

**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

**ORDER GRANTING PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS
AND PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

WHEREAS, the Class Representative Plaintiffs, on behalf of themselves and all similarly situated DraftKings participants, and Defendant DraftKings Inc. (“DraftKings”), all acting by and through their respective counsel, have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle their claims in this litigation as they relate to DraftKings only upon the terms as set forth in the Settlement Agreement;

WHEREAS, this Court has reviewed and considered the Settlement Agreement dated March 3, 2021, entered into among the Class Representative Plaintiffs and DraftKings (the “Agreement”), together with all exhibits thereto, the record in this case, and the briefs and arguments of counsel; and

WHEREAS, this Court preliminarily finds, for the purposes of settlement only, that the above-captioned action (the “Action”) meets all the prerequisites of Rule 23 of the Federal Rules

of Civil Procedure, that the Class Representatives are adequate representatives of the Settlement Class (as defined below), and that Class Counsel are adequate to represent the Settlement Class.

NOW, THEREFORE, based upon the files, records, and proceedings herein, and it appearing to the Court that a hearing should be held on notice to the Settlement Class of the proposed settlement to determine finally if the terms of the settlement are fair, reasonable, and adequate;

IT IS HEREBY ORDERED THAT:

1. All terms and definitions used herein have the same meanings as set forth in the Agreement.

2. The proposed settlement set forth in the Agreement is hereby preliminarily approved as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Class.

3. The following Settlement Class is conditionally and preliminarily certified for settlement purposes only:

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.

4. The Class Representative Plaintiffs listed on **Exhibit A** to the Agreement are hereby found to be adequate and are therefore appointed as representatives of the Settlement Class (the “Class Representatives”).

5. The following counsel are hereby found to be adequate and are therefore appointed as class counsel for the Settlement Class (“Class Counsel”):

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6. If final approval of the settlement is not obtained, this certification order, including the above description of the Settlement Class and appointment of the Class Representatives and Class Counsel, shall be vacated and this Action shall proceed as though the certification and appointments never occurred.

7. Pending final determination of whether the settlement should be approved, neither the Class Representatives nor any member of the Settlement Class, whether directly, indirectly, individually, representatively, or in any other capacity, shall commence or prosecute any action or proceeding of any nature whatsoever asserting any of the claims herein against DraftKings.

8. The Class Action Settlement Notices (“Class Notices”), which are attached as **Exhibits C-1 and C-2** to the Agreement, are hereby approved as to form. DraftKings shall cause the Class Notices (which shall be substantially identical to the form of **Exhibits C-1 and C-2** to the Agreement) to be disseminated by the Claims Administrator who shall send the Class Notices via email to DraftKings’ current and former customers who are within the Settlement Class (the “Class Notice Emails”) by July 15, 2021.

9. Tracking and reporting of Persons eligible to be Settlement Class Members who 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 (the “Opt Outs”) shall be compiled by the Claims Administrator and reported to DraftKings, Class Counsel and the Court. DraftKings shall pay all costs associated with such tracking and reporting of Opt Outs.

10. DraftKings shall pay all costs associated with preparing and disseminating the Class Notices.

11. 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, 28 U.S.C. § 1715(a).

12. DraftKings is directed to file with the Court and serve upon Class Counsel, no later than July 22, 2021, a declaration confirming that dissemination of the Class Notices has taken place in accordance with this Order.

13. The Court finds that the dissemination of the Class Notices under the terms and in the format provided for in the Agreement and this Order constitutes the best notice practicable under the circumstances, that it is due and sufficient notice for all purposes to all persons entitled to such notice, and that it fully satisfies the requirements of due process and all other applicable laws.

14. A hearing (the “Fairness Hearing”) shall be held on October 6, 2021, at 11:00 a.m., in Courtroom 22, before the Honorable George A. O’Toole, Jr., John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA 02210 to determine whether the proposed settlement of this Action as to DraftKings should be finally approved as fair, reasonable, and adequate and whether the Final Judgment approving the settlement and dismissing certain claims

asserted in the litigation on the merits and with prejudice should be entered. The Court will hear Class Counsel's application for attorneys' fees and costs concurrently with the Fairness Hearing. The Court will also hear Class Counsel's application for incentive payments to the Class Representatives at the Fairness Hearing. The Fairness Hearing may be postponed, adjourned, or rescheduled by order of the Court without further notice to the members of the Settlement Class.

15. Objections by any Settlement Class Member to the Agreement shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if, by August 19, 2021, such objector (1) files with the Clerk of the United States District Court, District of Massachusetts: (i) his, her, or its objection and a statement of the basis for such objection, including the objector's full name, current address, and telephone number; (ii) if applicable, a Notice of Intention to Appear at the Fairness Hearing; and (iii) documentary proof that he, she, or it is a member of the Settlement Class, and (2) serves copies of the foregoing and all other papers in support of such objections (including any briefs or declarations) on counsel for the parties identified in the Class Notices. In addition, any Settlement Class Member objecting to the Agreement shall provide a detailed list of any other objections submitted by the objector, or the objector's separate counsel, to any class action settlements submitted in any court in the United States, whether state, federal or otherwise, in the previous five years. A Settlement Class Member need not appear at the Fairness Hearing in order for his, her, or its objection to be considered.

16. The filing of an objection allows Class Counsel or Defendant's Counsel to notice such objecting Settlement Class Member for and take his, her, or its deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon location, and to seek any documentary

evidence or other tangible things that are relevant to the objection. Failure by an objecting Settlement Class Member to make himself, herself, or itself available for a deposition or to comply with expedited discovery requests may result in the Court striking the Settlement Class Member's objection and otherwise denying that Settlement Class Member the opportunity to make an objection or be further heard. The Court reserves the right to tax the costs of any such discovery to the objecting Settlement Class Member or the objecting Settlement Class Member's separate counsel should the Court determine that the objection is frivolous or is made for an improper purpose.

17. Any Settlement Class Member shall have the right to opt-out of the class and the settlement. To be effective, all requests for exclusion from the Settlement Class must: (1) be in writing, (2) fully comply with the provisions of the Class Notices, and (3) be sent to the mailing address identified in the Class Notice, post-marked by August 19, 2021. Any Settlement Class Member who does not submit a timely and valid request for exclusion from the Settlement Class that fully complies with the provisions of the Class Notices this Paragraph 17 shall be subject to and bound by the Settlement Agreement and every order or judgment entered concerning the Settlement Agreement.

18. Class Counsel shall file any application for an award of attorneys' fees and costs and for incentive payments to the Class Representatives ("Fee Application") no later than July 29, 2021, which shall be set for the same date as the Fairness Hearing.

19. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of final approval of the Agreement no later than July 29, 2021.

20. Counsel for the parties shall file any reply papers in support of final approval of the Agreement or the Fee Application and in response to any objections from Settlement Class Members by September 2, 2021.

21. The settlement on the terms and conditions of the Agreement filed concurrently with the parties' joint motion for preliminary approval is hereby preliminarily approved, but is not to be deemed an admission of liability or fault by DraftKings or by any other party or person, or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by DraftKings. The settlement is not a concession and shall not be used as an admission of any fault or omission by DraftKings or any other party or person.

22. Any Settlement Class Member may enter an appearance in the Action individually or through the counsel of their choice at their own expense. Other than (a) Settlement Class Members who enter an appearance and (b) Opt-Outs, the Class will be represented by Class Counsel.

23. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement which are not materially inconsistent with either this Order or the terms of the Agreement.

24. Summary of Dates and Deadlines:

Last day to disseminate class notice:	30 days after entry of the Preliminary Approval Order
Last day to file papers in support of final approval of the settlement and any application for attorneys' fees, expenses and incentive payments:	14 days after class notice is disseminated
Last day for class members to file comments and objections to the settlement or fee application:	35 days after class notice is disseminated

Last day for class members to opt-out of the settlement class:	35 days after class notice is disseminated
Last day for the parties to file replies to any class member objections:	14 days after the last day for class members to file comments and objections to the settlement or fee application
Fairness Hearing:	October 6, 2021

IT IS SO ORDERED.

DATED: June 15, 2021

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

APPROVED AS TO FORM:

DATED: June 15, 2021

NAPOLI SHKOLNIK PLLC

By: /s/ Hunter J. Shkolnik
Hunter J. Shkolnik
Attorneys for Class Representative Plaintiffs

DATED: June 15, 2021

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DATED: June 15, 2021

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DATED: June 15, 2021

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