

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MATTHEW MCAFEE, on behalf of)	
himself and all others similarly situated,)	Case No. 1:24-cv-1168
)	
Plaintiff,)	Removed from:
)	Hamilton County Superior 3
v.)	Cause No. 29D03-2406-CT-006326
)	
DRAFTKINGS, INC.)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant, DraftKings, Inc. (hereafter “DraftKings” or “Defendant”), by counsel, hereby gives notice that this action, *Matthew McAfee, et al. v. DraftKings, Inc.*, Cause No. 29D03-2406-CT-006326, is hereby removed to this Court from the Hamilton County Superior Court to the United States District Court for the Southern District of Indiana, pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, and Local Rules 81-1, 81-2. This Court has jurisdiction over this action based upon diversity. *See* 28 U.S.C. § 1332(a). In support of its Notice of Removal, DraftKings states the following:

NATURE OF THE CASE

1. On June 10, 2024, Plaintiff Matthew McAfee filed this action in the Hamilton County Superior Court of Indiana.

2. Plaintiff alleges that he is a “natural person residing in Indianapolis, Indiana,” and that he has filed this action “on behalf of himself and all others similarly situated in the State of Indiana who had winning bets placed and accepted on the October 24, 2023, Lakers versus Nuggets basketball game that were

subsequently canceled by DraftKings for purported obvious error.” (Compl. ¶¶ 1–2.)

3. Plaintiff alleges that DraftKings is a for-profit corporation with its “principal place of business in Boston, Massachusetts.” *Id.* at ¶ 3. DraftKings is incorporated in the State of Nevada.

4. Plaintiff alleges that DraftKings improperly cancelled the Lakers-versus-Nuggets parlay bet that allegedly would have paid him \$150,000 had the bet been paid out. (Compl. ¶¶ 4–15.)

5. As a result, Plaintiff asserts claims against DraftKings for alleged violations of the Indiana Deceptive Consumer Sales Act and breach of contract.

6. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b)(1), which states that the notice of removal “shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” Plaintiff served DraftKings by mail on June 14, 2024.

7. Because there is complete diversity of citizenship between the parties¹ and the amount in controversy exceeds \$75,000 (exclusive of interest and costs), this case is removable. *See* 28 U.S.C. § 1332(a).

VENUE

8. Removal to this District is proper because this Court embraces Hamilton County, Indiana. 28 U.S.C. § 94(b).

¹ In determining subject matter jurisdiction over a proposed class action, “only the citizenship of the named plaintiffs matters for diversity purposes.” *F. & H.R. Farman-Farmaian Consulting Eng’rs Firm v. Harza Eng’g Co.*, 882 F.2d 281, 284 (7th Cir. 1989) (citing *Snyder v. Harris*, 394 U.S. 332, 340 (1969)).

JURISDICTION

9. In support of removal, Defendant provides the following “short and plain statement of the grounds for removal” pursuant to 28 U.S.C. § 1446(a).

10. Plaintiff is a citizen of Indiana. (*See* Compl. ¶¶ 1–2.)

11. For purposes of diversity jurisdiction, Defendant is a citizen of Nevada because it is incorporated there, and a citizen of Massachusetts because it maintains its principal place of business in Massachusetts. (*See* Compl. at ¶ 3.).

12. Based upon the allegations in the Complaint, the amount in controversy exceeds \$75,000, exclusive of interest and costs. (*See* Compl. ¶¶ 4–15.)

13. Because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) and this action may be removed pursuant to 28 U.S.C. § 1441 *et seq.*

REMOVAL PROCEDURES

14. DraftKings timely files this Notice of Removal within thirty days of receiving the Complaint on June 14, 2024. 28 U.S.C. § 1446(b).

15. DraftKings attaches a copy of “all process, pleadings, orders, and other documents” currently on file in the state court as **Exhibit 1** hereto. *Id.* at § 1446(a). The attachments in the State Court Record, in chronological order, are as follows:

- a. Appearance of Attorney Robert E. Duff for Plaintiff;
- b. Class Action Complaint (also attached separately as **Exhibit 2** per Local Rule 81-2(d));
- c. Summons to Defendant;

- d. Appearance of Attorneys Philip Zimmerly and Dakota C. Slaughter for Defendant;
- e. Defendant's Unopposed Motion for Extension of Time;
- f. Order Granting Motion for Enlargement of Time; and
- g. A copy of the state court docket sheet as of this filing date.

16. Pursuant to Local Rule 81-2, DraftKings verifies that the attached state court record is complete as of the date of removal.

17. DraftKings will promptly give written notice to all adverse parties and the clerk of the Court of Hamilton County. *Id.* § 1446(d).

18. By filing this Notice of Removal, Defendant does not waive, and expressly reserves, any defenses that may be available to it, including but not limited to any defenses related to insufficient service of process, lack of personal jurisdiction, and defenses available under Rule 12 of the Federal Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons, Defendant, DraftKings, Inc., by counsel, hereby removes this action, *Matthew McAfee, et al. v. DraftKings, Inc.*, Cause No. 29D03-2406-CT-006326 (Hamilton County, Indiana), to this Court pursuant to 28 U.S.C. § 1332(a).

Respectfully submitted,

/s/ Philip R. Zimmerly
Philip R. Zimmerly (#30217-06)
Dakota C. Slaughter (#37582-29)
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000 (phone); (317) 684-5173 (fax)

PZimmerly@boselaw.com
DSlaughter@boselaw.com

Richard Patch (*Pro Hac Vice to be filed*)
Rees Morgan (*Pro Hac Vice to be filed*)
Emlyn Mandel (*Pro Hac Vice to be filed*)
Franklin Krbechek (*Pro Hac Vice to be filed*)
COBLENTZ PATCH DUFFY & BASS LLP
1 Montgomery St, Suite 3000
San Francisco CA 94104
(415) 391-4800 (phone); (415) 989-1663 (fax)
ef-rrp@cpdb.com
ef-rfm@cpdb.com
ef-erm@cpdb.com
ef-fsk@cpdb.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on July 11, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record, and further certify that I also served all counsel of record via email.

Robert E. Duff
Indiana Consumer Law Group
robert@robertdufflaw.com

Counsel for Plaintiff

/s/ Philip R. Zimmerly

4800932

EXHIBIT 1

Complete State Court Record

STATE OF INDIANA
HAMILTON SUPERIOR COURT 3

MATTHEW MCAFEE, on behalf of himself and all others similarly situated, Plaintiff, v. DRAFTKINGS INC., Defendant.	CAUSE NO.
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E-FILING APPEARANCE BY ATTORNEY IN CIVIL CASE

1. The party on whose behalf this form is being filed is:

Initiating Responding Intervening ; and
the undersigned attorney and all attorneys listed on this form now appear in this
case for the following parties:

Name of party: Matthew McAfee

2. Attorney information for service as required by Trial Rule 5(B)(2):

Robert E. Duff, Atty No. 16392-06
Indiana Consumer Law Group
P.O. Box 7251
Fishers, IN 46037
Telephone: 800-817-0461
Fax: 800-817-0461
Email: robert@robertdufflaw.com

IMPORTANT: Each attorney specified on this appearance:

- (a) certifies that the contact information listed for him/her on the Indiana
Supreme Court Roll of Attorneys is current and accurate as of the date of
this Appearance;
- (b) **acknowledges that all orders, opinions, and notices from the court in
this matter that are served under Trial Rule 86(G) will be sent to the
attorney at the email address(es) specified by the attorney on the
Roll of Attorneys regardless of the contact information listed above
for the attorney;** and
- (c) understands that he/she is solely responsible for keeping his/her Roll of
Attorneys contact information current and accurate, see Ind. Admis.

Disc. R. 2(A).

3. This is a CT case type as defined in administrative Rule 8(B)(3).
4. This case involves child support issues. Yes ____ No
5. This case involves a protection from abuse order, a workplace violence restraining order, or a no – contact order. Yes ____ No
6. There are related cases: Yes ____ No

Respectfully submitted,

/s/ Robert E. Duff

Robert E. Duff, Atty No. 16392-06
Indiana Consumer Law Group
Fishers, IN 46037
800-817-0461
robert@robertdufflaw.com

STATE OF INDIANA
HAMILTON SUPERIOR COURT 3

<p>MATTHEW MCAFEE, on behalf of himself and all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>DRAFTKINGS INC.,</p> <p>Defendant.</p>	<p>CAUSE NO.</p>
--	------------------

CLASS ACTION COMPLAINT

Plaintiff Matthew McAfee, by counsel, for his Class Action Complaint, states:

I. INTRODUCTION

1. Plaintiff Matthew McAfee files this cause of action on behalf of himself and all other similarly situated in the State of Indiana who had winning bets placed and accepted on the October 24, 2023, Lakers versus Nuggets basketball game that were subsequently canceled by DraftKings for purported obvious error. The winning bets were not timely canceled and should have been paid. Plaintiff's Class Action Complaint states claims for violation of the Deceptive Consumer Sales Act and breach of contract.

II. PARTIES

2. Plaintiff Matthew McAfee is a natural person residing in Indianapolis, Indiana.
3. Defendant DraftKings Inc. is a for-profit foreign corporation with its principal place of business in Boston, Massachusetts.

III. STATEMENT OF FACTS

4. On October 24, 2023, Mr. McAfee placed a \$100 seven-leg same game parlay bet with DraftKings on the October 24, 2023, Lakers versus Nuggets basketball game (hereinafter “the Bet”).
5. The Bet was accepted.
6. The seven legs were:
 - a. Michael Porter Jr. to score more than 5.5 points;
 - b. Anthony Davis to score more than 9.5 points;
 - c. Austin Reaves to score more than 4.5 points;
 - d. D’Angelo Russell to score more than 4.5 points;
 - e. Jamal Murray to score more than 7.5 points;
 - f. LeBron James to score more than 8.5 points; and
 - g. Nikola Jokic to score more than 9.5 points.
7. If all the legs hit, the Bet paid \$150,000.
8. According to DraftKings, the points on each leg were erroneously low for a full game market.
9. DraftKings learned of the purported “error” before the game began.
10. DraftKings could have—but did not—cancel the Bet prior to the start of the game.
11. DraftKings could have—but did not—cancel the Bet prior to it becoming apparent that all the legs had hit.
12. DraftKings could have—but did not—cancel the Bet prior to the end of the game.
13. All the legs hit, and the Bet was a winning bet.
14. DraftKings canceled the Bet the next day.

15. DraftKings did not pay the Bet.

IV. CLAIMS FOR RELIEF

A. Indiana Deceptive Consumer Sales Act – Incurable Deceptive Act

16. Mr. McAfee repeats, re-alleges and incorporates by reference the preceding paragraphs.

17. DraftKings violated the Deceptive Consumer Sales Act, particularly I.C. § 24-5-0.5-3(a); the violations include, but are not limited to:

- a. Canceling the Bet;
- b. Failing to pay the Bet;
- c. Failing to pay the Bet in the time required by Indiana law;
- d. Canceling the Bet after the start of the contest when DraftKings had the information and ability to cancel the bet prior to the start of the contest;
- e. Canceling the Bet after it became apparent that all the legs had hit when DraftKings had the information and ability to cancel the bet prior to it becoming apparent that all the legs had hit;
- f. Canceling the Bet after the end of the contest when DraftKings had the information and ability to cancel the bet prior to the end of the contest;
- g. Canceling the Bet after it had won when DraftKings had the information and ability to cancel the bet prior to the Bet winning;
- h. Having a practice of waiting to see if a bet won or lost before canceling a bet.

18. The foregoing acts and omissions are incurable deceptive acts under I.C. § 24-5-0.5-2(a)(8).

19. The foregoing acts and omissions are willful deceptive acts under I.C. § 24-5-0.5-4(a).

20. Mr. McAfee is entitled to his damages, treble damages, attorney fees, costs and all other proper relief for DraftKings' violation of the Indiana Deceptive Consumer Sales Act.

B. Indiana Deceptive Consumer Sales Act – Uncured Deceptive Act

21. Mr. McAfee repeats, re-alleges and incorporates by reference the preceding paragraphs.

22. DraftKings violated the Deceptive Consumer Sales Act, particularly I.C. § 24-5-0.5-3(a); the violations include, but are not limited to:

- a. Canceling the Bet;
- b. Failing to pay the Bet;
- c. Failing to pay the Bet in the time required by Indiana law;
- d. Canceling the Bet after the start of the contest when DraftKings had the information and ability to cancel the bet prior to the start of the contest;
- e. Canceling the Bet after it became apparent that all the legs had hit when DraftKings had the information and ability to cancel the bet prior to it becoming apparent that all the legs had hit;
- f. Canceling the Bet after the end of the contest when DraftKings had the information and ability to cancel the bet prior to the end of the contest;
- g. Canceling the Bet after it had won when DraftKings had the information and ability to cancel the bet prior to the Bet winning;

- h. Having a practice of waiting to see if a bet won or lost before canceling a bet.
- 23. The foregoing acts and omissions are uncured deceptive acts under I.C. § 24-5-0.5-2(a)(7).
- 24. A copy of the notice required by Indiana Code § 24-5-0.5-5(a)(2) for bringing an uncured deceptive act is attached as Exhibit A; no offer to cure was made in response to Exhibit A.
- 25. The foregoing acts and omissions are willful deceptive acts under I.C. § 24-5-0.5-4(a).
- 26. Mr. McAfee is entitled to his damages, treble damages, attorney fees, costs and all other proper relief for DraftKings' violation of the Indiana Deceptive Consumer Sales Act.

C. Breach of Contract

- 27. Mr. McAfee repeats, re-alleges and incorporates by reference the preceding paragraphs.
- 28. The Bet was a contract between DraftKings and Mr. McAfee.
- 29. DraftKings breached the contract when it failed to timely pay Mr. McAfee after the Bet won.
- 30. Mr. McAfee is entitled to his damages and all other proper relief for DraftKings' breach of contract.

D. Class Allegations

- 31. Mr. McAfee brings this action on behalf of himself and all persons similarly situated in the State of Indiana who placed a winning bet on the October 24, 2023,

- Lakers versus Nuggets basketball game that was subsequently canceled by DraftKings for purported obvious error.
32. This lawsuit seeks a determination by the Court that DraftKings breached its contracts with the class members and violated the Deceptive Consumer Sale Act and for an award of actual and statutory damages, treble and exemplary damages, interest, attorney fees and costs for all members of the class.
 33. The class members are so numerous that joinder is impracticable. The proposed class consists of more than 30 persons.
 34. Mr. McAfee's claim is typical of the proposed class. Common questions of law or fact raised by this class action affect all members of the proposed class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.
 35. The prosecution of separate actions by individual members of the proposed classes would create a risk of inconsistent or varying adjudications with respect to the individual members of the proposed classes, and a risk that any adjudications with respect to individual members of the proposed classes would, as a practical matter, either be dispositive of the interests of other members of the proposed classes not a party to the adjudication, or substantially impair or impede their ability to protect their interests.
 36. Mr. McAfee will fairly and adequately protect and represent the proposed class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require

extended contact with the members of the proposed class because DraftKings' conduct was perpetrated on all members of the proposed class in the same way for the same purported reason and will be established by common proof. Moreover, Mr. McAfee has retained counsel with extensive experience in the Deceptive Consumer Sales Act and class action litigation.

WHEREFORE, Mr. McAfee respectfully requests that the Court grant the following relief:

- A. Certify the Class;
- B. Appoint Mr. McAfee as Class Representative of the Class and his attorney as Class Counsel;
- C. Find that DraftKings violated the Deceptive Consumer Sales Act and breached its contracts with the Class members;
- D. Enter judgment in favor of Mr. McAfee and the Class and against DraftKings for actual and statutory damages, treble and exemplary damages, interest, attorney fees and costs;
- E. Award Mr. McAfee a service award for his participation as Class Representative; and
- F. All such additional relief as the Court deems appropriate and just.

Respectfully submitted,

/s/ Robert E. Duff

Robert E. Duff, Atty No. 16392-06
Indiana Consumer Law Group
P.O. Box 7251
Fishers, IN 46037
800-817-0461
robert@robertdufflaw.com

JURY TRIAL REQUEST

Mr. McAfee requests a trial by jury.

/s/ Robert E. Duff
Robert E. Duff



Indiana Consumer Law Group
The Law Office of Robert E. Duff

December 27, 2023

DraftKings Inc.
c/o CT Corporation System
334 North Senate Avenue
Indianapolis, IN 46204

Dear DraftKings Inc.,

Please be advised that I represent Matthew McAfee.

As you know, Mr. McAfee placed a winning wager (638337762525554875) on the October 24, 2023, basketball game between the Lakers and the Nuggets. His wager was to pay \$150,100. You voided the bet some time after the end of the game and have refused to pay Mr. McAfee the money he is owed.

You were aware of a potential issue with the odds before the game even started. Rather than voiding all improvidently accepted bets immediately, you waited to see whether the bets won or lost before deciding which bets to void so that you could keep the bets that did not win. That is not fair.

Critically, you waited until after the end of the contest to void Mr. McAfee's bet. That was too late.

This letter is providing you notice of a deceptive act as required by Indiana Code § 24-5-0.5-5(a). The deceptive acts (Indiana Code § 24-5-0.5-3 makes it a deceptive act to commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction) you committed include:

1. Failing to pay a winning wager (unfair omission);
2. Voiding a bet after the start of the contest when you had the information and ability to void the bet prior to the start of the contest (unfair act);
3. Voiding a bet after the end of the contest when you had the information and ability to void the bet prior to the conclusion of the contest (unfair act);
4. Having a practice of waiting to see if a bet won or lost before voiding the bet (unfair practice).

As a result of these deceptive acts, my client has suffered actual damages in the amount of the unpaid winnings (\$150,000).

You are hereby advised to gather and store all evidence relevant to the aforementioned violations. Such evidence may include, but not be limited to:

1. E-mails, internal communications, notes or other records, electronic or otherwise, regarding Mr. McAfee;
2. E-mails, internal communications, notes or other records, electronic or otherwise, regarding the 10/24/23 Lakers vs. Nuggets game;
3. E-mails, recordings, notes or other records, electronic or otherwise, regarding communications with your odds vendor about the 10/24/23 Lakers vs. Nuggets game;
4. E-mails, recordings, notes or other records, electronic or otherwise, regarding communications with any outside entity about the 10/24/23 Lakers vs. Nuggets game;
5. E-mails, recordings, notes or other records, electronic or otherwise, regarding communications with the Indiana Gaming Commission about the 10/24/23 Lakers vs. Nuggets game;
6. E-mails, recordings, notes or other records, electronic or otherwise, regarding communications with any and all state gaming commissions about the 10/24/23 Lakers vs. Nuggets game;
7. All records concerning the purported “incorrect odds” offered on the 10/24/23 Lakers vs. Nuggets game;
8. All records concerning any bet made in the United States on the 10/24/23 Lakers v. Nuggets game that involved markets impacted by the “incorrect odds;”
9. All records concerning the voiding of any bet made in the United States on the 10/24/23 Lakers v. Nuggets game that involved markets impacted by the “incorrect odds;”
10. Any other records, e-mails, recordings or evidence that you believe are relevant to the aforementioned alleged deceptive acts.

Your failure to preserve these items will result in claims of spoliation made against you in any subsequent litigation.

Sincerely,

s/ Robert E. Duff

Robert E. Duff

STATE OF INDIANA) HAMILTON COUNTY SUPERIOR COURT #3
) One Hamilton County Square
 COUNTY OF HAMILTON) Noblesville, IN 46060
 Tel. 317-776-8589

MATTHEW MCAFEE, on behalf of himself
 and all others similarly situated,

Plaintiff,

v. Cause No.

DRAFTKINGS INC.,
 Defendant.

SUMMONS

The State of Indiana to Defendant: DraftKings Inc.

Address: c/o C T Corporation System
 334 North Senate Avenue
 Indianapolis, IN 46204

You have been sued by the person(s) named "plaintiff," in the court stated above.

The nature of the suit against you is stated in the complaint which is attached to this summons. It also states the demand which the plaintiff has made against you.

You must answer the complaint in writing to be filed with the Court, by you or your attorney, within twenty (20) days, commencing the day after you receive this summons (you have twenty-three (23) days to answer if this summons was received by mail), or judgment will be entered against you for what the plaintiff has demanded.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

The following manner of service of summons is hereby designated: Certified Mail.

6/11/2024

Date: _____

Robert E. Duff, #16392-06
 Attorney for Plaintiff
 P.O. Box 7251
 Fishers, IN 46037
 Telephone: 800-817-0461

Kathy Kreag Williams

Clerk of Superior Court of Hamilton County



RETURN ON SERVICE OF SUMMONS

I hereby certify that I have served the within summons:

- (1) By delivering a copy of the summons and a copy of the complaint to the defendant, _____, on the _____ day of _____, 20____.
- (2) By leaving a copy of the summons and a copy of the complaint at _____, the dwelling place or usual place of abode of the said defendant, with a person of suitable age and discretion residing therein, namely _____.
- (3) _____

Sheriff's Fees: _____
Additional: _____

Sheriff of _____ County, Indiana
By _____

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 20____, I mailed a copy of this summons and a copy of the complaint to the defendant, _____, by _____ mail, requesting a return receipt, at the address furnished by the plaintiff.

Clerk of the _____ Court of
_____ County, Indiana

RETURN OF SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached return receipt was received by me showing that the summons and a copy of the complaint mailed to defendant _____ was accepted by the defendant on the _____ day of _____, 20____.

I hereby certify that the attached return receipt was received by me showing that the summons and a copy of the complaint was returned not accepted on the _____ day of _____, 20____.

I hereby certify that the attached return receipt was received by me showing that the summons and a copy of the complaint mailed to the defendant _____ was accepted by _____, age _____, on behalf of said defendant on the _____ day of _____, 20____.

Clerk of the _____ Court of
_____ County, Indiana

SERVICE ACKNOWLEDGED

A copy of the within summons and a copy of the complaint attached thereto were received by me at _____, this _____ day of _____, 20____.

Signature of Defendant

- (a) certifies that the contact information listed for him/her on the Indiana Supreme Court Roll of Attorneys is current and accurate as of the date of this Appearance;
- (b) **acknowledges that all orders, opinions, and notices from the court in this matter that are served under Trial Rule 86(G) will be sent to the attorney at the email address(es) specified by the attorney on the Roll of Attorneys regardless of the contact information listed above for the attorney;** and
- (c) understands that he is solely responsible for keeping his Roll of Attorneys contact information current and accurate, see Ind. Admis. Disc. R. 2(A).

Attorneys can review and update their Roll of Attorneys contact information on the Courts Portal at <http://portal.courts.in.gov>.

- 3. This is a **CT** case type as defined in administrative Rule 8(B)(3).
- 4. This case involves child support issues. Yes ____ No **X**
- 5. This case involves a protection from abuse order, a workplace violence restraining order, or a no – contact order. Yes ____ No **X**
- 6. This case involves a petition for involuntary commitment. Yes ____ No **X**
- 7. There are related cases: Yes ____ No **X**
- 8. Additional information required by local rule: _____
- 9. There are other party members: Yes ____ No **X**
- 10. This form has been served on all other parties and Certificate of Service is attached: Yes **X** No ____

Respectfully submitted,

/s/ Philip R. Zimmerly
Philip R. Zimmerly (#30217-06)
Dakota C. Slaughter (#37582-29)
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000 (phone); (317) 684-5173 (fax)
PZimmerly@boselaw.com
DSlaughter@boselaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on June 28, 2024, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that the foregoing document was served upon the following person(s) via IEFS:

Robert E. Duff
Indiana Consumer Law Group
robert@robertdufflaw.com

Counsel for Plaintiff

/s/ Philip R. Zimmerly

4799202

STATE OF INDIANA)
)
COUNTY OF HAMILTON)

HAMILTON COUNTY SUPERIOR COURT NO. 3

CAUSE NO. 29D03-2406-CT-006326

MATTHEW MCAFEE, on behalf of)
himself and all others similarly situated,)
)
Plaintiff,)

DRAFTKINGS, INC.)
)
Defendant.)

**UNOPPOSED MOTION FOR ENLARGEMENT OF
TIME TO RESPOND TO COMPLAINT**

Defendant DraftKings Inc. (“DraftKings”), by counsel, respectfully moves the Court pursuant to Indiana Trial Rule 6(B)(1) for an order granting DraftKings an enlargement of time to respond to Plaintiff’s Complaint and states as follows:

1. DraftKings’ current deadline to respond to the Complaint is July 8, 2024.
2. DraftKings requests an enlargement of time of 30 days to respond to Plaintiff’s Complaint, which would make the new deadline August 7, 2024.
3. Such extension of time is necessary for Defendant’s attorneys to properly investigate the allegations in the Plaintiff’s Complaint in order to adequately respond.
4. No prior extensions have been requested.
5. Counsel for Plaintiff does not oppose the request for enlargement of time of 30 days.

WHEREFORE, Defendant respectfully requests an extension of time of 30 days to respond to the Plaintiff’s Complaint and for all other relief just and proper in the premises.

DATED: June 28, 2024

Respectfully submitted,

By: /s/ Philip R. Zimmerly

Philip R. Zimmerly, Attorney No. 30217-06
Dakota C. Slaughter, Attorney No. 37582-29
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
(317) 684-5000
PZimmerly@boselaw.com
DSlaughter@boselaw.com

Richard R. Patch (*pro hac vice* forthcoming)
Rees F. Morgan (*pro hac vice* forthcoming)
Emlyn Mandel (*pro hac vice* forthcoming)
Franklin Krbecek (*pro hac vice* forthcoming)
COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
San Francisco, California 94104-5500
Telephone: 415.391.4800
Facsimile: 415.989.1663
Email: ef-rrp@cpdb.com
ef-rfm@cpdb.com
ef-erm@cpdb.com
ef-fsk@cpdb.com

Counsel for Defendant
DRAFTKINGS INC.

CERTIFICATE OF SERVICE

I certify that on June 28, 2024, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that the foregoing document was served upon the following person(s) via IEFS:

Robert E. Duff
Indiana Consumer Law Group
robert@robertdufflaw.com

Counsel for Plaintiff

/s/ Philip R. Zimmerly

STATE OF INDIANA)
)
COUNTY OF HAMILTON)

HAMILTON COUNTY SUPERIOR COURT NO. 3

CAUSE NO. 29D03-2406-CT-006326

MATTHEW MCAFEE, on behalf of)
himself and all others similarly situated,)
)
Plaintiff,)

DRAFTKINGS, INC.)
)
Defendant.)

ORDER GRANTING ENLARGEMENT OF TIME

This matter is before the Court on the *Unopposed Motion for Enlargement of Time to Respond to Complaint* filed by Defendant DraftKings, Inc.; and the Court having considered the Motion and being duly advised now finds it should be **GRANTED**.

IT IS THEREFORE ORDERED that Defendant shall respond to the Complaint by **August 7, 2024**.

Date: 6/30/2024



Judge, Hamilton Superior Court 3
Magistrate

Distribution:

Robert E. Duff, Esq., robert@robertdufflaw.com

Philip R. Zimmerly, Esq., PZimmerly@boselaw.com

Dakota C. Slaughter, Esq., DSlaughter@boselaw.com

This is not the official court record. Official records of court proceedings may only be obtained directly from the court maintaining a particular record.

Matthew McAfee v. DraftKings Inc.

Case Number	29D03-2406-CT-006326
Court	Hamilton Superior Court 3
Type	CT - Civil Tort
Filed	06/10/2024
Status	06/10/2024 , Pending (active)

Parties to the Case

Defendant DraftKings Inc.

Attorney

Philip Richard Zimmerly
#3021706, Lead, Retained

Bose McKinney & Evans LLP
111 Monument Circle
Suite 2700
Indianapolis, IN 46204
317-684-5000(W)

Attorney

Dakota Christopher Slaughter
#3758229, Retained

111 Monument Circle
Suite 2700
Indianapolis, IN 46204
317-684-5000(W)

Plaintiff McAfee, Matthew

Attorney

Robert E Duff
#1639206, Retained

Indiana Consumer Law Group
The Law Office Of Robert E Duff
P.O. Box 7251
Fishers, IN 46037
800-817-0461(W)

Chronological Case Summary

06/10/2024 **Case Opened as a New Filing**

06/11/2024 **Appearance Filed**

Appearance of Robert E. Duff

For Party: McAfee, Matthew

File Stamp: 06/10/2024

06/11/2024 **Complaint/Equivalent Pleading Filed**

Class Action Complaint

Filed By: McAfee, Matthew

File Stamp: 06/10/2024

06/11/2024 **Subpoena/Summons Filed**

Summons for DraftKings Inc.

Filed By: McAfee, Matthew

File Stamp: 06/10/2024

06/28/2024 **Appearance Filed**

Appearance for Defendant filed. BL

For Party: DraftKings Inc.

File Stamp: 06/28/2024

06/28/2024 **Motion for Enlargement of Time Filed**
 Unopposed Motion for Extension of Time filed. Order submitted. BL
 Filed By: DraftKings Inc.
 File Stamp: 06/28/2024

07/01/2024 **Order Granting Motion for Enlargement of Time**
 Order Granting Enlargement of Time entered. smb
 Judicial Officer: Evans, Christopher J - MAG
 Noticed: Duff, Robert E
 Noticed: Slaughter, Dakota Christopher
 Noticed: Zimmerly, Philip Richard
 Order Signed: 06/30/2024

07/02/2024 **Automated ENotice Issued to Parties**
 Order Granting Motion for Enlargement of Time ---- 7/1/2024 : Dakota Christopher Slaughter;Philip Richard Zimmerly;Robert E Duff

Financial Information

* Financial Balances reflected are current representations of transactions processed by the Clerk's Office. Please note that any balance due does not reflect interest that has accrued - if applicable - since the last payment. For questions/concerns regarding balances shown, please contact the Clerk's Office.

McAfee, Matthew

Plaintiff

Balance Due (as of 07/11/2024)

0.00

Charge Summary

Description	Amount	Credit	Payment
Court Costs and Filing Fees	232.00	0.00	232.00

Transaction Summary

Date	Description	Amount
06/11/2024	Transaction Assessment	232.00
06/11/2024	Electronic Payment	(232.00)

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EXHIBIT 2

Operative Complaint

STATE OF INDIANA
HAMILTON SUPERIOR COURT 3

<p>MATTHEW MCAFEE, on behalf of himself and all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>DRAFTKINGS INC.,</p> <p>Defendant.</p>	<p>CAUSE NO.</p>
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CLASS ACTION COMPLAINT

Plaintiff Matthew McAfee, by counsel, for his Class Action Complaint, states:

I. INTRODUCTION

1. Plaintiff Matthew McAfee files this cause of action on behalf of himself and all other similarly situated in the State of Indiana who had winning bets placed and accepted on the October 24, 2023, Lakers versus Nuggets basketball game that were subsequently canceled by DraftKings for purported obvious error. The winning bets were not timely canceled and should have been paid. Plaintiff's Class Action Complaint states claims for violation of the Deceptive Consumer Sales Act and breach of contract.

II. PARTIES

2. Plaintiff Matthew McAfee is a natural person residing in Indianapolis, Indiana.
3. Defendant DraftKings Inc. is a for-profit foreign corporation with its principal place of business in Boston, Massachusetts.

III. STATEMENT OF FACTS

4. On October 24, 2023, Mr. McAfee placed a \$100 seven-leg same game parlay bet with DraftKings on the October 24, 2023, Lakers versus Nuggets basketball game (hereinafter “the Bet”).
5. The Bet was accepted.
6. The seven legs were:
 - a. Michael Porter Jr. to score more than 5.5 points;
 - b. Anthony Davis to score more than 9.5 points;
 - c. Austin Reaves to score more than 4.5 points;
 - d. D’Angelo Russell to score more than 4.5 points;
 - e. Jamal Murray to score more than 7.5 points;
 - f. LeBron James to score more than 8.5 points; and
 - g. Nikola Jokic to score more than 9.5 points.
7. If all the legs hit, the Bet paid \$150,000.
8. According to DraftKings, the points on each leg were erroneously low for a full game market.
9. DraftKings learned of the purported “error” before the game began.
10. DraftKings could have—but did not—cancel the Bet prior to the start of the game.
11. DraftKings could have—but did not—cancel the Bet prior to it becoming apparent that all the legs had hit.
12. DraftKings could have—but did not—cancel the Bet prior to the end of the game.
13. All the legs hit, and the Bet was a winning bet.
14. DraftKings canceled the Bet the next day.

15. DraftKings did not pay the Bet.

IV. CLAIMS FOR RELIEF

A. Indiana Deceptive Consumer Sales Act – Incurable Deceptive Act

16. Mr. McAfee repeats, re-alleges and incorporates by reference the preceding paragraphs.

17. DraftKings violated the Deceptive Consumer Sales Act, particularly I.C. § 24-5-0.5-3(a); the violations include, but are not limited to:

- a. Canceling the Bet;
- b. Failing to pay the Bet;
- c. Failing to pay the Bet in the time required by Indiana law;
- d. Canceling the Bet after the start of the contest when DraftKings had the information and ability to cancel the bet prior to the start of the contest;
- e. Canceling the Bet after it became apparent that all the legs had hit when DraftKings had the information and ability to cancel the bet prior to it becoming apparent that all the legs had hit;
- f. Canceling the Bet after the end of the contest when DraftKings had the information and ability to cancel the bet prior to the end of the contest;
- g. Canceling the Bet after it had won when DraftKings had the information and ability to cancel the bet prior to the Bet winning;
- h. Having a practice of waiting to see if a bet won or lost before canceling a bet.

18. The foregoing acts and omissions are incurable deceptive acts under I.C. § 24-5-0.5-2(a)(8).

19. The foregoing acts and omissions are willful deceptive acts under I.C. § 24-5-0.5-4(a).

20. Mr. McAfee is entitled to his damages, treble damages, attorney fees, costs and all other proper relief for DraftKings' violation of the Indiana Deceptive Consumer Sales Act.

B. Indiana Deceptive Consumer Sales Act – Uncured Deceptive Act

21. Mr. McAfee repeats, re-alleges and incorporates by reference the preceding paragraphs.

22. DraftKings violated the Deceptive Consumer Sales Act, particularly I.C. § 24-5-0.5-3(a); the violations include, but are not limited to:

- a. Canceling the Bet;
- b. Failing to pay the Bet;
- c. Failing to pay the Bet in the time required by Indiana law;
- d. Canceling the Bet after the start of the contest when DraftKings had the information and ability to cancel the bet prior to the start of the contest;
- e. Canceling the Bet after it became apparent that all the legs had hit when DraftKings had the information and ability to cancel the bet prior to it becoming apparent that all the legs had hit;
- f. Canceling the Bet after the end of the contest when DraftKings had the information and ability to cancel the bet prior to the end of the contest;
- g. Canceling the Bet after it had won when DraftKings had the information and ability to cancel the bet prior to the Bet winning;

- h. Having a practice of waiting to see if a bet won or lost before canceling a bet.
- 23. The foregoing acts and omissions are uncured deceptive acts under I.C. § 24-5-0.5-2(a)(7).
- 24. A copy of the notice required by Indiana Code § 24-5-0.5-5(a)(2) for bringing an uncured deceptive act is attached as Exhibit A; no offer to cure was made in response to Exhibit A.
- 25. The foregoing acts and omissions are willful deceptive acts under I.C. § 24-5-0.5-4(a).
- 26. Mr. McAfee is entitled to his damages, treble damages, attorney fees, costs and all other proper relief for DraftKings' violation of the Indiana Deceptive Consumer Sales Act.

C. Breach of Contract

- 27. Mr. McAfee repeats, re-alleges and incorporates by reference the preceding paragraphs.
- 28. The Bet was a contract between DraftKings and Mr. McAfee.
- 29. DraftKings breached the contract when it failed to timely pay Mr. McAfee after the Bet won.
- 30. Mr. McAfee is entitled to his damages and all other proper relief for DraftKings' breach of contract.

D. Class Allegations

- 31. Mr. McAfee brings this action on behalf of himself and all persons similarly situated in the State of Indiana who placed a winning bet on the October 24, 2023,

- Lakers versus Nuggets basketball game that was subsequently canceled by DraftKings for purported obvious error.
32. This lawsuit seeks a determination by the Court that DraftKings breached its contracts with the class members and violated the Deceptive Consumer Sale Act and for an award of actual and statutory damages, treble and exemplary damages, interest, attorney fees and costs for all members of the class.
 33. The class members are so numerous that joinder is impracticable. The proposed class consists of more than 30 persons.
 34. Mr. McAfee's claim is typical of the proposed class. Common questions of law or fact raised by this class action affect all members of the proposed class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.
 35. The prosecution of separate actions by individual members of the proposed classes would create a risk of inconsistent or varying adjudications with respect to the individual members of the proposed classes, and a risk that any adjudications with respect to individual members of the proposed classes would, as a practical matter, either be dispositive of the interests of other members of the proposed classes not a party to the adjudication, or substantially impair or impede their ability to protect their interests.
 36. Mr. McAfee will fairly and adequately protect and represent the proposed class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require

extended contact with the members of the proposed class because DraftKings' conduct was perpetrated on all members of the proposed class in the same way for the same purported reason and will be established by common proof. Moreover, Mr. McAfee has retained counsel with extensive experience in the Deceptive Consumer Sales Act and class action litigation.

WHEREFORE, Mr. McAfee respectfully requests that the Court grant the following relief:

- A. Certify the Class;
- B. Appoint Mr. McAfee as Class Representative of the Class and his attorney as Class Counsel;
- C. Find that DraftKings violated the Deceptive Consumer Sales Act and breached its contracts with the Class members;
- D. Enter judgment in favor of Mr. McAfee and the Class and against DraftKings for actual and statutory damages, treble and exemplary damages, interest, attorney fees and costs;
- E. Award Mr. McAfee a service award for his participation as Class Representative; and
- F. All such additional relief as the Court deems appropriate and just.

Respectfully submitted,

/s/ Robert E. Duff

Robert E. Duff, Atty No. 16392-06
Indiana Consumer Law Group
P.O. Box 7251
Fishers, IN 46037
800-817-0461
robert@robertdufflaw.com

JURY TRIAL REQUEST

Mr. McAfee requests a trial by jury.

/s/ Robert E. Duff
Robert E. Duff



Indiana Consumer Law Group
The Law Office of Robert E. Duff

December 27, 2023

DraftKings Inc.
c/o CT Corporation System
334 North Senate Avenue
Indianapolis, IN 46204

Dear DraftKings Inc.,

Please be advised that I represent Matthew McAfee.

As you know, Mr. McAfee placed a winning wager (638337762525554875) on the October 24, 2023, basketball game between the Lakers and the Nuggets. His wager was to pay \$150,100. You voided the bet some time after the end of the game and have refused to pay Mr. McAfee the money he is owed.

You were aware of a potential issue with the odds before the game even started. Rather than voiding all improvidently accepted bets immediately, you waited to see whether the bets won or lost before deciding which bets to void so that you could keep the bets that did not win. That is not fair.

Critically, you waited until after the end of the contest to void Mr. McAfee's bet. That was too late.

This letter is providing you notice of a deceptive act as required by Indiana Code § 24-5-0.5-5(a). The deceptive acts (Indiana Code § 24-5-0.5-3 makes it a deceptive act to commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction) you committed include:

1. Failing to pay a winning wager (unfair omission);
2. Voiding a bet after the start of the contest when you had the information and ability to void the bet prior to the start of the contest (unfair act);
3. Voiding a bet after the end of the contest when you had the information and ability to void the bet prior to the conclusion of the contest (unfair act);
4. Having a practice of waiting to see if a bet won or lost before voiding the bet (unfair practice).

As a result of these deceptive acts, my client has suffered actual damages in the amount of the unpaid winnings (\$150,000).

You are hereby advised to gather and store all evidence relevant to the aforementioned violations. Such evidence may include, but not be limited to:

1. E-mails, internal communications, notes or other records, electronic or otherwise, regarding Mr. McAfee;
2. E-mails, internal communications, notes or other records, electronic or otherwise, regarding the 10/24/23 Lakers vs. Nuggets game;
3. E-mails, recordings, notes or other records, electronic or otherwise, regarding communications with your odds vendor about the 10/24/23 Lakers vs. Nuggets game;
4. E-mails, recordings, notes or other records, electronic or otherwise, regarding communications with any outside entity about the 10/24/23 Lakers vs. Nuggets game;
5. E-mails, recordings, notes or other records, electronic or otherwise, regarding communications with the Indiana Gaming Commission about the 10/24/23 Lakers vs. Nuggets game;
6. E-mails, recordings, notes or other records, electronic or otherwise, regarding communications with any and all state gaming commissions about the 10/24/23 Lakers vs. Nuggets game;
7. All records concerning the purported “incorrect odds” offered on the 10/24/23 Lakers vs. Nuggets game;
8. All records concerning any bet made in the United States on the 10/24/23 Lakers v. Nuggets game that involved markets impacted by the “incorrect odds;”
9. All records concerning the voiding of any bet made in the United States on the 10/24/23 Lakers v. Nuggets game that involved markets impacted by the “incorrect odds;”
10. Any other records, e-mails, recordings or evidence that you believe are relevant to the aforementioned alleged deceptive acts.

Your failure to preserve these items will result in claims of spoliation made against you in any subsequent litigation.

Sincerely,

s/ Robert E. Duff

Robert E. Duff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
MATTHEW McAFEE, on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert E. Duff - Indiana Consumer Law Group

DEFENDANTS
DRAFTKINGS, INC.
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Philip R. Zimmerly & Dakota C. Slaughter - Bose McKinney & Evans LLP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [X] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, Intellectual Property Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding []
2 Removed from State Court [X]
3 Remanded from Appellate Court []
4 Reinstated or Reopened []
5 Transferred from Another District (specify) []
6 Multidistrict Litigation - Transfer []
7 Multidistrict Litigation - Direct File []

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(a)
Brief description of cause:
Plaintiff asserts claims against DraftKings for alleged violations of the Indiana Deceptive Consumer Sales Act and breach of contract.

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE July 11, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Philip R. Zimmerly

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE