

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of March 3, 2021 (the “Agreement Execution Date”) by and among the plaintiffs listed on **Exhibit A** attached hereto individually and in their capacity as the proposed Class Representatives for the proposed Settlement Class (“Class Representative Plaintiffs”), and Defendant DraftKings Inc. (“DraftKings”), a Delaware corporation (the “Settlement Agreement” or the “Agreement”).

RECITALS

WHEREAS, DraftKings operates a daily fantasy sports (“DFS”) platform in which fantasy or simulation teams are selected by authorized participants who enter competitions on the platform and compete against family, friends and other sports enthusiasts;

WHEREAS, commencing on or about June 12, 2015, the Class Representative Plaintiffs, among others, began filing putative class action complaints against, among other defendants, DraftKings in various courts (the “Actions”);

WHEREAS, the various Actions were consolidated into three separate MDL actions in the United States District Court for the District of Massachusetts (the “Court”), captioned, *In re Daily Fantasy Sports Marketing and Sales Practices Litigation*, MDL Case No. 2677; *In Re: DraftKings, Inc., Fantasy Sports Litigation*, MDL Case No. 2678; and *In Re: FanDuel, Inc., Fantasy Sports Litigation* MDL No. 2679 (the “MDL Actions”);

WHEREAS, pursuant to the Court’s February 4, 2016 Transfer Order, the actions pending outside the District of Massachusetts were transferred to and consolidated with the MDL Actions for coordinated or consolidated pretrial proceedings under MDL Case No. 2677, and MDL Case No. 2677 was renamed to *In re: Daily Fantasy Sports Litigation* (the “Litigation”) (*In re: Daily Fantasy Sports Litig.*, Case No. 16-MD-2677 (D. Mass.), Dkt. 1);

WHEREAS, on June 30, 2016, the Class Representative Plaintiffs and others filed a proposed Consolidated Consumer Class Action Complaint and Jury Demand;

WHEREAS, on September 2, 2016, the Class Representative Plaintiffs and others filed the First Amended Master Class Action Complaint and Jury Demand (Dkt. 269) superseding all previously filed complaints;

WHEREAS, on September 28, 2016, the Court entered Case Management Order No. 1, in which the parties agreed that the Court would have jurisdiction over all pretrial and trial proceedings for claims in the First Amended Master Class Action Complaint (Dkt. 287);

WHEREAS, on November 27, 2019, the Court issued an order compelling arbitration of the claims of the Class Representative Plaintiffs and the other named plaintiffs who were participants in contests operated by DraftKings and/or FanDuel;

WHEREAS, on March 9, 2020, DraftKings moved to dismiss the claims in the First Amended Master Class Action Complaint that were not ordered to arbitration (*i.e.*, the claims of Family Members) and that motion remains pending and is not affected by this Settlement Agreement;

WHEREAS, based on the investigation and evaluation of the facts and law relating to the matters alleged in the Complaint, the Class Representative Plaintiffs and DraftKings have agreed to settle the Litigation in accordance with the terms and conditions set forth in this Settlement Agreement. The settlement was reached after considering, among other things: (1) the benefits available to the Class Representative Plaintiffs and the Settlement Class under the terms of this Agreement, (2) the risks and uncertainty of litigation, especially in actions such as this, as well as the difficulties and potential delays inherent in such litigation, and (3) the desirability of

consummating this Agreement promptly to provide effective relief to the Class Representative Plaintiffs and the Settlement Class; and

WHEREAS, DraftKings denies wrongdoing of any kind whatsoever, denies the factual allegations in the various complaints, and has agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of litigation, and to be completely free of further participation in the Litigation and any further controversy with respect to the Released Claims (defined below).

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

I. DEFINITIONS.

A. The following terms shall have the meanings set forth below:

1. "Class Counsel" means the following individuals:

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JONES WARD PLC

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**KANTROWITZ, GOLDHAMER
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**SHERMAN, SILVERSTEIN, KOHL,
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2. “Class Notice” means notice of the terms and conditions of the proposed settlement as approved by the Court, as part of its entry of the Preliminary Approval Order.

3. “Complaint” means the First Amended Master Class Action Complaint and Jury Demand filed on September 2, 2016 in the Litigation (Dkt. 269).

4. “Defendant’s Counsel” means the following individuals:

KING & SPALDING LLP

Damien J. Marshall

Leigh Nathanson

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5. “DK Dollars” are cash-equivalent site credits that authorized participants can use for entry into any real money contest on DraftKings’ DFS platform. DK Dollars cannot be withdrawn or transferred, and can only be used to enter contests. Payouts in cash contests are paid out in U.S. dollars which may be used as cash.

6. “Effective Date” means the first date after which *all* of the following events and conditions have been met or have occurred or have been mutually waived by written agreement of the Parties:

(a) All Parties have executed this Agreement;

(b) The Court has certified the Settlement Class;

(c) The Court has entered the Preliminary Approval Order (which shall be substantially identical to the form of **Exhibit B** attached hereto) issuing its Preliminary Approval (as defined herein) of this Agreement, the settlement set forth herein, and approving, among other things, the method for providing notice to the Settlement Class;

(d) At Plaintiffs’ request, the Court has entered an order dismissing with prejudice all claims in the Litigation against the Payment Processor Defendants;

(e) The Court has entered Judgment (which shall be substantially identical to the form of **Exhibit E** attached hereto); and

(f) There has occurred: (i) the passage of five (5) business days from entry of the Judgment where no formal objections have been filed; (ii) in the event that one or more formal objections to entry of the Judgment are timely filed, the expiration (without the filing or notice of an appeal) of the time to appeal from the Judgment; (iii) the final non-appealable dismissal of any appeal from the Judgment; (iv) if a ruling or decision has been entered by an appellate court affirming the Judgment in a form substantially identical to that of the Judgment entered by the Court, the time to petition for review to the United States Supreme Court with respect to such ruling or decision has expired; or (v) if a petition for review to the United States Supreme Court with respect to the Judgment has been filed, the petition has been denied or, if granted, has resulted in affirmance of the Judgment in a form substantially identical to the form of the Judgment entered by the Court.

7. “Fairness Hearing” means the hearing at or after which the Court will make a final decision whether to approve this Agreement and the settlement set forth herein as fair, reasonable, and adequate.

8. “Family Members” means the Persons identified in the Complaint as follows:

(a) Georgia Family Members: “All persons in the State of Georgia with a family member and/or next-of-kin that participated in [DraftKings’] DFS [contests], deposited money in a [DraftKings’] account, and lost money in any game or contest during the time period starting four years ago until six months prior to filing the original complaint.”

(b) Kentucky Family Members: “All persons in the State of Kentucky that are spouses, children, next-of-kin, heirs, or creditors, of a person in the State of Kentucky that participated in [DraftKings’] DFS [contests], deposited money in a [DraftKings’] account, and lost money in any game or contest during the time period starting six months from the filing of the Complaint up until five years prior to the filing of the original complaint.”

(c) New Mexico Family Members: “All persons in the State of New Mexico who are the spouse, children, heirs, executors, administrators and creditors of those persons in the State of New Mexico that participated in [DraftKings’] DFS [contests], deposited money in a [DraftKings’] account, and lost money in any game or contest during the one year prior to filing of the original complaint.”

9. “Judgment” means a judgment entered by the Court that is substantially identical to the form of **Exhibit E** attached hereto.

10. “Litigation” shall have the meaning ascribed to that term above.

11. “Parties” means the Class Representative Plaintiffs and DraftKings.

12. “Person” means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.

13. “Preliminary Approval” shall mean the Court’s entry of an order (the “Preliminary Approval Order”) that is substantially identical to the form of **Exhibit B** attached hereto approving, among other things, the timing, content, and manner of the Class Notice, conditionally certifying the Settlement Class for settlement purposes only, preliminarily approving this Agreement and the terms and conditions of settlement contained herein, and enjoining the commencement or continued prosecution by any Releasing Person of any Released Claim against any Released Person.

14. “Released Claims” means any and all manner of actions, causes of actions, claims, compensations, controversies, costs, damages, debts, demands, expenses, liens, liabilities, losses, rights or suits, including claims or suits for contribution or indemnity of every kind and nature or description whatsoever, whether foreseen or unforeseen, developed, fixed or contingent, direct or indirect, liquidated, unliquidated, at law, in equity or otherwise arising at any time prior to the Agreement Execution Date, (i) that were or could have been asserted in, the MDL Actions, the Complaint or the Litigation and/or (ii) in connection with, arising out of, or relating to any of the facts, circumstances, transactions, events, occurrences, acts, disclosure statements, submissions or failures to act as alleged in the MDL Actions, Complaint or the Litigation.

15. “Released Persons” means and includes:

- (a) DraftKings Inc., a Delaware corporation;
- (b) the Payment Processor Defendants as defined in the Complaint: Paysafecard.com USA Inc. and Vantiv, Inc. only as to claims involving DraftKings;
- (c) the Non-Defendant Banks as defined in the Complaint: JPMorgan Chase & Co. and Capital One Financial Corporation only as to claims involving DraftKings;
- (d) the Non-Defendant Facilitators as defined in the Complaint: Visa Inc., Mastercard Incorporated and American Express Credit Corporation only as to claims involving DraftKings;
- (e) the Non-Defendant Enterprise DraftKings Investors as defined in the Complaint: 21st Century Fox; Atlas Ventures Associates III, Inc.; BDS Capital Management LLC; Mail.ru Group, formerly known as DST Global, also known as Digital Sky Technologies; Fox Sports Interactive Media LLC; GGV Capital; Jason Robins; Hub Angels Management LLC;

Jordan Mendell; Kraft Group; Legends Hospitality LLC; MSG Sports & Entertainment, LLC; Major League Baseball Ventures; Major League Soccer LLC; M7 Tech Partners LLC; NHL Enterprises, Inc.; NHL Enterprises, L.P.; Redpoint Ventures LLC; The Raine Group LLC; and Wellington Management Company LLP only as to claims involving DraftKings; and

(f) the past and present direct and indirect parents, subsidiaries, and affiliated Persons of all of the foregoing persons and entities; the officers, directors, employees, partners, shareholders, agents, attorneys, and insurers of all of the foregoing persons and entities; and the predecessors, successors, assigns, and legal representatives of all of the foregoing persons and entities only as to claims involving DraftKings.

16. “Releasing Persons” means the Class Representative Plaintiffs, each Settlement Class Member and his, her or their attorneys, agents, administrators, devisees, assignees, executors, successors, predecessors, or other representatives.

17. “Settlement Class” means all Persons in the United States who made a first-time deposit into their DraftKings Daily Fantasy Sports account prior to January 1, 2018, and who are not net lifetime winners on DraftKings as determined by DraftKings’ business records not later than 48 hours prior to the Agreement Execution Date. For the avoidance of doubt, the Settlement Class does not include Family Members.

18. “Settlement Class Member(s),” “Class Member(s),” or “Member(s)” means any Person who is included within the definition of the Settlement Class who does not validly and timely request exclusion from the Settlement Class in accordance with the provisions of the Notice of Pendency and Settlement of Class Action. Such Persons who request a valid and timely exclusion from the Settlement Class that fully complies with the provisions of the Notice of Pendency and Settlement of Class Action shall be known as the “Opt-Outs.”

II. CERTIFICATION OF PLAINTIFF SETTLEMENT CLASS.

A. The Parties stipulate to certification of the Settlement Class as defined in Section I.A.17 above for purposes of effectuating this settlement; stipulate to the appointment of the Class Representative Plaintiffs as representatives of the Settlement Class (the “Class Representatives”); and stipulate to the appointment of Class Counsel as counsel for the Settlement Class. The Parties agree to cooperate in the preparation of such moving papers as the Court shall require to effectuate certification of the Settlement Class for settlement purposes.

B. Certification of the Settlement Class and appointment of the Class Representatives and Class Counsel by the Court shall be binding only with respect to the settlement of the Litigation. In the event the Effective Date for any reason does not occur, the certification of the Settlement Class and appointment of Class Representatives and Class Counsel shall be vacated, the Parties’ stipulation shall be voided, and the Litigation shall proceed as though the certification and appointments had never occurred, without prejudice to the Class Representative’s rights or the ability of Class Counsel to later fill such a role in accord with governing law.

III. SETTLEMENT RELIEF.

In consideration for the release hereinafter set forth, the termination and dismissal with prejudice of the Litigation, and in full and final settlement of all Released Claims against the Released Persons by Settlement Class Members, DraftKings agrees that the Judgment to be entered following Final Approval shall order the following relief:

A. Injunctive Relief.

1. Scope:

These Daily Fantasy Sports Procedures and Restrictions (the “Procedures and Restrictions”) shall only apply to DraftKings’ Daily Fantasy Sports platform. They shall not apply in any respect to DraftKings’ other lines of business, including but not limited to, its sports betting and iGaming businesses.

2. Term:

These Procedures and Restrictions shall apply for a period of two (2) years following the Effective Date.

3. Definitions. The following definitions shall only apply for purposes of this Agreement:

(a) “authorized participant” shall mean: an individual, who is not a prohibited DraftKings employee, that participates in daily fantasy sports contests offered by DraftKings on its daily fantasy sports platform.

(b) “daily fantasy sports contest(s)” or “contest(s)” shall mean: a daily fantasy contest with an entry fee (unless otherwise noted below) in which fantasy or simulation teams are selected by authorized participants who enter competitions on the platform. An entry fee is cash or cash equivalent that DraftKings collects in order for an authorized participant to participate in a contest.

(c) “daily fantasy sports platform” or “platform” shall mean: the DraftKings’ website, e.g., DraftKings.com, and the associated application solely with respect to daily fantasy sports contests.

(d) “prohibited DraftKings Employee” shall mean:

an employee or employee’s immediate family member (an immediate family member means an employee’s spouse, sibling, spouse’s siblings, children or parents who reside at an employee’s residence) of DraftKings that participates in paid daily fantasy sports contests that DraftKings offers to the general public; for the avoidance of doubt, and by way of example only, a DraftKings employee shall not be considered a prohibited DraftKings Employee for purposes of these Procedures and Restrictions if: (1) the employee uses a marked employee account; (2) the employee participates in employee-only contests; (3) the employee participates in private contests; or (4) the employee participates in free-to-play contests (i.e., contests for which there is not an entry fee).

(e) “highly experienced participant” shall mean:

an authorized participant who has (a) entered more than five hundred contests on DraftKings’ platform, or (b) won more than three prizes valued at one thousand dollars each or more on DraftKings’ platform.

4. Measures:

(a) DraftKings shall use commercially reasonable efforts to implement the following measures with respect to the offering of daily fantasy sports contests on the DraftKings’ platform:

(i) limit each authorized participant to one active and continuously used account; and prevent prohibited DraftKings Employees from entering public daily fantasy sports contests for which an entry fee is required on DraftKings’ platform;

(ii) enable authorized participants to exclude themselves from contests and prevent such participants from entering a contest from which they have excluded themselves;

(iii) enable authorized participants to: (i) set limits on the amount of funds an authorized participant can deposit; (ii) set limits on the number of entries an authorized participant can enter each week and/or (iii) set limits on an authorized participant's maximum entry fee per contest;

(iv) provide a hyperlink on DraftKings' daily fantasy sports platform to make information available to customers about responsible play;

(v) provide a hyperlink on DraftKings' daily fantasy sports platform to make statistics available to consumers about the percentage of all authorized participants who are net winners, breakeven, and net losers over the previous 30 days (to be calculated as of the last updated date);

(vi) permit any authorized participant to permanently close an account registered to such participant on DraftKings' platform at any time and for any reason;

(vii) identify all highly experienced participants in any contest by a symbol attached to such participants' usernames, or by other easily visible means, on DraftKings' platform;

(viii) disclose the number of entries a single authorized participant may submit to each contest;

(ix) use a hyperlink on DraftKings' platform directing participants to information concerning assistance for compulsive participants, including a toll-free number directing callers to reputable resources containing further information;

(x) ensure the value of any prizes and awards offered to authorized participants are established and determinable prior to the start of the contest;

(xi) ensure no winning outcome shall be based solely on the score, point spread, or performance of a single sports team; and

(xii) ensure no winning outcome shall be based solely on any single performance of an individual athlete.

(b) DraftKings shall further use commercially reasonable efforts to:

(i) not permit the use of unauthorized scripts that give an authorized participant an unfair advantage over another authorized participant in a paid daily fantasy sports contest and shall use commercially reasonable efforts to monitor for and prevent the use of such scripts; and

(ii) ensure that commercially reasonable measures are in place to deter, detect and, to the extent reasonably possible, prevent cheating, including collusion, and the use of automated means that: (1) are not available to all participants, and (2) provide a competitive advantage.

B. DK Dollar Benefits and U.S. Dollar Benefits.

1. Settlement Funds:

DraftKings will create one settlement fund consisting of 7,280,000 DK Dollars and a second settlement fund consisting of U.S. \$720,000 ("U.S. Dollars"). The

settlement funds shall be allocated according to eight levels which are based upon the amount of the first deposit made by the Settlement Class Member prior to January 1, 2018 as shown in the charts set forth below.

2. **DK Dollar Settlement Fund:**

Class Members With Open Accounts				
Acct. Levels	First Deposit Amount	Number of Depositors	Allocated % of Settlement DK Dollars	Aggregate Allocated DK Dollars
Open Accts. Level 1	<= \$10	694,429	4.18%	304,439.52 DK\$
Open Accts. Level 2	> \$10, <= \$24.99	144,156	2.14%	155,983.78 DK\$
Open Accts. Level 3	Exactly \$25	1,407,118	29.40%	2,140,311.16 DK\$
Open Accts. Level 4	> \$25, <= \$60	208,396	7.47%	543,854.87 DK\$
Open Accts. Level 5	> \$60, <= \$100	331,117	27.46%	1,998,842.21 DK\$
Open Accts. Level 6	> \$100, <= \$300	89,323	17.19%	1,251,420.23 DK\$
Open Accts. Level 7	> \$300, <= \$600	22,616	10.76%	783,397.80 DK\$
Open Accts. Level 8	> \$600	1,109	1.40%	101,750.42 DK\$
Total		2,898,264		7,280,000.00 DK\$

3. **U.S. Dollar Settlement Fund:**

Class Members With Closed Accounts				
Acct. Levels	First Deposit Amount	Number of Depositors	Allocated % of Settlement \$	Aggregate Allocated U.S. Dollars
Closed Accts. Level 1	<= \$10	62,980	4.45%	\$32,042.34
Closed Accts. Level 2	> \$10, <= \$24.99	12,275	2.21%	\$15,938.05
Closed Accts. Level 3	Exactly \$25	135,654	34.10%	\$245,490.21
Closed Accts. Level 4	> \$25, <= \$60	16,933	7.08%	\$50,966.14
Closed Accts. Level 5	> \$60, <= \$100	23,571	23.51%	\$169,260.15
Closed Accts. Level 6	> \$100, <= \$300	6,317	14.58%	\$104,997.51
Closed Accts. Level 7	> \$300, <= \$600	2,037	11.61%	\$83,573.64
Closed Accts. Level 8	> \$600	203	2.46%	\$17,731.96
Total		259,970		\$720,000.00

IV. CLAIM PROCEDURE

A. Claims for DK Dollar Benefits.

All Settlement Class Members with an open account with DraftKings who provide a complete, timely and duly executed claim form and declaration in the form of **Exhibit D-1** attached hereto (“Claim Form(s) and Declaration(s)”) shall be entitled to make a claim for DK Dollars which, if validly made, will be deposited directly into their account in the amount (not to exceed the limit specified in Section IV.C.) that will be determined by the number of complete, timely and duly executed Claim Forms and Declarations that are made against the portion of the settlement fund allocated to their level, as determined by the amount of their initial deposit. Amounts will be equally distributed to claimants in each level up to the maximum applicable to the relevant level.

B. Claims for U.S. Dollar Benefits.

Settlement Class Members who do not have an open account with DraftKings who provide a complete, timely and duly executed Claim Form and Declaration in the form of **Exhibit D-2** attached hereto shall be entitled to make a claim for U.S. Dollars in an amount (not to exceed the limit specified in IV.C.) that will be determined by the number of complete, timely and duly executed Claim Forms and Declarations that are made against the portion of the settlement fund allocated to their level, as determined by the amount of their initial deposit. Amounts will be equally distributed to claimants in each level up to the maximum applicable to the relevant level.

C. Limit on Claims.

The maximum amount that can be received pursuant to the claims procedure by an individual claimant shall be the amount at the top of the range of first deposits specified for each of the first seven levels, multiplied by 1.75. For example, the maximum

amount for any claimant in level 8 shall be \$1,050.00 ($\600×1.75) or 1,050.00 DK Dollars ($600 \text{ DK} \times 1.75$), respectively. The maximum amount for any claimant in level 8 shall be the same as the maximum amount for any claimant in level 7.

D. Unclaimed U.S. Dollars or DK Dollars.

Aggregate Allocated U.S. Dollars for a particular level that are unclaimed because a residual amount remains after all valid claimants have been allocated the maximum amount for that level shall be reallocated pro-rata to other levels which have not reached their maximum amount per valid claimant based on the relative amounts initially allocated to such “open levels.” After that process is completed, any remaining unallocated U.S. dollars will be converted to DK Dollars ($\$1 \text{ U.S. Dollar}$ shall convert to 1 DK Dollar), and will be allocated pro-rata to the “open levels” of the DK Dollar Settlement Fund based on the relative amounts of pro-rata DK Dollars initially allocated to such open levels. Unallocated DK Dollars in any level will similarly be reallocated pro-rata to levels which have not reached their maximum amount per valid claimant. After that process is completed, any remaining unallocated DK Dollars shall revert to DraftKings.

E. Distribution of Claim Form and Declaration.

The Claim Form and Declaration shall be distributed to Settlement Class Members by DraftKings, at DraftKings’ cost, with the Class Notice.

V. NOTICE TO THE SETTLEMENT CLASS, REQUESTS FOR EXCLUSION, AND ADMINISTRATION OF THE SETTLEMENT.

A. DraftKings shall issue the Class Notice in accordance with the requirements of the Preliminary Approval Order, as follows:

1. Subject to the approval of the Court and to be completed no later than thirty (30) days after the Court’s order preliminarily approving the settlement, DraftKings shall

cause the Class Notice to be issued in forms substantially identical as **Exhibits C-1 and C-2** attached hereto by sending out the Class Notice via email using the email address in DraftKings' records for each Settlement Class Member (the "Class Notice Emails").

2. DraftKings shall pay all costs associated with preparing and disseminating the Class Notice in the manner described above.

3. DraftKings shall provide and bear the cost of notice to appropriate federal and state officials as required by the Class Action Fairness Act of 2005.

B. DraftKings shall administer the settlement.

1. **Claims Administrator:** The settlement claims process shall be administered by an administrator selected by DraftKings in consultation with Class Counsel. All expenses and costs of the claims administrator shall be paid by DraftKings.

2. **Settlement Website:** Within twenty (20) days of execution of the Settlement Agreement, the claims administrator selected pursuant to Section V.B.1 above will create a website regarding the settlement. The website will be updated to provide access to relevant documents and information related to the settlement, including a copy of the Class Notice and claims procedure.

3. The claims administrator shall track, compile and report to Defendant's Counsel and Class Counsel all of the Opt-Outs.

VI. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES.

A. Plaintiffs and DraftKings acknowledge that attorneys' fees and reimbursement of expenses for Class Counsel are subject to the Court's approval and determination.

DraftKings agrees not to oppose an application by Class Counsel for a fee in the amount of One Million, Nine Hundred Thousand Dollars (\$1,900,000), and agrees not to oppose an application by Class Counsel for reimbursement of expenses in the amount of One Hundred

Thousand Dollars (\$100,000). Class Counsel agrees that, notwithstanding any award of fees and costs by the Court in an amount higher than Two Million Dollars (\$2,000,000), Class Counsel will not enforce nor attempt to enforce such an award to the extent it exceeds the Two Million Dollar (\$2,000,000) maximum fee and reimbursement of expenses agreed to herein. Within thirty (30) days after the Effective Date, DraftKings shall deliver to Todd & Weld LLP a check for the benefit of Class Counsel payable to Todd & Weld LLP, at the address set forth above, in the total amount actually awarded by the Court as attorneys' fees, expenses, and costs, but not to exceed One Million, Nine Hundred Thousand Dollars (\$1,900,000) for fees and One Hundred Thousand Dollars (\$100,000) for expenses.

B. DraftKings agrees not to oppose an application by the Class Representative Plaintiffs for an Incentive Payment of \$1,250.00 for each Class Representative Plaintiff, and the Class Representative Plaintiffs and Class Counsel agree not to apply for an Incentive Payment in excess of \$1,250.00 for each Class Representative Plaintiff. Within thirty (30) days after the Effective Date, DraftKings shall deliver to the claims administrator checks payable to the Class Representative Plaintiffs for the amount actually awarded by the Court as an Incentive Payment, but not exceeding the sum of \$1,250.00 for each Class Representative Plaintiff.

C. In no event shall DraftKings be required by Order of the Court to pay more than the One Million, Nine Hundred Thousand Dollars (\$1,900,000) for fees and One Hundred Thousand Dollars (\$100,000) for expenses (inclusive of any interest) set forth herein or the \$1,250.00 agreed herein as the Incentive Payment for each Class Representative Plaintiff (inclusive of any interest). Should the Court by Order require DraftKings to pay larger amounts, DraftKings shall have the right, but not the obligation, to cancel this Agreement, terminate the

settlement, and to proceed as if the settlement had never been executed, and the Agreement shall be null and void as provided in Section VIII.B below.

D. Settlement Class Members shall not be responsible for paying any part of the agreed fees, costs, expenses, or incentive awards described in this Agreement.

E. Other than the attorneys' fees, costs, and expenses explicitly provided herein, the Class Representative Plaintiffs, the Settlement Class and its individual members, and DraftKings shall bear their own attorneys' fees, costs, and expenses associated with the Litigation and this Agreement.

F. Any money required to be paid by DraftKings shall be paid only after the Effective Date of the Agreement.

VII. OPT-OUTS – RIGHT TO TERMINATE

DraftKings shall be entitled, but not required, in its sole and absolute discretion, by written notice to Class Counsel, to terminate and cancel this Agreement in the event the number of Opt-Outs is greater than 1,000 or DraftKings reasonably and in good faith determines that the aggregate value of the total claims of the Opt-Outs exceeds \$350,000 in which event the Parties shall proceed as provided in Section VIII.B below.

VIII. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF THIS AGREEMENT.

A. The Parties agree that no Party shall conduct discovery against any of the others pending the preliminary approval of the settlement by the Court, and that, upon the preliminary approval of this settlement by the Court as evidenced by entry of the Preliminary Approval Order, all discovery and other proceedings in the Litigation shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement this Agreement or to comply with or effectuate the terms of this Agreement.

B. If that any of the events or conditions described in Section I.A.6 above(a)-(e) either are not met or do not occur or the Agreement is terminated by DraftKings pursuant to Section VI.C. or VII of this Agreement, this entire Agreement shall become null and void, except that the Parties shall have the option to agree mutually in writing to waive the event or condition and proceed with this settlement in which event the Effective Date shall be deemed to have occurred on the date that said mutually agreeable written agreement is duly executed and effective. If any of the events or conditions described in Section I.A.6 above(a)-(e) either are not met or do not occur (and the events or conditions are not mutually waived in writing) or the Agreement is terminated by DraftKings pursuant to Section VI.C. or VII of this Agreement, the Parties shall return to their respective positions in this Litigation as those positions existed immediately before the Parties executed this Agreement, and nothing stated in the Agreement, or in any exhibits to the Agreement, shall be deemed an admission of any kind by any of the Parties or used as evidence against, or over the objection of, any of the Parties for any purpose in this Litigation or in any other action. In particular, DraftKings will retain the right to contest whether this case should be maintained as a class action or collective action and to contest the merits of the claims being asserted by the Class Representative Plaintiffs.

IX. DISMISSAL OF LITIGATION AND RELEASE.

A. As soon as practicable after execution of this Agreement, Class Counsel will take all necessary steps to secure the Court's approval of this settlement, certification of the Settlement Class, the entry of the Judgment in the form of **Exhibit E** attached hereto, and the subsequent dismissal of the Litigation, with prejudice, as to the Settlement Class.

B. Within five (5) days of the Order Granting Final Approval of the Settlement:

1. Plaintiffs shall dismiss with prejudice all claims in the Litigation against the Payment Processor Defendants.

2. DraftKings shall cause the Judgment to be entered.

C. In consideration of the aforementioned payments and obligations undertaken by DraftKings, and save and except only those obligations created or arising from this Agreement or the attached Judgment, the Releasing Persons hereby release and forever discharge the Released Persons from the Released Claims, and stipulate and agree that they and the Settlement Class shall be deemed to be forever barred from initiating, asserting, and/or prosecuting any Released Claims against any Released Person in any court or other forum.

D. Upon the entry of the Judgment and the occurrence of the Effective Date, each and every Releasing Persons and all successors in interest and assigns shall be permanently enjoined and forever barred from prosecuting any and all Released Claims against the Released Persons.

E. The Parties agree that they may hereafter discover facts in addition to or different from those they believe to be true with respect to the subject matter of this Agreement. Each party agrees that, notwithstanding the discovery of the existence of any such additional or different facts that, if known, would materially affect her, his, or its decision to enter into this Agreement, the releases given herein shall be and remain in effect as a full, final, and complete release to the Released Claims, and that no party shall be entitled to modify or set aside this Agreement, either in whole or in part, by reason thereof. The Parties further agree that they have been informed of and waive the benefits of California Civil Code section 1542 (and any and all other similar state statutes regarding the effectiveness of general releases), which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

X. MISCELLANEOUS PROVISIONS.

A. The Parties hereto and their undersigned counsel agree to undertake commercially reasonable efforts and to offer their reasonable cooperation to effectuate this Agreement and the terms of the settlement set forth herein, including taking all steps and efforts contemplated by this Agreement and any other steps and efforts which may become reasonably necessary by order of the Court or otherwise.

B. This Agreement, together with its attachments, contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings (including any term sheets) between them, other than agreements regarding confidentiality. All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon all of the Parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties hereto, including any Settlement Class Member and the Releasing Parties.

C. In entering into this Agreement, DraftKings does not admit to any wrongdoing of any kind, and expressly denies wrongdoing of any kind whatsoever, and has entered into this Agreement and agreed to the terms solely to avoid the risk, expense, inconvenience, distraction, and burden of further protracted litigation. Moreover, this Agreement shall not be deemed an admission of any kind by DraftKings or used as evidence against, or over the objection of, DraftKings by any third-party for any purpose in any action, claim, arbitration or tribunal.

D. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties. Amendments and modifications may be made without additional notice to the Settlement Class unless such notice is required by the Court.

E. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the Commonwealth of Massachusetts.

F. The exhibits to this Agreement are an integral part of the settlement and are hereby incorporated by reference and made a part of this Agreement.

G. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective parent, subsidiary, and affiliated corporations and the officers, directors, employees, partners, shareholders, agents, and any other successors, assigns, or legal representatives of all of the foregoing persons and entities.

H. Except as agreed to herein, the Parties to this Agreement shall bear their own attorneys' fees, expenses, and costs, including in connection with finalizing this settlement, obtaining Court approval of the same, and proceedings subsequent to the same.

I. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

J. This Agreement, whether or not executed and consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Agreement, are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits, nor any communications exchanged nor actions taken pursuant to or during the negotiation of this Agreement, shall constitute or be construed as admissible evidence

of the validity of any claim asserted or fact alleged in the Complaint or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Released Persons. This Agreement is made without prejudice to the rights of DraftKings to oppose certification of a class or classes should this Agreement not be approved or implemented or should the Effective Date not occur.

K. This Agreement shall be deemed to have been executed upon the Agreement Execution Date.

L. The Parties warrant and represent that no claim or any portion of any claim referenced or released in this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other Person.

M. This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement may be executed by facsimile or email signatures, each of which shall be deemed to be an original.

N. The Settlement Class Members, Releasing Persons and Class Counsel, including their experts and consultants, agree that they will not use any confidential material obtained, derived, or created in connection with the Litigation for any purpose unrelated to the Litigation, and that they will, following the completion of the distribution of all awards to the Settlement Class Members and a reasonable period for resolution of any disputes relating to such awards, delete or destroy all electronic data and databases in their possession and delete or destroy any other information provided to them which was confidential information, and agree that they have not made and will not retain any copies.

O. Except as otherwise expressly agreed to in writing, DraftKings, its counsel, the Class Representative Plaintiffs, and Class Counsel agree not to make any oral or written statements to the press regarding the Litigation or the settlement, but shall be free, upon receipt

of inquiry from one or more members of the press, to state “the matter has been amicably resolved,” “a settlement was reached,” “we are pleased to have resolved this matter.” In no event shall any Settlement Class Members be deemed “press” for purposes of this prohibition, and in no event shall this prohibition be construed as limiting the ability of Class Counsel to earnestly and candidly communicate with Settlement Class Members. Class Counsel and Defendant’s Counsel reserve the right to post neutral factual statements about the settlement on their websites and to provide information about the settlement to courts or in the course of their practices, including but not limited to providing information to potential clients and/or counsel, provided however, for the avoidance of doubt, nothing contained herein shall prevent a Party from making any of the following disclosures:

1. confidentially to their respective attorneys, accountants and indemnitors;
2. in the case of DraftKings only, confidentially to DraftKings’ employees who have a reason to know such information in connection with their job responsibilities, and to DraftKings board of directors and executive leadership team;
3. to the extent required to enforce this Agreement;
4. to fulfill their corporate financial reporting obligations under GAAP; and/or
5. for the purpose of disclosure in connection with reports filed with the Securities and Exchange Commission, or any other filings, reports or disclosures that may be required under applicable laws or regulations (including without limitation applicable stock exchange rules and regulations), including without limitation to governmental or regulatory bodies.

P. The signatories hereto warrant that they are authorized to enter into this Agreement on behalf of the entities below.

[signatures on the following pages]

CLASS REPRESENTATIVE PLAINTIFFS

A handwritten signature in black ink, appearing to be 'Thomas Berg', written over a horizontal line.

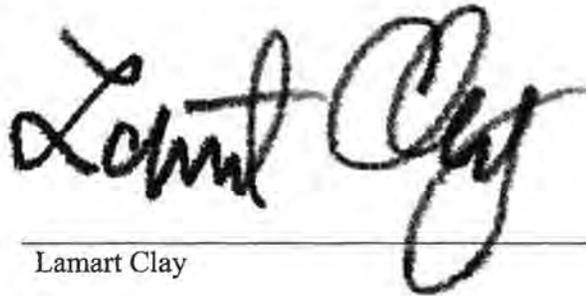
Thomas Berg

Antonio Cantamaglia

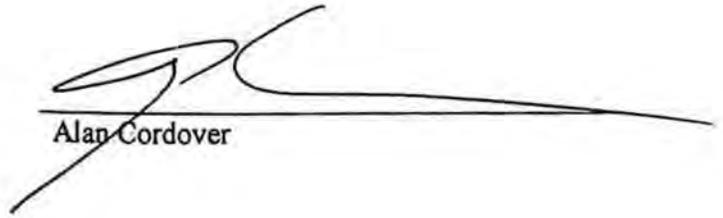
Tony Cantamaglia



Eric Champagne



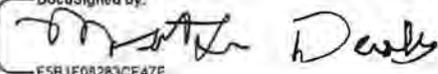
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Alan Cordover

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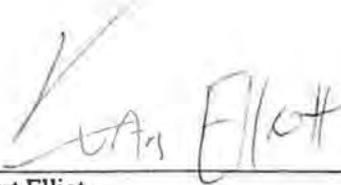
In re: Daily Fantasy Sports Litig.
FINAL Settlement Agreement
Signature Pages

DocuSigned by:

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Matt Deady



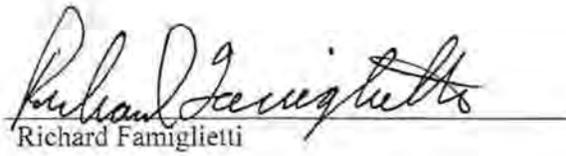
Michael Desabato

A handwritten signature in black ink, appearing to read "Kurt Elliot", is written above a horizontal line.

Kurt Elliot

DocuSigned by:
Jamie Facenda
185D007C7E6CA33

Jamie Facenda

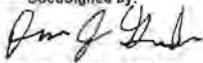


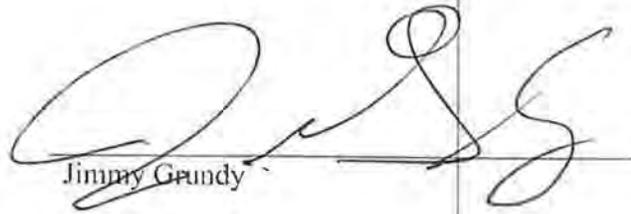
Richard Famiglietti



Alicia Ferdula

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DocuSigned by:

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James Gardner



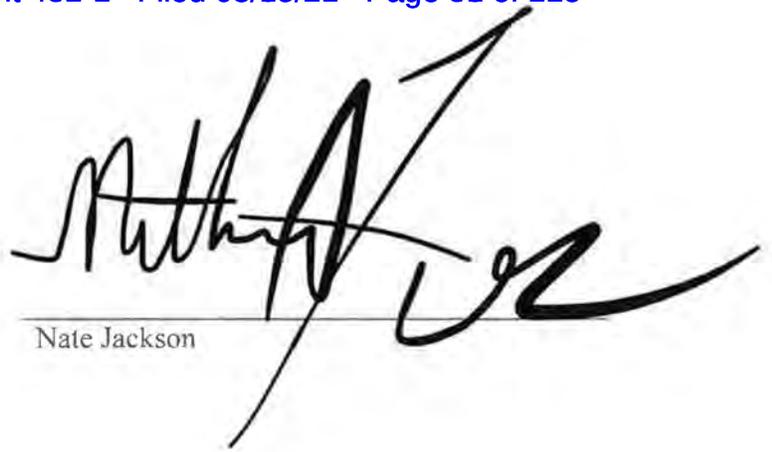
Jimmy Gandy



Tom Guarino



Paul Guercio



Nate Jackson

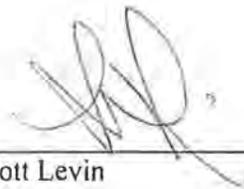
Jeffrey Kaufman
Jeff Kaufman



Aissa Khirani

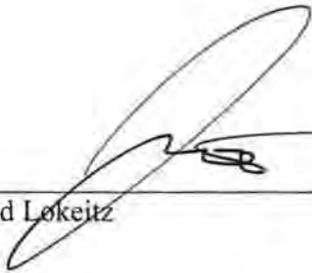


Ryan Leonard



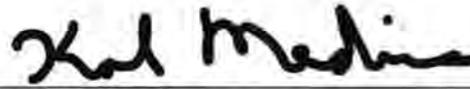
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Scott Levin



Jared Lokeitz

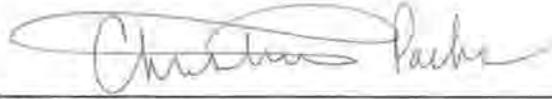
A handwritten signature in black ink, appearing to be "B. J. [unclear]". The signature is written in a cursive style with a large initial "B" and a smaller "J".

A handwritten signature in black ink that reads "Karl Medina". The signature is written in a cursive style with a large initial "K".

Karl Medina

Michael Moton

Michael Moton

A handwritten signature in cursive script that reads "Christine Parks". The signature is written in black ink and is positioned above a horizontal line.

Christine Parks



Jodi Siegel

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DocuSigned by:

7C2502E305A847B

Steven Siler

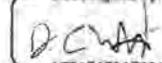


Peter Triantafylidis



Scott Walters

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David White

DEFENDANT

DRAFTKINGS INC

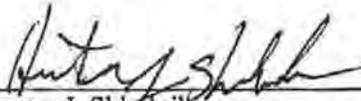


By: R. Stanton Dodge

Its: Chief Legal Officer

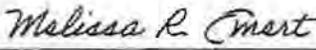
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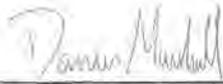
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