

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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

Lead Plaintiff,

v.

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

Defendants.

Case No. 1:23-cv-10524-DJC

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION,
SETTLEMENT HEARING, AND RIGHT TO APPEAR**

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF PENDENCY OF CLASS ACTION: Please be advised that your rights may be affected by the above-captioned securities class action (the “Action”) pending in the United States District Court for the District of Massachusetts (the “Court”), if, during the period from August 11, 2021, through and inclusive of the date of entry of the Judgment (the “Settlement Class Period”), you purchased, acquired, sold, disposed of, owned, held, used, or otherwise transacted in non-fungible tokens (“NFTs”) in a DraftKings Inc. (“DraftKings” or the “Company”) account, including, but without limitation, DraftKings Marketplace (“DK Marketplace”) NFTs, and were damaged thereby.¹

NOTICE OF SETTLEMENT: Please also be advised that the Court-appointed Lead Plaintiff, Justin Dufoe (“Lead Plaintiff”), on behalf of himself and the Settlement Class (as defined in ¶ 14 below), have reached a proposed Settlement of the Action for \$10,000,000 in cash that, if approved, will resolve all claims in the Action (the “Settlement”).

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.

These rights and options – **and the deadline to exercise them** – are explained in this Notice.

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated February 26, 2025 (the “Stipulation”), which is available at www.DraftKingsNFTSettlement.com.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
SUBMIT A CLAIM FORM ONLINE, VIA EMAIL, OR POSTMARKED NO LATER THAN JULY 21, 2025.	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 23 below) that you have against Released Defendant Parties (defined in ¶ 24 below), so it is in your interest to submit a Claim Form.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JULY 9, 2025.	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Released Defendant Parties concerning the Released Plaintiffs' Claims.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JULY 9, 2025.	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for a Fee and Expense Award, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the request for a Fee and Expense Award unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
GO TO A HEARING CURRENTLY SCHEDULED FOR JULY 30, 2025, AT 3:00 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JULY 9, 2025.	Filing a written objection and notice of intention to appear by July 9, 2025, allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for a Fee and Expense Award. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak about your objection.
DO NOTHING.	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement, and you will be bound by any judgments or orders entered by the Court in the Action.

The Court overseeing this case still has to decide whether to approve the Settlement.

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you may: (1) see the Settlement Agreement available at www.DraftKingsNFTSettlement.com; (2) contact Class Counsel representing the Settlement Class Members (contact information listed under Paragraph 61 below); (3) access the Court docket in the case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; or (4) visit the office of the Clerk of Court for the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK’S OFFICE REGARDING THIS NOTICE, THIS SETTLEMENT, OR THE CLAIMS PROCESS.

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WHY DID I RECEIVE THIS NOTICE?

1. The Court directed that this Notice be mailed to you because you may have purchased, acquired, sold, disposed of, owned, held, used, or otherwise transacted in DraftKings NFTs during the Settlement Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Settlement Administrator, selected by Lead Plaintiff and approved by the Court, will make payments pursuant to the Settlement after any objections and appeals are resolved.

2. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for a Fee and Expense Award and the Service Award (the “Settlement Hearing”). See paragraph 51 below for details about the Settlement Hearing, including the date and location of the hearing.

3. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

WHAT IS THIS CASE ABOUT?

4. A class action complaint was filed in the Court on March 9, 2023, styled *Dufoe et al. v. DraftKings Inc. et al.*, No. 1:23-cv-10524 (D. Mass.).

5. By Order dated June 6, 2023, Dufoe was appointed Lead Plaintiff, and its selection of Kirby McInerney LLP to serve as Lead Counsel and Berman Tabacco to serve as Local Counsel was approved by the Court. Together, Kirby McInerney LLP, Berman Tabacco, Hannafan & Hannafan Ltd., and G. Dowd Law LLC serve as Class Counsel.

6. On August 4, 2023, Lead Plaintiff filed the Amended Complaint for violation of federal and Massachusetts securities laws alleging claims (i) against all Defendants for alleged violations of §§ 5 and 12(a)(1) of the Securities Act of 1933 (“Securities Act”), (ii) against DraftKings for alleged violations of §§ 5 and 29(b) of the Securities Exchange Act of 1934 (“Exchange Act”), (iii) against DraftKings for alleged violations of §§ 15(a)(1) and 29(b) of the Exchange Act, (iv) against Robins, Park, and Kalish for “control person” liability under § 15 of the Securities Act and § 20 of the Exchange Act, (v) against DraftKings for alleged violations of Mass. Gen. Laws Ch. 110A § 201(a), and (vi) against all Defendants for alleged violations of Mass. Gen. Laws Ch. 110A § 301. Among other things, the Amended Complaint alleged that NFTs purchased, sold, and held on the DraftKings Marketplace constitute securities that were not registered in accordance with federal and state law, and that the DK Marketplace is or was a securities exchange and DraftKings

acts or acted as a securities broker when transacting in NFTs, neither of which were registered as allegedly required by federal and state law.

7. On September 25, 2023, Defendants filed a motion to dismiss the Amended Complaint, which was thereafter fully briefed. On July 2, 2024, the Court issued its Memorandum and Order denying the motion to dismiss. On August 15, 2024, Defendants filed their Answer to the Amended Complaint, after which discovery commenced.

8. In September and October 2024, counsel for the Parties engaged in early settlement communications and the exchange of information and discovery pertinent to alleged liability and damages issues and defenses to the same.

9. On October 22, 2024, counsel for the Parties participated in a full-day mediation session before Jed D. Melnick, Esq. and Orna Artal, Esq. of JAMS. Before the mediation, the Parties exchanged mediation statements and exhibits, which addressed issues of both liability and damages. The mediation was successful, and the Parties reached an agreement-in-principle to settle the Action for \$10,000,000 in cash, subject to negotiation and execution of mutually agreeable definitive documentation and approval by the Court. On October 23, 2024, the Parties informed the Court of the settlement-in-principle of the Action.

10. Lead Plaintiff and Lead Plaintiff's Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Lead Plaintiff and the other members of the Settlement Class, and in their best interests. Based on Lead Plaintiff's direct oversight of the prosecution of this matter and with the advice of Lead Counsel and other Class Counsel, Lead Plaintiff has agreed to settle and release the Released Plaintiffs' Claims (as defined below) pursuant to the terms and conditions of this Stipulation, after considering, among other things: (a) the financial benefit that Lead Plaintiff and the other members of the Settlement Class will receive under the proposed Settlement; and (b) the significant costs, risks, and delay of continued litigation, trial, and appeal.

11. The Parties agree that certification of a class, for settlement purposes only, is appropriate in the Action. For purposes of this Settlement only, the Settlement Class is defined in paragraph 14. The Parties intend that the provisions herein concerning certification of the Settlement Class shall have no effect whatsoever in the event the Settlement does not become Final.

12. Defendants are entering into this Stipulation to avoid the cost, disruption, and uncertainty of further litigation. Each of the Defendants denies any wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever in any other matter, or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants expressly deny any and all allegations of fault, liability, wrongdoing, or damages. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit.

13. On February 28, 2025, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?
WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

14. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

All persons or entities who purchased, acquired, sold, disposed of, owned, held, used, or otherwise transacted in NFTs in a DraftKings account from August 11, 2021 through and inclusive of the date of entry of the Judgment, including, without limitation, Marketplace NFTs.

Excluded from the Settlement Class are: (i) Defendants; (ii) DraftKings' officers and directors during the Class Period; (iii) the Immediate Family of Defendants and their legal representatives, heirs, successors, or assigns; and (iv) any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class are those persons who are found by the Court to have timely and validly submitted a request for exclusion from the Settlement Class that is accepted by the Court. *See* "What if I Do Not Want to Be a Member of the Settlement Class? How Do I Exclude Myself?," on page 13 below.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN ONLINE OR POSTMARKED NO LATER THAN JULY 21, 2025.

WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?

15. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the remaining Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. For example, Defendants argued and would have continued to argue that DraftKings is not a broker or dealer, that DraftKings NFTs are not securities, and that the Marketplace is not an exchange and therefore DraftKings is not subject to federal or state securities laws. Additionally, Defendants would continue to argue that Lead Plaintiff and the Class: (i) lack standing to challenge NFTs that were not purchased at a loss; (ii) allege claims that are in substantial part untimely; (iii) have no viable securities act claim for secondary market transactions; and (iv) alleged claims for damages are limited. Additionally, Lead Plaintiff would have to prevail at several stages—class certification, motions for summary judgment, trial, and if prevailed on those, on the appeals that were likely to follow. Thus, there were very significant risks attendant to the continued prosecution of the Action.

16. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Class Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, namely

\$10,000,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no recovery after the motion to dismiss, summary judgment, trial, and appeals, possibly years in the future.

17. Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by Defendants.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

18. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of the claims asserted against Defendants, neither Lead Plaintiff nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, either at the class certification, summary judgment, trial, or appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?

19. As a Settlement Class Member, you are represented by Lead Plaintiff and Class Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section below entitled, “When and Where Will the Court Decide Whether to Approve the Settlement?”.

20. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section below entitled, “What if I Do Not Want to Be a Member of the Settlement Class? How Do I Exclude Myself?”.

21. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, or Class Counsel’s application for a Fee and Expense Award and a Service Award, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section below entitled, “When and Where Will the Court Decide Whether to Approve the Settlement?”.

22. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the “Judgment”), which will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any and all Released Plaintiffs’ Claims (as defined in ¶ 23 below) against the Released Defendant Parties (as defined in ¶ 24 below), and shall forever be barred and enjoined from

prosecuting any or all of the Released Plaintiffs' Claims against any and all of the Released Defendant Parties.

23. "Released Plaintiffs' Claims" means (i) any and all Claims asserted by Lead Plaintiff in the Action, and (ii) any and all Claims and Unknown Claims (as defined below) that Lead Plaintiff or any member of the Settlement Class asserted or could have asserted in the Action or in any other forum against the Released Defendant Parties in connection with, arising out of, or relating with respect to any Marketplace NFTs or any of the facts alleged in the Action, including, but not limited to, any and all Claims arising out of or relating to: (a) any purchase, acquisition, sale, trade, transfer, disposition of, owning, use, minting, burning, holding, listing, or any other transaction in any Marketplace NFTs during the Class Period; (b) any use or ownership of any Marketplace NFTs during the Class Period; (c) the value of, or consideration paid or received in, any Marketplace NFTs purchased, acquired, sold, traded, transferred, disposed of, owned, used, minted, burned, held, listed, or otherwise transacted in during the Class Period; (d) all disclosures, public statements, press releases, advertising, marketing, or solicitation materials, or other statements issued, made available, or disseminated by any of the Released Defendant Parties relating, directly or indirectly, to any Marketplace NFTs; (e) the fees, expenses or costs (including any Fee and Expense Award) incurred in prosecuting, defending, or settling the Action; (f) the Service Award; or (g) any deliberations, negotiations, representations, omissions, or other conduct leading to the execution of this Stipulation and entering into the Settlement.

Notwithstanding the foregoing, the Released Plaintiffs' Claims do not include (i) all claims relating to the enforcement of this Stipulation and the Settlement; (ii) all claims against Marketplace Licensors unrelated to the purchase, acquisition, sale, trade, transfer, disposition of, owning, use, minting, burning, holding, listing, or any other transaction in Marketplace NFTs on the DK Marketplace, including claims alleged in the complaints filed on or before the date of this Stipulation in the actions captioned *Headley v. LFG NFTs, Corp, et al.*, No. 1:24-cv-24613-FAM (S.D. Fla.), *Headley v. LFG NFTs, Corp, et al.*, No. 2024-015525-CA-01 (Fla. Circ. Ct. Miami-Dade Cty.), and *Mullens v. LFG NFTs, Corp.*, No. 23-SC-331C (Cal. Super. Ct. San Diego Cty.), (iii) the claims alleged derivatively on behalf of DraftKings in *In re DraftKings Inc. Stockholder Derivative Litigation*, Lead Case No. A-23-871543 (Clark Cty., Nev.); and (iv) all claims of any person or entity who or which submits a request for exclusion from the Class that is accepted by the Court.

24. "Released Defendant Parties" means: (i) the Defendants; (ii) the Immediate Family of any Defendant; (iii) Defendants' past or present, associates, members, managers, partners, partnerships, investment funds, subsidiaries, parents, predecessors, and successors; (iv) all entities that control, are controlled by, or are under common control with any Defendant; (v) all officers, directors, employees, agents, advisors, shareholders, and attorneys (including Defendants' Counsel) of any and all of the foregoing persons and entities; (vi) the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any and all of the foregoing persons and entities; and (vii) any licensors of intellectual property rights or providers of services to DraftKings in connection with DK Marketplace or Marketplace NFTs, including, without limitation, National Football League Players Association, National Football League Players Incorporated, PGA Tour, Inc., Zuffa Marketing, LLC, LFG NFTS, Corp., and Matic Network BVI LTD, in each case in their capacities as such licensors or service providers to DraftKings and only in connection with the purchase, acquisition, sale, trade, transfer, disposition of, owning, use, minting, burning, holding, listing, or

any other transaction in any Marketplace NFTs on the DK Marketplace (collectively, “Marketplace Licensors”).

25. “Unknown Claims” means any Released Plaintiffs’ Claims that the Released Plaintiff Parties do not know or suspect to exist in his, her, its, or their favor at the time of the release of the Released Plaintiffs’ Claims, and any Released Defendants’ Claims that any Defendant does not know or suspect to exist in his, her, its, or their favor at the time of the release of the Released Defendants’ Claims, including those which, if known by him, her, it, or them, might have affected his, her, its, or their decision(s) with respect to the Settlement. The Parties acknowledge, and the other Settlement Class Members by operation of law are deemed to acknowledge, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Plaintiffs’ Claims and the Released Defendants’ Claims, but that it is the intention of the Parties, and by operation of law the other Settlement Class Members, to completely, fully, finally, and forever extinguish any and all Released Plaintiffs’ Claims and Released Defendants’ Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties also acknowledge, and the other Settlement Class Members by operation of law are deemed to acknowledge, that the inclusion of “Unknown Claims” in the definition of the Released Plaintiffs’ Claims and the Released Defendants’ Claims was separately bargained for and is a key element of the Settlement.

26. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants and each of the other Released Defendant Parties, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged any and all Released Defendants’ Claims (as defined in ¶ 27 below) against Lead Plaintiff and other Released Plaintiff Parties (as defined in ¶ 28 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants’ Claims against any of the Released Plaintiff Parties.

27. “Released Defendants’ Claims” means any and all Claims, including Unknown Claims (as defined below), that have been or could have been asserted in the Action, or in any court, tribunal, forum, or proceeding, by Defendants or any of their respective successors and assigns against any of the Released Plaintiff Parties, that arise out of the institution, prosecution, settlement, or dismissal of the Action; provided, however, that the Released Defendants’ Claims shall not include Claims to enforce the Stipulation or the Judgment.

28. “Released Plaintiff Parties” means: (i) Lead Plaintiff and all other Settlement Class Members; (ii) all Settlement Class Members’ past or present, direct affiliates, associates, members, managers, partners, partnerships, investment funds, attorneys (including Class Counsel), subsidiaries, parents, predecessors, and successors; (iii) all officers, directors, employees, and attorneys of any and all of the foregoing persons and entities; and (iv) the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any of the foregoing persons and entities.

HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

29. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and submit the Claim Form with adequate supporting documentation: **(i) online using the electronic version of the Claim Form hosted at www.DraftKingsNFTSettlement.com no later than July 21, 2025; (ii) by email to info@DraftKingsNFTSettlement.com no later than July 21, 2025; or (iii) by First-Class Mail to *DraftKings NFT Settlement, c/o A.B. Data, Ltd., P.O. Box. 173039, Milwaukee, WI 53217* so that it is postmarked no later than July 21, 2025.** A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Settlement Administrator for the Settlement, www.DraftKingsNFTSettlement.com, or you may request that a Claim Form be mailed to you by calling the Settlement Administrator toll free at (877) 883-9186. Please retain all records of your ownership of and transactions in DraftKings NFTs, as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

HOW MUCH WILL MY PAYMENT BE?

30. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

31. Pursuant to the Settlement, Defendants have agreed to pay or caused to be paid ten million dollars (\$10,000,000) in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less: (a) all federal, state, and/or local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members; (c) any attorneys’ fees and Litigation Expenses awarded by the Court; and (d) any other costs or fees approved by the Court including Service Awards) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

32. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired.

33. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court’s order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the plan of allocation.

34. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

35. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form online, by email, or by mail postmarked on or before July 21, 2025, shall be fully and forever barred from receiving payments pursuant to the Settlement, but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs' Claims (as defined in ¶ 23 above) against Released Defendant Parties (as defined in ¶ 24 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs' Claims against any of Released Defendant Parties whether or not such Settlement Class Member submits a Claim Form.

36. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member.

37. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim Form.

38. Only Settlement Class Members, *i.e.*, persons and entities who purchased, acquired, sold, disposed of, owned, held or used DraftKings NFTs during the Settlement Class Period and were damaged as a result of such purchases or acquisitions will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms.

PROPOSED PLAN OF ALLOCATION

39. The Plan of Allocation set forth below is the plan for the distribution of the Net Settlement Fund that is being proposed by Lead Plaintiff and Class Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Settlement website at www.DraftKingsNFTSettlement.com.

40. The objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered economic losses as a proximate result of Defendants' alleged wrongdoing. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

41. Based on the formulas set forth below, an "Individual Recognized Loss" or "IR" and a "Pro Rata Share of the Net Settlement Fund" or "PR" shall be calculated by the Settlement Administrator for each individual Settlement Class Member's recognized loss during the Class Period. Solely to assist in the dissemination of notice, DraftKings shall use reasonable efforts to provide Class Counsel and the Settlement Administrator with information necessary to determine each Settlement Class Member's IR and PR, including each known Settlement Class Member's name, contact information, and account and transaction information. Each Settlement Class Member identified in DraftKings' records will be sent their estimated distribution amount in

advance of distribution so they are able to review the amount and make any necessary inquiries prior to Class Counsel’s request for an Order allowing Distribution of the Net Settlement Fund.

42. First, the IR shall be calculated by adding the individual Claimants’: (i) “Primary Market Payments” or “PP,” which is the aggregate amount the Settlement Class Member paid for all purchases of all NFTs from DraftKings in the primary market or “drops;” and (ii) “Secondary Market Payments” or “SP,” which is the aggregate amount the Settlement Class Member paid for all purchases of NFTs in the secondary market or the “Marketplace.” The Settlement Administrator will then subtract any: (a) “Secondary Market Receipts” or “SR,” which is the aggregate amount received by the Settlement Class Member for all sales of NFTs in the secondary market; (b) “Closure Receipts” or “CR,” which is the aggregate amount the Settlement Class Member received from DraftKings in connection with its Marketplace shutdown offer; and/or (c) “Prize Receipts” or “PR,” which is the amount the Settlement Class Member received from DraftKings in prize contests.

$$\mathbf{IR = [PP + SP] - [SR + CR + PR]^2}$$

43. Next, to determine the Settlement Class Member’s PR, the Settlement Administrator will divide the IR (*i.e.*, that particular Settlement Class Member’s recognized loss) by the “Aggregate Recognized Loss” or “AR,” (*i.e.*, all Settlement Class Member’s recognized losses combined) with the resulting percentage multiplied against the “Net Settlement Fund” or “NF” (*i.e.*, the balance remaining in the Settlement Fund after the payment of: (i) any and all Notice Costs; (ii) any and all Administration Costs; (iii) any and all Taxes; (iv) any Fee and Expense Award; (v) any Service Award; and (vi) any other fees, costs, or expenses approved by the Court).

$$\mathbf{PR = [IR/AR] x NF}$$

44. To participate in the distribution, Authorized Claimants must be entitled to a distribution payment of at least \$5.00. If any funds remain in the Net Settlement Fund after the initial distribution, then the remaining balance of the Net Settlement Fund six (6) months after the initial distribution shall be used: (i) first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants who will receive at least a \$5.00 payment; (ii) second, to pay any additional Notice Costs and Administration Costs incurred in administering the Settlement; and (iii) finally, to make a second distribution to Authorized Claimants who would receive at least \$5.00 from such second distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. Six (6) months after such second distribution, if undertaken, or if such second distribution is not undertaken, any funds remaining in the Net Settlement Fund shall be contributed to a *cy pres* recipient agreed on between the Parties and approved by the Court.

45. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Claimants. No person shall have any claim against Lead Plaintiff, Class Counsel, Lead Plaintiff’s consulting expert, Defendants, Defendants’ Counsel, any of the other Releasees, or the Settlement Administrator or the agent designated by Class Counsel arising from distributions made substantially in accordance with the Stipulation, the

² Should the resulting IR be a negative number, the Settlement Class Member’s IR would be adjusted to \$0 and the Settlement Class Member would not be eligible for a distribution from the Settlement Fund.

Plan of Allocation approved by the Court, or further Orders from the Court. Lead Plaintiff, Defendants, their respective counsel, and all other Releasees shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Settlement Administrator, the payment or withholding of Taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?
HOW WILL THE LAWYERS BE PAID?**

46. Class Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class, nor has Class Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Class Counsel will apply to the Court for an award of attorneys' fees for all Class Counsel in an amount not to exceed one-third of the Settlement Fund. At the same time, Class Counsel also intends to apply for reimbursement of Litigation Expenses in an amount not to exceed \$100,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class in an amount not to exceed \$50,000. The Court will determine the amount of any Fee and Expense Award. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?
HOW DO I EXCLUDE MYSELF?**

47. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to *DraftKings NFT Settlement*, EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box. 173039, Milwaukee, WI 53217. The exclusion request must be *received* no later than July 9, 2025. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must: (a) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion from the Settlement Class in *Dufoe v. DraftKings, et al.*, No. 1:23-cv-10524 (D. Mass.)"; (c) identify and state the DraftKings NFTs that the person requesting exclusion purchased/acquired and/or sold during the Settlement Class Period (*i.e.*, from August 11, 2021 through and inclusive of the date of entry of the Judgment), as well as the dates and prices of each such purchase/acquisition and/or sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

48. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have a pending proceeding, or later file another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Released Defendant Parties.

49. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund.

50. Defendants have the right to terminate the Settlement in the event that collective requests for exclusion from the Settlement Class by Settlement Class Members meet the conditions set forth in Defendants' confidential supplemental agreement with Lead Plaintiff, in accordance with the terms of that agreement.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DO NOT LIKE THE SETTLEMENT?

51. Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.

52. The Settlement Hearing is currently scheduled to be held on July 30, 2025, at 3:00 p.m., before the Honorable Denise J. Casper at the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210. The Court reserves the right to approve the Settlement, the Plan of Allocation, Class Counsel's motion for Fee and Expense Award and a Service Award, and/or any other matter related to the Settlement, at or after the Settlement Hearing without further notice to the members of the Settlement Class. The Court also reserves the right to hold the Settlement Hearing telephonically or via videoconference.

53. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation, or Class Counsel's motion for a Fee and Expense Award and a Service Award. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the District of Massachusetts at the address set forth below on or before July 9, 2025. You must also serve the papers on Class Counsel and on Defendants' Counsel at the addresses set forth below so that the papers are *received* on or before July 9, 2025.

<u>Clerk's Office</u>	<u>Lead Counsel</u>	<u>Defendants' Counsel</u>
United States District Court District of Massachusetts Clerk of the Court 1 Courthouse Way Boston, MA 02210	Kirby McInerney LLP Anthony F. Fata, Esq. 211 West Wacker Dr, Suite 550 Chicago, IL 60606	Sullivan & Cromwell LLP Brian T. Frawley, Esq. 125 Broad Street New York, NY 10004

54. Any objection must: (a) state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) include documents sufficient to prove membership in the Settlement Class, including the DraftKings NFTs that the person requesting exclusion purchased/acquired and/or sold during the

Settlement Class Period (*i.e.*, from August 11, 2021 through and inclusive of the date of entry of the Judgment), as well as the dates and prices of each such purchase/acquisition and/or sale. You may not object to the Settlement, the Plan of Allocation, or Class Counsel’s motion for Fee and Expense Award or a Service Award if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

55. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

56. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Class Counsel’s motion for a Fee and Expense Award or a Service Award, and if you timely file and serve a written objection as described above, you must also file a notice of appearance with the Clerk’s Office and serve it on Class Counsel and Defendants’ Counsel at the addresses set forth above so that it is ***received on or before July 9, 2025***. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

57. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Defendants’ Counsel at the addresses set forth in ¶ 53 above so that the notice is ***received on or before July 9, 2025***.

58. The Settlement Hearing may be adjourned by the Court, or held telephonically or via videoconference, without further written notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date, time, and location on the Settlement website www.DraftKingsNFTSettlement.com, or with Lead Counsel.

59. Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, or Class Counsel’s motion for a Fee and Expense Award or a Service Award. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

60. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Settlement Administrator, www.DraftKingsNFTSettlement.com.

61. All inquiries concerning this Notice and the Claim Form should be directed to:

DraftKings NFT Settlement
c/o A.B. Data, Ltd.
P.O. Box 173039
Milwaukee, WI 53217
www.DraftKingsNFTSettlement.com
info@DraftKingsNFTSettlement.com

and/or

Kirby McInerney LLP
Anthony F. Fata, Esq.
211 West Wacker Dr, Suite 550
Chicago, IL 60606
(312) 767-5180
afata@kmlp.com

**DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF
THE COURT, DEFENDANTS, OR THEIR COUNSEL REGARDING THIS
NOTICE.**

Dated: February 28, 2025

By Order of the Court
United States District Court
District of Massachusetts