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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

UNDERDOG SPORTS, LLC, d/b/a
Underdog Fantasy,

Petitioner,

v.

ROB BONTA, in his official capacity as
Attorney General of California; and
CALIFORNIA DEPARTMENT OF
JUSTICE,

Respondents.

Case No. _____

**VERIFIED PETITION FOR WRIT OF
MANDATE AND
COMPLAINT FOR INJUNCTIVE
RELIEF**

1 Petitioner Underdog Sports, LLC, d/b/a Underdog Fantasy, pursuant to California Code of
2 Civil Procedure § 1085, petitions this court for a writ of mandate and injunctive relief against
3 Respondents Rob Bonta, in his official capacity as Attorney General of California, and the
4 California Department of Justice, and alleges as follows:

5 INTRODUCTION

6 1. Fantasy sports are accepted as a ubiquitous part of the sports landscape. Often, the
7 athletes themselves participate in fantasy contests—the Dodgers, for example, hold an annual
8 fantasy football draft that is widely reported on every year.¹ Sports leagues have partnerships with
9 numerous fantasy sports purveyors. Most sports teams have partnerships with fantasy sports
10 platforms. Major brands sponsor fantasy sports contests. And most importantly, more than 60
11 million people throughout the United States and Canada participate in fantasy sports each year.
12 Tens of millions of Californians have participated in digital fantasy sports contests. Doing so
13 brings people together—fantasy sports are a highly social form of entertainment.

14 2. All fantasy sports are contests of skill. To be successful, contestants must engage
15 in significant research, taking into account statistics, matchups, and all of the other factors that
16 cause teams and athletes to succeed (or fail) across a set of games or throughout a season.
17 Contestants are akin to General Managers of their respective “teams,” using their skill and
18 knowledge to outperform the competition. Thus, even in states like California where sports betting
19 is currently illegal, fantasy sports operate lawfully.

20 3. Since 2015, the California Legislature has considered but not enacted legislation to
21 regulate or expand California law to cover certain types of fantasy sports contests. Attorney
22 General Harris was asked to issue an opinion that deemed certain fantasy sports contests unlawful
23 under California law and declined to do so.² On information and belief, Attorney General Becerra
24 was also asked to do so and declined to do so.

25
26 ¹ Sportsnet LA Staff, *Backstage: Dodgers' fantasy football draft* (Sept. 16, 2023) MyNews13
27 <<https://mynews13.com/fl/orlando/sports/2023/09/16/backstage--dodgers--fantasy-football-draft->
28 >.

² *California Attorney General Investigating Daily Fantasy Sports Legality* (Nov. 27, 2023) Vixio
<[https://www.vixio.com/insights/gc-california-attorney-general-investigating-daily-fantasy-](https://www.vixio.com/insights/gc-california-attorney-general-investigating-daily-fantasy-sports-legality)
sports-legality>.

1 4. There is no dispute, then, that at present, fantasy sports contests of all kinds are
2 legal in California. In reliance on that understanding, an entire industry of fantasy sports-related
3 businesses operates openly in California. Because of its size, California is an extremely important
4 market for nearly all of these businesses: the State provides a meaningful percentage of their
5 revenue, which in turn has guided corporate policies and practices on a wide range of business
6 activities. It is not a stretch to say that thousands of employees in the industry owe their jobs to
7 the fact that fantasy sports in California is understood to be legal.

8 5. Underdog is a high-growth company that is one of the many that organize fantasy
9 sports contests throughout California. Founded in 2020, Underdog already has millions of
10 customers across the country, more than half a million of whom reside in California. Underdog
11 has more than 500 employees who work daily in various roles to facilitate its contests. Underdog
12 depends on access to the capital markets to raise funds. It also must depend on a wide network of
13 service providers and vendors to make its business work. These service providers and vendors,
14 from app stores to payment processors, are multinational corporations who can quickly end
15 Underdog's business by denying them access to customers or denying customers access to their
16 funds.

17 6. Despite the enduring popularity of fantasy sports and the significance of fantasy
18 sports to the economy, Underdog and its competitors in California face an imminent, existential
19 threat. "Within a matter of days"—and no later than July 3—California Attorney General Rob
20 Bonta plans to issue an opinion finding that certain fantasy contests, which he deems
21 counterfactually to be "daily fantasy sports" (or "DFS"), are prohibited under California law.³

22 7. The opinion, which Bonta's predecessors declined to issue, will satisfy only one
23 constituency, a small handful of the powerful tribes that maintain a monopoly on gaming in the
24 State. On information and belief, the tribes have met numerous times with Attorney General Bonta
25 and his representatives and lobbied for the opinion to be issued.
26
27

28 ³ Zavala, *Online fantasy sports platforms may soon be illegal in California* (Jun. 25, 2025)
KCRA <<https://www.kcra.com/article/online-fantasy-sports-platforms-california/65196468>>.

1 8. If issued, the opinion will poison a thriving industry that serves millions of
2 Californians. It will cast a legal cloud over the companies that organize digital fantasy sport
3 contests and deter the businesses who make those contests possible by processing payments,
4 hosting the platforms that Californians use to participate in digital fantasy sports, and providing
5 critical financing. In short, it will cost jobs, squander investments, and deprive Californians of an
6 activity that millions enjoy.

7 9. But the opinion should never be issued because doing so would violate clear
8 statutory constraints on the Attorney General’s authority to issue the opinion. The source of that
9 authority is California Government Code § 12519, which authorizes the Attorney General to issue
10 written opinions in response to requests from certain state officials. The scope of those opinions,
11 however, is limited to pure legal questions (“any question of law”) that “relat[e]” to the office of
12 the requesting official. Gov. Code, § 12519. Moreover, the Attorney General must “give” the
13 opinion “to” the particular public official who “requested” it. *Id.* The Attorney General himself
14 states in published guidelines and on his website that these constraints bound the scope of his
15 opinion authority—*i.e.*, that he “declines requests under section 12519 that do not satisfy these ...
16 statutory criteria.”⁴ Indeed, the Attorney General has confirmed that “[r]equests that require
17 factual investigations or that would require the resolution of a factual dispute are declined.”⁵

18 10. None of the conditions that Section 12519 imposes are met here. Whether a
19 particular fantasy sports contest—much less a collection of different fantasy sports contests, all
20 under the umbrella of DFS—is prohibited under California law necessarily is a factual question
21 that is improper for an Attorney General opinion. That is because answering the question requires
22 a careful factual assessment of both the relative role of skill and chance in DFS contests and the
23 differences among the many kinds of contests that are often considered to fall within the meaning
24 of DFS. Notably, the Attorney General has engaged in a factual inquiry in preparing the opinion.

25
26
27 ⁴ Bonta, Guidelines Regarding Attorney General Opinions Under Government Code Section
12519 (2022), available at <<https://oag.ca.gov/system/files/media/ag-opinion-guidelines.pdf>>.

28 ⁵ *Legal Opinions of the Attorney General - Frequently Asked Questions* CA OAG
<<https://oag.ca.gov/opinions/faqs>> [as of June 29, 2025] (“Legal Opinion FAQs”).

11. Moreover, the request for an opinion on the legality of DFS does not relate to the office of the official who requested it. The request did not come from a state or local official charged with enforcing California's gaming laws—*i.e.*, someone with executive responsibility—but rather from a legislator, then-State Senator Scott Wilk, who is no longer even in office to receive the opinion. A request about whether particular conduct violates the law is not a legislative inquiry; it is an executive one. This case illustrates the danger of conflating the two: a former state senator, with a political interest in stifling the digital fantasy sports industry, is on the verge of coopting the executive branch to achieve his goal.

12. Because the Attorney General has a clear duty not to accept a request for, and not to issue, an opinion that raises a non-legal question, much less one submitted by a (now former) state legislator stepping outside his legislative lane, this Court should issue the requested writ of mandate prohibiting the Attorney General from issuing an opinion that responds to then-Senator Wilk's request and should issue an injunction enforcing that prohibition. Moreover, because Underdog faces imminent irreparable harm if the Attorney General proceeds with issuance of the opinion, this Court should expeditiously issue a temporary restraining order prohibiting the Attorney General from issuing an opinion that responds to the request or that otherwise addresses the legality of digital fantasy sports platforms under California law.

THE PARTIES

A. Petitioner

13. Petitioner Underdog Sports, LLC, d/b/a Underdog Fantasy (“Underdog”), is a digital sports fantasy company organized and existing under the laws of the State of Delaware with its principal place of business at 150 Waterbury Street, Brooklyn, New York, 11206.

14. Underdog offers fantasy sports in California and in states across the country. Underdog has been operating in California since 2020. Underdog currently has more than a half-million active users in the state of California and employs more than 70 employees across the state.

B. Respondents

15. Respondent Rob Bonta is the Attorney General of California. He is the “chief law officer of the State.” Cal. Const., art. V, § 13. Attorney General Bonta is a resident of California.

1 and his principal place of business is 1300 I Street, Sacramento, California. At all relevant times,
2 Attorney General Bonta, as well as those subject to his supervision, direction, or control, are and
3 will be acting under color of state law. He is sued in his official capacity.

4 16. Respondent California Department of Justice is a department in the California
5 executive branch under the leadership of the California Attorney General. It is headquartered in
6 Sacramento, California.

7 JURISDICTION AND VENUE

8 17. This Court has jurisdiction over the matters alleged in this Complaint pursuant to
9 Code of Civil Procedure sections 1085 and 1086.

10 18. Venue for this action properly lies in the Superior Court for the State of California,
11 County of Sacramento, pursuant to Code of Civil Procedure sections 393.

12 STANDING

13 19. Underdog is a “beneficially interested” party in this dispute. *Doe v. Albany Unified*
14 *Sch. Dist.* (2010) 190 Cal.App.4th 668, 682 [118 Cal.Rptr.3d 507, 518] (citing Code Civ. Proc., §
15 1086)). Underdog, a digital sports fantasy company, has a “special interest to be served” in the
16 Attorney General’s decision to issue an opinion in response to a request about whether California
17 law prohibits DFS platforms. *Save the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52
18 Cal.4th 155, 165 [127 Cal.Rptr.3d 710, 717]. Because the Attorney General’s issuance of the
19 opinion will have “direct and substantial” consequences for Underdog’s business and the future of
20 the industry in which it operates, Underdog has a “particular right to be preserved or protected
21 over and above the interest held in common with the public at large.” *Id.*

22 20. In addition, the issue implicated in this petition—the Attorney General’s
23 compliance with California Government Code § 12519—is “one of public right,” and “the object
24 of the mandamus is to procure the enforcement of a public duty.” *Save the Plastic Bag*, 52 Cal.4th
25 at 166. The purpose of the petition is the enforcement of the Attorney General’s public duty to
26 comply with a law—California Government Code § 12519—that sets out the scope and limits of
27 his official responsibilities with respect to giving opinions. It is a matter of public right that the
28 Attorney General comply with such limits. As such, “it is sufficient that [Underdog] is interested

1 as a citizen in having the laws executed and the duty in question enforced.” *Id.* Factual allegations
2 detailing the harm that Underdog will likely suffer if the opinion is issued are set forth beginning
3 at Paragraph 58.

4 **FACTUAL ALLEGATIONS**

5 On information and belief, and as grounds for their complaint, Petitioner alleges as follows:

6 **A. Underdog and Digital Fantasy Sports Contests**

7 21. Underdog was founded in 2020 by veterans of the fantasy sports industry.

8 22. Underdog organizes paid fantasy sports contests in 41 states, the District of
9 Columbia, and parts of Canada. It has applied for and obtained licenses and permits to offer
10 fantasy sports contests in all states where they are required (17). In just five years, Underdog has
11 attracted millions of customers nationwide.

12 23. California is Underdog’s largest market by both the number of customers and
13 revenue. Underdog earns a substantial portion of its corporate revenue from its large customer
14 base in the state.

15 24. In California, Underdog operates the Underdog Fantasy mobile application,
16 currently available for customers to download on Apple iOS and Google Play, as well as a website
17 (together, “Underdog Fantasy”). With Underdog Fantasy, Underdog offers customers the
18 opportunity to enter and play a variety of skill-based fantasy sports contests, including daily,
19 weekly, tournament-long, and season-long contests. Underdog charges customers an
20 administrative or entry fee to participate in contests on Underdog Fantasy, just as participants in
21 other contests—from celebrity golf charity events to chess tournaments—are charged when
22 competing for a prize.

23 25. Underdog Fantasy is one of the many ways that millions of Americans participate
24 in digital fantasy sports each year. In 2022, over 60 million people participated in online fantasy
25 sports in the United States and Canada.

26 26. Unlike sports wagering, which involves the placing of bets or wagers on the
27 outcome of a real sporting event, participants in fantasy sports do not bet on the outcome of a
28 specific sporting event, or even bet at all. *See* Pen. Code, § 337a (prohibiting bets and wagers on

the outcome of a single event or trial). Rather, fantasy sports participants draft and manage virtual rosters of athletes from multiple teams, and they set a lineup with the goal of scoring the highest number of points. The outcome of a fantasy sports contest is determined not by the result of a single sporting event or statistic of a single athlete, but by the collective performance of the fantasy sports roster assembled by the participant. Indeed, Underdog Fantasy prohibits participants from creating a lineup based entirely on a single athlete or athletes from a single sports team.

27. Underdog's offerings showcase the range of digital fantasy contests available, and the variety of skill and strategy required of participants in each. For instance, Underdog offers "Best Ball" contests, in which participants participate in a "snake draft" against each other to assemble the highest-scoring roster for a specific slate of games or sport season. These contests are typically tournament-style, in which participants advance in tranches over the course of the contest until a winner is determined. Underdog's "Battle Royale" contests also involve a snake draft among a handful of entrants, but then all entrants compete against each other for the contest period to accumulate the highest score, without a tournament-style advancement component. By comparison, Underdog's individual draft contests are played only among the participants in the same draft, typically 6 or 12 participants, and often involve a limited slate of athletic events (e.g., a day or weekend of NFL football). Underdog also offers "Pick'em" style contests, in which participants select rosters of 2 to 8 (or more athletes) and win by predicting how their athletes will collectively perform in real-world athletic contests. The contest calls for participants to use their knowledge of sports to decide which players to put on their roster and skillfully select the metrics upon which their roster will win or lose.

28. Underdog's contests vary widely in duration, from single-day matchups to full sports seasons. Their prizes go from just a few dollars to millions of dollars. Contests can have as few as two participants, up to thousands. Their winning criteria also vary. As do the types of real-world sports covered by the contests, which can include anything from the NFL to NASCAR to WNBA and eSports. Other fantasy sports organizers offer even more contest types, including popular salary cap formats.

1 29. Each of these contests rewards a different set of skills. But regardless of the format
2 of the contest, participants win by relying upon their analytical skills and their understanding of
3 the athletes, the teams, and other factors (e.g., weather, historical dynamics between teams or
4 players, event location). *Cf. People v. Settles* (1938) 29 Cal.App2d Supp. 781 [78 P.2d 274]
5 (holding that, in California, the primary test of whether a game requiring payment for participation
6 constitutes an illegal lottery is whether “chance or skill ... is dominant in determining the result.”).

7 30. Statistical and economic experts who have studied fantasy sports contests have
8 concluded that their outcomes turn on the skill of the contestant in assembling the best fantasy
9 roster. *See, e.g., Chu, Study: There’s real skill in fantasy sports* (Nov. 7, 2018) MIT News Office
10 <<https://news.mit.edu/2018/hosoi-study-skill-fantasy-sports-1107>>; Bhansali et al., *Skill over*
11 *chance: A comparative study of legal recognition of fantasy sports in India & USA* (2024),
12 *available at* <[https://thedialogue.co/wp-content/uploads/2024/09/Skill-Over-Chance-A-](https://thedialogue.co/wp-content/uploads/2024/09/Skill-Over-Chance-A-Comparative-Study.pdf)
13 [Comparative-Study.pdf](https://thedialogue.co/wp-content/uploads/2024/09/Skill-Over-Chance-A-Comparative-Study.pdf)> (“The comprehensive analysis of Indian and American precedents along
14 with the review of statistical studies, ascertain that fantasy sports are games of skill, distinct from
15 betting, gambling, and wagering”); Aishvarya et al., *Decision support system for policy-making:*
16 *Quantifying skill and chance in daily fantasy sports* (2024) 182 *Decision Support Sys.*, *available*
17 *at* <<https://doi.org/10.1016/j.dss.2024.114237>> (“We find that skill plays a dominant role in
18 determining winnability in cricket-based DFS contests.”); Bergner, *Daily Fantasy Sports: Chance*
19 *or Skill?*, Bryant University Honors Thesis (2017), *available at*
20 <[https://digitalcommons.bryant.edu/cgi/viewcontent.cgi?params=/context/honors_mathematics/a](https://digitalcommons.bryant.edu/cgi/viewcontent.cgi?params=/context/honors_mathematics/article/1027/&path_info=DailyFantasySports.pdf)
21 [rticle/1027/&path_info=DailyFantasySports.pdf](https://digitalcommons.bryant.edu/cgi/viewcontent.cgi?params=/context/honors_mathematics/article/1027/&path_info=DailyFantasySports.pdf)> (“[T]he statistical tests run on the results show
22 that online daily fantasy sports are games predominantly based off skill”).

23 31. Courts that have examined the facts surrounding digital fantasy sports have reached
24 the same conclusion. The Illinois Supreme Court determined that a user’s skill “in using their
25 knowledge of statistics and the relevant sport to select a fantasy team that will outperform the
26 opponent” is “‘always the dominant factor’ in head-to-head [daily fantasy sports] contests
27 involving NBA games.” *Dew-Becker v. Wu* (Ill. 2020) 178 N.E.3d 1034, 1040. The New York
28 Court of Appeals found “resounding support” for the New York state legislature’s determination

1 that fantasy sports contests are predominantly skill-based, including credible studies showing that
2 skilled players achieve “significantly more success” than unskilled players or players using
3 randomly generated lineups. *White v. Cuomo* (2022) 38 N.Y.3d 209, 223 [192 N.E.3d 300, 313].

4 32. In all cases, determining whether a fantasy sports contest is permissible under a
5 state’s anti-gaming law requires a factual inquiry that includes an examination of the game itself,
6 its rules, and the games’ outcome distribution.

7 **B. The Request for an Opinion on the Legality of DFS in California**

8 33. The California Attorney General has authority to issue legal opinions only under
9 limited conditions pursuant to California Government Code § 12519. Section 12519 states that:
10 “The Attorney General shall give the Attorney General’s opinion in writing to any Member of the
11 Legislature, the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State
12 Lands Commission, Superintendent of Public Instruction, Insurance Commissioner, any state
13 agency, and any county counsel, district attorney, or sheriff when requested, upon *any question of*
14 *law relating to their respective offices.*” Gov. Code, § 12519 (emphasis added).

15 34. By the terms of § 12519, a legal opinion issued by the Attorney General must
16 address only “question[s] of law,” and the Attorney General has separately confirmed that he will
17 not accept any requests for opinions “that require factual investigations or that would require the
18 resolution of a factual dispute.”⁶ Accordingly, an opinion request that poses a mixed question of
19 law and fact is beyond the appropriate scope of Attorney General opinions because mixed
20 questions require factual investigations to permit “the application of the rule to the facts and the
21 consequent determination whether the rule is satisfied.” *People ex rel. City of Com. v. Argumedo*
22 (2018) 28 Cal.App.5th 274, 280 [239 Cal. Rptr. 3d 128, 133].

23 35. A second limit is that the Attorney General “shall give [his] opinion in writing to
24 any Member of the Legislature” who has “requested” the opinion. Gov. Code, § 12519 (emphasis
25 added); *see also* Guidelines (“Section 12519 directs the Attorney General to provide opinions *only*
26 *to the public officials and agencies listed in the statute, and not to private individuals[.]*” (emphasis
27 added)).

28

⁶ *Legal Opinion FAQs*, *supra* note 5.

1 36. The final limit that Section 12519 imposes is that the Attorney General may not
2 accept a request for an opinion when the request is not “relat[ed] to the [requesting official’s]
3 office[.]” *See also Legal Opinion* FAQs, *supra* note 5 (“When it is apparent that there is no
4 connection [to the requesting official’s office], the request will be declined.”).

5 37. Together, these limits place important constraints on the circumstances in which
6 the State’s top law enforcement official can issue blanket opinions about what California law does,
7 or does not, require. Limiting the scope of opinions to “any question of law” ensures that the
8 Attorney General does not prejudge the outcome of any fact-dependent dispute in a setting devoid
9 of procedural protections for the people and businesses affected by his opinions. In other words,
10 it ensures the Attorney General cannot simply brand particular conduct illegal without having the
11 facts, and the factfinding process, necessary to make that determination.

12 38. Similarly, requiring the Attorney General to only give opinions “to” a particular
13 public official, and insisting that the public official’s request “relat[e] to their respective office[.],”
14 ensures that the Attorney General does not needlessly set down new legal markers. Instead the
15 Attorney General will set out his views only when a need arises in relation to the demands of a
16 particular state official’s duties. In the context of requests from Members of the Legislature, this
17 limit preserves the separation of powers by preventing legislators from using an opinion request
18 about a purely executive function to dictate the State’s use of executive branch resources. *See Cal.*
19 *Const.*, art. III, § 3 (“The powers of state government are legislative, executive, and judicial.
20 Persons charged with the exercise of one power may not exercise either of the others except as
21 permitted by this Constitution.”).

22 39. These limits are particularly important in light of the effect the Attorney General’s
23 opinions can have when issued under appropriate circumstances. Although the opinions are not
24 binding, courts often accord them meaningful weight.

25 40. Digital fantasy sports have been offered in California for decades. During that time,
26 to Underdog’s knowledge, no law or regulation has barred, and no governmental enforcement
27 action has challenged the legality of digital fantasy sports contests in California.
28

1 41. However, on October 5, 2023, then-Senator Scott Wilk submitted a request, under
2 Gov. Code, § 12519, for a “legal opinion as to whether California law prohibits the offering and
3 operation of daily fantasy sports betting platforms with players physically located within the State
4 of California, regardless of whether the operators and associated technology are located within or
5 outside of the State.” Declaration of David Gringer in Support of Petition for Writ of Mandate
6 (“Gringer Petition Decl.”), Ex. 1 (“Opinion Request”). In posing that question, Senator Wilk
7 highlighted that under “California law, one may not operate ‘any game of chance’ without the
8 required federal, state, and local licenses.” *Id.* (quoting Pen. Code, § 337j).

9 42. The content of the request makes its purpose clear. Then-Senator Wilk contrasts
10 the fact that “sports wagering in all forms remains illegal in California,” with the claim that “online
11 daily fantasy sports betting is proliferating.” *Id.* He then expresses his view that “daily fantasy
12 sports appears to be a game of chance not otherwise permitted by the laws of California.” *Id.* The
13 aim, then, was plainly to nudge the Attorney General towards finding that the operators of digital
14 fantasy sports contests are breaking the law. That aim was likely consistent with then-Senator
15 Wilk’s political interests, given that public reporting indicates that he “has notably been a supporter
16 of tribal gaming backed initiatives in the past.”⁷

17 43. The Attorney General accepted the request for an opinion, which is now identified
18 as “pending” on the Attorney General’s website as Opinion No. 23-1001, and has been for more
19 than 18 months.⁸ The opinion has been assigned to a Deputy Attorney General who reports to
20 Defendant Rob Bonta, acting in his official capacity.⁹ Media has reported that Assemblyman
21 Lackey, who is currently in office, “took over the effort” when Senator Wilk’s term ended and that
22 he has “been following up with the [Department] about the request.”¹⁰ But the Attorney General’s
23 website reflects that the original 2023 request from Senator Wilk is the only pending opinion
24 request pertaining to fantasy sports.¹¹

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26 ⁷ *California Attorney General Investigating Daily Fantasy Sports Legality*, *supra* note 2.

27 ⁸ *Legal Opinions of the Attorney General - Monthly Opinion Report* CA OAG
<<https://oag.ca.gov/opinions/monthly-report>> [as of June 29, 2025].

28 ⁹ *Id.*

¹⁰ Zavala, *supra* note 3.

¹¹ *California Attorney General Investigating Daily Fantasy Sports Legality*, *supra* note 8.

1 44. The question under consideration, according to the Attorney General’s website,
2 uses the same wording as Senator Wilk did in his request—namely, whether “California law
3 prohibit[s] the offering and operation of daily fantasy sports betting platforms with players
4 physically located within the State of California, regardless of whether the operators and associated
5 technology are located within or outside of the State.”¹² Answering the question posed requires,
6 at minimum, (1) a detailed factual assessment of the characteristics of different DFS contests, and
7 (2) an empirical examination of whether skill or chance predominates in each individual DFS
8 contest offered in the marketplace.

9 45. First, the request requires a careful examination of different DFS fantasy contests
10 because the terminology the request uses—daily fantasy sports betting platforms—does not have
11 a consensus factual, much less legal, definition. There is no agreed upon set of contests that fall
12 under the umbrella of “daily fantasy sports.” *See* Declaration of Dustin Cooper (“Cooper Decl.”)
13 ¶ 11. And that is in part because the rules and terms of different fantasy contests vary widely.

14 46. Some contests require ongoing management of the participant’s roster over the
15 length of a season, whereas others restrict the changes a participant might make to the roster after
16 the initial drafting, necessitating greater upfront research and time investment in creating the initial
17 roster. *Id.* ¶ 8; Gringer Petition Decl., Ex. 2 (Underdog Website Rules). The calculation of which
18 players to draft in a season-long or tournament-format contest will vary wildly from the strategic
19 calculations that go into a short-duration contest. Even within similar sports and formats, the rules
20 for scoring different contests may vary. For example, in one baseball contest, a pitcher’s win might
21 be worth 5 points and each strikeout is worth 3; in another, wins are not a factor but WHIP (a
22 metric that assesses a pitcher’s walks + hits per inning pitched) and xERA (a pitcher’s expected
23 earned run average) are. Like an amateur general manager, a skilled participant must weigh the
24 strengths and weaknesses of multiple players and teams to craft the strongest roster under the
25 specific contest rules. *See* Cooper Decl. ¶ 8.

26 47. The question under consideration for Opinion No. 23-1001, whether “daily fantasy
27 sports” platforms are prohibited, therefore elides the distinctions between the different kinds of
28

¹² *Id.*

1 contests that have been labeled “daily fantasy sports” and necessarily requires factual investigation
2 to decide the scope of the opinion’s applicability. *See* Opinion Request.

3 48. *Second*, providing a response to Senator Wilk’s request requires an examination of
4 the relative role of skill versus chance across the many different kinds of contests that companies
5 like Underdog offer. Indeed, Senator Wilk highlighted California’s prohibition on operating an
6 unlicensed “game of chance” in framing his question for the Attorney General. *Id.*

7 49. When courts have confronted questions about whether specific contests or games
8 are unlawful, they have engaged in factfinding—including by relying on evidence from statistical
9 experts and from participants in the contest or game—to determine whether skill predominates
10 over chance. For example, in *Bell Gardens Bicycle Club v. Department of Justice*, the court
11 considered whether a form of poker called “jackpot poker” was a game of skill or an “illegal
12 lottery.” (1995) 36 Cal.App.4th 717, 756 [42 Cal.Rptr.2d 730, 755]. To evaluate this question, the
13 court relied on extensive expert testimony in the record, including from a professional poker player
14 and a statistics professor from U.C. Berkeley. *Id.* at 752. These experts testified about how players
15 of different levels of skill approached the game differently, their personal experiences playing
16 jackpot poker, and computer simulations evaluating the precise likelihood of certain game
17 outcomes. *Id.* at 726-27. In light of this testimony, the court rejected the conclusion “that poker
18 participants win the jackpot prize through skill and not by chance.” *Id.* at 753.

19 50. Moreover, when questions similar to the one presented by opinion number 23-1001
20 have arisen in other states, courts have carefully weighed the factual evidence about whether the
21 most successful digital fantasy sports players rely on skill or luck to succeed. In *White v. Cuomo*,
22 the Court of Appeals of New York noted that “the legislature’s *factual determination* that
23 [interactive fantasy sport] contests are a game of ‘skill,’ not of ‘chance’... – and therefore are not
24 ‘gambling’ – has resounding support.” *supra*, 38 N.Y.3d 209 at p. 223 (emphasis added). In
25 support of the proposition that “interactive fantasy sport” (“IFS”) contests are games of skill, the
26 court cited “[s]tudies show[ing] that skilled players achieve significantly more success in IFS
27 contests and that rosters of skilled human players were more successful in IFS contests than
28 randomly generated lineups over 80% of the time.” *Id.* The *White* court also relied on an expert

1 opinion arguing that “IFS games ‘have an inherent and vast character of skill where chance is
2 overwhelmingly immaterial in the probability of winning’ and winning a prize in such contests
3 ‘strongly depends more on skill than on chance.’ In fact, it is now ‘widely recognized’ that IFS
4 contests are predominately skill-based competitions.” *Id.* at 224.

5 51. Similarly, when asked to determine whether certain DFS platforms were legal in
6 Illinois, the state’s Supreme Court said the central question it had to answer was “whether head-
7 to-head DFS contests are predominately determined by the skill of the participants in using their
8 knowledge of statistics and the relevant sport to select a fantasy team that will outperform the
9 opponent. Several recent, peer-reviewed studies have established that they are.” *Dew-Becker v.*
10 *Wu, supra*, 178 N.E.3d at p. 1040. The *Wu* court proceeded to cite those peer-reviewed studies
11 and articles in support of its factual determination that “‘skill is always the dominant factor’ in
12 head-to-head DFS contests involving NBA games.” *Id.* Indeed, the state Supreme Court rejected
13 the opinion of the state’s Attorney General—which had “concluded DFS contests are illegal
14 gambling under Illinois law”—precisely because the opinion had not considered important factual
15 information about the degree to which skill predominates over chance in fantasy sports. *See id.* at
16 1041.

17 52. Ultimately, the Attorney General cannot determine whether DFS contests are
18 prohibited under California law without *some* consideration and ascertainment of the relevant
19 facts. In other words, at the core of the requested opinion, the Attorney General is being asked
20 “whether the facts satisfy the [relevant legal] standard,” which is not a purely legal question.
21 *People v. Uribe* (2011) 199 Cal.App.4th 836, 855 [132 Cal.Rptr.3d 102, 118].

22 53. And indeed, on information and belief, the Attorney General *has* conducted a
23 factual investigation in preparation for issuing the opinion, albeit a limited and flawed one.
24 Specifically, he has received submissions from representatives of the digital fantasy sports industry
25 about the details of different various contests and the degree to which skill predominates over
26 chance; he has considered the specifics of those submissions; and he has discussed facts pertaining
27 to digital fantasy sports with market participants.

1 54. Upon information and belief, representatives of the Department of Justice have told
2 stakeholders that these submissions have been “helpful” in developing the Attorney General’s
3 understanding of the underlying facts as a necessary component in answering the question
4 presented.

5 **C. The Upcoming Publication of the Opinion and Imminent Irreparable Harm**

6 55. On June 25, 2025, KCRA reported that “multiple sources” have confirmed that
7 “California Attorney General Rob Bonta is soon expected to deem all online fantasy sports
8 platforms illegal in the state” and that “[w]ithin a matter of days, Bonta is expected to release a
9 legal opinion with more details and why he came to this conclusion.”¹³ KCRA reports that “the
10 opinion ... could put billions of dollars at risk for the companies that have been operating in the
11 state for a decade.”¹⁴

12 56. The Attorney General’s office has confirmed to Underdog’s counsel that the
13 opinion will be very broad in its applicability, and that it will find all daily fantasy sports to be
14 illegal under California law. *See* Gringer Decl. ¶¶ 2-4.

15 57. Underdog has a significant interest in preventing the unlawful issuance of a legal
16 opinion that would jeopardize its ability to continue operating in California.

17 58. Specifically, the issuance of the opinion would severely and irreparably impair
18 Underdog’s relationships with service providers, business partners, and investors, both in
19 California and nationally. It would also cause many of Underdog’s customers in California to
20 withdraw money from their accounts and irreparably damage the Company’s reputation and
21 goodwill among its customers in the State. None of these harms would be compensable through
22 monetary damages.

23 59. Indeed, when attorneys general in Texas and Alabama issued a legal opinion or
24 otherwise addressed the legality of daily fantasy sports in their respective states, it forced some
25 daily fantasy sports companies to withdraw all of their paid contests from the states. A
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28 ¹³ Zavala, *supra* note 3.

¹⁴ *Id.*

1 representative of Attorney General Bonta has already informed Underdog’s counsel that it wishes
2 to achieve the same outcome here. *See* Gringer Decl. ¶ 4.

3 **FIRST CAUSE OF ACTION (WRIT OF MANDATE)**

4 **Traditional Mandamus (Code Civ. Proc., § 1085):**

5 **Violation of Government Code Section 12519**

6 60. Petitioner incorporates paragraphs 1 through 59 as though fully set forth herein.

7 61. A writ of mandate is “the traditional remedy for the failure of a public official to
8 perform a legal duty.” *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432 [261 Cal.Rptr.
9 574]. To obtain relief under traditional mandamus, a petitioner must demonstrate “(1) no plain,
10 speedy, and adequate alternative remedy exists; (2) a clear, present, ... ministerial duty on the part
11 of the respondent; and (3) a correlative clear, present and beneficial right in the petitioner to the
12 performance of that duty.” *Loeber v. Lakeside Joint Sch. Dist.* (2024) 103 Cal.App.5th 552, 567
13 [323 Cal.Rptr.3d 18, 30], rev. den. (Sept. 11, 2024) (internal citations and quotations omitted).
14 Underdog meets all three requirements.

15 62. Underdog has no alternative remedy to ensure the Attorney General adheres to the
16 limits of his authority under Section 12519. Absent issuance of the writ and accompanying
17 injunction, Opinion No. 23-1001 will issue and Underdog will suffer irreparable harm.

18 63. A ministerial duty “is an act that a public officer is required to perform in a
19 prescribed manner in obedience to the mandate of legal [duty] and without regard to his own
20 judgment or opinion concerning such act’s propriety or impropriety, when a given state of facts
21 exists.” *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916
22 [129 Cal.Rptr.2d 811, 814], as mod. (Apr. 16, 2003).

23 64. California Government Code Section 12519 authorizes the Attorney General to
24 “give” an opinion “to” certain state officials (including legislators) when requested, and it
25 prescribes the circumstances in which such opinions can issue—limiting them to “any question of
26 law relating to [the requester’s] office[.]” The Attorney General has confirmed that these limits in
27 fact restrict the opinions he agrees to issue.¹⁵

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¹⁵ *See* Bonta, *supra* note 4; *Legal Opinion FAQs*, *supra* note 5.

1 65. The Attorney General does not have discretion in adhering to the limits of Section
2 12519. Although he may have discretion in determining the *contents* of an opinion that he has
3 (lawfully) agreed to write, the threshold determination of whether an opinion request is appropriate
4 under the statute is ministerial.

5 66. Respondents have exceeded their authority under Section 12519 by deciding to
6 accept the request for, and to imminently issue, Opinion No. 23-1001 because (1) the request does
7 not raise a “question of law,” (2) the Attorney General cannot “give” the opinion to the “Member
8 of the Legislature” who “requested it,” and (3) the request does not “relate[]” to the requesting
9 (former) state senator’s “office[].” Gov. Code, § 12519.

10 67. Answering the question whether “California law prohibit[s] the offering and
11 operating of daily fantasy supports betting platforms” requires both an examination of the
12 empirical question whether skill or chance predominates in those contests and a detailed factual
13 assessment of the characteristics of different DFS contests. *See supra* ¶¶ 29-32; 42-54. The
14 opinion request therefore poses a mixed question of law and fact.

15 68. Courts in California have recognized that “[m]ixed questions of law and fact
16 concern the application of the rule to the facts and the consequent determination whether the rule
17 is satisfied.” *People ex rel. City of Com., supra*, 28 Cal.App.5th at p. 280. Even questions that
18 sound “legal” in their framing often are, at their core, mixed. For example, “[w]hether
19 governmental action constituted a taking” is a mixed question of law and fact. *Lafayette Bollinger*
20 *Dev. LLC v. Town of Moraga* (2023) 93 Cal.App.5th 752, 777 [311 Cal.Rptr.3d 273, 296]. So too
21 are questions about the “establishment of a partnership.” *Halperin v. Raville* (1986) 176 Cal.
22 App.3d 765, 772 [222 Cal.Rptr. 350, 354].

23 69. The Attorney General is being asked “whether the facts satisfy the [relevant legal]
24 standard” for prohibited gambling in California, which is a mixed question of law and fact. *People*
25 *v. Uribe, supra*, 199 Cal.App.4th at p. 855. The answer then-Senator Wilk requested is contingent
26 on determining numerous underlying facts. For example, the Attorney General cannot determine
27 whether chance or skill predominates in DFS without actual analysis of the details of different
28

1 DFS contests and the degree to which the outcomes of those contests turn on chance versus skill.
2 The Attorney General's efforts to gather facts in preparation for issuing the opinion confirm this.

3 70. California law also limits legal opinions from the Attorney General to requests from
4 officials that "relat[e] to their respective offices." Gov. Code, § 12519. The request made by then-
5 Senator Wilk does not relate to his former legislative office but instead asks California's top law
6 enforcement officer to stake out a position about whether a longstanding business activity in the
7 State is legal. That question goes to the core of executive branch power. *See, e.g., People v. Boyd*
8 (1979) 24 Cal.3d 285, 291 [594 P.2d 484, 487] ("[T]he prosecutorial functions [are] vested in the
9 executive branch").

10 71. In sum, by accepting opinion request No. 23-1001, and deciding to issue the
11 forthcoming opinions, Respondents have violated their ministerial duty to adhere to the limits on
12 their authority under Section 12519.

13 72. Alternatively, a writ of mandate can be used "to correct abuses of discretion."
14 *People for Ethical Operation of Prosecutors etc. v. Spitzer*, 53 Cal. App. 5th 391, 407 (Cal. Ct.
15 App. 2020), *as modified* (Sept. 8, 2020). Respondents have abused their discretion by accepting
16 an opinion request that flouts the key limits on Attorney General authority under § 12519.

17 73. Underdog has a clear, present, and beneficial right to Respondents' adherence to
18 the limits of Section 12519 for all of the reasons it has standing to seek a writ of mandate. *See,*
19 *e.g., Carsten v. Psychology Examining Com.*, (1980) 27 Cal.3d 793, 796 [166 Cal.Rptr. 844, 846]
20 (considering whether petitioner "lacked standing" on ground that she was "not a 'beneficially
21 interested' party").

22 **SECOND CAUSE OF ACTION (INJUNCTIVE RELIEF)**

23 **Injunctive Relief (Code Civ. Proc., § 526)**

24 74. Petitioner incorporates paragraphs 1 through 73 as though fully set forth herein.

25 75. Respondents have violated a clear and mandatory duty under California
26 Government Code § 12519 by accepting opinion request No. 23-1001 even though (1) the request
27 does not raise a "question of law" but instead a mixed question of law and fact; and (2) the request
28 does not "relate[]" to the requesting state senator's "office[]."

Attorneys for Petitioner

UNDERDOG SPORTS, LLC,
d/b/a Underdog Fantasy

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1. I am the General Counsel and an officer of Petitioner Underdog Sports, LLC, d/b/a Underdog Fantasy.

3. I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

By:

Nicholas G. Green

UNDERDOG SPORTS, LLC,
d/b/a Underdog Fantasy