

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JUSTIN DUFOE, on Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

DRAFTKINGS INC., JASON D. ROBINS,
JASON K. PARK, and MATTHEW KALISH,

Defendants.

Case No. 23-cv-10524-DJC

CLASS ACTION

Honorable Judge Denise J. Casper

**MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR
ATTORNEYS' FEES, LITIGATION EXPENSES,
AND SERVICE AWARD TO LEAD PLAINTIFF**

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Court-appointed Lead Counsel,¹ Kirby McInerney LLP and Local Counsel, Berman Tabacco, and additional counsel, Hannafan & Hannafan Ltd. and G. Dowd Law LLC respectfully submits this Memorandum of Law in Support of its application for (i) an award of attorneys' fees of 33 1/3% of the \$10,000,000 Settlement Amount; (ii) an award of unreimbursed litigation expenses not to exceed \$100,000;² and (iii) payment of \$50,000 to Lead Plaintiff Justin Dufoe.³

I. PRELIMINARY STATEMENT

Class Counsel initiated this high-risk, first-of-its-kind litigation in 2022. No prior precedent dealt with the question of whether “gamified” non fungible tokens (NFTs) are investment contracts or “securities” for which registration is required under federal and state law. Likewise, no prior precedent dealt with the question of whether an entity that facilitates the purchase and sale of such NFTs is an “exchange” obligated to register under federal and state law. Importantly, this case does not involve a prior regulatory action or a prior “corrective disclosure” by Defendants. Until this case was filed, Defendants’ dealings in NFTs were completely unchallenged.

After prevailing on a motion to dismiss and conducting important discovery, Class Counsel negotiated a hard-fought, contentious \$10,000,000 Settlement with Defendants. It will be distributed to eligible Class Members after deduction of Court-approved fees, expenses, and a service award. This substantial and certain recovery obtained for the Class was achieved through the efforts, skill, experience, and effective advocacy of Class Counsel over nearly three years. As

¹ Unless otherwise indicated, defined terms shall have the definitions set forth in the Stipulation of Settlement (“Settlement” or “Settlement Agreement”). The Settlement Agreement and its exhibits are attached as Exhibit 1 to the Declaration of Sarah E. Flohr in Support of Plaintiff’s Motion for Preliminary Approval of Settlement (“Flohr Decl.”) filed on February 26, 2025 (ECF No. 87-2). Citations to the Settlement Agreement are abbreviated as “§ __.”

² The total requested litigation expenses will be submitted with Lead Counsel’s reply submission on July 23, 2025.

³ Proposed orders will be submitted with Lead Counsel’s reply submission on July 23, 2025, after the July 9, 2025 deadline for Class Members to object or exclude themselves from the Settlement and after the July 21, 2025 deadline for Class Members to submit claims has passed.

explained in contemporaneously filed submissions, the effort of Class Counsel included:

- Conducting a comprehensive investigation of the events underlying the claims alleged in the Action, including, *inter alia*, a review of publicly available information regarding Defendants;
- Researching the applicable law with respect to Lead Plaintiff's claims and Defendants' anticipated defenses;
- Drafting and filing the Complaint and Amended Complaint;
- Successfully opposing Defendants' motion to dismiss the Amended Complaint;
- Extensively researching the law concerning the Class's claims and anticipated defenses as well as the facts surrounding Defendants' practices and the Class's experiences to thoroughly map out discovery and discovery requests;
- Requesting, negotiating for, and reviewing non-public documents in anticipation of the formal mediation of the Parties and the months-long settlement negotiations that followed;
- Preparing a detailed mediation statement, and participating in a contentious, arm's-length mediation process before a highly experienced mediator;
- Consulting with experts, including working with a damages expert to create the Plan of Allocation;
- Documenting the Settlement and extensively negotiating important aspects of the provisions contained therein; and
- Extensively communicating with Class members to ensure a thorough understanding of the Class Settlement.

See generally Declaration of Anthony F. Fata ("Fata Decl."), filed as Exhibit A to the contemporaneously filed Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation.

Class Counsel's efforts have been without compensation for its successful prosecution of this risky case, which required them to devote over 4,000 cumulative hours of billable time and risk more than \$50,000 in litigation expenses, to date. The recovery of any fees or expenses has

been wholly contingent upon the result achieved. In line with fees awarded in similar actions in this Circuit and throughout the Country, Class Counsel seeks a percentage fee of 33 1/3% of the Settlement Fund, a percentage which is amply justified and supported under existing precedent. The method of compensating counsel and the amount requested are acceptable in light of the substantial time and labor expended by Class Counsel; the substantial recovery obtained for the Class; the quality of Class Counsel's representation; the significant risks presented in the prosecution and settlement of this class action on a contingent basis; the magnitude and complexity of the Action; and the professional standing of both Class Counsel and Defendants' Counsel.

Class Counsel also seek payment of no more than \$100,000 in reasonable litigation expenses incurred in prosecuting the Action. The expenses requested are reasonable in amount and were necessarily incurred during the successful litigation of the case.

Finally, Lead Plaintiff seeks \$50,000 for his efforts representing the Class in the Action. The award is reasonable and should be granted in light of the time and effort expended by Lead Plaintiff in pursuing the claims on behalf of the Class.

The requested amounts were disclosed in the Court-approved Notices that were provided or made available to the Class.

II. BACKGROUND OF THE LITIGATION

To avoid repetition, Lead Plaintiff respectfully refers the Court to the contemporaneously filed Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation for a detailed discussion of the factual background and procedural history of the Action, the efforts taken by Class Counsel and Lead Plaintiff during the course of the Action, the risks of continued litigation, and other factors supporting the fee and expense request.

III. ARGUMENT

A. Class Counsel is Entitled to an Award of Attorneys' Fees from the Common Fund

The U.S. Supreme Court and the First Circuit have long recognized that “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995). Attorney fee awards from a “common fund” provide compensation that “encourages capable plaintiffs’ attorneys to aggressively litigate complex, risky cases like this one” and spread the costs of litigation “proportionately among those benefited by the suit.” *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007).

Private securities actions are “an essential supplement to criminal prosecutions and civil enforcement actions” brought by the U.S. Securities and Exchange Commission (“SEC”). *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Compensating counsel for bringing risky actions is essential, “[s]uch actions could not be sustained if plaintiffs’ counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class.” *Hicks v. Stanley*, No. 01 Civ. 10071, 2005 WL 275779, at *9 (S.D.N.Y. Oct. 24, 2005). Accordingly, Lead Counsel and Class Counsel are entitled to an award of attorneys’ fees from the Settlement Fund.

B. The Court Should Award Attorneys’ Fees Using the Percentage-of-the-Fund Method

The Supreme Court has endorsed the percentage method, stating that “under the ‘common fund doctrine’ . . . a reasonable fee is based on a percentage of the fund bestowed on the class.” *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The First Circuit has endorsed this method in common fund cases, noting that it is the prevailing method and that it “offers significant structural

advantages in common fund cases, including ease of administration, efficiency, and a close approximation of the marketplace.” *Thirteen Appeals*, 56 F.3d at 308. “Indeed, there is a clear consensus among federal and state courts that the percentage of fund approach is the more efficient, better reasoned, and effective method.” *Gordon v. Mass. Mut. Life Ins. Co.*, No. 13 Civ. 30184-MAP, 2016 WL 11272044, at *2 (D. Mass. Nov. 3, 2016) (internal citations omitted). The percentage method “appropriately aligns the interest of the class with the interests of the class counsel . . . is ‘less burdensome to administer than the lodestar method,’ . . . ‘enhances efficiency’ and does not create a ‘disincentive for the early settlement of cases.’” *Duhaime v. John Hancock Mut. Life Ins. Co.*, 989 F. Supp. 375, 377 (D. Mass. 1997) (quoting *Thirteen Appeals*, 56 F.3d at 307); see also *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (noting method “directly aligns with the interests of the class and its counsel”). For these reasons, courts assessing fee awards in securities fraud class actions generally apply the percentage method, with or without consideration of lodestar as a “cross-check.” See, e.g., *Hill v. State St. Corp.*, No. 09 Civ. 12146-GAO, 2015 WL 127728, at *17 (D. Mass. Jan. 8, 2015) (noting that lodestar cross-check is sometimes used but would not be “particularly helpful or appropriate” to assess fees in that securities fraud action).

The requested fee of 33 1/3% is both reasonable under the circumstances and well within the typical range of percentage fees awarded in the First Circuit and elsewhere. See, e.g., *In re G.E. ERISA Litig.*, No. 17 Civ. 12123-IT, ECF No. 385 at 1-2, (D. Mass. Mar. 8, 2024) (awarding 1/3 of \$61 million settlement fund, plus expenses); *Dahhan v. Oavascience, Inc.*, No. 17 Civ. 10511-IT, ECF No. 210 at 2 (D. Mass. Dec. 20, 2022) (awarding 33 1/3% of \$15 million settlement, plus expenses); *Machado v. Endurance Int’l Grp. Holdings, Inc.*, No. 15 Civ. 11775-GAO, 2019 WL 4409217, at *1 (D. Mass. Sept 13, 2019) (awarding 33 1/3% of \$18.65 million settlement, plus

expenses); *Crandall v. PTC Inc.*, No. 16 Civ. 10471-WGY, 2017 U.S. Dist. LEXIS 217581, at *16 (D. Mass. July 14, 2017) (awarding 33 1/3% of \$2.1 million settlement, plus expenses); *Roberts v. TJX Cos., Inc.*, No. 13 Civ. 13142-ADB, 2016 WL 8677312, at *13 (D. Mass. Sept. 30, 2016) (awarding 33 1/3% of \$4.75 million settlement).

C. Factors Considered by Courts in the First Circuit Confirm that the Requested Fee is Fair and Reasonable

While “[t]he First Circuit has not endorsed a specified set of factors to be used in determining whether a fee request is reasonable,” *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 79 (D. Mass. 2005), courts in this Circuit consider several factors when considering an award of attorneys’ fees, including: (1) the fund size and class size; (2) the skill and experience of counsel; (3) the complexity and length of the litigation; (4) the risk of non-payment; (5) the amount of time counsel devoted to the case; (6) similar case awards; (7) public policy considerations; and (8) whether lead plaintiff supports the requested fee and the reaction of the class. *Hill*, 2015 WL 127728, at *17 (citing *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 458 (D.P.R. 2011)); *In re TJX Cos. Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395, 401 (D. Mass. 2008) (considering “the reaction of the class members to the settlement and proposed attorneys’ fees” as one of the relevant factors). All these factors weigh strongly in favor of finding the requested fee award of 33 1/3% of the common fund reasonable.

1. The Amount of the Recovery and the Number of Class Members Who Will Benefit From the Settlement Support the Requested Fee

Courts consistently have recognized that the result achieved is one of the most important factors to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“[T]he most critical factor is the degree of success obtained”); *see also Puerto Rico Cabotage*, 815 F. Supp. 2d at 458 (“[T]he net dollars and cents results achieved by counsel for their clients is

often the most influential factor in assessing the reasonableness of any attorneys' fee award.”). The Settlement Fund of \$10,000,000 was obtained through the diligent efforts of Class Counsel without the risk of trial and appeals.

Indeed, one of the distinct advantages of the percentage of the fund method is that it directly incorporates the value of the recovery obtained into the calculation of the fee. *See Duhaime*, 989 F. Supp. at 377 (noting advantage of percentage method is that “it focuses ‘on result, rather than process, which better approximates the workings of the marketplace’” and “the greater the value secured for the class, the greater the fee earned by class counsel”). Here, the Settlement is in all cash and is not dependent upon the number of claims made. §§ G, I.1(uu), II.2(b)(ii). There is no reversion to Defendants. § II.2(b)(ii). Members of the Class will receive substantial compensation that was totally uncertain when the case began. Fata Decl. ¶ 42.

In addition to the \$10 million Settlement, this litigation directly led to other substantial monetary benefits to Class members. On July 2, 2024, the Court denied Defendant's motion to dismiss the Amended Complaint in its entirety. ECF No. 60. On July 29, 2024, Defendants stated that the motion to dismiss ruling had created legal uncertainty with respect to its NFTs. Fata Decl. ¶ 26. On July 30, 2024, Defendant publicly announced its decision to discontinue its NFT Marketplace “due to recent legal developments.” *Id.* ¶ 27. In connection with closing the Marketplace, Defendant offered cash payments to Class Members who still held DraftKings NFTs. *Id.* Class Counsel was not consulted on the NFT Marketplace closure decision or the method by which Defendants distributed the funds, but the litigation was cited by Defendants as the cause for the payments. *Id.* ¶ 32. The NFT Marketplace closure payments were substantial, although the precise amount has been designated as confidential by Defendants.⁴ Although the requested fee

⁴ These closure payments were taken into account in the Plan of Allocation. Fata Decl. ¶ 47. In particular, they will be deducted when determining the recipients recognized net loss (or gain).

award is reasonable as a percentage of the Settlement Fund without considering the NFT Marketplace closure payments to Class Members, the Court should consider them as a relevant factor. Indeed, under a “catalyst theory,” federal courts have recognized relief external to a judgement or settlement can be considered in assessing attorney’s fees where the “the lawsuit was a ‘causal, necessary, or substantial factor in obtaining the result’ plaintiff sought” and “‘it is more probable than not that the opposing party would not have performed the desired act absent the lawsuit.’” *Kifafi v. Hilton Hotels Ret. Plan*, 999 F. Supp. 2d 88, 96 (D.D.C. 2013) (internal citations omitted). Class Counsel do not directly claim the “catalyst theory” here, but they do respectfully submit that these additional, significant sums which were paid to Class members as NFT Marketplace closure payments render the fee request here more than reasonable.

2. The Skill and Experience of Counsel Support the Requested Fee

The prosecution and management of a complex national class action requires unique legal skills and abilities. As demonstrated by its firm resume, Kirby McInerney has experienced and skilled practitioners in the securities class action field and has a long and successful track record in such cases. *See* Kirby McInerney Firm Resume, attached as Exhibit D to the Declaration of Patrick T. Egan in Support of Justin Dufoe’s Motion for Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel filed May 8, 2023 (ECF No. 24-4). Kirby McInerney’s willingness and ability to undertake complex and difficult cases such as this, and commitment to the Action, added valuable leverage to the settlement negotiations. *See Hill*, 2015 WL 127728, at *17 (noting plaintiffs’ counsel’s “experience and expertise contributed to the achievement of the Settlement”); *see also Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 250 (D. Mass. 2015), *aff’d*, 809 F.3d 78 (1st Cir. 2015) (finding skill of lawyers “nationally known for and greatly experienced in representing plaintiffs” in class action lawsuits weighed in favor of fee award).

Kirby McInerney’s attorneys include longtime practitioners of securities law. Anthony F. Fata, the lead Kirby McInerney partner in this Action, has taught securities law courses as an adjunct professor, including detailed examinations of the *Howey* test for investment contracts—which was the core issue in this case. Kirby McInerney was ably assisted by Berman Tabacco—whose attorneys also have decades of experience as securities law practitioners. In addition, Class Counsel included Hannafan & Hannafan, Ltd., whose primary attorney on this case, Blake T. Hannafan, has decades of experience on the plaintiff and defense side of securities litigation, as well as G. Dowd Law, LLC, whose primary attorney on this case worked extensively for decades in the securities and other financial markets before becoming an attorney, and who has testified as an expert and authored legal publications concerning financial markets and digital assets. Simply put, the experience of Class Counsel in this space put them in an exceptional position to achieve the result obtained. And they worked efficiently and in a closely coordinated manner to press the claims and issues forward. The quality of the work performed by Class Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. *See In re Xcel Energy, Inc., Sec., Derivative & “ERISA” Litig.*, 364 F. Supp. 2d 980, 995 (D. Minn. 2005) (“Defendants’ attorneys . . . consistently put plaintiffs’ counsel through the paces. All counsel consistently demonstrated considerable skill and cooperation to bring this matter to an amicable conclusion.”). Here, throughout the Action, Defendants have been represented by highly experienced lawyers from Sullivan & Cromwell LLP, a global and well-respected law firm known for its vigorous defense in similar cases, as well as Wilmer Cutler Pickering Hale and Dorr LLP.

Notwithstanding this formidable opposition, Class Counsel coordinated, developed, and prosecuted a case that led to a favorable outcome on the core legal issues and that was sufficiently strong to persuade a significant public company and its officers, represented by defense firms who

are among the best, to settle the Action on terms highly favorable to the Class. *See Schwartz v. TXU Corp.*, No. 02 Civ. 2243, 2005 WL 3148350, at *30 (N.D. Tex. Nov. 8, 2005) (“The ability of plaintiffs’ counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of the representation.”). Accordingly, this factor further supports the requested attorneys’ fees.

3. The Complexity and Duration of the Litigation Support the Requested Fee

Courts have long recognized that securities class actions are notoriously complex and difficult to prove, and this case was no exception. *See, e.g., Redwen v. Sino Clean Energy, Inc.*, No. 11 Civ. 3936, 2013 WL 12303367, at *6 (C.D. Cal. July 9, 2013) (“Courts experienced with securities fraud litigation routinely recognize that securities class actions present hurdles to proving liability that are difficult for plaintiffs to clear”) (internal citations omitted); *see also In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02 Civ. 3400, 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (recognizing securities litigation is “notably difficult and notoriously uncertain”) (internal citations omitted); *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132, 2014 WL 1883494, at *16 (S.D.N.Y. May 9, 2014), *aff’d sub nom. Arbuthnot v. Pierson*, 608 F. App’x 73 (2d Cir. 2015) (“the complex and multifaceted subject matter involved in a securities class action such as this supports the [33%] fee request”).

As stated at the outset, this case involved the nascent issue of whether the NFTs at issue—a substantial portion of which were “gamified”—were in fact “investment contracts” and thus “securities.” Many complex issues in this litigation set this case apart from a “typical” securities class action. Fata Decl. ¶ 17. Among other things, litigation regarding NFTs as securities is a relatively new issue without substantial precedent and, therefore, increased the risk of proceeding. In addition, Class Counsel needed to develop a thorough analytical framework for assessing the NFTs under the *Howey* test for “investment contracts” and DraftKings role as an “exchange.” *Id.*

In addition, a substantial portion of the NFTs at issue were “gamified,” meaning they could be placed in prize competitions. This gamification would be the subject of vigorously asserted “utility” defenses by Defendants. It directly affected the complexity and risk of proving the elements under the *Howey* test for investment contracts. *Id.* Class Counsel also had to develop a thorough understanding of DraftKings NFTs and the platform’s functioning. *Id.* ¶ 16.

Before filing the original complaint, Class Counsel had to scour information provided by Lead Plaintiff and other publicly data to determine whether to proceed. Fata Decl. ¶ 15. Class Counsel’s investigation continued, leading to the filing of the comprehensive Amended Complaint. *Id.* ¶¶ 16-19. A formidable motion to dismiss was filed, which Class Counsel successfully opposed. *Id.* ¶¶ 20-22. This Court issued a thorough opinion detailing its analysis of the legal and factual issues. ECF No. 60. With that, Class Counsel developed a comprehensive discovery plan and propounded targeted discovery to Defendants and third parties. Fata Decl. ¶ 30. The Court set a tight schedule, with class certification discovery to be completed by Fall 2024, and class certification to be briefed commencing December 2024. *Id.* ¶ 25.

This Court’s ruling on the motion to dismiss set the stage for productive settlement discussions contemporaneous with discovery, in advance of drafting a mediation statement that set out Lead Plaintiff’s strongest evidence based on the documents produced and interviews obtained. *Id.* ¶ 37. Defendants also made compelling arguments in connection with their motion to dismiss and in their mediation statement, including arguments that their liability under the Securities Act did not extend to secondary transactions and that as the issuer of the alleged securities is not subject to registration requirements. *Id.* These and many other matters required substantial attention by Class Counsel, who needed to analyze the factual record and relevant law carefully. *Id.*

Accordingly, the magnitude and complexity of this Action support the conclusion that the

requested fee is fair and reasonable.

4. The Risk of Non-Payment was Extremely High in this Case

In a case undertaken on a contingency fee basis, the risk of litigation is a key factor in determining an appropriate fee award. *See Roberts*, 2016 WL 8677312, at *13 (“most importantly, Class Counsel took the case on a contingency fee basis, assuming significant risk in litigating the case”); *see also Hill*, 2015 WL 127728, at *18 (considering “contingency risk in awarding attorneys’ fees” when counsel “litigated the Action on a fully contingent basis and were exposed to the risk that they might obtain no compensation for their efforts on behalf of the class”). Where, as here, Class Counsel “undertook this action on a contingency basis and faced a significant risk of non-payment, this factor weighs more heavily in favor of rewarding litigation counsel.” *Medoff v. CVS Caremark Corp.*, No. 09 Civ. 554, 2016 WL 632238, at *9 (D.R.I. Feb. 17, 2006).

This case is novel. As discussed above, it is the first unregistered securities involving “gamified” NFTs and one of the only challenging a party in DraftKings’ position as an “unregistered exchange.” From the outset of this case in 2023, it was apparent that Class Counsel faced formidable challenges to establishing liability and damages on behalf of the Class. Fata Decl. ¶ 42. Significant risk existed that the case could be litigated for many years but result in no recovery for the Class and no payment for Class Counsel. Specifically, Class Counsel faced substantial risks and uncertainties in, among other things, proving that the NFTs at issue satisfied the elements of the *Howey* Test, Defendants’ liability for secondary market transactions, and establishing the total amount of damages. *Id.* There was also a significant risk that Defendants could successfully challenge class certification because this was not a typical “10b-5” case, and there is very little precedent for class certification in the unregistered securities and exchange claim context. *Id.* ¶¶ 43. In the absence of a settlement, the Class faced a substantial litigation risk with no guarantee of a greater, or any recovery whatsoever. *Id.* Despite these very real risks, Class Counsel worked

vigorously to achieve a significant result for the Class. Under these circumstances, the requested fee is fully appropriate.

5. The Amount of Time Devoted to the Litigation by Class Counsel Supports the Requested Fee

The extensive time and effort expended by Class Counsel in prosecuting the Action and achieving the Settlement, with investigation beginning in 2022, also establishes that the requested fee is justified and reasonable. *See Hill*, 2015 WL 127728, at *19. Class Counsel engaged in substantial effort developing the Class’s claims and rebutting Defendants’ assertions. Fata Decl. ¶¶ 15-25, 29-37. While a lodestar cross-check is not required, *Hill*, 2015 WL 127728, at *17, “a lodestar analysis may be performed as a cross-check to ensure that the percentage award is fair and reasonable.” *Gordon*, 2016 WL 11272044, at *2. Courts considering lodestar frequently note that lodestar multipliers of 1.0 to 4.0 are generally considered appropriate. *See, e.g., Relafen*, 231 F.R.D. at 82 (approving settlement with 2.02 lodestar multiplier). When the lodestar is used as a cross-check, “the focus is not on the ‘necessity and reasonableness of every hour’ of the lodestar, but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.” *Tyco*, 535 F. Supp. 2d at 270 (quoting *Thirteen Appeals*, 46 F.3d at 307). In this case, the lodestar method, whether used directly or as a cross check on the percentage method, strongly demonstrates the reasonableness of the requested fee.

To date, Class Counsel spent, in cumulative, over 4,209.75 hours of attorney and other professional support staff prosecuting the litigation through June 20, 2025. *See* Fee Declarations of Kirby McInerney (“KM Decl.”), Berman Tabacco, Hannafan & Hannafan, and G. Dowd Law attached hereto as Exhibits A-D. Based on counsel’s historic rates, their collective lodestar through

June 20, 2025, is \$3,403,362. KM Decl. ¶ 15.⁵ A \$3.33 million fee therefore represents a negative multiplier of 0.98 to Class Counsel’s lodestar. *Id.* ¶ 16. The fact that counsel are seeking fees below the amount of their lodestar supports the reasonableness of the requested fee. *See In re Health Ins. Innovations Sec. Litig.*, No. 17 Civ. 2186, 2021 WL 1341881, at *12 (M.D. Fla. Mar. 23, 2021) (A “negative lodestar multiplier . . . further supports the reasonableness of the requested fee”); *see also In re Flag Telecom Holdings*, 2010 WL 4537550, at *26 (“Lead Counsel’s request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request.”). The substantial time and effort devoted to this case was critical in obtaining the favorable result achieved by the Settlement and confirms that the fee request here is reasonable.⁶

Importantly, Class Counsel has submitted their lodestar at “historic” rates. It has become common to submit lodestar at “current” rates, which results in an increase in lodestar. *See Schutter v. Tarena Int’l, Inc.*, No. 21 Civ. 3502, 2024 WL 4118465, at *14 (E.D.N.Y. Sept. 9, 2024) (discussing “the use of current rates to calculate lodestar figures in securities litigation”). If Class Counsel’s “current rates” were applied to all their time in the case, they would receive an even more negative multiplier.

6. Awards in Similar Cases Support the Requested Fee

Class Counsel’s requested fee of 33 1/3% of the Settlement Fund is well within the range of fee awards in class action cases in this Circuit and elsewhere. *See* § III.B; *see also Esposito v. American Rental Associates Holdings, Inc., et al.*, No. 16 Civ. 11797-ADB, ECF No. 106 (D. Mass.

⁵ The Supreme Court and courts in this Circuit have approved the use of current rates in calculating the lodestar figure as a means of compensating for the delay in receiving payment and the loss of interest. *Mo v. Jenkins by Agyei*, 491 U.S. 274, 283-84 (1989); *Cohen v. Brown Univ.*, No. 99 Civ. 0485, 2001 WL 1609383, at *1 (D.N.H. Dec. 5, 2001).

⁶ The legal work on this Action will not end with the Court’s approval of the proposed Settlement. Additional hours and resources continue to be expended assisting Class Members with their Proof of Claim and Release forms, overseeing the claims process, and responding to Class Member inquiries. KM Decl. ¶ 18.

June 15, 2018) (awarding lead plaintiff’s counsel attorneys’ fees equal to 33% of the Settlement fund, with interest, and out of pocket litigation expenses); *Mohanty v. AVID Technology, Inc., et al.*, No. 16 Civ. 12336-IT, ECF No. 69 (D. Mass. May 2, 2018) (awarding attorneys’ fees equal to 33 1/3% and litigation costs, with interest earned on both amounts); *Luna v Carbonite, et al.*, No. 19 Civ. 11662-LTS, ECF No. 193 (D. Mass. May 15, 2024) (awarding attorneys’ fees equal to 33 1/3% of the settlement plus expenses together with interest earned); *Dahhan v. Ovascience Inc., et al.*, No. 17 Civ. 10511-IT (D. Mass. Dec. 20, 2022) (awarding attorneys’ fees of 33 1/3% of the settlement fund plus litigation expenses); *Miller v. Sonus Networks, Inc., et al.*, No. 18 Civ. 12344-GAO (D. Mass. Apr. 24, 2024) (awarding 33 1/3% of settlement fund in attorneys’ fees); *Crandall v. PTC Inc., et al.*, No. 16 Civ. 10471-WGY (D. Mass. July 14, 2017) (awarding attorneys’ fees of 33 1/3% settlement fund plus litigation expenses). Thus, this factor strongly supports the reasonableness of the requested fee.

7. Public Policy Considerations Support the Requested Fee

Public policy supports rewarding counsel for prosecuting securities class actions, especially where, as here, “counsel’s dogged efforts—undertaken on a wholly contingent basis—result in satisfactory resolution for the class.” *Medoff*, 2016 WL 632238, at *9 (citing *Tyco*, 535 F. Supp. 2d at 270). As the Supreme Court has emphasized, private securities actions such as this provide “a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action.” *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (internal citation omitted). Here, there was no prior regulatory enforcement action or other litigation challenging Defendants’ conduct. This case was the first and only to do so. Without this case, the Class would be receiving nothing.

8. The Endorsement of Lead Plaintiff and the Reaction of the Class Support the Requested Fee

Lead Plaintiff was appointed pursuant to the relevant provisions of the PSLRA. *See* Order Appointing Lead Plaintiff and Approving Selection of Lead Counsel dated June 6, 2023 (ECF No. 32). As set forth in his declaration, Lead Plaintiff carefully oversaw the prosecution and resolution of this Action and had a sound basis for assessing the reasonableness of the fee request. *See* Declaration of Lead Plaintiff Justin Dufoe (“Dufoe Decl.”), filed contemporaneously with this Motion.

The reasonableness of the requested fee is supported by the reaction of the Class. *See, e.g., Hill*, 2015 WL 127728, at *19 (“The endorsement of the Lead Plaintiffs and the favorable reaction of the class both support approval of the requested fees.”). Pursuant to the Preliminary Approval Order, the Claims Administrator has disseminated over 1,554,528 Direct Notices. *See* Declaration of Kathleen M. Brauns Regarding Implementation of the Settlement Notice Program (“Brauns Declaration” or “Brauns Decl.”) attached to the Final Approval Brief as Exhibit B ¶ 6. As of June 23, 2025, the A.B. Data has received 13,957 claims. *Id.* ¶ 17. Only two (2) members of the Class have objected (one to the proposed Settlement, Plan of Allocation, and Attorney’s Fees and the other only to the proposed Plan of Allocation) and only three (3) members have sought exclusion. *Id.* ¶¶ 20-21. The sole objection to the request for attorneys’ fees asks the Court to (absent a finding of “extraordinary complexity or effort”) limit the fee award to 20% (\$10 million) of the objector’s proposed \$50 million settlement. ECF No. 93 at 4. This positive reaction from the Class supports the requested fee. *See, e.g., Bezdek*, 79 F. Supp. 3d at 351 (finding “overwhelmingly positive” reaction of the class and “quite low number of opt-outs” weighed in favor of requested fee).

In sum, Class Counsel respectfully submits that the 33 1/3% fee is reasonable here.

D. The Expenses Incurred Are Reasonable and Were Necessary to Achieve the Benefit Obtained

Class Counsel's fee application includes a request for payment of litigation expenses that were reasonable and necessary to the prosecution of the Action. Attorneys who create a common fund for the benefit of a class are entitled to payment of reasonable litigation expenses from the fund. *See, e.g., In re Fidelity/Micron Sec. Litig.*, 167 F.3d 735, 737 (1st Cir. 1999) ("law firms are not eleemosynary institutions, and lawyers whose efforts succeed in creating a common fund for the benefit of the class are entitled not only to reasonable fees, but also to recover from the fund, as a general matter, expenses, reasonable in amount, that were necessary to bring the action to a climax"); *Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21 Civ. 10090-WGY, 2023 WL 3679031, at *3 (D. Mass. Mar. 31, 2023). In the Notice, the Class was advised that Class Counsel would ask the Court for an award of litigation expenses not to exceed \$100,000.00. Long-Form Notice at 13.

Class Counsel's litigation expense request is reasonable and should be approved. The Fee Declarations submitted herewith provide itemized schedules of the expenses incurred by each firm, to date. Exs. A-D. The expenses listed on those schedules are ones that are necessarily incurred in litigation and routinely charged to clients billed by the hour by each firm. Class Counsel will submit a final litigation expense total with its reply brief, which is due no later than July 23, 2025.

Class Counsel respectfully submits that their expenses are reasonably and necessarily incurred in prosecuting this action and should be awarded from the Settlement Fund. *See, e.g., In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) ("The expenses incurred—which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review—are the type for which the paying, arms' length market reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund") (internal citations omitted); *see also Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 118,

2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) (“Here, Plaintiffs’ Counsel seek reimbursement for expenses such as mediation fees, expert witness fees, electronic legal research, photocopying, postage, and travel expense, each of which is the type the paying, arms’ length market reimburses attorneys. . . . As such, these expenses shall be reimbursed.”); *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 454 (E.D. Cal. 2013) (noting “travel, mediation fees, photocopying . . . delivery and mail charges” are “routinely reimbursed”). The sole objector to the Settlement raises no specific reasoning for objecting to the expense award.

E. The Requested Award to Lead Plaintiff is Reasonable

The Class was also advised that Lead Plaintiff would ask the Court for an award not to exceed \$50,000 in connection with his participation in the Action. Bruns Decl., Ex. A-C. The PSLRA specifically provides that an “award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class” may be made “to any representative party serving on behalf of a class.” 15 U.S.C. § 78u-4(a)(4); *see also In re Evergreen Ultra Short Opportunities Fund Sec. Litig.*, No. 08 Civ. 11064–NMG, 2012 WL 6184269, at *2 (D. Mass. Dec. 10, 2012) (reimbursing lead plaintiffs a total of \$54,626 when they had “worked closely with counsel throughout the case, communicated with counsel on a regular basis, reviewed and provided input with respect to counsel’s submissions, provided information, produced documents, and participated in settlement discussions”); *Ahearn v. Credit Suisse First Bos. LLC*, No. 03 Civ. 10956-JLT, ECF No. 82 at 5-6 (D. Mass. June 7, 2006) (awarding total of \$35,000 to two lead plaintiffs). The rationale for permitting payment for services of a lead plaintiff is clear from the congressional record: “These provisions are intended to increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions

of plaintiff's counsel." H.R. Conf. Reg. No. 104-369 at 32 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, at 731 (1995).

Courts in this Circuit analyze the following factors "when determining the appropriateness of an incentive award: '1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.'" *Carlson v. Target Enter., Inc.*, 447 F. Supp. 3d 1, 5 (D. Mass. 2020) (quoting *Swack v. Credit Suisse First Boston, LLC*, No. 02. Civ. 11943-DPW, 2006 WL 2987053, at *4 (D. Mass. Oct. 4, 2006)); *see also Sasoon v. Postmates, Inc.*, No. 17 Civ. 11397-JCB, 2020 WL 8092224, at *4 (D. Mass. May 15, 2020). "An incentive award is particularly appropriate where class representatives have attracted significant media attention and notoriety as a result of the litigation, and experienced personal difficulties as a result." *Weeks v. Kellogg Co.*, No. 09 Civ. 08102, 2013 WL 6531177, at *36 (C.D. Cal. Nov. 23, 2013). Even minor media attention can justify an increased incentive award. *Marshall v. Northrop Grumman Corp.*, No. 16 Civ. 6794, 2020 WL 5668935, at *10 (C.D. Cal. Sept. 18, 2020) (noting that the case had "garnered media attention" and "[t]his factor weighs slightly in favor of granting the incentive awards."); *In re Am. Apparel, Inc. S'holder Litig.*, No. 10 Civ. 06352, 2014 WL 10212865, at *31 (C.D. Cal. July 28, 2014) (because the case attracted media attention, the court "concludes that this factor weighs in favor of authorizing [the] requested incentive award.").

As set forth in his declaration, Lead Plaintiff has actively and effectively fulfilled his obligations as a representative of the Class, complying with the demands placed upon him and providing valuable assistance to Class Counsel throughout the Action. Dufoe Decl. ¶ 6; KM Decl.

¶¶ 19-23. Lead Plaintiff was actively involved in this case from start to finish. Lead Plaintiff located and produced documents to assist with drafting and filing the Complaint and Amended Complaint, reviewed pleadings and Lead Plaintiff's opposition to Defendants' Motion to Dismiss, reviewed filings provided by Class counsel, discussed case strategy with Class Counsel, discussed settlement status, and was consulted during the mediation process. *Id.*

In recognition of Lead Plaintiff's time and effort expended for the benefit of the Class, Class Counsel respectfully requests an award to Lead Plaintiff in the amount of \$50,000, which represents his time and effort spent in the investigation and prosecution of the Action over the last three years. This amount is reasonable and fully justifiable under the PSLRA based on Lead Plaintiff's extensive involvement in the Action and the amount of time devoted for the benefit of the Class. Indeed, this Court has granted exceptional service awards in recent antitrust cases. *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 248 (D. Mass. 2022) (Casper, J.) (approving \$50,000 service awards for each of the two class representatives); *In re Solodyn Antitrust Litig.*, No. 14 MDL 2503, 2018 WL 7075881, at *2 (D. Mass. July 18, 2018) (Casper, J.) (approving \$90,000 service awards for each of the two class representatives); *In re Asacol Antitrust Litig.*, No. 15 Civ. 12730, 2017 WL 11475275, at *4 (D. Mass. Dec. 7, 2017) (Casper, J.) (approving \$100,000 service awards for each of the five class representatives). Lead Counsel and Lead Plaintiff respectfully submit that this award should be granted.

IV. CONCLUSION

Based on the foregoing, Lead Plaintiff respectfully requests that the Court enter an Order: (i) awarding Class Counsel fees in the amount of 33 1/3% of the Settlement Fund, plus accrued interest; (ii) an award of litigation expenses not to exceed \$100,000, plus accrued interest; and (iii) awarding Lead Plaintiff \$50,000 in connection with his representation of the Class.

Dated: June 25, 2025

Respectfully submitted,

KIRBY McINERNEY LLP

/s/ Anthony F. Fata

Anthony F. Fata (*pro hac vice*)

Cormac Broeg (*pro hac vice*)

211 West Wacker Drive, Suite 550

Chicago, Illinois 60606

312.767.5180

afata@kmlp.com

cbroeg@kmlp.com

Sarah E. Flohr (*pro hac vice*)

250 Park Avenue, Suite 820

New York, New York 10177

212.371.6600

sflohr@kmlp.com

Lead Counsel for Lead Plaintiff Dufoe

BERMAN TABACCO

Patrick T. Egan (BBO #637477)

Justin N. Saif (BBO #660679)

1 Liberty Square

Boston, Massachusetts 02109

617.542.8300

pegan@bermantabacco.com

jsaif@bermantabacco.com

Local Counsel for Lead Plaintiff Dufoe

HANNAFAN & HANNAFAN, LTD.

Blake T. Hannafan (*pro hac vice*)

181 West Madison Street, Suite 4700

Chicago, Illinois 60602

312.527.0055

bth@hannafanlaw.com

Additional Counsel for Lead Plaintiff Dufoe

G. DOWD LAW LLC

George Dowd (*pro hac vice*)

181 West Madison Street 47th Floor

Chicago, IL 60602

312.854.8300

george.dowd@gdowd.law

Additional Counsel for Lead Plaintiff Dufoe

CERTIFICATE OF SERVICE

I, Anthony F. Fata, hereby certify that on June 25, 2025, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using CM/ECF. Copies of the foregoing document will be served upon interested counsel via transmission of Notices of Electronic Filing generated by CM/ECF.

Dated: June 25, 2025

/s/ Anthony F. Fata
Anthony F. Fata

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JUSTIN DUFOE, on Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

DRAFTKINGS INC., JASON D. ROBINS,
JASON K. PARK, and MATTHEW KALISH,

Defendants.

Case No. 23-cv-10524-DJC

CLASS ACTION

**DECLARATION OF KIRBY MCINERNEY LLP IN SUPPORT OF LEAD COUNSEL’S
MOTION FOR ATTORNEYS’ FEES, LITIGATION EXPENSES,
AND A SERVICE AWARD**

I, Anthony F. Fata, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm Kirby McInerney LLP (“Kirby McInerney”) and am counsel of record for Lead Plaintiff Justin Dufoe in the above-captioned action. I am admitted to practice *pro hac vice* before this Court.

2. I submit this Declaration in support of Lead Counsel’s Motion for Attorneys’ Fees, Litigation Expenses, and a Service Award to Lead Plaintiff, in connection with the representation of the Class. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

3. Class Counsel pursued this Action on a contingency basis, risking the substantial investment of time and money without any guarantee of recovery.

4. Class Counsel have maintained contemporaneous time records for the duration of this litigation.

5. As of June 20, 2025, these time records indicate that attorneys and paralegals at Kirby McInerney have expended 2,329.30 hours in this Action. *See* Ex. A-1, Kirby McInerney

Lodestar Chart.

6. When hours worked by each attorney and paralegal in this Action are multiplied by their respective hourly billing rates, this calculation results in a cumulative lodestar of \$1,655,360. *See* Ex. A-1.

7. Time spent by attorneys and paralegals who worked fewer than 10 hours on the case has been omitted from the fee calculation.

8. The 2,329.30 hours expended by Lead Counsel in this litigation include those spent: investigating the legal and factual grounds for the Class's claims; drafting and amending the pleadings; engaging in motion practice, such as briefing in full Defendants' motion to dismiss; conducting formal and informal discovery relating to the scope of the class size and Class damages in advance of mediation; drafting and preparing Lead Plaintiff's mediation brief; and negotiating settlement terms with counsel for Defendants, both within and outside the context of preparing for and appearing at the all-day mediation session conducted before Jed D. Melnick, Esq. and Orna Artal, Esq. of JAMS; follow-up communications with counsel for Defendants and the mediators; developing the notice and claims administration plan; developing and working with experts on the plan of allocation; and communicating with class members with questions and other issues relating to the Settlement. These efforts were critical to securing the substantial benefit afforded to the Class under the Settlement Agreement.

9. As of June 20, 2025, Kirby McInerney has incurred \$41,451.46 in advanced costs and expenses in the course of pursuing this litigation. *See* Ex. A-2. These costs and expenses are comprised primarily of mediation fees, legal research costs, and travel expenses. *Id.*

10. These expenses were recorded contemporaneously by Kirby McInerney and represent an accurate record of costs and expenses incurred in connection with the prosecution of

this Action.

11. Lead Counsel, Liaison Counsel and other Class Counsel worked cooperatively and efficiently throughout the course of this litigation.

12. All Class Counsel bring skills and experience to this Action that directly benefited the Class.

13. Lead Counsel directed workflow to eliminate unnecessary duplication of effort and to ensure the maximum possible recovery for the Class.

14. All Class Counsel submitted to Lead Counsel time and expense reports on a monthly or regular basis so that Lead Counsel could monitor the lodestar of each firm at various stages of the litigation and raise questions concerning time submissions when necessary.

15. When hours worked by each attorney and paralegal in this Action are multiplied by their respective hourly billing rates in existence at the time the work was performed, this calculation results in a cumulative lodestar of \$3,403,362.

16. A 33 1/3 percent fee on the \$10 million Settlement results in a fee of approximately \$3.33 million. That fee, when divided by Class Counsel's actual lodestar at historical rates, results in a negative multiplier of 0.98.

17. The hours worked by Lead Counsel in this Action listed under the "Settlement" category in Ex. A-1 includes not only contentious settlement communications with Defendants and the drafting of the Settlement Agreement, but also extensive and ongoing communications with Class members regarding the Settlement, the Plan of Allocation, and claims administration issues.

18. The legal work on this Action will not end with the Court's approval of the proposed Settlement. Additional hours and resources continue to be expended assisting Class Members with

their Proof of Claim and Release forms, overseeing the claims process, and responding to Class Member inquiries.

19. Lead Plaintiff Justin Dufoe willingly contributed his time and efforts to the service of the Class. Without Mr. Dufoe's assistance in initiating, investigating and filing this Action, and his participation in the discovery and settlement process, the substantial benefit afforded to the Class under the Settlement Agreement would not have been possible.

20. Lead Plaintiff has actively participated in the Action since the very beginning. Lead Plaintiff substantially assisted Class Counsel's extensive investigation both before and after the drafting of the initial complaint filed in March 2023. Throughout the Action, Lead Plaintiff has assisted Class Counsel in investigating the claims at issue and drafting the respective complaints and documents. Lead Plaintiff provided voluminous documents and significant information to Class Counsel concerning the operation of the DraftKings Marketplace, DraftKings' interaction with NFT counterparties, and related matters.

21. Lead Plaintiff always stood ready, willing and able to answer specific factual questions regarding DraftKings' practices. Lead Plaintiff also affirmatively raised issues for Lead Counsel to investigate and provided information and documents concerning these subjects. For example, during the course of this litigation, I received more than 430 email messages from Lead Plaintiff that focused on various aspects of this case and provided important information or attached important documents.

22. Lead Plaintiff has consulted with Class Counsel regarding communications he received when the DraftKings Marketplace was shut down. Lead Plaintiff was also the subject of communications on public forums concerning NFTs. Consistent with awards regularly granted under similar circumstances, Lead Plaintiff should be compensated for his effort supporting the

litigation and assisting Class Counsel in achieving a strong settlement on behalf of the Class, as well as the reputational risks he undertook in bringing and maintaining this Action.

23. Lead Plaintiff's efforts were extremely helpful in pleadings, motion practice, discovery planning, settlement negotiations, and post-settlement efforts.

24. Lead Plaintiff's interests are not antagonistic to members of the Settlement Class. Moreover, Lead Plaintiff has demonstrated his commitment to pursuing this Action on behalf of the Settlement Class and has achieved a favorable result, which does not favor any member of the Settlement Class at the expense of others.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 25, 2025 in Chicago, Illinois.

/s/ Anthony F. Fata
Anthony F. Fata

EXHIBIT A-1

Dufoe v. DraftKings Inc.
23-cv-10524 (DJC)

EXHIBIT I
TIME SUMMARY

Firm Name: Kirby McInerney LLP

Reporting Period: Inception-June 20, 2025

Categories: (1) Case Assessment/Complaint (6) Case Management / Strategy
(2) Motion Practice/Legal Research (7) Word Processing
(3) Discovery/Factual Research (8) Paralegal
(4) Court Appearance/Trial (9) Clerk
(5) Settlement* (22) Document Review

NAME	1	2	3	4	5	6	7	8	9	22	Hourly Rate	Total Hours	Total Lodestar at Historical Rates
Partners													
Anthony Fata (2022)	43.50	6.80									\$950	50.30	\$47,785.00
Anthony Fata (2023)	54.20	175.30	10.80	20.00	0.50	5.10					\$1,100	265.90	\$292,490.00
Anthony Fata (2024, 2025)		87.00	31.70	9.00	281.20	5.10					\$1,200	414.00	\$496,800.00
Of Counsel													
Ira Press (2023)	7.80	21.50				0.50					\$1,100	29.80	\$32,780.00
Ira Press (2024)					2.00	0.50					\$1,200	2.50	\$3,000.00
Associates													
Cornac Broeg (2024, 2025)		104.40	84.10		87.20	1.50					\$600	277.20	\$166,320.00
Sarah Flohr (2023)		16.50	1.50	25.10							\$650	43.10	\$28,015.00
Sarah Flohr (2024)		11.70	34.30	0.30	165.40	57.30					\$700	269.00	\$188,300.00
Sarah Flohr (2025)					121.80	1.40					\$750	123.20	\$92,400.00
Faisal Haider (2022, 2023)	220.30	210.10	7.90	16.80		44.20					\$400	499.30	\$199,720.00
Faisal Haider (2024)	0.20	5.20	6.10			8.60					\$450	20.10	\$9,045.00
Attorney Totals	326.00	638.50	176.40	71.20	658.10	124.20	0.00	0.00	0.00	0.00		1,994.40	\$1,556,655.00
Analysts													
Lu Liu (2023)								26.50			\$400	26.50	\$10,600.00
Paralegals													
Kristen Bolster (2023, 2024, 2025)								95.00			\$300	95.00	\$28,500.00
Fabiha Khan (2022, 2023)								26.70			\$275	26.70	\$7,342.50
Casey Liu (2023)								1.00			\$275	1.00	\$275.00
Casey Liu (2024)								36.80			\$300	36.80	\$11,040.00
Isabella Lok (2024, 2025)								14.00			\$275	14.00	\$3,850.00
Marya Jureidini (2023, 2024)								107.00			\$275	107.00	\$29,425.00
Marisa Sanelli (2022)								13.00			\$275	13.00	\$3,575.00
Daniel Sokolin (2022)								14.90			\$275	14.90	\$4,097.50
Non-Attorney Totals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	334.90	0.00	0.00		334.90	\$98,705.00
TOTALS:	326.00	638.50	176.40	71.20	658.10	124.20	0.00	334.90	0.00	0.00		2,329.30	\$1,655,360.00

*Settlement includes not only settlement communications and negotiation with Defendants but also efforts towards Preliminary and Final Approval and communications with class members regarding the Settlement and the Plan of Allocation as well as Claims Administration Issues.

EXHIBIT A-2

Dufoe v. DraftKings Inc.
23-cv-10524 (DJC)

EXHIBIT 2

Kirby McInerney LLP
Expenses
Inception - June 20, 2025

EXPENSE	AMOUNT
Mediation	\$17,500.00
Lexis/Westlaw/Pacer	\$16,177.15
Travel (Airfare, Hotel, Meals, Transportation)	\$5,381.98
Expert Fees	\$1,800.00
Court Reporter	\$301.21
Federal Express/Local Courier, etc.	\$136.12
Process Server	\$135.00
Court Fees	\$20.00
TOTAL	\$41,451.46

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JUSTIN DUFOE, on Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

DRAFTKINGS INC., JASON D. ROBINS,
JASON K. PARK, and MATTHEW KALISH,

Defendants.

Case No. 23-cv-10524-DJC

CLASS ACTION

**DECLARATION OF BERMAN TABACCO IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES,
AND A SERVICE AWARD**

I, Patrick T. Egan, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm Berman Tabacco and am local counsel of record for Lead Plaintiff Justin Dufoe in the above-captioned action. I am admitted to practice before this Court.

2. I submit this Declaration in support of Lead Counsel's Motion for Attorneys' Fees, Litigation Expenses, and a Service Award to Lead Plaintiff, in connection with the representation of the Class. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

3. Class Counsel pursued this Action on a contingency basis, risking the substantial investment of time and money without any guarantee of recovery.

4. Class Counsel have maintained contemporaneous time records for the duration of this litigation.

5. As of June 20, 2025, these time records indicate that attorneys and paralegals at Berman Tabacco have expended 604.8 hours in this Action. *See* Ex. B-1, Berman Tabacco Lodestar

Chart.

6. When hours worked by each attorney and paralegal in this Action are multiplied by their respective hourly billing rates, this calculation results in a cumulative lodestar of \$413,979.50. *See* Ex. B-1.

7. Time spent by attorneys and paralegals who worked fewer than 10 hours on the case has been omitted from the fee calculation.

8. The 604.8 hours expended by Class Counsel in this litigation include those spent: investigating the legal and factual grounds for the Class's claims; drafting and amending the pleadings; engaging in motion practice, such as briefing in full Defendants' motion to dismiss; conducting formal and informal discovery relating to the scope of the class size and Class damages in advance of mediation; drafting and preparing Lead Plaintiff's mediation brief; and communicating with class members with questions and other issues relating to the litigation. These efforts were critical to securing the substantial benefit afforded to the Class under the Settlement Agreement.

9. As of June 20, 2025, Berman Tobacco has incurred \$4,493.96 in advanced costs and expenses in the course of pursuing this litigation. *See* Ex. B-2. These costs and expenses are comprised primarily of Court Costs for filing fees (\$1,152) and computer research (\$2,961.17) in connection with responding to Defendants' motion to dismiss and other legal research. *Id.*

10. These expenses were recorded contemporaneously by Berman Tobacco and represent an accurate record of costs and expenses incurred in connection with the prosecution of this Action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 25, 2025 in Boston, Massachusetts.

/s/ Patrick T. Egan

Patrick T. Egan

EXHIBIT B-1

Dufoe v. DraftKings Inc.
23-cv-10524 (DJC)

EXHIBIT 1
TIME SUMMARY

Firm Name: Berman Tabacco

Reporting Period: Inception through June 20, 2025

Categories:

(1) Case Assessment/Complaint	(6) Case Management / Strategy
(2) Motion Practice/Legal Research	(7) Word Processing
(3) Discovery/Factual Research	(8) Paralegal
(4) Court Appearance/Trial	(9) Clerk
(5) Settlement	(22) Document Review

NAME	1	2	3	4	5	6	7	8	9	22	Hourly Rate	Total Hours	Total Lodestar at Historical Rates
Partners													
P. Egan 2025					1.30						\$1,150.00	1.30	\$1,495.00
P. Egan 2024		39.40	11.30	0.70	8.90	0.20					\$1,095.00	60.50	\$66,247.50
P. Egan 2023	8.60	18.60	0.00	15.00							\$1,045.00	42.20	\$44,099.00
Of Counsel/Staff Attorney													
E. McKim 2024-2025		299.30									\$450.00	299.30	\$134,685.00
J. Saif 2025		0.50			0.80						\$920.00	1.30	\$1,196.00
J. Saif 2024	0.20	90.60	20.80	3.20	6.40	2.30					\$875.00	123.50	\$108,062.50
J. Saif 2023	18.30	25.60		14.50		0.30					\$835.00	58.70	\$49,014.50
Attorney Totals	27.10	474.00	32.10	33.40	17.40	2.80	0.00	0.00	0.00	0.00		586.80	\$404,799.50
Paralegals													
K. Becker 2023-2024								18.00			\$510.00	18.00	\$9,180.00
Non-Attorney Totals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	18.00	0.00	0.00		18.00	\$9,180.00
TOTALS:	27.10	474.00	32.10	33.40	17.40	2.80	0.00	18.00	0.00	0.00		604.80	\$413,979.50

EXHIBIT B-2

Dufoe v. DraftKings Inc.
23-cv-10524 (DJC)

EXHIBIT 2

Berman Tabacco
Expenses
Inception - June 20, 2025

EXPENSE	AMOUNT
Court Costs	\$1,152.00
Computer Research	\$2,961.17
Messenger/delivery	\$52.49
Photocopies - in House	\$29.40
Service of Process	\$165.00
Travel	\$133.90
TOTAL	\$4,493.96

EXHIBIT C

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JUSTIN DUFOE, on Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

DRAFTKINGS INC., JASON D. ROBINS,
JASON K. PARK, and MATTHEW KALISH,

Defendants.

Case No. 23-cv-10524-DJC

CLASS ACTION

Honorable Judge Denise J. Casper

**DECLARATION OF HANNAFAN & HANNAFAN, LTD. IN SUPPORT OF LEAD
COUNSEL'S MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES,
AND A SERVICE AWARD**

I, Blake T. Hannafan, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a principal at the law firm Hannafan & Hannafan, Ltd., ("Hannafan & Hannafan") and am counsel of record for Lead Plaintiff Justin Dufoe in the above-captioned action.

I am admitted to practice *pro hac vice* before this Court.

2. I have decades of experience handling large and complex litigation, including many plaintiff and defense side securities litigation matters and successfully tried a month-long jury trial in 2018 before Judge Burroughs in this District.

3. I submit this Declaration in support of Lead Counsel's Motion for Attorneys' Fees, Litigation Expenses, and a Service Award to Lead Plaintiff, in connection with the representation of the Class. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

4. Class Counsel pursued this Action on a contingency basis, risking the substantial investment of time and money without any guarantee of recovery.

5. Class Counsel have maintained contemporaneous time records for the duration of

this litigation.

6. As of June 20, 2025, these time records indicate that attorneys and paralegals at Hannafan & Hannafan have expended 825.4 hours in this Action. *See* Ex. C-1, Hannafan & Hannafan Lodestar Chart.

7. When hours worked by each attorney and paralegal in this Action are multiplied by their respective hourly billing rates, this calculation results in a cumulative lodestar of \$887,580.00. *See* Ex. C-1.

8. Time spent by attorneys and paralegals who worked fewer than 10 hours on the case has been omitted from the fee calculation.

9. The 825.4 hours expended by Hannafan & Hannafan in this litigation include those spent: investigating the legal and factual grounds for the Class's claims; drafting and amending the pleadings; engaging in motion practice, such as briefing in full Defendants' motion to dismiss; conducting formal and informal discovery relating to the scope of the class size and Class damages in advance of mediation; drafting and preparing Lead Plaintiff's mediation brief; and negotiating settlement terms with counsel for Defendants, both within and outside the context of preparing for and appearing at the all-day mediation session conducted before Jed D. Melnick, Esq. and Orna Artal, Esq. of JAMS; follow-up communications with counsel for Defendants and the mediators; developing the notice and claims administration plan; developing and working with experts on the plan of allocation; and communicating with class members with questions and other issues relating to the Settlement. These efforts were critical to securing the substantial benefit afforded to the Class under the Settlement Agreement.

10. As of June 20, 2025, Hannafan & Hannafan has incurred \$3,068.72 in advanced costs and expenses in the course of pursuing this litigation. *See* Ex. C-2. These costs and expenses are comprised primarily of costs required to attend and participate in the mediation in New York. *Id.*

11. These expenses were recorded contemporaneously by Hannafan & Hannafan and represent an accurate record of costs and expenses incurred in connection with the prosecution of this Action.

12. Class Representative Justin Dufoe willingly contributed his time and efforts to the service of the Class. Without Mr. Dufoe's assistance in initiating, investigating and filing this Action, and his participation in the discovery and settlement process, the substantial benefit afforded to the Class under the Settlement Agreement would not have been possible.

13. Lead Plaintiff has actively participated in the litigation since the very beginning, assisting with drafting of the initial complaint filed in March 2023. Throughout the litigation Lead Plaintiff has assisted Class Counsel in investigating the claims at issue and drafting the respective complaints and documents. Lead Plaintiff has consulted with Class Counsel as needed and produced relevant DraftKings materials received throughout the Action, including communications he received when the DraftKings Marketplace was shut down. Lead Plaintiff was also the subject of communications on public forums concerning NFTs. Consistent with awards regularly granted under similar circumstances, Lead Plaintiff should be compensated for his efforts to support the litigation and assisting Class Counsel in achieving a significant settlement on behalf of the Class, as well as the reputational risks he undertook in bringing and maintaining this Action.

14. Lead Plaintiff's interests are not antagonistic to members of the Settlement Class. Moreover, Lead Plaintiff has demonstrated his commitment to pursuing this Action on behalf of the Settlement Class and has achieved a favorable result, which does not favor any member of the

Settlement Class at the expense of others.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on June 25, 2025, in Chicago, Illinois.

/s/ Blake T. Hannafan

Blake T. Hannafan

EXHIBIT C-1

Dufoe v. DraftKings Inc.
23-cv-10524 (DJC)

EXHIBIT 1
TIME SUMMARY

Firm Name: Hannafan & Hannafan, Ltd.

Reporting Period: Inception-June 20, 2025

Categories:

- (1) Case Assessment/Complaint
 (2) Motion Practice/Legal Research
 (3) Discovery/Factual Research
 (4) Court Appearance/Trial
 (5) Settlement

- (6) Case Management / Strategy
 (7) Word Processing
 (8) Paralegal
 (9) Clerk
 (22) Document Review

NAME	1	2	3	4	5	6	7	8	9	22	Hourly Rate	Total Hours	Total Lodestar at Historical Rates
Partners													
Blake T. Hannafan (2022)	82.40										\$950.00	82.40	\$78,280.00
Blake T. Hannafan (2023)	83.90	113.60	101.70			28.00					\$1,025.00	327.20	\$335,380.00
Blake T. Hannafan (2024)	2.20	171.80	31.40	1.50	158.10	13.50					\$1,150.00	378.50	\$435,275.00
Blake T. Hannafan (2025)					27.30						\$1,150.00	27.30	\$31,395.00
Of Counsel												0.00	\$0.00
Christine Hannafan (2024)		10.00									\$725.00	10.00	\$7,250.00
												0.00	
Attorney Totals	168.50	295.40	133.10	1.50	185.40	41.50	0.00	0.00	0.00	0.00		825.40	\$887,580.00
Law Clerks												0.00	\$0.00
Paralegals												0.00	\$0.00
												0.00	\$0.00
												0.00	\$0.00
												0.00	\$0.00
Non-Attorney Totals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00	\$0.00
TOTALS:	168.50	295.40	133.10	1.50	185.40	41.50	0.00	0.00	0.00	0.00		825.40	\$887,580.00

EXHIBIT C-2

Dufoe v. DraftKings Inc.
23-cv-10524 (DJC)

EXHIBIT 2

Hannafan & Hannafan, Ltd.
Expenses
Inception - June 20, 2025

EXPENSE	AMOUNT
Lexis/Westlaw/Pacer	\$879.64
Travel (Hotel, Meals, Transportation)	\$2,189.08
Miscellaneous (Jury profile reports, Third Party Discovery - US Treasury - FOIA)	
Court Fees	
Federal Express/Local Courier, etc.	
Process Server	
Outside Photocopying	
Deposition Costs - (Veritext)	
TOTAL	\$3,068.72

EXHIBIT D

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JUSTIN DUFOE, on Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

DRAFTKINGS INC., JASON D. ROBINS,
JASON K. PARK, and MATTHEW KALISH,

Defendants.

Case No. 23-cv-10524-DJC

CLASS ACTION

**DECLARATION OF G. DOWD LAW LLC IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES,
AND A SERVICE AWARD**

I, George Dowd, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am at the founding member of the law firm G. Dowd Law LLC ("G. Dowd Law") and am counsel of record for Lead Plaintiff Justin Dufoe in the above-captioned action. I am admitted to practice *pro hac vice* before this Court.

2. I have worked extensively and for decades in the securities and other financial markets before becoming an attorney, and have testified as an expert in proceedings before the National Futures Association, FINRA, the London Court of International Arbitrations, and the Federal Court of Australia. In addition, I served on the Board of Directors of the Global Digital Asset & Cryptocurrency Association in 2020 and 2021, and I am the primary author of "Digital Assets, Cryptocurrencies, and Blockchain" (IICLE®, 2022).

3. I submit this Declaration in support of Lead Counsel's Motion for Attorneys' Fees, Litigation Expenses, and a Service Award to Lead Plaintiff, in connection with the representation of the Class. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

4. Class Counsel pursued this Action on a contingency basis, risking the substantial investment of time and money without any guarantee of recovery.

5. Class Counsel have maintained contemporaneous time records for the duration of this litigation.

6. As of June 20, 2025, these time records indicate that attorneys and paralegals at G. Dowd Law have expended 450.25 hours in this Action. *See* Ex. D-1, G. Dowd Law Lodestar Chart.

7. When hours worked by each attorney and paralegal in this Action are multiplied by their respective hourly billing rates, this calculation results in a cumulative lodestar of \$446,442.50. *See* Ex. D-1.

8. Time spent by attorneys and paralegals who worked fewer than 10 hours on the case has been omitted from the fee calculation.

9. The 450.25 hours expended by Class Counsel in this litigation include those spent: investigating the legal and factual grounds for the Class's claims; drafting and amending the pleadings; engaging in motion practice, such as briefing in full Defendants' motion to dismiss; conducting formal and informal discovery relating to the scope of the class size and Class damages in advance of mediation; drafting and preparing Lead Plaintiff's mediation brief; and negotiating settlement terms with counsel for Defendants, both within and outside the context of preparing for and appearing at the all-day mediation session conducted before Jed D. Melnick, Esq. and Orna Artal, Esq. of JAMS; follow-up communications with counsel for Defendants and the mediators; developing the notice and claims administration plan; developing and working with experts on the plan of allocation; and communicating with class members with questions and other issues relating to the Settlement. These efforts were critical to securing the substantial benefit afforded to the Class under the Settlement Agreement.

10. As of June 20, 2025, G. Dowd Law has incurred \$2,295.78 in advanced costs and

expenses in the course of pursuing this litigation. *See* Ex. D-2. These costs and expenses are comprised primarily of travel expenses related to appearing at the all-day mediation session conducted before Jed D. Melnick, Esq. and Orna Artal, Esq. of JAMS. *Id.*

11. These expenses were recorded contemporaneously by G. Dowd Law and represent an accurate record of costs and expenses incurred in connection with the prosecution of this Action.

12. Class Representative Justin Dufoe willingly contributed his time and efforts to the service of the Class. Without Mr. Dufoe's assistance in initiating, investigating and filing this Action, and his participation in the discovery and settlement process, the substantial benefit afforded to the Class under the Settlement Agreement would not have been possible.

13. Lead Plaintiff has actively participated in the litigation since the very beginning, assisting with drafting of the initial complaint filed in March 2023. Throughout the litigation Lead Plaintiff has assisted Class Counsel in investigating the claims at issue and drafting the respective complaints and documents. Lead Plaintiff has consulted with Class Counsel as needed and produced relevant DraftKings materials received throughout the Action, including communications he received when the DraftKings Marketplace was shut down. Lead Plaintiff was also the subject of communications on public forums concerning NFTs. Consistent with awards regularly granted under similar circumstances, Lead Plaintiff should be compensated for his effort supporting the litigation and assisting Class Counsel in achieving a strong settlement on behalf of the Class, as well as the reputational risks he undertook in bringing and maintaining this Action.

14. Lead Plaintiff's interests are not antagonistic to members of the Settlement Class. Moreover, Lead Plaintiff has demonstrated his commitment to pursuing this Action on behalf of the Settlement Class and has achieved a favorable result, which does not favor any member of the Settlement Class at the expense of others.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 25, 2025 in Chicago, Illinois.

/s/George Dowd
George Dowd

EXHIBIT D-1

Dufoe v. DraftKings Inc.
23-cv-10524 (DJC)

EXHIBIT 1
TIME SUMMARY

Firm Name: G. Dowd Law LLC

Reporting Period: Inception-June 20, 2025

Categories:

(1) Case Assessment/Complaint

(2) Motion Practice/Legal Research

(3) Discovery/Factual Research

(4) Court Appearance/Trial

(5) Settlement

(6) Case Management / Strategy

(7) Word Processing

(8) Paralegal

(9) Clerk

(22) Document Review

NAME	1	2	3	4	5	6	7	8	9	22	Hourly Rate	Total Hours	Total Lodestar at Historical Rates
Partners													
George T. Dowd III (8/31/22-10/1/2024)	48.30	130.25	133.30	1.30	4.20	8.20					\$950.00	325.55	\$309,272.50
George T. Dowd III (10/2/24-6/20/25)		25.80	7.70		90.10	1.10					\$1,100.00	124.70	\$137,170.00
Attorney Totals	48.30	156.05	141.00	1.30	94.30	9.30	0.00	0.00	0.00	0.00		450.25	\$446,442.50
												0.00	\$0.00
Non-Attorney Totals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00	\$0.00
TOTALS:	48.30	156.05	141.00	1.30	94.30	9.30	0.00	0.00	0.00	0.00		450.25	\$446,442.50

EXHIBIT D-2

Dufoe v. DraftKings Inc.
23-cv-10524 (DJC)

EXHIBIT 2

G. Dowd Law LLC
Expenses
Inception - June 20, 2025 □

EXPENSE	AMOUNT
Lexis/Westlaw/Pacer	
Travel (Hotel, Meals, Transportation)	\$2,295.78
Miscellaneous (Jury profile reports, Third Party Discovery - US Treasury - FOIA)	
Court Fees	
Federal Express/Local Courier, etc.	
Process Server	
Outside Photocopying	
Deposition Costs - (Veritext)	
TOTAL	\$2,295.78