UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZUFFA, LLC d/b/a ULTIMATE FIGHTING CHAMPIONSHIP, Plaintiff, -against- ERIC T. SCHNEIDERMAN, in his official capacity as ATTORNEY GENERAL OF THE STATE OF NEW YORK, VINCENT G. BRADLEY, in his official capacity as COMMISSIONER AND CHAIRMAN OF THE NEW YORK STATE LIQUOR AUTHORITY, and KEVIN KIM, in his official capacity as COMMISSIONER OF THE NEW YORK STATE LIQUOR AUTHORITY, Defendants.	No. 15cv7624 **COMPLAINT**

I.
INTRODUCTION

1. This lawsuit is a constitutional challenge to N.Y. Unconsol. Law § 8905-a (the "Combative Sport Law", "CSL", or simply "§8905-a"), a criminal law that is so badly written that neither ordinary persons nor state officials are able to say with any certainty what it permits and what it prohibits. As a consequence, state officials have, over the course of the law's history, engaged in a series of arbitrary and discriminatory interpretations of the law, making clear beyond peradventure that the discretion they possess under the CSL is wholly standardless.

2. Mixed martial arts—commonly referred to as MMA—is one of the fastest growing spectator sports in the United States. MMA involves bouts between highly trained athletes skilled in various martial and combat arts, including karate, jiu-jitsu, boxing,

kickboxing, grappling, judo, Muay Thai, and freestyle and Greco-Roman wrestling.

3. The Ultimate Fighting Championship® ("UFC") is the world's largest professional mixed martial arts promoter. Mixed martial arts events promoted by the UFC adhere to a set of rules utilized and enforced by most states in the country (and many countries in the world)—the "Unified Rules of MMA" or "Unified Rules."

4. Professional MMA matches are lawful in every state in the United States, except New York.

5. Matches promoted by the UFC regularly fill the nation's—and indeed, the world's—largest arenas. The viewership of mixed martial arts on network and pay-per-view ("PPV") television often outstrips that of professional boxing and wrestling, and MMA programming now can be seen regularly on network and cable television alongside professional baseball, basketball, and football. The UFC reaches over half a billion homes worldwide and can be seen on some form of television in over 150 countries and territories in over 20 different languages.

6. MMA is the subject of major motion pictures such as *Warrior* and *Here Comes the Boom*. The UFC is sponsored by notable entities including Anheuser-Busch, Harley-Davidson, and Reebok.

7. Professional athletes in other sports incorporate mixed martial arts into their training regimens, citing the physical as well as mental toughness that mixed martial arts builds. MMA techniques and training are taught to members of our nation's military and to law enforcement officers. MMA programs have sprung up to help stop the bullying of students and to steer children away from gangs and other at-risk behavior.

8. MMA is extremely popular in the State of New York. Professional MMA is widely available throughout the State on television, and countless New Yorkers of all ages watch it. MMA also is widely practiced in the State. Tens of thousands of children and

adults train at New York's many mixed martial arts gyms and schools. Leading professional fighters hail from New York and train here. Live amateur MMA events occur regularly throughout the state.

9. Yet, despite MMA's huge popularity and acceptance in New York, and throughout the world, New York state officials have long taken the position that professional MMA matches are illegal under New York's law governing "combative sport." *See* N.Y. Unconsol. Law § 8905-a.

10. The CSL has proven to be putty in the hands of state officials. As the holders of state offices have changed, so, too, has the official interpretation of the CSL. On its face and as interpreted by state officials, the law is so vague that no reasonable person could know what is permitted and what is not. The vagueness of the CSL has allowed State officials to exercise standardless discretion, acting in arbitrary and discriminatory ways in deciding which events to permit and which to prohibit.

11. To pick just one example, the Combative Sport Law exempts "martial arts" from its ban, and says that "martial arts shall include any professional match or exhibition sanctioned by any" of the organizations listed in the statute. Among those organizations is the World Karate Association, today known as the World Kickboxing Association ("WKA"). State officials recognize the WKA as an organization entitled to sanction professional martial arts events, and the WKA does indeed sanction many such events in New York. But state officials will not allow the WKA to sanction professional MMA.

12. While barring the WKA from sanctioning professional MMA, state officials have allowed the WKA to sanction other major martial arts events in New York promoted by the UFC's competitors, such as Glory and K-1. State officials are unable to offer any coherent explanation for why the UFC's competitors may promote their events, including in such leading New York arenas as Madison Square Garden ("MSG"), but the UFC may not.

13. Among the many, conflicting explanations offered by state officials is the claim that listed organizations may only sanction "single discipline" but not "mixed discipline" martial arts. However, as state officials well know, Glory is—and describes itself as—a "mix of several combat disciplines including Karate, Muay Thai, Tae Kwon Do and traditional Boxing." Similarly, K-1 is "a combat sport that combines the most effective stand-up fighting strategies from bare knuckle Karate, Kung Fu, Muay Thai, Taekwon-do, Savate, San Shou/San Da, Western Kickboxing, and traditional boxing."

14. For all of these reasons and as set forth more fully below, the CSL is unconstitutionally vague with regard to professional MMA and, therefore, violates the UFC's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

II. PARTIES

15. Plaintiff Zuffa, LLC is a private company that does business as the Ultimate Fighting Championship®, the leading promoter of professional Unified Rules MMA contests and exhibitions throughout the world. Since 2001, the UFC has organized and promoted widely popular professional MMA matches in various weight classes. UFC events are the most watched and attended MMA exhibitions in the United States, and many of the top MMA competitors in the world fight in UFC events. UFC matches are highly regulated. They involve extensive prefight physicals that include blood tests, neurological examinations, brain scans, and eye exams; ringside doctors and emergency medical technicians; experienced referees with complete authority over the matches; post-match medical examinations; and strict enforcement of all rules. The UFC has been selected as a finalist for "Professional Sports League of the Year" by *SportsBusiness Journal*. In addition to producing professional MMA matches, the UFC licenses mixed martial arts training programs, fitness training centers, and UFC goods and apparel, and is actively involved in

charitable endeavors.

16. In 2011, the UFC was one of a group of parties that filed suit in the United States District Court for the Southern District of New York challenging the Combative Sport Law on the grounds that it is, *inter alia*, unconstitutionally vague. That case was captioned *Jones v. Schneiderman*. Ultimately the vagueness claim in the *Jones v. Schneiderman* litigation was rejected on the ground that plaintiffs lacked standing at the time they filed their initial complaint. No. 11–CV–8215 (KMW), 2015 WL 1454529 (S.D.N.Y. Mar. 31, 2015).

17. The standing of the UFC in the present action could not be clearer.

18. The UFC is in the business of promoting professional MMA matches throughout the country and has taken every step it can to organize and promote professional MMA matches in New York as well.

19. The UFC is a licensed WKA promoter, and the WKA is ready, willing, and able to sanction MMA events in New York, including professional MMA events promoted by the UFC. State officials recognize the WKA as one of the organizations entitled to sanction a variety of martial arts events under the CSL. The WKA already sanctions numerous other professional martial arts events in the state (including those such as Glory, K-1, and kickboxing that mix martial arts disciplines).

20. The UFC has a contract with MSG to hold a live, professional MMA event on April 23, 2016, and an agreement with the WKA to sanction that event. Yet according to the unequivocal position Defendants have now taken, *see* ¶¶109-113, that event is barred by the CSL—even though Defendants cannot explain why.

21. If the UFC cannot go forward with that event, it will suffer substantial financial and reputational harm.

22. The UFC expects to sell thousands of tickets to, and earn millions of dollars in revenue from, the April 23, 2016 event at MSG.

23. Moreover, MSG has hosted some of the world's most momentous concerts, speeches, and athletic events, including historic boxing matches like Joe Louis's comeback fight against Rocky Marciano in 1951, the "Fight of the Century" between Muhammad Ali and Joe Frazier in 1971, the 1999 fight between Lennox Lewis and Evander Holyfield, and a mass given by Pope Francis in September 2015. Hosting an event at MSG would be an enormous asset for the UFC, not only in terms of the gate receipts, but from a marketing and reputational perspective.

24. The UFC unequivocally wants to promote other MMA events in New York as well. Its inability to do so has caused and will continue to cause the UFC to suffer substantial financial, reputational, and other market-based harms.

25. For instance, the UFC loses millions of dollars in ticket sales by being barred from some of the largest and most prominent venues in the United States. The UFC also loses a source of marketing for its UFC-branded gyms in New York, as well as for the DVDs, consumer products, videogames, and other products that it sells.

26. The UFC also has lost sponsorships and has suffered reputational damage around the world because of its inability to hold professional MMA events in New York.

27. Because state officials will not allow the UFC to promote professional MMA events, but allow competitors such as Glory and K-1 to promote their events, the UFC loses market share and the attention of fans, along with all concomitant profits.

A. Defendants

1. Eric T. Schneiderman

28. Defendant Eric T. Schneiderman is the Attorney General of the State of New York. The New York Combative Sport Law explicitly empowers the Attorney General to commence criminal and civil actions to enforce the statute. Attorney General Schneiderman maintains an executive office in New York City at 120 Broadway, New York,

New York. He is sued in his official capacity.

29. As detailed below, Defendant Schneiderman has taken various and conflicting positions regarding the legality of a professional MMA match in New York. Despite a history of equivocation and flip-flops, Defendant Schneiderman ultimately took the position in the *Jones* litigation that, professional MMA matches—in particular those promoted by the UFC—cannot lawfully occur in New York, even if they are sanctioned by an Exempt Organization.

2. Vincent G. Bradley and Kevin Kim

30. Defendant Vincent G. Bradley is the Chairman and commissioner of the New York State Liquor Authority ("NYSLA"). Kevin Kim is also a commissioner of the NYSLA. The NYSLA is an agency of the State of New York and is designated to "regulate and control the manufacture and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to the law." The NYSLA issues, enforces, suspends, cancels, and revokes liquor licenses within the state of New York.

31. In particular, Defendants Bradley and Kim administer N.Y. Alco. Bev. Cont. Law § 106(6-c)(a), referred to below as the "Liquor Law." As written, the Liquor Law incorporates the language of the CSL, including all attendant vagueness. As detailed below, the NYSLA has interpreted the Liquor Law to bar venues with liquor licenses from hosting professional MMA events.

32. Defendants Bradley and Kim maintain offices at 80 S. Swan Street, Albany, New York and are sued in their official capacities.

III.
JURISDICTION AND VENUE

33. This case arises under the Constitution and laws of the United States.

Jurisdiction is predicated upon 28 U.S.C. § 1331. The causes of action arise under 42 U.S.C. § 1983. Defendants are officials acting under color of New York law, charged with violating the constitutional rights of the UFC. The UFC seeks a declaration that New York's Combative Sport Law violates the Constitution, an injunction against enforcement of the CSL and Liquor Law as applied to professional MMA, and attorney's fees and costs pursuant to 42 U.S.C. § 1988(b).

34. Venue is proper in this court pursuant to 28 U.S.C. § 1391.

IV.
MMA AND THE COMBATIVE SPORT LAW

Early MMA

35. Mixed martial arts is derived from traditional martial arts. Its historical origins can be traced back to the ancient sport of pankration, part of the Greek Olympics in 648 B.C. Pankration combined boxing, wrestling, and fighting with the feet, much like modern professional MMA.

36. In the late nineteenth and early twentieth centuries, competitions regularly were held between fighters of different disciplines, such as boxing and wrestling, to determine which fighters and methods were superior. The legendary martial artist Bruce Lee combined—or mixed—a variety of martial arts to create his famous martial concept, Jeet Kune Do, a predecessor to contemporary MMA, for Lee refused to limit himself to any single style of martial arts.

37. Modern MMA's origins can be traced back to the Brazilian full contact martial art vale tudo and to Brazilian jiu-jitsu (*jujutsu*, in Japanese, means "the gentle art"). In the early 1990s, Rorion Gracie, a Brazilian vale tudo artist, partnered with an advertising executive from California to develop the concept of a single-elimination tournament called "War of the Worlds" ("WOW"). The idea behind WOW was that fighters from different

disciplines would compete in an open-weight, nearly-no-rules tournament to find out which fighting style was most effective. Rorion Gracie was a member of a Brazilian dynasty that founded Brazilian jiu-jitsu, a ground-based system of fighting that utilizes submission and grappling techniques.

38. WOW Promotions was formed in 1992 and partnered with pay-per-view producers Semaphore Entertainment Group ("SEG"), which launched the name "Ultimate Fighting Championship" for the televised airing of the WOW tournament.

39. The first UFC tournament was staged in Denver, Colorado in 1993. Competitors from a variety of martial arts disciplines, including kickboxing, karate, sumo, boxing, and Brazilian jiu-jitsu, participated in the tournament. There were no weight classes—competitors were matched up regardless of size. The tournament was aggressively hyped to stress the most violent possibilities and to suggest that the participants faced significant danger. Under SEG, the UFC of that time fully capitalized on the "no rules" concept of the tournament.

40. These UFC tournaments of the early 1990s changed martial arts forever. To the surprise of most spectators and participants in the tournament, the winner was Royce Gracie, brother of Rorion Gracie. One of the smallest fighters in the tournament, Gracie vanquished his three opponents in less than five minutes combined, crediting technique as the key to his fighting success. As a black belt in Brazilian jiu-jitsu, Gracie was better equipped than the entrants who practiced more "traditional" striking-based combat sports, rendering them less versatile. Gracie's dominant victory in this first tournament, and in two of the three tournaments that followed, sent one of the loudest messages in martial arts history. One scholarly study of MMA has explained that "Gracie's victories in three of the first four tournaments led many martial artists to reassess their knowledge of fighting techniques and tactics and how the human body might function in unarmed conflict."

41. Throughout the 1990s, fan interest increased and competitors honed their skills to adapt to the multidisciplinary nature of the sport. Martial artists realized that training in a single martial art was not sufficient if they wanted to compete among the best; they needed to train in additional disciplines and become well-rounded fighters who could fight both standing or on the mat. This blend of fighting styles and skills paved the way for present-day MMA.

42. However, early MMA quickly became a victim of its own success, in large part because of the ill-advised marketing strategy used to advertise the very first tournaments. Those 1990s bouts were advertised as "no holds barred" and as blood sport or fights to the death. Advertisements claimed "[e]ach match will run until there is a designated winner—by means of knock-out, surrender, doctor's intervention, or *death*." The tournaments were marketed with the motto "There Are No Rules!"

The New York Combative Sport Law

43. Although MMA was becoming more competitive and increasingly regulated by the late 1990s, the perception created by the sensationalized marketing for the earliest mixed martial arts matches caused legislatures to begin prohibiting mixed martial arts competitions in their states.

44. As MMA became more popular, some national political figures vocally opposed MMA. Most prominent among these critics was Senator John McCain of Arizona, a longtime boxing fan, who at that time described mixed martial arts as "human cockfighting." Many New York officials took cues from these figures, repeating these concerns about the safety and message of mixed martial arts.

45. In 1996, the New York Legislature held hearings on the question "Should New York Ban Extreme Fighting?"

46. The Legislature then passed, and the Governor signed into law, Senate Bill

7780 (the "1996 statute"), which provided for the regulation of mixed martial arts by the New York State Athletic Commission ("NYSAC") in much the same way that the NYSAC currently regulates boxing. The Bill's sponsor, Senator Roy Goodman of Manhattan, and then-Governor Pataki preferred a total ban on "ultimate" and "extreme" fighting," but the legislature would not accept this.

47. Less than a year later, however, in February 1997, the 1996 statute was replaced by the present law banning—subject to certain exceptions—"combative sport" events. *See* N.Y. Unconsol. Law §8905-a.

48. The proponents of what became the CSL sought to eliminate "ultimate" and "extreme" fighting events. They described "ultimate" or "extreme" fighting as a "no holds barred" combat sport that had "no rounds or weight divisions, [did] not require the use of gloves by contestants, and [had] very little interference by a referee." Legislators expressed concern that the sport they targeted permitted punches or kicks to the throat or groin area of an opponent, eye gouging, and head butting.

49. During the floor debate in the New York Senate, Senator Goodman described what he considered a "typical" event: "[it] would involve two men charging at one another and one will raise his foot in a kick to the throat or the head of his opponent and down the opponent on the mat. They may grapple for a time, . . . there is a deliberate effort to take a fist and to pummel directly the vital parts which are situated between the legs of one contestant. This is done repeatedly and viciously. . . . There is eye gouging. There is head butting. There is every form of attempt by one human being to literally destroy another . . . ."

50. Although the 1996 statute expressly referred to "mixed martial arts" by name, defining it as "any professional competition wherein the rules of said competition authorize bouts and events between various fighting disciplines," neither the text nor the legislative history of the 1997 revision that became §8905-a uses the term "mixed martial arts" or

"MMA."

Section 8905-a

51. Section 8905-a(1) defines a "combative sport" as "any professional match or exhibition other than boxing, sparring, wrestling or martial arts wherein the contestants deliver, or are not forbidden by the applicable rules thereof from delivering kicks, punches or blows of any kind to the body of an opponent or opponents."

52. Section 8905-a(2) states that "[n]o combative sport shall be conducted, held or given within the state of New York, and no licenses may be approved by the commission for such matches or exhibitions."

53. Section 8905-a is a criminal statute: Anyone who "knowingly advances or profits from a combative sport activity" is subject to criminal penalties. §8905-a(3)(a).

54. The Attorney General of New York ("AG") and local District Attorneys ("DAs") have the authority to press criminal charges for a violation of §8905-a(2). Section 8905-a also empowers the AG to seek statutorily defined civil penalties and injunctive relief. §8905-a(3)(d).

55. Section 8905-a exempts from its scope professional "boxing, sparring, wrestling or martial arts." §8905-a(1). In reference to martial arts, §8905-a(1) states:

> For the purposes of this section, the term "martial arts" shall include *any* professional match or exhibition *sanctioned* by any of the following organizations: U.S. Judo Association, U.S. Judo, Inc., U.S. Judo Federation, U.S. Tae Kwon Do Union, North American Sport Karate Association, U.S.A. Karate Foundation, U.S. Karate, Inc., World Karate Association, Professional Karate Association, Karate International, International Kenpo Association, or World Wide Kenpo Association. § 8905-a(1) (emphasis added).

56. The twelve organizations listed in §8905-a(1) are referred to herein as the "Exempt Organizations."

MMA Today Is Not What the New York Legislature Banned in 1997

57. New Jersey regulators drafted the Unified Rules in 2000, and the first MMA event promoted under the unified rules took place that same year. Nevada followed shortly thereafter, adopting rules for regulating MMA matches based almost entirely on New Jersey's rules, which became the Unified Rules that are the standard for athletic commission regulations across the country.

58. In 2001, Zuffa purchased the UFC. The new UFC brand began aggressively restructuring its professional mixed martial arts contests into highly organized, well controlled, and safely regulated sporting events, with a defined set of rules.

59. The UFC actively sought regulation by states and foreign countries to ensure the safety of the sport.

60. Today, primarily as a result of the UFC's efforts, MMA matches are lawful in forty-nine states. Most states use the Unified Rules to govern MMA matches, although some states and other regulatory bodies regulate above and beyond them.

61. In other countries, MMA matches are regulated either by the government itself or under sanctioning by a third-party organization.

62. None of the concerns identified by the Legislature in 1997 with regards to "Extreme," "Ultimate," and "no-holds-barred" fighting matches are true of MMA matches today. Under the Unified Rules, MMA matches are highly regulated, not "no holds barred" fighting.

63. In particular, the UFC and other promoters employ full-time matchmakers to ensure that all fights are between similarly skilled athletes. The applicable athletic commission or regulatory body overseeing each event must approve the UFC's matches to ensure that they are "fair" and involve evenly matched opponents. A trained referee closely monitors professional MMA matches with timed rounds. This referee enforces the rules and

ensures that none of the fighters uses any of the thirty-one strikes or "fouls," prohibited by the Unified Rules, including head butting, eye gouging, biting, hair pulling, fish hooking, stomping a grounded opponent, and strikes to the groin or throat.

64. The Unified Rules address the very issues identified by the New York Legislature as troubling about the early years of "extreme" or "ultimate" fighting.

65. The Legislature was concerned that there were no weight classes, that referees had little involvement in fights, and that the competitors did not wear safety equipment. The Unified Rules set out nine separate weight classes, give experienced referees total control of all aspects of each fight, and require the use of gloves, mouth guards, and groin protection.

66. The Legislature was concerned that combatants were permitted to punch and kick an opponent while their opponent was "down on the ground, staggering or otherwise defenseless." The Unified Rules prohibit kicks and knees to the head of a grounded opponent, stomping a grounded opponent, spiking an opponent on his head or neck, and striking an opponent who is under the care of the referee.

67. The Legislature was concerned with unprotected opponents "kicking, punching, kneeing and pummeling each other until one surrenders." The Unified Rules permit a range of ways for a match to end, including physical "tap out," verbal "tap out," stoppage by the referee, after the injury of fighter, after a knockout, and when the time in each round expires.

68. The Legislature also was concerned with throat strikes, groin attacks, eye gouging, and head butting, all of which are expressly prohibited by the Unified Rules.

69. Judge Kimba Wood of the United States District Court for the Southern District of New York, in the previous *Jones v. Schneiderman* litigation over the constitutionality of the CSL, recognized these vast changes when she found that the

legislative history of §8905-a was of limited value because "MMA has changed substantially since the Ban was enacted." 974 F. Supp. 2d 322, 341 (S.D.N.Y. 2013) (Wood, J.) ("*Jones II*").

70. Judge Wood's conclusion was fully supported by the testimony of state officials who testified repeatedly in the *Jones* litigation that, in enacting §8905-a, the Legislature was concerned with "no-holds-barred fighting."

71. These state officials acknowledged that MMA today is different than what the Legislature banned in 1997. For example, Glen Alleyne of the NYSAC, whom the AG put forward in the *Jones* litigation as the most knowledgeable person from the NYSAC, stated that "MMA [is] different than ultimate or extreme fighting."

72. In light of the Unified Rules, and the UFC's safety history, many former opponents of the sport now have accepted MMA, or even embraced it, including now-former Governor Pataki, who stated through his spokesman that "[w]ith more rigorous oversight, training and medical requirements - mixed martial arts has made considerable strides to ensure the safety of participants . . . [w]ith these measures in mind, Gov. Pataki would be supportive of allowing the sport in New York [] today."

73. Melvina Lathan, a former NYSAC Chairwoman, said, "[e]veryone at some point who was against M.M.A. says it's entirely different now . . . People change their minds. Governor Pataki did. Randy [Gordon, former NYSAC commissioner] did . . . We've learned a lot."

74. Even Senator John McCain has said that MMA has "grown up," provides "better protection[] and . . . fairer competition" and " [t]hey have cleaned up the sport, at least in my view."

V.
THE COMBATIVE SPORTS LAW IS VAGUE AND IT ENCOURAGES ARBITRARY ENFORCEMENT

75. Notwithstanding these fundamental changes, New York continues to maintain its ban on combative sport. Yet no one—including state officials—can agree on what the Combative Sport Law permits and prohibits. Making matters worse, as martial arts have evolved, New York state officials have struggled to apply the antiquated text to modern circumstances, resulting in arbitrary, discriminatory, and standardless decisionmaking.

76. In *Jones II*, the UFC challenged the Combative Sport Law as unconstitutionally vague. Ultimately the vagueness claim in that case was rejected on standing grounds. Before that dismissal, however, there was extensive discovery, both documentary and testimonial. Discovery in the *Jones* case revealed the following widespread interpretive confusion and arbitrary enforcement under the Combative Sport Law.

A. The CSL Provides No Standard for Determining Which Events Exempt Organizations Are Permitted to Sanction

77. The CSL defines a martial art as "any professional match or exhibition sanctioned by" an Exempt Organization:

> For the purposes of this section, the term "martial arts" shall include ***any professional match or exhibition sanctioned by any of the following organizations***: U.S. Judo Association, U.S. Judo, Inc., U.S. Judo Federation, U.S. Tae Kwon Do Union, North American Sport Karate Association, U.S.A. Karate Foundation, U.S. Karate, Inc., World Karate Association, Professional Karate Association, Karate International, International Kenpo Association, or World Wide Kenpo Association. § 8905-a(1) (emphasis added).

78. Among the critical language of the Exempt Organizations clause is its directive that "martial arts shall include ***any*** professional match or exhibition sanctioned by" one of those organizations.

79. State officials cannot agree on what "any" includes or excludes. They

acknowledge that the Exempt Organizations clause is "unclear" and have offered a variety of explanations of what "any" means. But those explanations are inconsistent both with one another and with the actual practice of state officials acting under the CSL.

80. By failing to provides any clear guidance on what the term "any" is supposed to mean, the CSL has left state officials free to pick and choose which matches or exhibitions may take place in New York.

1. Limited to what is named in the CSL

81. Officials have sometimes taken the position that no sports other than those included in the names of the Exempt Organizations—karate, taekwondo, judo, and kenpo—may be sanctioned by any Exempt Organization. For example, former NYSAC General Counsel Hugo Spindola testified that "[a]ny martial art not in the statute simply can't occur in New York." And Stephen Maher, the AG's 30(b)(6) witness in *Jones*, agreed. He would advise a client who wanted to promote a kickboxing event that the client could not because "kickboxing is not in [the statute], kickboxing . . . as a discipline or as an organization is not in here."

82. Some officials further believe that the organizations listed cannot sanction anything but what their own name indicates. Mr. Maher, the AG's 30(b)(6) witness, stated that his "initial understanding" was that only the sports mentioned in §8905-a could be sanctioned, and each organization could only sanction the sport that its name indicated. Thus, Mr. Maher would interpret the CSL to allow the U.S. Judo Association to sanction only judo.

83. Other state officials have rejected the idea that Exempt Organizations are limited to sanctioning only the martial arts implied by their name. James Leary, a New York Department of State ("DOS") lawyer who advises the NYSAC, took the position in the *Jones* litigation that "any" means "*anything* done by any of the [Exempt Organizations]" including "a Hamilton-Burr style duel or a knife fight." (emphasis added.)

2. "Single-Discipline Martial Arts"

84. Sometimes state officials have taken the position that only "single discipline martial arts" can be sanctioned by the Exempt Organizations. For example, before he took the position during the *Jones* litigation that "any" means "anything," Mr. Leary told Brandon Noyes in an email dated April 22, 2009 that Exempt Organizations "may conduct professional single discipline martial arts events, such as kickboxing and karate, within the State of New York . . . ." Mr. Leary also told Mr. Matthew Dunham in an email dated February 4, 2009 that "[t]o be permissible and exempt from the combative sports prohibition, single discipline professional martial arts events must be sanctioned by" an Exempt Organization.

85. However, the text of §8905-a does not refer to "single discipline" martial arts, and the legislative history of §8905-a does not mention the term "single discipline." The AG does not know where the qualifier "single discipline" comes from, while Mr. Leary, from the DOS, testified, "That's just the Commission's understanding of [§8905-a]." Numerous martial arts experts have testified that the phrase "single discipline" has no common or colloquial meaning. For example, one promoter testified in the *Jones* case that "I never heard the single discipline term in the fight business."

86. Moreover, the State has never developed or made public any rules or guidelines to define what is and is not a "single discipline" martial art. Mr. Leary has acknowledged that "there's not written rules" and that no "list of factors" or guidelines were developed to distinguish "single discipline" from "non-single-discipline" sports. Rather, the NYSAC apparently makes this determination on a case-by-case basis, with nothing to guide or cabin its exercise of the discretion it claims to possess.

87. With no rules, guidelines, or common understanding to aid them, state officials have proven profoundly confused about what their own made-up term of "single

discipline" might mean.

88. Some state officials say a martial art is "single discipline" if participants do not use techniques from more than one martial arts discipline. For example, Mr. Leary once responded to an outside query stating that to qualify as single discipline, the proposed event "should feature exclusively . . . competitors both of whom are required by the applicable rules to use only one and the same martial arts discipline during their match."

89. During the *Jones* litigation, Mr. Maher, the AG's 30 (b)(6) said that he gave "[single discipline] its common sense meaning . . . something that's not a mixture of multiple martial arts." But then Mr. Maher contradicted himself, stating that "two techniques may be used in . . . a single discipline martial art." He did not know whether three techniques were permissible. He concluded, in what would seem inescapable evidence of constitutional vagueness, "I would say the more mixed the martial arts match becomes, the more it comes close to violating the statute or violates the statute."

90. The SAC's 30(b)(6) witness, by contrast, said the number of techniques does not matter.

91. In the real world, the idea of a "single discipline" martial art is meaningless. As state officials have acknowledged, martial arts evolve over time. For example, Brazilian jiu-jitsu is a direct precursor of MMA. Brazilian jiu-jitsu is a grappling martial art developed in Brazil based on an evolution of Japanese judo techniques. Jiu-Jitsu mixes techniques from other martial arts. Yet the State has allowed Exempt Organizations to sanction Brazilian jiu-jitsu.

92. The same is true of many other martial arts the state has allowed to occur in New York, including San Da, a combat sport developed by the Chinese military in the 1960's in order to "provide a forum in which martial artists from all styles could comp[]ete," and Muay Thai, which combines hand and foot strikes with other techniques "derivative [of]

other martial arts" such as throws and foot sweeps.

93. Similarly, kickboxing, regularly sanctioned by Exempt Organizations in New York, is a martial art that combines the martial arts of karate and boxing.

94. Likewise, Kenpo, one of the sports specifically mentioned in the CSL, is itself a mixed martial art. Developed in Hawaii in the 1950s, it mixes Chinese martial arts with boxing and judo.

95. In depositions in the *Jones* case, state officials tried to distinguish a "single discipline" martial art from one that mixes disciplines by relying on a variety of factors. However, these officials could not agree on what the factors were or how they applied. Ultimately officials made clear that they could not specify a precise or exact list of relevant factors.

96. Among other things, the officials said the discipline must have a name, that it must have a defined set of rules, and that it must have a history. Professional MMA has all of these characteristics.

97. Even when state officials could identify factors that supposedly define what "single discipline" means, they could not explain them. For example, after stating that something was single discipline if it had a "history," state officials had no idea how much history is enough history to qualify a martial art as single discipline. Glory, which the NYSAC has allowed the WKA to sanction, was only created in 2012, while MMA itself obviously has a longer history.

98. Notably, the AG's 30(b)(6) witness agreed that it is possible that MMA today *is* a single discipline martial art: It is "possibly true of mixed martial arts, that at one time it was one thing, but it evolved and took on different forms and adopted a unified set of rules and became its own single thing."

3. Professional MMA

99. In the past, state officials also could not agree on whether "any" includes professional Mixed Martial Arts.

100. In the *Jones* litigation, Judge Wood observed that the Exempt Organizations clause appears to allow Exempt Organizations to sanction professional MMA. *Jones II*, 974 F. Supp. 2d at 341 ("A plain reading of this provision suggests that Plaintiffs would be allowed to promote a professional MMA event in New York if the event were sanctioned by one of the exempt organizations.").

101. Mr. Leary testified in the *Jones* case that although "[t]he Commission's position would be that they couldn't," his own position was that Exempt Organizations could sanction "mixed martial arts, and that could be a plain language interpretation."

102. In an August 1, 2012 report based on an internal review of the State Athletic Commission, the DOS Auditor also concluded that the text of §8905-a would permit an Exempt Organization to sanction MMA.

103. On the other hand, the NYSAC and NYSLA both have taken the position that Exempt Organizations may not sanction MMA matches or exhibitions. For example, Mr. Spindola, General Counsel of the NYSAC from 2002 to 2007, acknowledged that "mixed martial arts" were among the events prohibited by the NYSAC, even if sanctioned by an Exempt Organization, while Mr. Frering, a Senior Attorney at the New York State Liquor Authority, testified that the WKA would not be permitted to sanction a mixed martial arts match because it was his "understanding that mixed martial arts is illegal in New York State."

B. The AG's Ever-Changing Views Throughout the *Jones* Litigation

104. Throughout the *Jones* litigation, the Attorney General of New York took conflicting and changing positions on whether the clause exempting "any professional match

or exhibition sanctioned by" an Exempt Organization permits the sanctioning of professional MMA.

105. In briefing on the initial Motion to Dismiss in the *Jones* case in early 2012, the UFC asked the Attorney General how it was that an event called "Muay Thai at the Mecca (Madison Square Garden)" was allowed to take place under §8905-a.

106. In his Reply Brief in support of his initial Motion to Dismiss, the Attorney General indicated that a professional martial arts event could take place so long as sanctioned by an Exempt Organization. In particular, the Attorney General accepted as true the UFC's characterization of Muay Thai as a "*mixed* martial art" and explained that an Exempt Organization could sanction the event consistent with §8905-a:

> Why plaintiffs believe Muay Thai is "not exempted from the Ban" is unclear, since exempted "martial arts" are *defined* as "any professional match or exhibition sanctioned by any" of the listed organizations. The proposed Muay Thai event appears to confirm that the 1997 Legislation provides a procedure by which a sport claiming to be a "martial art" or to have similar characteristics can enter the New York market under the sponsorship of a listed organization. The UFC has apparently decided not to even explore this path, preferring an all-out attack on the statute, but the procedure's availability shows the legislature's reasonable intent in 1997 to allow for future flexibility.

107. Eight months later, on October 26, 2012, the Attorney General emphasized in his second Motion to Dismiss that his suggestion in prior briefing that the WKA could sanction a professional Mixed Martial Arts event "was . . . a reflection of what the statute says." Indeed, the Attorney General said that a "plain reading of the statute . . . leaves open the possibility that MMA fights could at least under some circumstances be made legal if sanctioned by a listed organization."

108. Yet, when the UFC informed the Attorney General by letter, on the very same day that the Attorney General made the above statements in his brief, that the UFC had begun

planning an event in New York, the Attorney General wrote back on November 21, 2012, and refused to provide assurances to the UFC that it may lawfully promote a professional MMA match in the State.

109. Nevertheless, in oral argument before the Court in February 2013, the Attorney General stated again – unequivocally – that an Exempt Organization could sanction a professional MMA event: "I don't see much wiggle room here . . . . Martial arts are excluded from the definition of combative sport. Martial arts expressly include matches or exhibitions sanctioned by one of the listed organizations. Accordingly, *on its face*, the ban of combative sport does not appear . . . to apply to a match or exhibition sanctioned by listed organizations. So I don't think on these issues we have to go any further than the text."

110. The Attorney General also informed the Court that the NYSAC was in full agreement with the Attorney General's reading, stating to the Court that "although that's my reading, I would not have said it if I had not checked it with the State Athletic Commission counsel. And I couldn't find a single lawyer in that agency that disagreed with me on the reading of it. I think that their position reflects that . . . exempt organizations could sanction a sport that would otherwise be a combative sport."

111. After the Attorney General's February 2013 statements to the Court that the UFC could plan an MMA event in New York if it was sanctioned by an Exempt Organization, the parties were ordered to attend a settlement conference before Magistrate Judge Pitman in an effort to resolve their dispute. But, despite his prior statements to the Court, on the eve of the settlement conference, in early March 2013, the Attorney General informed the Court that he could not stipulate to the UFC's exempt organization sanctioned MMA event in New York because of "a clarification of the position of the State Athletic Commission presented to us after the [February 13, 2013] oral argument."

112. Then, the Attorney General announced in supplemental briefing that, contrary

to its earlier position, the word "any" in the Exempt Organization clause did *not* include WKA sanctioning of a UFC event. In papers filed with the Court on March 22, 2013, the AG announced that because "[t]he intent of the New York Legislature in enacting §8905-a was clearly not to permit the principle target of the legislation – professional Ultimate Fighting/MMA – to take place in New York through one of the exempted organizations," §8905-a "cannot be read to permit professional Ultimate Fighting/MMA events in New York, even if sanctioned by a listed exempt organization."

113. In taking the exact opposite position as it had just a few months earlier, the AG did not interpret the CSL to mean that Exempt Organizations are limited to sanctioning events listed in their names. Nor did the AG explain what it is as a practical matter that differentiates MMA from other forms of martial arts that it believes Exempt Organizations may sanction. Instead, the AG simply adopted the position that, although it could not explain what "any" means in any other context, it cannot mean that an Exempt Organization may sanction an MMA event. Accordingly, under the now-prevailing view of the office charged with enforcing the CSL, Exempt Organizations still do not know what they may or may not sanction—other than they may not sanction an MMA event.

114. Beyond the conflicting statements of the AG and other State actors, there is additional evidence of confusion about the meaning of the Exempt Organization provision. James Leary said the provision was "unclear." Mr. Maher, the Attorney General's "most knowledgeable" 30(b)(6) witness, said he did not know if the NYSAC's position is a correct interpretation of the statute or if the statute was unclear.

115. When the *New York Post* wrote the NYSAC to inquire about whether a UFC event could in fact take place with WKA sanctioning, numerous conversations were required involving personnel from the NYSAC, the DOS and the Governor's Office before answering. Defendants withheld both these deliberations and their ultimate conclusion in the *Jones*

litigation under an assertion of privilege.

116. In denying Defendants' motion to dismiss the Complaint in the *Jones* litigation, the Court held that: "In light of Defendants' varying interpretations of the statutory language, the Court finds that Plaintiffs have adequately alleged that the statute is unconstitutionally vague with respect to professional MMA sanctioned by exempt organizations." *Jones II*, 974 F. Supp. 2d at 341-42.

C. Erratic and Standardless Enforcement

117. State officials have engaged in a history of erratic and arbitrary enforcement, underscoring the vagueness of the Combative Sports Law.

118. Sanctioning organizations—like the Exempt Organizations listed in the CSL—commonly have rule sets defining the sports they will sanction, and these rules govern the conduct of sanctioned professional martial arts matches or exhibitions. Sanctioning organizations oversee events, which involves, among other things, approving fighters, ensuring matchmaking is fair, ensuring insurance is in place, reviewing medical information, coordinating referees and inspectors, compiling records, and determining the rules that will govern the matches.

119. One of the Exempt Organizations is the World Karate Association. Today its successor organization is the World Kickboxing Association or the World Kickboxing and Karate Association. This organization is commonly referred to simply as the WKA.

120. The NYSAC, the New York State Liquor Authority, and the New York Department of State all have recognized the WKA as an Exempt Organization eligible to sanction a variety of martial arts events.

121. The UFC is a promoter licensed by the WKA to sanction Professional Martial Arts events.

122. The WKA has repeatedly expressed interest in sanctioning professional

MMA in New York to legal counsel for the NYSAC, and is ready, willing and able to sanction professional MMA if permitted to do so.

123. Since 2002, however—as detailed above—state officials repeatedly have said that the Combative Sport Law prohibits professional MMA, even if sanctioned by an Exempt Organization.

124. At the same time, New York state officials have allowed Exempt Organizations—including the WKA—to sanction numerous other professional martial arts events in the state, none of which are named in §8905-a, including:

a. Kickboxing;

b. Muay Thai;

c. San Da;

d. Jiu-jitsu;

e. Brazilian jiu-jitsu;

f. Glory;

g. K-1;

h. Shin Do Kumate.

125. The actual practice in New York cannot be squared with either of the two main interpretations given to the clause in the CSL exempting from its prohibition "any match or exhibition sanctioned by" an Exempt Organization.

126. None of these sports is named in §8905-a.

127. Many of them, including Glory, K-1, Shin Do Kumate, and Muay Thai mix martial arts disciplines and/or techniques.

1. Glory

128. Glory is a martial arts promotion that began in 2012.

129. Glory is not a sport named in the CSL.

130. Glory is as a "mix of several combat disciplines including Karate, Muay Thai, Tae Kwon Do and traditional Boxing."

131. Glory is a competitor of the UFC.

132. In October 2013, a promoter informed the NYSAC that Glory planned to hold an event at MSG on November 23, 2013.

133. State witnesses confirmed in depositions in the *Jones* case that the WKA properly sanctioned the November 2013 Glory Event which occurred at MSG.

2. K-1

134. K-1 is another competitor of the UFC.

135. K-1 began in 1993, and is described as "a combat sport that combines the most effective stand-up fighting strategies from bare knuckle Karate, Kung Fu, Muay Thai, Taekwon-do, Savate, San Shou/San Da, Western Kickboxing, and traditional boxing."

136. Even the name "K-1" was chosen to convey the various martial arts it is comprised of. "K-1 is a martial arts combat sport that derives its name from its inclusion of a wide array of martial arts disciplines, including Karate, Kung-Fu, and Kickboxing ('K'), and its intent to determine one champion in one ring ('1')."

137. K-1 is not a sport named in the CSL.

138. The State also allowed the WKA to sanction K-1 events.

3. Shin Do Kumate

139. MSG wrote the NYSAC to ask if it could hold a Shin Do Kumate event if sanctioned by an Exempt Organization. MSG included a link to the Shin Do Kumate website describing the event.

140. Shin Do Kumate, a martial arts style and promotion that began in 2002, "draws from the art of Muay Thai and allows techniques from a variety of other Martial Arts disciplines[] [s]uch as Kyokushin Karate, Tae Kwon Do, Sanshou, Kickboxing and Persian

wrestling neck clinch."

141. Shin Do Kumate is not a sport named in the CSL.

142. After reviewing promotional materials for Shin Do Kumate, the State took the position that MSG could host a Shin Do Kumate event if the event is sanctioned by an Exempt Organization.

143. The state's enforcement history thus negates every theory that state officials put forward to explain which martial arts events Exempt Organizations may sanction. It highlights the vagueness of the CSL and the arbitrary and standardless enforcement its vagueness invites.

144. Martial arts practitioners cannot understand or make any sense of which events state officials are allowing and disallowing Exempt Organizations to sanction.

D. The CSL Also Fails to Provide Any Guidance as to What Martial Arts Events May Take Place *Without* Exempt Organization Sanctioning

145. Section 8905-a(1) defines a "combative sport" as "any professional match or exhibition other than boxing, sparring, wrestling or martial arts wherein the contestants deliver, or are not forbidden by the applicable rules thereof from delivering kicks, punches or blows of any kind to the body of an opponent or opponents." §8905-a(1).

146. It then provides that the term "martial arts ***shall include*** any professional match or exhibition sanctioned by" one of the Exempt Organizations. (emphasis added.)

147. In *Jones II*, the UFC argued that by stating martial arts "shall include" certain matches, the Combative Sport Law left open (but undefined) what else "martial arts" might include.

148. In ruling on a motion to dismiss in that case, Judge Wood held that, to the contrary, "the phrase 'shall include' is best understood to be exhaustive. Under this reading, the CSL defines martial arts as 'comprising' or 'consisting of' only events sanctioned by

exempt organizations." *Jones II*, 974 F. Supp. 2d at 346-47.

149. However, the AG himself does not agree that this is the right interpretation of the Law. In *Jones II*, the AG's 30(b)(6) witness testified—subsequent to Judge Wood's opinion—that the "shall include" language in the above-quoted portion of §8905-a(1) could mean "include but not limited to."

150. The AG's interpretation of "martial arts shall include" is consistent with the first five years of history under the CSL: martial arts events that were not sanctioned by Exempt Organizations occurred regularly in New York, and NYSAC members attended some of those events. These events would not have been permissible if the Exempt Organizations Clause permitted only events sanctioned by an Exempt Organization.

151. The phrase "martial arts shall include" in the CSL is unconstitutionally vague. A federal court and the Attorney General of New York cannot agree on the meaning of this phrase. And while the AG and others interpret it to mean "included but not limited to," there is nothing in the CSL that would guide state officials in determining what else the definition may include or exclude. The enforcement history of this phrase thus has been just as erratic as the enforcement of the Exempt Organizations Clause.

E. The CSL is Unclear as to the NYSAC's Authority under the Statute

152. The vagueness of the CSL also is evident in the standardless discretion it has allowed the NYSAC as a de facto interpreter and enforcer of the law.

153. During the *Jones* litigation, the AG evidenced its confusion as to the legal authority of the NYSAC and its role in interpreting the CSL.

154. First, the AG told the Court that the NYSAC "has no responsibility or authority to enforce [§8905-a]." The AG has asserted that the NYSAC's role was limited to promulgating regulations for adding and removing Exempt Organizations.

155. Then, the AG declared in a letter to the Court that because the NYSAC "is

expressly granted regulatory authority in §8905-a [], with respect to the martial arts organizations to which the statute refers in its definition of martial arts," its position on the interpretation of §8905-a is "entitled to consideration."

156. When the AG took the position that an Exempt Organization could sanction professional MMA, he first consulted the NYSAC. And when the AG changed his mind on what the CSL means, he again consulted and relied upon the NYSAC.

157. Throughout the history of the CSL, the NYSAC has exercised enforcement authority under the statute.

158. As General Counsel of the NYSAC from 2002 to 2007, Mr. Spindola deemed it part of his prerogative to enforce §8905-a: "I would assume that we're the body that's required to enforce the law, that we would have to confirm that these were amateurs, or these were professionals, or that these were sanctioning bodies [that] were appropriate; and what the events were actually being done . . . ."

159. And, in fact, Mr. Spindola aggressively enforced the CSL as he understood it, frequently sending cease and desist letters, and saying aye or nay with regard to which events could be sanctioned in New York and even what techniques were used. Further, Mr. Spindola said the Governor and other state officials were fully aware that he was exercising this enforcement authority.

160. Mr. Spindola was hardly alone in exercising enforcement authority.

161. On February 4, 2009, then-NYSAC Chairwoman Melvina Lathan, citing §8905-a, issued a cease and desist order against an "Illegal Combative Sports Event at Main St. Armory." Mr. Mossberg, Senior Attorney at the DOS, citing §8905-a, issued a "Cease and Desist Notice" on February 18, 2011 to the promoters of an amateur Muay Thai and full contact kickboxing event called "Rumble in Rochester." The State sent many cease and desist letters in addition to those described above.

162. The NYSLA believes that the NYSAC is the agency tasked with enforcing §8905-a.

163. The WKA was led by state officials to believe that the NYSAC was in charge of enforcing §8905-a.

164. The AG's 30(b)(6) witness testified that he believes it "would be a matter for the State Athletic Commission to determine" whether "the U.S. Judo Association could sanction a Brazilian jiu-jitsu" event but that he "really [does not] know" for sure.

165. Over the course of the CSL's history, both the NYSAC and the DOS have decided which organizations may sanction events, have approved events on an event-by-event basis, have reviewed posters for events and approved or disapproved them, have decided who can participate and what the rules should be, and have regulated amateur events extensively, even though the AG now claims there is no authority under the CSL to regulate amateur events at all.

VI.
THE LIQUOR LAW IS UNCLEAR AND ENCOURAGES ARBITRARY AND INCONSISTENT ENFORCEMENT BY THE STATE

166. In 2001, the NY Legislature passed into law New York Alcoholic Beverage Control Law Section 106(6-c) ("the Liquor Law"). The Liquor Law gives the NYSLA authority regarding certain Combative Sport events that occur at establishments with liquor licenses and closely tracks the language of §8905-a. N.Y. Alco. Bev. Cont. §106(6-c).

167. The events prohibited by the Liquor Law are the same as those prohibited in 8905-a, with the explicit addition of amateur events. N.Y. Alco. Bev. Cont. §106(6-c); §8905-a. The Liquor Law incorporates provisions of §8905-a by reference. N.Y. Alco. Bev. Cont. §106(6-c).

168. Thus, the vagueness of the Liquor Law follows from the vagueness of the CSL and its interpretation by the NYSAC.

169. Section (a) of the Liquor Law provides that holders of liquor licenses cannot allow an event on their premises in which "contestants deliver or are not forbidden by the applicable rules thereof from delivering kicks, punches or blows of any kind to the body of an opponent or opponents." N.Y. Alco. Bev. Cont. §106(6-c)(a).

170. The prohibition in (a) applies "whether or not the event consists of a professional match or exhibition, and whether or not the event … is done for compensation." *Id*.

171. Section (b) of the Liquor Law provides an exception to the broad prohibition in Section (a) for any "professional match or exhibition which consists of boxing, sparring, wrestling or martial arts and which is excepted from" §8905-a. N.Y. Alco. Bev. Cont. §106(6-c)(b).

172. Section (c) of the Liquor Law provides penalties including revocation or suspension of a liquor license. *Id*. §106(6-c)(c).

173. Neither the Liquor Law nor its legislative history mentions "mixed martial arts" or "MMA."

174. Nevertheless, the NYSLA believes the Liquor Law prohibits MMA events from being held in licensed establishments.

175. In taking that position, the NYSLA follows the guidance of the NYSAC regarding the permissibility of martial arts events under §8905-a. If an event was deemed permissible by the NYSAC then the SLA deems it permissible under the Liquor Law.

176. The NYSLA has taken the position that MMA matches are prohibited because it "was informed" by the NYSAC that MMA events are illegal in New York and because the Exempt Organizations do not have the term "mixed martial arts" in their name.

VII.
COUNTS

177. The UFC challenges the Combative Sport Law as-applied to professional MMA. The UFC seeks: (1) a declaration that the Combative Sport Law and Liquor Law are unconstitutional as applied to the UFC; (2) an injunction against enforcement of the Combative Sport Law and Liquor Law to the extent they ban the UFC from promoting a professional MMA event; and (3) attorney's fees and costs. By virtue of the Combative Sport Law and Liquor Law, Defendants, acting under color of state law, have deprived and will deprive the UFC of the rights, privileges, and immunities secured to it by the United States Constitution and protected under 42 U.S.C. § 1983. The UFC has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law.

FIRST CAUSE OF ACTION

THE COMBATIVE SPORT LAW IS UNCONSTITUTIONALLY VAGUE AS APPLIED TO PROFESSIONAL MMA

178. The UFC repeats and realleges each and every allegation contained in paragraphs 1 through 177 as if fully set forth herein.

179. At all times relevant herein, Defendant Attorney General has acted, and is acting, under color of state law.

180. The Due Process Clause of the Fourteenth Amendment of the United States Constitution requires that statutes be written with sufficient clarity to provide persons of ordinary intelligence fair notice of what is prohibited, and to guard against standardless, arbitrary, or discriminatory enforcement. Laws that impose criminal penalties—as does the Combative Sport Law—are subject to a higher degree of scrutiny. Statutes that regulate

expressive conduct protected by the First Amendment must be drafted with particular care.[1]

181. The Combative Sport Law defines a "combative sport" as "any professional match or exhibition other than boxing, sparring, wrestling, or martial arts wherein contestants deliver, or are not forbidden by the applicable rules thereof from delivering kicks, punches or blows of any kind to the body of an opponent or opponents." N.Y. Unconsol. Law § 8905-a(1). Section 8905-a(1) states that "[f]or the purposes of this section, the term 'martial arts' shall include *any* professional match or exhibition sanctioned by any of the" Exempt Organizations (emphasis added).

182. There is no guidance as to what the phrase "any professional match or exhibition sanctioned by" means, and as is apparent from the facts and history detailed above, state officials cannot agree on what events Exempt Organizations are permitted to sanction. The WKA is ready, willing and able to sanction professional MMA in New York, and the UFC is a licensed WKA promoter. There is no basis for permitting martial arts events—including those that involve mixing martial arts disciplines—sanctioned by an Exempt Organization, but not allowing the same for professional MMA. As the history set out above makes clear, state officials are engaging in arbitrary and standardless conduct in picking and choosing what events to allow and disallow. The CSL is thus unconstitutionally vague as applied to professional MMA sanctioned by an Exempt Organization.

183. The CSL also fails to provide any guidance as to what martial arts events may take place in New York *without* Exempt Organization sanctioning. Section 8905-a(1) states that "[f]or the purposes of this section, the term 'martial arts' *shall include* any professional match or exhibition sanctioned by any of the" Exempt Organizations (emphasis added).

[1] In *Jones v. Schneiderman*, the plaintiffs alleged that the CSL violates the First Amendment. This Court rejected that argument on a motion to dismiss, holding, *inter alia*, that MMA events are not entitled to First Amendment protection. The *Jones* plaintiffs have appealed that ruling to the United States Court of Appeals for the Second Circuit.

Although the court in the *Jones* litigation ruled on a Motion to Dismiss that the phrase "shall include" is clear, and that "only events sanctioned by exempt organizations" are permitted, *Jones II*, 974 F. Supp. 2d at 346-47, the Attorney General's 30(b)(6) witness testified "shall include martial arts" means "include, but not limited to." There is no guidance in the statute whatsoever as to what might be included.

184. As the history set out above makes clear, state officials are engaging in arbitrary and standardless conduct in picking and choosing what events to allow and disallow. The CSL is thus unconstitutionally vague as applied to professional MMA.

SECOND CAUSE OF ACTION

THE 2001 LIQUOR LAW IS UNCONSTITUTIONALLY VAGUE AS APPLIED TO PROFESSIONAL MMA

(Defendants Bradley and Kim - Due Process Clause of the Constitution of the United States)

185. The UFC repeats and realleges each and every allegation contained in paragraphs 1 through 184 as if fully set forth herein.

186. At all times relevant herein, Defendants Bradley and Kim have acted, and are acting, under color of state law.

187. The UFC pleads this cause of action against the background of the profound vagueness and lack of clarity of the CSL (*see* First Cause of Action).

188. The 2001 Liquor Law bans venues holding liquor licenses from hosting events at which contestants "deliver . . . kicks, punches or blows to the body of an opponent or opponents, whether or not the event consists of a professional match or exhibition, and whether or not the event or any such act, or both, is done for compensation." N.Y. Alco. Bev. Cont. Law § 106(6-c)(a). Every major sports and entertainment venue in New York holds a retail liquor license, including MSG, the Barclays Center, HSBC Arena, among many others. So, too, do most small venues. Thus, the 2001 Liquor Law effectively bans

combative sports from being performed in nearly every venue in New York.

189. The 2001 Liquor Law's blanket prohibition on retail licensees hosting combative sport matches and exhibitions contains the same exception as the CSL. *See id.* § 106(6-c)(b) ("The prohibition contained in paragraph (a) . . . however, shall not be applied to any professional match or exhibition which consists of boxing, sparring, wrestling, or martial arts and which is excepted from the definition of the term 'combative sport' contained in [the CSL]").

190. That exception—which explicitly references and incorporates the CSL—is unconstitutionally vague as applied to the UFC. Because the 2001 Liquor Law references and incorporates the unconstitutionally vague portions of the CSL, it is unconstitutionally vague for the same reasons that the CSL is unconstitutionally vague.

191. Specifically, as alleged in the First Cause of Action above, the CSL is unconstitutionally vague both as applied to professional MMA events sanctioned by Exempt Organizations, and as applied to those that are not. Both the text of the CSL and the erratic enforcement history of the CSL render this aspect of the CSL unconstitutionally vague, and the Liquor Law's express reliance on and incorporation of that provision similarly render the Liquor Law unconstitutionally vague.

192. The Combative Sport Law is thus unconstitutionally vague as applied to professional MMA.

WHEREFORE, the UFC respectfully requests that the following relief be awarded:

(a) A declaration that the Combative Sport Law violates the Due Process Clause of the Constitution of the United States because it is unconstitutionally vague as applied to professional MMA;

(b) A declaration that the 2001 Liquor Law violates the Due Process

Clause of the Constitution of the United States because it is unconstitutionally vague as applied to professional MMA;

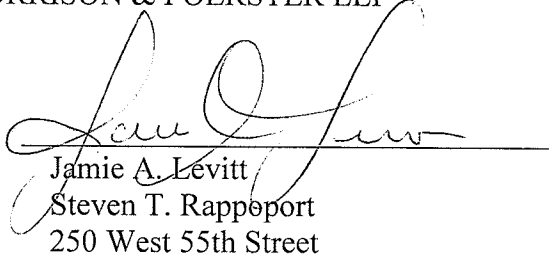
(c) An injunction preventing Defendants or any other officer, department, or entity of the State of New York from enforcing the Combative Sport Law or the 2001 Liquor Law against the UFC's professional MMA events;

(d) An award of attorney's fees and costs pursuant to 42 U.S.C. § 1988(b) to the UFC for the prosecution of this action; and

(e) Such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 28, 2015

MORRISON & FOERSTER LLP

By: 

Jamie A. Levitt
Steven T. Rappoport
250 West 55th Street
New York, New York 10019
Phone: 212.468.8000
Fax: 212.468.7900
jlevitt@mofo.com
srappoport@mofo.com

BANCROFT PLLC
Paul D. Clement
Erin E. Murphy
Andrew N. Ferguson
(*pro hac vice* application pending)
500 New Jersey Avenue, NW
7th Floor
Washington, DC 20001
Phone: 202.234.0090
Fax: 201.234.2806
pclement@bancroftpllc.com
emurphy@bancroftpllc.com
aferguson@bancroftpllc.com

Attorneys for Plaintiff

Barry Friedman
40 Washington Square South
Room 317
New York, New York 10014-1005
Phone: 212.998.6293
Fax: 212.995.4030
barry.friedman@nyu.edu