

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re: DAILY FANTASY SPORTS LITIGATION	)	MDL No. 16-02677-GAO
This Document Relates to:	)	
All Cases	)	
	)	
	)	
	)	

**FAMILY MEMBER PLAINTIFFS’ UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT**

Pursuant to Fed. R. Civ. P. 23(e), named family member plaintiffs Leah Boast, Crystal Turner, Rebecca McGuire, Michelle Hodge, Aurora Walker, and Hillary Williams, individually and on behalf of a proposed settlement class (“Plaintiffs”), make this motion for preliminary approval of Plaintiffs’ proposed settlement with Defendants FanDuel Inc. and FanDuel Deposits, LLC (together, “FanDuel”), which FanDuel does not oppose. Plaintiffs respectfully request that the Court:

1. Preliminarily approve the settlement between Plaintiffs and FanDuel, as set forth in the Settlement Agreement (attached as Exhibit 1 to the Declaration of Taylor C. Bartlett, filed contemporaneously herewith);
2. Certify the Settlement Classes as:
  - a. “Georgia Family Member Settlement Class:” all persons in the State of Georgia that are spouses, children, next-of-kin, or dependents of a person in the State of Georgia that participated in FanDuel’s DFS contests, deposited money in a FanDuel account, and lost money in any game or contest during the time period starting six months prior to the filing of the original complaint up until four years prior to the filing of the original complaint on November 12, 2015.

- b. “Kentucky Family Member Settlement Class:” all persons in the State of Kentucky that are spouses, children, next-of-kin, or dependents of a person in the State of Kentucky that participated in FanDuel’s DFS contests, deposited money in a FanDuel account, and lost money in any game or contest during the time period starting six months from the filing of the original complaint up until five years prior to the filing of the original complaint on December 15, 2015.
- c. “New Mexico Family Member Settlement Class:” all persons in the State of New Mexico who are spouses, children, heirs, executors, administrators or creditors of those persons in the State of New Mexico that participated in FanDuel’s DFS contests, deposited money in a FanDuel account, and lost money in any game or contest during the one year prior to filing of the original complaint on December 14, 2015.
- d. “South Carolina Family Member Settlement Class:” all persons in the State of South Carolina that are spouses, children, or other family members of a person in the State of South Carolina that participated in FanDuel’s DFS contests, deposited money in a FanDuel account, and lost money in any game or contest going for the time period starting three months prior to the filing of the original complaint up until one year to the filing of the original complaint on June 30, 2016.
- e. “Tennessee Family Member Settlement Class:” all persons in the State of Tennessee that are spouses, children, or next of kin of a person in the State of Tennessee that participated in FanDuel’s DFS contests, deposited money in a FanDuel account, and lost money in any game or contest during the time period

starting ninety-one days prior to the filing of the original complaint until one year prior to the filing of the original complaint on December 3, 2015;

3. Preliminarily appoint the following Class Representative Plaintiffs: Leah Boast, Crystal Turner, Rebecca McGuire, Michelle Hodge, Aurora Walker, and Hillary Williams;
4. Schedule a Final Approval Hearing on a date approved by the Court and no earlier than ninety (90) days after FanDuel completes service of the CAFA Notice;
5. Appoint Settlement Class Counsel, Taylor C. Bartlett and W. Lewis Garrison, Jr., to serve as counsel for the Settlement Class; and
6. Enter the Proposed Preliminary Approval Order (attached as Exhibit 1 to this Motion).

DATED: July 29, 2021

Respectfully submitted,

/s/ Taylor C. Bartlett

Taylor C. Bartlett (Pro Hac Vice)  
Email: taylor@hgdllawfirm.com  
W. Lewis Garrison, Jr. (Pro Hac Vice)  
Email: lewis@hgdllawfirm.com  
**HENINGER GARRISON DAVIS, LLC**  
2224 1st Avenue North  
Birmingham, Alabama 35203  
Telephone: (205) 326-3336  
Facsimile: (205) 326-3332

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF and paper copies will be sent to any indicated as non-registered participants on July 29, 2021.

/s/ Taylor C. Bartlett

Taylor C. Bartlett (Pro Hac Vice)

# EXHIBIT 1

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

In re: DAILY FANTASY SPORTS LITIGATION	)	
	)	MDL No. 16-02677-GAO
This Document Relates to:	)	
All Cases	)	
	)	
	)	

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

WHEREAS, the above-captioned putative class action is pending before this Court;

WHEREAS, the Court has received and reviewed the parties’ Stipulation and Settlement Agreement dated July 28, 2021 (the “Settlement Agreement”), entered into by plaintiffs Leah Boast, Crystal Turner, Rebecca McGuire, Michelle Hodge, Aurora Walker, and Hillary Williams, individually and on behalf of the Settlement Class they seek to represent (collectively, “Plaintiffs”), and defendants FanDuel Inc. and FanDuel Deposits, LLC (“FanDuel” or “Defendants”; together with Plaintiffs, the “Parties”), and Plaintiffs’ unopposed motion pursuant to Rule 23 of the Federal Rules of Civil Procedure for an Order preliminarily certifying the Settlement Class and preliminarily approving the Settlement and Settlement Agreement, and all supporting papers submitted therewith;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Preliminary Approval Order incorporates by reference the definitions in the Settlement Agreement, and all initial capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement, unless otherwise set forth below.

2. The Court finds that it has subject matter jurisdiction to preliminarily approve the Settlement Agreement, including all exhibits thereto and the Settlement contained therein and that

is has personal jurisdiction over Plaintiffs, Defendants (in this Action only and for purposes of this Settlement), and all Settlement Class Members.

3. The Court preliminarily finds, for purposes of approving this Settlement only, that, pursuant to Rule 23 of the Federal Rules of Civil Procedure: (a) the proposed Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of fact and law common to the Settlement Class; (c) Plaintiffs' claims are typical of the claims of the Settlement Class; (d) Plaintiffs will fairly and adequately protect the interests of the Settlement Class; (e) Settlement Class Counsel is experienced in class action and complex litigation; and (f) Defendants have acted on grounds that apply generally to the Settlement Class, so that final injunctive relief is appropriate respecting the Settlement Class as a whole.

4. In light of the above findings, preliminarily and solely for purposes of the Settlement, the Court certifies the following Settlement Class pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure:

All members of the Georgia Family Member Settlement Class, Kentucky Family Member Settlement Class, New Mexico Family Member Settlement Class, South Carolina Family Member Settlement Class, and Tennessee Family Member Settlement Class in the United States or its territories at any time during the Class Period. Excluded from the class are: (a) all persons who are employees, directors, officers, or agents of FanDuel; (b) government entities; and (c) the Court, the Court's immediate family, and Court staff.

The "Georgia Family Member Settlement Class" consists of all persons in the State of Georgia that are spouses, children, next-of-kin, or dependents of a person in the State of Georgia that participated in FanDuel's DFS contests, deposited money in a FanDuel account, and lost money in any game or contest during the time period starting six months prior to the filing of the original complaint up until four years prior to the filing of the original complaint on November 12, 2015.

The "Kentucky Family Member Settlement Class" consists of all persons in the State of Kentucky that are spouses, children, next-of-kin, or dependents of a person in the State of Kentucky that participated in FanDuel's DFS contests, deposited money in a FanDuel account, and lost money in any game or contest during the time period starting six months from the filing of the original complaint up until

five years prior to the filing of the original complaint on December 15, 2015.

The “New Mexico Family Member Settlement Class” consists of all persons in the State of New Mexico who are spouses, children, heirs, executors, administrators or creditors of those persons in the State of New Mexico that participated in FanDuel’s DFS contests, deposited money in a FanDuel account, and lost money in any game or contest during the one year prior to filing of the original complaint on December 14, 2015.

The “South Carolina Family Member Settlement Class” consists of all persons in the State of South Carolina that are spouses, children, or other family members of a person in the State of South Carolina that participated in FanDuel’s DFS contests, deposited money in a FanDuel account, and lost money in any game or contest going for the time period starting three months prior to the filing of the original complaint up until one year to the filing of the original complaint on June 30, 2016.

The “Tennessee Family Member Settlement Class” consists of all persons in the State of Tennessee that are spouses, children, or next of kin of a person in the State of Tennessee that participated in FanDuel’s DFS contests, deposited money in a FanDuel account, and lost money in any game or contest during the time period starting ninety-one days prior to the filing of the original complaint until one year prior to the filing of the original complaint on December 3, 2015.

5. The Court’s preliminary certification of the Settlement Class is subject to further consideration at the Final Approval Hearing, as set forth below.

6. The Court preliminarily appoints Plaintiffs as the representatives of the Settlement Class for purposes of the Settlement only.

7. The Court appoints Taylor C. Bartlett and W. Lewis Garrison, Jr., to serve as Settlement Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

8. The Court preliminarily approves the proposed Settlement of this Action as embodied in the Parties’ Settlement Agreement as fair, reasonable, and adequate and in the best interests of the Settlement Class, subject to further consideration at the Final Approval Hearing. The Court further finds that the Settlement Agreement was entered into at arm’s length by experienced counsel after extensive negotiations spanning months.

9. The foregoing preliminary determinations regarding class certification, class representation, and settlement approval are for settlement purposes only. The Court recognizes and the Parties agree that Defendants retain the right to dispute that any class may be certified in this case should the Settlement not receive Final Approval. In the event that the Settlement does not become Final for any reason, and litigation resumes, these preliminary findings regarding class certification, class representation, and settlement approval shall be of no further force or effect, and this Order will be vacated in its entirety. Further, in the event that the Settlement does not become Final for any reason, and litigation resumes, then all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party thereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner in any subsequent proceeding in this Action or any other action or proceeding in any court or other forum.

10. The Final Approval Hearing is scheduled for \_\_\_\_\_, 2021, at \_\_\_\_\_ (at least 100 days after the entry of this Preliminary Approval Order), at the United States District Court for the District of Massachusetts, 1 Courthouse Way, Suite 2300, Boston, Massachusetts 02210, or as this Court otherwise directs, to determine whether the proposed Settlement as set forth in the Settlement Agreement is fair, reasonable, and adequate and should be finally approved by the Court.

11. Defendants shall notify the appropriate state and federal officials of the Parties' Settlement Agreement as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA") within the time period required thereunder, and to do so exclusively at its own expense. No later than seven (7) days before the Final Approval Hearing, Defendants will file a certification with the Court stating the date or dates on which CAFA Notice was sent.



12. The Court finds that further notice of the Settlement to the Settlement Class is not necessary to comport with due process or the Federal Rules of Civil Procedure. By this Order, the Court preliminarily certifies for settlement purposes the Settlement Class under Rule 23(b)(2) of the Federal Rules of Civil Procedure, and therefore no notice or opt-out rights apply. Further, upon issuance of an Order and Final Judgment following the Final Approval Hearing, the Settlement Class will release only claims for injunctive, other equitable, and declaratory relief; Settlement Class Members, other than Plaintiffs, will not be releasing claims for actual damages. In light of the foregoing, and given that CAFA Notice will have been timely provided, the Court will not require that discretionary notice be provided to Settlement Class Members, as is permitted under Rules 23(c)(2)(A) and 23(e)(1)(B) of the Federal Rules of Civil Procedure.

13. No Settlement Class Member may opt-out of this Settlement. Any Settlement Class Member may object to or comment upon the Settlement if they wish to speak or show good cause why the Settlement should not be approved as fair, reasonable, and adequate. Any such objection or comment must be in a writing sent to the Clerk of Court, with a copy served on Settlement Class Counsel, Heninger Garrison Davis, LLC, Attn.: Taylor C. Bartlett, 2224 1<sup>st</sup> Avenue North, Birmingham, Alabama 35203; and Defense Counsel, ZwillGen PLLC, Attn: Nicholas A. Jackson, 1900 M Street NW, Suite 250, Washington, DC 20036, that is postmarked no later than twenty-eight (28) days before the Final Approval Hearing date, and which contains the following:

- (a) The name and case number of this lawsuit, *In re: Daily Fantasy Sports Litigation*, Case No. 16-02677-GAO (D. Mass.);
- (b) The full name, business name (if different), address, telephone number, and email address of the Settlement Class Member;
- (c) Proof of membership in the Settlement Class;

(d) If objecting, whether Settlement Class Member's objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class;

(e) A written statement of all grounds for the comment or objection, accompanied by any legal or factual support for the comment or objection (if any);

(f) Copies of any papers, briefs, or other documents upon which the comment or objection is based;

(g) A description of any and all evidence the objecting person may offer at the Final Approval Hearing, including but not limited to the names, addresses, and expected testimony of any witnesses and all exhibits intended to be introduced at the hearing;

(h) A statement as to whether the Settlement Class Member, or any attorney or other representative on the Settlement Class Member's behalf, will appear at the Final Approval Hearing, and if so the name and contact information of any and all attorneys representing, advising, or assisting the Settlement Class Member, including any counsel who may be entitled to compensation for any reason related to the objection or comment;

(i) A list, by case name, court, and docket number, of all other cases in which the Settlement Class Member and/or their attorney has objected to or commented on in the last five years; and

(j) The Settlement Class Member's signature and (if applicable) the signature of the Settlement Class Member's duly authorized attorney or other representative.

14. Any objection to the Settlement or motion to intervene submitted by a Settlement Class Member must be signed by the Settlement Class Member (and if applicable his, her, or its legally authorized representative), even if the Settlement Class Member is represented by counsel. The right to object to the proposed Settlement or to intervene must be exercised individually by

the Settlement Class Member and not as a member of a group, class, or subclass, except that such objections and motions to intervene may be submitted by the Settlement Class Member's legally authorized representative. Any motion to intervene must comply with the Federal Rules of Civil Procedure and the Local Rules of the Court.

15. No Settlement Class Member will be entitled to be heard at the Final Approval Hearing (whether individually, by representative, or through separate counsel), unless their timely objection or comment states their intention to appear at the Final Approval Hearing. Any Settlement Class Member who does not make his or her objection or comment in the manner provided in this Order shall be deemed to have waived such objection or comment; shall be forever foreclosed and barred from making any objection or comment or seeking to intervene with regard to any aspect of the Settlement, Settlement Agreement, this Preliminary Approval Order, or any forthcoming Final Approval Order, whether in this or any other action or proceeding related to or arising out of the Settlement; and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Action. Any challenge to the Settlement Agreement, the Final Approval Order approving this Settlement Agreement, or the Final Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

16. All objectors and commenters shall make themselves available to be deposed by any Party in the District of Massachusetts or the county of the objector's residence or principal place of business within seven (7) days of service of the objector's timely written objection.

17. Any lawyer representing or assisting an objecting Settlement Class Member must, no later than twenty-eight (28) days before the Final Approval Hearing: (a) file a notice of appearance with the Court; (b) file a sworn declaration attesting to representation of each

Settlement Class Member on whose behalf the lawyer has acted or will be acting; and (c) comply (and ensure their client's compliance) with each of the applicable requirements in this Order.

18. Pending the Final Approval Hearing, all proceedings in the Action between the Plaintiffs participating in the Settlement and FanDuel, other than proceedings necessary to carry out and enforce the terms and conditions of the Settlement, Settlement Agreement, and this Preliminary Approval Order, are hereby stayed and suspended until further order of this Court.

19. Settlement Class Members and all other persons pursuing claims on behalf of any such person or entity (including by pursuing a class action, by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) are hereby preliminarily enjoined from, directly or indirectly, filing, commencing, prosecuting, intervening in, participating in, maintaining, or otherwise receiving any benefits from any lawsuit, arbitration, government action, administrative or regulatory proceeding, or order in any jurisdiction, forum, or tribunal asserting claims or seeking relief relating in any way to the Class Released Claims. Nothing in this paragraph shall require any person or entity to take any affirmative action with regard to other pending class action litigation in which it may be an absent class member.

20. The Court's preliminary certification of the Settlement Class, appointment of Plaintiffs as class representatives for settlement purposes, and findings in this Preliminary Approval Order shall have no effect on the Court's ruling on any other motion to certify any class in the Action or any other action, or appoint class representatives, and no person may cite or refer to the Court's approval of the Settlement Class as binding or persuasive authority with respect to any motion to certify such class or appoint class representatives.

21. Unless otherwise specified, the word "days," as used herein, means calendar days.

In the event that any date or deadline set forth herein falls on a weekend or federal or state legal holiday, such date or deadline shall be deemed moved to the first business day thereafter.

22. In accord with the above, the Court approves the following deadlines:

<b>Event</b>	<b>Time for Compliance</b>
Deadline for Defendant to serve CAFA Notice	No later than 10 days after filing of the motion for Preliminary Approval
Deadline for Settlement Class Members to mail written objections and comments regarding the Settlement	28 days prior to the Final Approval Hearing
Deadline for counsel to any objecting Settlement Class Member(s) to appear and attest to representation	28 days prior to the Final Approval Hearing
Deadline for Plaintiffs to file a Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Plaintiff Service Awards	21 days prior to the Final Approval Hearing
Deadline for the Parties to file reply papers in further support of the Settlement and/or in response to any written objections	10 days prior to the Final Approval Hearing
Deadline for Defendant to file its certification of CAFA Notice compliance	7 days prior to the Final Approval Hearing
Final Approval Hearing (at least 100 days after filing of the motion for Preliminary Approval, scheduled at the Court's convenience)	_____, 2021, at _____ _.m., at the United States District Court for the District of Massachusetts, 1 Courthouse Way, Suite 2300, Boston, Massachusetts 02210, or as this Court otherwise directs

Upon application of the Parties and good cause shown, the deadlines set forth in this Preliminary Approval Order may be extended by order of the Court, without further notice to the Settlement Class, except that any such change shall be noted on the Court's docket.

IT IS SO ORDERED:

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

\_\_\_\_\_  
Hon. George A O'Toole, Jr.  
United States District Court Judge