

**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 SARAH E. FLOHR IN SUPPORT OF
LEAD PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Sarah E. Flohr, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney at the law firm Kirby McInerney LLP and am counsel of record for Lead Plaintiff 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 Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.

3. Class Counsel conducted substantial investigation and analysis of Lead Plaintiff's claims, commencing even before the filing of the initial pleading, and, throughout the course of the litigation and settlement efforts, reviewed and analyzed documents pertaining to the DraftKings' NFTs and the DK Marketplace. Class Counsel is experienced in complex class action litigation, thoroughly understands the factual and legal issues involved in the Action, and believes the Settlement is fair and reasonable. *See* Exhibits D-F to Declaration of Patrick T. Egan in Support of Justin DuFoe's Motion for Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel in this Action (ECF Nos. 24-4, 24-5, and 24-6).

4. Through a “Community Announcement” posted on the DraftKings’ website, which has since been removed, DraftKings announced it “decided to discontinue Reignmakers and our NFT Marketplace, effective immediately, *due to recent legal developments.*” (emphasis added).

5. Following the shut-down of the DK Marketplace, Class Counsel was contacted by several potential class members advising that DraftKings offered them a fraction of what they had invested in the NFTs because DraftKings would no longer offer prize contests.

6. Class Counsel estimates there are over 175,000 Settlement Class Members, based on discovery produced in advance of the mediation in this case.

7. Following the closure of the DK Marketplace, the Parties engaged in voluntary settlement discussions.

8. After weeks of arm’s-length negotiations between competent and experienced counsel, including the exchange of informal discovery for settlement purposes only, the Parties participated in a full-day mediation session before Jed D. Melnick, Esq. and Orna Artal, Esq. of JAMS, which resulted in a mediator’s proposal for a settlement. Both parties accepted the mediator’s proposal, subject to executing formal settlement documents and the Court’s approval.

9. The Parties exchanged preliminary discovery in advance of mediation, allowing them to comprehensively evaluate the strengths and weaknesses of the Action. Furthermore, the shutdown of the DK Marketplace following the motion to dismiss order and subsequent payments to potential Settlement Class Members present additional damages issues that would have to be fully briefed and which may result in a lower available damages.

10. Class Counsel prosecuted this Action on a contingent basis and advanced all associated costs with no expectation of recovery in the event the litigation did not result in recovery for the Settlement Class.

11. 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 DraftKings materials received throughout the Action, including communications he received when the DK 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 this Action.

12. 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.

13. Attached as Exhibit 1 hereto is a true and correct copy of the Stipulation and Agreement of Settlement dated February 26, 2025 (the "Stipulation"), and the exhibits attached thereto. Attached as Exhibit A-2 to the Stipulation is the Long-Form Notice that includes the proposed Plan of Allocation was drafted based upon information and discovery and with the assistance of Peregrine Economics, a firm whose principal has over 26 years of experience as a consultant and expert on hundreds of matters.

14. Attached as Exhibit 2 hereto is a true and correct copy of the resume of the proposed Claims Administrator, A.B. Data, Ltd. ("A.B. Data"). A.B. Data is a settlement administrator with over 40 years of experience administering class action settlements and has successfully

administered hundreds of complex class action settlements in an efficient and effective manner. Ex. 2 at 1, 8-15. Notice and administration costs will be capped at \$300,000, which is approximately 3% of the Settlement Fund. Should costs exceed this cap, Class Counsel will apply to the Court for additional cost payments. A.B. Data also has robust procedures for handling class member data and sufficient insurance coverage. Based upon their experience working with A.B. Data in similar cases, Class Counsel is confident that A.B. Data will perform its work in an efficient, secure, and cost-effective manner, while attempting to ensure a high claims rate among Settlement Class Members.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 26, 2025 in New York, New York.

/s/ Sarah E. Flohr
Sarah E. Flohr