

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: DAILY FANTASY SPORTS  
LITIGATION

MDL No. 1:16-md-02677-GAO

This Document Relates to:  
All Cases

**JUDGMENT AND ORDER APPROVING SETTLEMENT AND  
DISMISSING CLAIMS OF SETTLEMENT CLASS MEMBERS WITH  
PREJUDICE**

This matter came before the Court for hearing on October 6, 2021. The Court, having considered the Motions for Preliminary Approval and Final Approval and the declarations in support thereof, the Settlement Agreement (the “Agreement”), objections and comments received regarding the proposed settlement, the record in the above-captioned action (the “Action”), the evidence presented, and the arguments and authorities presented by counsel, and for good cause appearing,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS  
FOLLOWS:**

1. The Court, for purposes of this Judgment and Order Approving Settlement and Dismissing Claims of Settlement Class Members with Prejudice (“Judgment”), adopts the capitalized terms and their definitions set forth in the Agreement.
2. The Court has jurisdiction over the subject matter of the Action, the Class Representatives, the Settlement Class Members, and DraftKings.
3. The Court finds that the notice to the Settlement Class of the pendency of the Action and of this settlement constituted the best notice practicable under the

circumstances to all Persons within the definition of the Settlement Class, and fully complied with the requirements of due process and of all applicable statutes and laws.

4. The Court hereby adopts and approves the Agreement and the settlement terms contained therein and finds that it is in all respects fair, reasonable, adequate, just, and in compliance with all applicable requirements of the United States Constitution (including the Due Process Clause) and all other applicable laws, and in the best interest of the parties and the Settlement Class. Any objections have been considered and are hereby overruled. Accordingly, the Court directs the parties and their counsel to implement and consummate the settlement in accordance with the terms and conditions of all portions of the Agreement.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finally certifies a Settlement Class, except for the individuals listed in **Attachment 1** hereto, consisting of:

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.

The Settlement Class as certified satisfies all the requirements of Rule 23 and the United States Constitution, and any other applicable law as more fully set forth in the Court's Preliminary Approval Order, which is incorporated into this Final Judgment by this reference.

#### **SETTLEMENT CLASS**

6. In certifying this Action as a class action, the Court hereby finds, in part based upon the waiver of affirmative defenses by DraftKings solely with regard to this Action, that:

(a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in this Action is impracticable;

(b) there are questions of law and fact common to the members of the Settlement Class;

(c) the claims of the Class Representatives are typical of the claims or defenses of the Settlement Class;

(d) the questions of law and fact common to members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class;

(e) a class action was and is superior to other available methods for the fair and efficient adjudication of the controversy, considering, *inter alia*: (i) the interests of members of the Settlement Class in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by or against members of the Settlement Class; (iii) the desirability or undesirability of prosecuting the litigation of these claims in this particular forum; and (iv) the difficulties likely to be encountered in the management of the class action; and

(f) the Class Representatives and Class Counsel have fairly and adequately protected the interests of the Settlement Class.

### **SETTLEMENT CONSIDERATION**

7. DraftKings and the Class Representatives are hereby ordered to comply with the terms and conditions contained in the Agreement, which is incorporated by reference herein and attached hereto as **Attachment 2**.

8. After the Effective Date, and solely for the purposes of the Agreement, the benefits available under the settlement shall be distributed by DraftKings in accordance with the eligibility requirements specified in the Agreement.

9. The Class Representatives, the Settlement Class, and/or DraftKings may seek to enforce the provisions of the Agreement by motion to the Court pursuant to the Court's continuing jurisdiction over the Agreement as set forth in Paragraph 17 below.

### **APPLICABILITY**

10. The provisions of this Judgment are applicable to and binding upon and inure to the benefit of each party to the Action (including each Settlement Class Member and each of DraftKings's successors and assigns) as to claims involving DraftKings.

11. To the extent permitted by law and without affecting the other provisions of this Judgment, this Judgment is intended by the parties and the Court to be *res judicata* and to prohibit and preclude any prior, concurrent, or subsequent litigation brought individually, or in the name of, and/or otherwise on behalf of the Class Representatives or any Settlement Class Member with respect to any and all claims, rights, legal theories, alleged violations of law, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses, or losses arising out of or relating to the matters, whether factual or legal, alleged in the Complaint as to claims involving DraftKings or which could have been alleged in the Complaint based upon the same alleged facts.

12. All Persons who are included within the definition of the Settlement Class and who did not request a valid and timely exclusion from the Settlement Class that fully complies with the provisions of the Class Notices and Paragraph 17 of this Order are therefore bound by this Judgment and by the Agreement.

13. **Attachment 1** to this Judgment contains a list setting forth the name of each Person who submitted a valid and timely request for exclusion from the Settlement Class that fully complies with the provisions of the Class Notices and Paragraph 17 of this Order. The Persons so identified shall not be entitled to benefits from the settlement nor bound by this Judgment.

**ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES  
AND INCENTIVE AWARD**

14. DraftKings shall within thirty (30) days after the Effective Date, deliver to Todd & Weld LLP, at the address set forth in the Agreement, a check payable to “Todd & Weld LLP” in the amount of One Million Nine Hundred Thousand Dollars and No Cents (\$1,900,000.00) as Class Counsel’s attorneys’ fees, and a check in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00) for reimbursement of Class Counsel’s expenses.

15. DraftKings shall within thirty (30) days after the Effective Date, deliver to Claims Administrator at the address set forth in the Agreement, checks payable to the “Claims Administrator” in the amount of One Thousand Two Hundred and Fifty Dollars and No Cents (\$1,250.00) each as the Class Representatives Incentive Payment.

**GENERAL PROVISIONS**

16. The provisions of this Judgment are entered as a result of a voluntary agreement of the parties. The Agreement and this Judgment are not intended to, and shall not be construed as any admission, express or implied, of any fault, liability or wrongdoing by DraftKings, or of the accuracy of any of the allegations in the Complaint.

17. All terms, provisions, obligations and rights as contained in the Agreement are hereby incorporated into this Judgment and the parties are ordered to perform their

obligations thereunder, including, but not limited to, the full release of claims. The claims of the Class Representative Plaintiffs and the Settlement Class as to claims involving DraftKings shall be and are hereby dismissed with prejudice. Save and except as expressly set forth to the contrary in this Judgment and any judgment issued by this Court regarding Class Counsel's fee application and the Class Representatives' incentive payments, the Class Representative Plaintiffs and Class Counsel shall take nothing by their claims and each party shall bear their own fees, costs, and expenses in connection with this Action.

Jurisdiction is retained by this Court for three months following the Effective Date for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Judgment and the Agreement, for the modification of any of the provisions hereof, for enforcement of compliance herewith, and for the punishment of violations hereof.

**IT IS SO ORDERED.**

DATED: October 6, 2021

*/s/ George A. O'Toole, Jr.*

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Hon. George A. O'Toole, Jr.  
Senior United States District Judge

**APPROVED AS TO FORM:**

DATED: \_\_\_\_\_

**NAPOLI SHKOLNIK PLLC**

By: \_\_\_\_\_

Hunter J. Shkolnik  
Attorneys for Class Representative Plaintiffs

DATED: \_\_\_\_\_

**KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.**

By: \_\_\_\_\_

Melissa Emert  
Attorneys for Class Representative Plaintiffs

DATED: \_\_\_\_\_

**JONES WARD PLC**

By: \_\_\_\_\_

Jasper D. Ward  
Attorneys for Class Representative Plaintiffs

DATED: \_\_\_\_\_

**TODD & WELD LLP**

By: \_\_\_\_\_

Christopher Weld  
Attorneys for Class Representative Plaintiffs

DATED: \_\_\_\_\_

**KING & SPALDING LLP**

By: \_\_\_\_\_

Damien J. Marshall  
Attorneys for Defendant DRAFTKINGS INC.