants but listed as investors in the illegal daily fantasy sports, or DFS, "enterprise."

These investors include the National Basketball Association, the National Hockey League, Major League Soccer and Major League Baseball, and investment firms such as Kohlberg Kravis Roberts LP and Google Capital.

The consolidated complaint alleges their investments gave DraftKings and FanDuel credibility, helping them attract more unsuspecting consumers even though proper due diligence should have shown that the companies "were conducting an ongoing illegal gambling operation and that

representations otherwise were false and fraudulent.”

“They’re running what is in essence illegal gambling in many states, and yet they have these processors and these investors who are participating by investing in them so that it would be paid back into their pockets as advertising profits,” Shkolnik said.

Leading DFS companies DraftKings and FanDuel were hit with a wave of proposed class actions last fall after a scandal in which a DraftKings employee allegedly used nonpublic information about how users were constructing their fantasy teams to win \$350,000 in contests sponsored by rival FanDuel.

The JPML in February consolidated the cases in February in Massachusetts. The panel said that although the cases aren’t all based on the same theory of liability, it would be efficient to combine them for pretrial purposes since they involve many of the same factual issues and proposed class members.

Representatives for DraftKings and FanDuel did not immediately respond to a request for comment Friday.

The plaintiffs’ lead counsel are from Napoli Shkolnik PLLC, Jones Ward PLC, Stull Stull & Brody and Todd & Weld LLP, among others.

FanDuel is represented by Morrison & Foerster LLP, Prince Lobel Tye LLP, Rouse Hendricks German May PC, Pietragallo Gordon Alfano Bosick & Raspanti LLP, Baker Donelson Bearman Caldwell & Berkowitz, Taylor English Duma LLP, Trujillo Rodriguez & Richards LLC, Napier Gault Schupach & Stevens PLC and Armstrong Teasdale LLP.

DraftKings is represented by Boies, Schiller & Flexner LLP, Gibson, Dunn & Crutcher LLP, Berry and Silberberg LLC, Wyatt Tarrant & Combs, Young Wells Williams PA, HeplerBroom LLC, Lightfoot Franklin & White LLC and Gunster.

The case is In re: Daily Fantasy Sports Litigation, case number 1:16-md-02677, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Jeff Zalesin and Pete Brush. Editing by Jill Coffey.

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