



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GOLDEN NUGGET ONLINE
GAMING, INC. STOCKHOLDERS
LITIGATION

C.A. No. 2022-0797-JTL

**STIPULATION AND AGREEMENT OF SETTLEMENT,
COMPROMISE, AND RELEASE**

This Stipulation and Agreement of Settlement, Compromise, and Release, dated March 1, 2024 (the “**Stipulation**”), is entered into by and among the following parties in the above-captioned consolidated stockholder class action (the “**Action**”): (i) Steven Eschbach (“Eschbach”) and Anthony Franchi (“Franchi”) (“**Lead Plaintiffs**”), on behalf of themselves and the Class (defined below); (ii) defendants Tilman Fertitta (“Fertitta”), Steven Scheinthal (“Scheinthal”), Michael S. Chadwick (“Chadwick”), Scott Kelly (“Kelly”), and Richard Liem (“Liem”) (collectively “**Defendants**”); and (iii) non-parties DraftKings Inc. (“DraftKings”), Golden Nugget Online Gaming, Inc. (“GNOG”), the Estate of G. Michael Stevens (“Stevens”) and Fertitta Entertainment Inc. (“FEI” and together with Defendants, DraftKings, GNOG, and Stevens the “**Settling Defendant Parties**” and collectively with Lead Plaintiffs, the “**Settling Parties**”). This Stipulation is submitted pursuant to Court of Chancery Rule 23.

Subject to the terms and conditions set forth herein and the approval of the Court, this Stipulation and Settlement is intended: (i) to be a full and final disposition

and resolution of the Action; (ii) to state all of the terms and conditions of the Stipulation; (iii) to fully and finally compromise, resolve, dismiss, discharge and settle each and every one of the Released Plaintiffs' Claims against each and every one of the Released Defendant Parties; and (iv) to fully and finally compromise, resolve, dismiss, discharge and settle each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties.¹

WHEREAS:

A. On August 9, 2021, GNOG and DraftKings announced that DraftKings would acquire GNOG in an all-stock transaction at an implied equity value of approximately \$1.56 billion (the "Transaction"). In connection with the Transaction, public stockholders of GNOG received 0.365 a share of New DraftKings Class A common stock for each GNOG share they owned (the "Transaction Consideration").

B. On October 29, 2021, Eschbach sent a books-and-records demand to GNOG, pursuant to 8 *Del. C.* § 220.

C. On November 11, 2021, Franchi sent a books-and-records demand to GNOG, pursuant to 8 *Del. C.* § 220.

D. On May 5, 2022, the Transaction closed.

¹ All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings given to them in Article I, Paragraph 1 of this Stipulation.

E. On September 9, 2022, an alleged GNOG stockholder filed a Verified Class Action Complaint in this Court captioned *Cecilia Barnes v. Tilman J. Fertitta, et al.*, C.A. No. 2022-0797-JTL (the “Barnes Action”) asserting claims against Fertitta, Liem, Scheinthal, Jefferies Financial Group, Inc. (“Jefferies”), and DraftKings.

F. On September 9, 2022, Lead Plaintiffs filed their Verified Class Action Complaint in this Court captioned *Steven Eschbach, et al. v. Tilman Fertitta, et al.*, C.A. No. 2022-0799-JTL (the “Eschbach Action”) asserting claims against Fertitta, Scheinthal, Stevens, Chadwick, Kelly, and Liem.

G. On October 12, 2022, the Court entered an Order consolidating the Barnes Action and the Eschbach Action for all purposes into this Action.

H. On October 17, 2023, Lead Plaintiffs filed their motion to compel the Raine Group LLC to promptly produce hit reports, which the parties resolved before the Court heard argument or issued a ruling.

I. On October 29, 2022, the Court entered an Order appointing Eschbach and Franchi as Lead Plaintiffs in the Action and Block & Leviton LLP and Friedman Oster & Tejtell PLLC as Lead Counsel in the Action.

J. On November 3, 2022, Lead Plaintiffs designated the Verified Class Action Complaint filed in the Eschbach Action as the operative complaint in the Action (the “**Complaint**”).

K. On January 13, 2023, Defendants Fertitta, Scheinthal, and Liem moved to dismiss the Complaint (the “Motion to Dismiss”) and Defendants Stevens, Chadwick, and Kelly joined in the Motion to Dismiss.

L. On January 13, 2023, Lead Plaintiffs served their first set of requests for production of documents directed to all Defendants.

M. On February 13, 2023, Defendants filed their motion to stay discovery pending resolution of the Motion to Dismiss (the “Motion to Stay”), which Lead Plaintiffs opposed on February 16, 2023.

N. On February 28, 2023, the Court granted the Motion to Stay.

O. On March 1, 2023, Lead Plaintiffs filed their answering brief in opposition to the Motion to Dismiss.

P. On June 8, 2023, following oral argument, the Court denied Defendants’ Motion to Dismiss in its entirety.

Q. On June 16, 2023, Lead Plaintiffs propounded their first set of interrogatories directed to all Defendants.

R. Between June 30, 2023, and July 7, 2023, Lead Plaintiffs served subpoenas *duces tecum* and *ad testificandum* upon FEI, Jefferies, LLC, Kroll, LLC, the Raine Group, LLC, Houlihan Lokey, Inc., DraftKings, Latham & Watkins LLP, Spectrum Gaming Group, LLC, Sullivan & Cromwell LLP, and White & Case LLP.

S. On July 7, 2023, Defendants filed their answers to the Complaint.

T. On September 13, 2023, Lead Plaintiffs filed their motion for class certification.

U. Between September 13, 2023, and September 14, 2023, Lead Plaintiffs served subpoenas *duces tecum* and *ad testificandum* on Apollo Management IX, L.P., PointsBet USA Inc., LeoVegas (AB), Marsh & McLennan Companies, Inc., Winston & Strawn LLP, and PricewaterhouseCoopers LLC.

V. On September 14, 2023, Defendants served their first set of interrogatories and their first set of requests for the production of documents directed to Lead Plaintiffs.

W. Between September 22, 2023, and January 11, 2024, Lead Plaintiffs served subpoenas *duces tecum* and *ad testificandum* on Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Brownstein Hyatt Farber & Schrek, LLP, Ernst & Young LLP, FanDuel Group, Inc., Simpson Thacher & Bartlett LLP, and MGM Resorts International.

X. On October 16, 2023, Lead Plaintiffs served their responses and objections to Defendants' first set of interrogatories and their responses and objections to Defendants' first set of requests for the production of documents directed to Plaintiffs.

Y. On October 20, 2023, the Court entered an order granting Lead Plaintiffs' motion for class certification and certified a non-opt-out class as follows:

[A]ll record and beneficial holders of [GNOG...] who received 0.365 shares of New DraftKings Class A common stock for each GNOG share they owned [...] excluding all Defendants and all Company directors and officers at the time the Transaction closed.

Z. On November 3, 2023, the parties to the Action filed the stipulation and order regarding the death and voluntary dismissal of Defendant Stevens, which the Court granted on November 6, 2023.

AA. On November 8, 2023, the parties to the Action filed the Stipulation on the Independence and the Disinterestedness of Defendants and Their Advisors.

BB. The parties to the Action engaged in fact discovery beginning in January 2023 and extending until January 2024, during which they corresponded and met and conferred about various discovery issues, including the nature and scope of productions, the identification of document custodians, and implementation of search terms.

CC. In total, Defendants and non-parties produced nearly 50,000 documents totaling over 458,000 pages in this Action.

DD. On January 24, 2024, counsel for the Settling Parties participated in a full-day mediation session (the “**Mediation**”) before Greg Danilow, Esq., of Phillips ADR Enterprises. Before the Mediation, the parties exchanged opening and reply mediation statements and exhibits, which addressed the issues of both liability and damages. The Mediation was successful and the Settling Parties reached an

agreement-in-principle to settle the Action for \$22,000,000 in cash, subject to negotiation and execution of mutually agreeable definitive documentation and approval by the Court.

EE. On January 26, 2024, Lead Plaintiffs and Defendants informed the Court of the settlement-in-principle of the Action.

FF. This Stipulation (together with the exhibits and schedules hereto) has been duly executed by the undersigned signatories on behalf of their respective clients, and reflects the final and binding agreement among the Settling Parties to settle the Action.

GG. Based upon their investigation and prosecution of the Action, Lead Plaintiffs and Class Counsel have concluded that the terms and conditions of the Settlement and the Stipulation are fair, reasonable, and adequate to the members of the Class, and in their best interests. Based on their direct oversight of the prosecution of this matter, Lead Plaintiffs have agreed, on behalf of the Class, to settle the claims raised in the Action pursuant to the terms and conditions of the Stipulation, after considering: (i) the substantial benefits that Lead Plaintiffs and the other members of the Class will receive from the resolution of the Action; (ii) the attendant risks of litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation.

HH. Defendants deny, among other things, any and all wrongdoing, fault,

liability, or damage to Lead Plaintiffs as well as each and every other member of the Class, and further deny that Lead Plaintiffs have asserted a valid claim as to any of them. Defendants further deny that they engaged in any wrongdoing or committed any violation of law or breach of duty, that the Transaction was not entirely fair to, or in the best interests of, GNOG stockholders, that Defendants have any liability or owe any damages of any kind to Lead Plaintiffs and/or the Class, and/or that any Defendant was unjustly enriched in the Merger. Defendants maintain that they acted properly, in good faith, and in a manner consistent with their legal duties, and Defendants further maintain that their conduct was at all times in the best interests of GNOG and its stockholders. The Settling Defendant Parties are entering into the Settlement and Stipulation solely to avoid the substantial burden, expense, inconvenience and distraction of continued litigation and to resolve each of the Released Plaintiffs' Claims as against the Released Defendant Parties. The Settlement and the Stipulation shall in no event be construed as, 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 factual allegation or of any fault or liability or wrongdoing or damage whatsoever or any infirmity in the defenses that any of the Defendants have or could have asserted.

II. The Settling Parties recognize that the litigation has been filed and prosecuted by Lead Plaintiffs and Class Counsel in good faith and defended by

Defendants in good faith and further recognize that the Settlement Payment to be made, and the other terms of the Settlement as set forth herein, were negotiated at arm's length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and among the Settling Parties that, subject to the approval of the Court under Court of Chancery Rule 23 and the other conditions set forth in Article V and for good and valuable consideration set forth herein and conferred on Lead Plaintiffs and the Class, the sufficiency of which is hereby acknowledged, the Action shall be finally and fully settled, compromised, and dismissed, on the merits and with prejudice, and that (i) the Released Plaintiffs' Claims shall be finally and fully compromised, settled, released, discharged, and dismissed with prejudice against the Released Defendant Parties, and (ii) the Released Defendants' Claims shall be finally and fully compromised, settled, released, discharged, and dismissed with prejudice against the Released Plaintiff Parties, in the manner set forth herein.

I. DEFINITIONS

1. In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms, used in this Stipulation and any exhibits attached hereto and made a part hereof, shall have the meanings given to them below:

- (a) **“Account”** means the account that is maintained by Class

Counsel and into which the Settlement Payment shall be deposited. The funds deposited into the Account shall be invested in instruments backed by the full faith and credit of the U.S. Government or agency thereof (or a mutual fund or similar fund that invests solely in such instruments backed by the U.S. Government), or, if the yield on such instruments is negative, in an account fully insured by the U.S. Government or an agency thereof.

(b) “**Administrative Costs**” means all costs, expenses, and fees associated with administering or carrying out the terms of the Settlement, other than the costs of providing notice of the Settlement to the Class. Administrative Costs are not part of the Fee and Expense Award.

(c) “**Cede**” means Cede & Co., Inc.

(d) “**Claims**” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, diminutions in value, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or consulting fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including known claims and unknown claims, whether direct, individual, class, representative, legal,

equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule.

(e) “**Class**” means a non-opt out class consisting of all record holders and beneficial owners of GNOG who received 0.365 shares of New DraftKings Class A common stock for each GNOG share they owned, excluding the Excluded Stockholders.

(f) “**Class Counsel**” means the law firms of Block & Leviton LLP, Friedman, Oster & Tejtel PLLC, Labaton Keller Sucharow LLP, Andrews & Springer LLC, Grant & Eisenhofer P.A., and Julie & Holleman LLP.

(g) “**Class Member**” means a member of the Class.

(h) “**Closing**” means the May 5, 2022 date of the consummation of the Transaction.

(i) “**Closing Security Position**” means, for each DTC Participant, the number of shares of GNOG common stock reflected on the DTC allocation report used by DTC to distribute the Transaction Consideration.

(j) “**Court**” means the Court of Chancery of the State of Delaware.

(k) “**Defendants’ Counsel**” means (i) the law firms of Young Conaway Stargatt & Taylor, LLP (for defendants Tilman Fertitta, Steven L. Scheinthal, and Richard L. Liem); and (ii) the law firms of Sullivan & Cromwell LLP, and Richards, Layton & Finger, P.A. (for Defendants Michael S. Chadwick

and Scott Kelly).

(l) “**DTC**” means the Depository Trust Company.

(m) “**DTC Participants**” means the DTC participants to which DTC distributed the Transaction Consideration.

(n) “**DTC Records**” means the information to be obtained from DTC necessary to facilitate distribution of the Net Settlement Fund to Eligible Beneficial Owners.

(o) “**Effective Date**” means the first business day following the date after which all of the events and conditions specified in Paragraph 13 of this Stipulation have been met and have occurred or have been mutually waived by written agreement of the Settling Parties.

(p) “**Eligible Class Members**” means, collectively, Eligible Beneficial Owners and Eligible Registered Owners. For the avoidance of doubt, Eligible Class Members excludes Excluded Stockholders.

(q) “**Eligible Beneficial Owners**” means the ultimate beneficial owners of any shares of GNOG common stock of record by Cede & Co. who or which were entitled to receive the Transaction Consideration.

(r) “**Eligible Registered Owners**” means the registered owners of GNOG common stock who or which received or were entitled to receive the Transaction Consideration.

(s) “**Eligible Shares**” means shares of GNOG Class A common stock held by Eligible Class Members at the Closing and for which Eligible Class Members received or were entitled to receive the Transaction Consideration, except for the Excluded Shares.

(t) “**Excluded Shares**” means the shares of GNOG common stock beneficially owned by the Excluded Stockholders as set forth on Schedule 1 hereto.

(u) “**Excluded Stockholders**” means the Settling Defendant Parties; any current or former directors or executive officers of GNOG; the Immediate Family of said directors and executive officers; and any entity formed for the benefit of or under the control of the foregoing individuals, in each case as set forth on Schedule 1 hereto.

(v) “**Fee and Expense Award**” means any award to Class Counsel of fees, expenses and costs to be paid from the Settlement Fund and approved by the Court in accordance with the Stipulation, in full satisfaction of all claims for attorneys’ fees, expenses and costs, that have been, could be, or could have been asserted by Class Counsel, any other counsel or any Class Member related to, in connection with or arising out of the Action or the Released Plaintiffs’ Claims. The Fee and Expense Award does not include Administrative Costs or Notice Costs, which are to be paid separately from the Settlement Fund. “Fee and Expense Award” includes any claim by Lead Plaintiffs for incentive or service awards.

(w) “**Final**,” when referring to the Judgment or any other court order, means (i) if no appeal is filed, the day after the expiration date of the time provided for filing or noticing any appeal; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the Judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant; provided, however, that any disputes or appeals relating solely to the amount, payment or allocation of the Fee and Expense Award and any expenses or any incentive or service award to Lead Plaintiffs shall have no effect on finality for purposes of determining Effective Date and shall not otherwise prevent, limit or otherwise affect the Judgment, or prevent, limit, delay or hinder entry of the Judgment.

(x) “**Immediate Family**” means an individual’s children, stepchildren, and spouse (a “**spouse**” shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union).

(y) “**Judgment**” means the Order and Final Judgment to be entered by the Court in the Action in all material respects in the form attached as Exhibit D hereto.

(z) “**Long-Form Notice**” means the Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B, which is to be made available to Class Members via internet distribution and by first-class mail.

(aa) “**Notice**” shall mean, collectively, the Long-Form Notice and the Publication Notice.

(bb) “**Net Settlement Fund**” means the balance remaining in the Settlement Fund after the payment of (i) any and all Notice Costs; (ii) any and all Administrative Costs; (iii) any and all Taxes; (iv) any Fee and Expense Award (including any incentive or service award to Lead Plaintiffs); and (v) any other fees, costs or expenses approved by the Court.

(cc) “**Nevada Action**” means the putative class action captioned *Gustafson v. Golden Nugget Online Gaming, Inc.*, Case No. A-22-856870-B, filed in the District Court of Clark County, Nevada on August 12, 2022.

(dd) “**Notice Costs**” means all costs, expenses and fees associated with providing notice of the Settlement to the Class. Notice Costs are not part of the Fee and Expense Award.

(ee) “**Notice Payment**” means \$300,000 of the Settlement Payment to be paid into the Account to cover Notice Costs.

(ff) “**Per-Share Recovery**” means the per-share recovery under the

Settlement, which will be calculated by dividing the total amount of the Net Settlement Fund by the total number of Eligible Shares held by all Eligible Class Members.

(gg) “**Publication Notice**” means the Summary Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit C, to be published as set forth in the Scheduling Order.

(hh) “**Released Defendant Parties**” means (i) the Settling Defendant Parties; (ii) the Immediate Family of any Settling Defendant Party; (iii) Settling Defendant Parties’ past or present, direct or indirect, affiliates, associates, members, managers, partners, partnerships, investment funds, subsidiaries, parents, predecessors, and successors (collectively, “**Defendant Affiliates**”); (iv) all associates, members, managers, partners, officers, directors, employees, agents, bankers, advisors, and attorneys (including Defendants’ Counsel) of any and all of the foregoing persons and entities; (v) all corporations or other entities in which any of the Settling Defendant Parties or their Defendant Affiliates have a financial interest; and (vi) the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any and all of the foregoing. For the avoidance of doubt, Released Defendant Parties include, but are not limited to, Tilman Fertitta, Steven Scheinthal,

Michael Chadwick, Scott Kelly, Richard Liem, the Estate of G. Michael Stevens, Thomas Winter, Michael Harwell, Jason Robins, New Duke Holdco, Inc., Duke Merger Sub, Inc., DraftKings, GNOG, and FEI.

(ii) “**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.

(jj) “**Released Plaintiff Parties**” means (i) Lead Plaintiffs and all other Class Members; (ii) the Immediate Family of each individual Class Member; (iii) all Class Members’ past or present, direct or indirect, affiliates, associates, members, managers, partners, partnerships, investment funds, subsidiaries, parents, predecessors, and successors (collectively, “**Plaintiff Affiliates**”); (iv) all associates, members, managers, partners, officers, directors, employees, agents, bankers, advisors, insurers and attorneys (including Class Counsel) of Lead Plaintiffs and the Class Members and their respective Plaintiff Affiliates; (v) all corporations or other entities in which Lead Plaintiffs or any other Class Members or their Plaintiff Affiliates have a financial interest; and (vi) the legal representatives, heirs,

executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any of the foregoing.

(kk) “**Released Plaintiffs’ Claims**” means (i) any and all Claims asserted by Lead Plaintiffs in the Action, and (ii) any and all Claims and Unknown Claims (as defined below) that Lead Plaintiffs, any other former GNOG stockholder, or any member of the Class asserted on or before the date of this Stipulation or could have asserted in the Action or in any other forum, including in the Nevada Action, in their capacity as a GNOG stockholder that arise out of or relate to the Transaction or the same set of operative facts alleged in the Action, including, but not limited to, Claims arising out of (a) the Transaction Consideration, (b) any deliberations or negotiations in connection with the Transaction, including all deliberations and negotiations by each of GNOG, DraftKings, and FEI, and any Released Defendant Party, (c) the consideration received by Class Members in connection with the Transaction, (d) the consideration or benefits received by the Settling Defendant Parties in connection with the Transaction, (e) the disclosures, SEC filings, public filings, periodic reports, press releases, recommendation statements, tender offer statements and materials, or other statements issued, made available, or filed relating, directly or indirectly, to the Transaction, including without limitation claims under any and all federal securities laws (including those within the exclusive jurisdiction of the federal courts), (f) investments in (including, but not limited to,

purchases, sales, exercises of rights with respect to and decisions to hold) securities issued by any of DraftKings, GNOG, or their respective affiliates which investments related directly to the Transaction, (g) the fiduciary obligations of the Released Defendant Parties in connection with the Transaction, (h) the fees, expenses or costs incurred in prosecuting, defending or settling the Action; or (i) any deliberations, negotiations, representations, omissions or other conduct leading to the execution of this Stipulation and Settlement; provided, however, that the Released Plaintiffs' Claims shall not include claims to enforce this Stipulation.

(ll) “**Releases**” means the releases set forth in Paragraphs 4-6 of this Stipulation.

(mm) “**Settlement**” means the settlement between Lead Plaintiffs and the Class and the Settling Defendant Parties on the terms and conditions set forth in this Stipulation.

(nn) “**Settlement Administrator**” means A.B. Data, Ltd., the settlement administrator selected by Lead Plaintiffs to administer the Settlement.

(oo) “**Settlement Fund**” means the Settlement Payment plus any and all interest earned thereon.

(pp) “**Settlement Hearing**” means the hearing to be set by the Court under Court of Chancery Rule 23 to consider, among other things, final approval of the Settlement.

(qq) “**Settlement Payment**” means \$22,000,000 in cash.

(rr) “**Taxes**” means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Class Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(ss) “**Transaction**” means the acquisition of GNOG by DraftKings, as described in Paragraph A of the recitals in this Stipulation.

(tt) “**Transaction Consideration**” means the 0.365 of a share of New DraftKings Class A common stock that GNOG common stockholders were entitled to receive in the Transaction, as described in Paragraph A of the recitals in this Stipulation.

(uu) “**Unknown Claims**” means any Released Plaintiffs’ Claims that the Released Plaintiff Parties do not know or suspect to exist in his, her, or its 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, or its favor at the time of the release of the Released Defendants’ Claims, including those which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. Lead Plaintiffs and Defendants acknowledge, and the other 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 Lead Plaintiffs and Defendants, and by operation of law the other 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. Lead Plaintiffs and Defendants also acknowledge, and the other 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.

II. SETTLEMENT CONSIDERATION

2. In consideration for the full and final release, settlement, dismissal with prejudice of the Action, and discharge of all Released Plaintiffs' Claims against the Released Defendant Parties, the Settling Parties have agreed to the following:

(a) **Settlement Payment:**

i. The Settlement Fund shall be used (a) to pay all Administrative Costs; (b) to pay all Notice Costs; (c) to pay all Taxes; (d) to pay any Fee and Expense Award, including any incentive award to Lead Plaintiffs; (e) to pay

any other fees, costs or expenses approved by the Court; and following the payment of (a) - (e) herein, (f) for subsequent disbursement of the Net Settlement Fund to the Eligible Class Members as provided in Paragraph 2(b) herein.

(a) Upon the Court's entry of the Scheduling Order, Class Counsel shall provide to Defendants' Counsel complete wire transfer information and instructions (including a W-9, telephone and e-mail contact information, identifying information for the Account, and a physical address for the designated recipient of the Notice Payment and Settlement Payment) (the "**Wire Transfer Information**"). The Settlement Payment (including the Notice Payment) shall be funded solely by DraftKings.

(b) No later than ten business days following entry of the Scheduling Order by the Court, and provided that Defendants are in receipt of the Wire Transfer Information, DraftKings shall deposit or cause to be deposited the Notice Payment into the Account.

(c) No later than ten business days following entry of the Judgment by the Court, DraftKings shall deposit or cause to be deposited the balance of the Settlement Payment (*i.e.*, the Settlement Payment less the Notice Payment) into the Account.

ii. Apart from the payment of the Notice Payment and the balance of the Settlement Payment and any and all costs associated with providing

stockholder information (including, without limitation, the Transaction Records) pursuant to Paragraph 2(b) below, the Settling Defendant Parties and the Released Defendant Parties shall have no obligation to pay or bear any additional amounts, expenses, costs, damages, or fees to any person or entity, including for the benefit of Lead Plaintiffs, Class Members or Class Counsel in connection with this Stipulation and Settlement, including, but not limited to, attorneys' fees, expenses and costs for any counsel to any Class Member, Taxes, or any costs of notice or settlement administration or otherwise.

(b) **Distribution of the Net Settlement Fund:**

i. Within 14 business days following entry by the Court of the Scheduling Order, the Settling Defendant Parties shall use reasonable efforts to provide or cause to be provided to the Settlement Administrator and Class Counsel, at no cost to the Settlement Fund, Lead Plaintiffs, Class Counsel, or the Settlement Administrator, the following information, to the extent that it has not already been provided and solely to the extent that it is known or reasonably knowable, or otherwise reasonably identifiable, by the Settling Defendant Parties: (a) the stockholder register from GNOG's transfer agent including the names and mailing addresses for all Eligible Registered Owners, the number of Eligible Shares held by such Eligible Registered Owners, and the account information (including the financial institution and the specific DTC Participant Number of that financial

institution, and the corresponding account numbers where the Eligible Shares were held) for such Eligible Registered Owners; and (b) the names and mailing addresses for the Excluded Stockholders, the number of Excluded Shares held by such Excluded Stockholders, and the account information (including financial institution and account numbers where the Excluded Shares were held) for such Excluded Stockholders. In addition to the foregoing, Class Counsel may request from the Settling Defendant Parties any additional information as may be reasonably required to distribute the Net Settlement Fund to Eligible Stockholders and to ensure that the Net Settlement Fund is paid only to Eligible Stockholders and not to Excluded Stockholders, and the Settling Defendant Parties agree to provide their good-faith cooperation in procuring and providing such information to the extent that it has not already been provided and solely to the extent that it is known or reasonably knowable, or otherwise reasonably identifiable, by the Settling Defendant Parties. The information to be provided by the Settling Defendant Parties to the Settlement Administrator and Class Counsel pursuant to this Paragraph 2(b)(i) is referred to herein as the “**Transaction Records**”.

ii. DraftKings will also use its reasonable efforts to obtain or cause to be obtained from DTC and its nominee, Cede, the DTC Records. The DTC Records shall include, without limitation, an allocation or “chill” report generated by DTC in anticipation of the Transaction to facilitate the allocation of the

Transaction Consideration to stockholders. Class Counsel will use any information obtained from DTC solely for the purpose of administering the Settlement as set forth in this Stipulation, and not for any other purpose, and will not disclose any information obtained from DTC to any other party except as necessary to administer the Settlement or as required by law.

iii. Following the Effective Date, the Net Settlement Fund will be disbursed by the Settlement Administrator to Eligible Class Members, each of which will receive a *pro rata* distribution from the Net Settlement Fund equal to the product of (a) the number of Eligible Shares held by the Eligible Class Member and (b) the Per-Share Recovery under the Settlement.

iv. With respect to GNOG common stock held of record by Cede, the Settlement Administrator will cause that portion of the Net Settlement Fund to be allocated to Eligible Beneficial Owners who held their shares through DTC Participants to be paid directly to the DTC Participants. The Net Settlement Fund will be allocated and distributed to the DTC Participants by paying each the Per-Share Recovery times its respective Closing Security Position. The DTC Participants and their respective customers, including any intermediaries, shall be instructed by the Settlement Administrator to ensure *pro rata* payment to each Eligible Beneficial Owner in accordance with DTC rules and procedures.

v. With respect to GNOG common stock held of record as of

the Closing other than by Cede, as nominee for DTC (a “**Closing Non-Cede Record Position**”), the payment with respect to each such Closing Non-Cede Record Position shall be made by the Settlement Administrator from the Net Settlement Fund directly to the record owner of each Closing Non-Cede Record Position in an amount equal to the Per-Share Recovery times the number of shares of GNOG common stock comprising such Closing Non-Cede Record Position.

vi. For the avoidance of doubt, to the extent that any record owner, any DTC Participants, or their respective customers, including any intermediaries, took or permitted actions that had the effect of increasing the number of shares of GNOG common stock entitled to payment of the Transaction Consideration, whether through permitting naked short-selling or the cash settlement of short positions or through any other means (“**Increased Transaction Consideration Entitlements**”), such record owner, DTC Participants, or their respective customer (including intermediaries) shall be responsible for paying to the ultimate beneficial owners of such Increased Transaction Consideration Entitlements an amount equal to the Per-Share Recovery times the number of the Increased Transaction Consideration Entitlements.

vii. For the avoidance of doubt, a person or entity who acquired shares of GNOG Class A common stock on or before May 5, 2022, but had not settled those shares at the Transaction’s Closing (“**Non-Settled Shares**”) shall

be treated as an Eligible Beneficial Owner with respect to those Non-Settled Shares (except for the Excluded Shares), and a person who sold those Non-Settled Shares on or before May 5, 2022 shall not be treated as an Eligible Beneficial Owner with respect to those Non-Settled Shares. Payment from the Net Settlement Fund made pursuant to and in the manner set forth above shall be deemed conclusive of compliance with this Stipulation.

viii. In the event that any payment from the Net Settlement Fund is undeliverable or in the event a check is not cashed by the stale date (*i.e.*, more than six months from the check's issue date), the DTC Participants or the holder of a Closing Non-Cede Record Position shall follow their respective policies with respect to further attempted distribution or escheatment.

ix. Class Counsel shall be solely responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund, subject to Court approval. Class Counsel believe that this proposed administration and distribution represents a fair and efficient means of applying the Settlement Fund towards the resolution of all the claims and damages alleged in the Action. The Net Settlement Fund shall be distributed to Eligible Class Members only after the Effective Date of the Settlement and after all Notice Costs, Administrative Costs and Taxes, and any Fee and Expense Award have been paid from the Settlement Fund or reserved.

x. Payment of the Settlement Fund shall be final and conclusive against all Class Members. The Settling Defendant Parties, and their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the determination, administration, or calculation of any payment from the Net Settlement Fund, the nonperformance of the Settlement Administrator or a nominee holding shares on behalf of an Eligible Class Member, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

xi. All proceedings with respect to the administration of the Settlement and distribution shall be subject to the exclusive jurisdiction of the Court.

(c) **Costs of Distribution**: Class Counsel shall pay out of the Account all Administrative Costs associated with the allocation and distribution of the Net Settlement Fund (including the costs, if any, associated with escheatment or other administration of any remaining proceeds from the Net Settlement Fund).

(d) **Investment and Disbursement of the Settlement Fund**:

i. The Settlement Fund shall be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof (or a mutual fund or similar fund that invests solely in such instruments backed by the U.S. Government), or, if

the yield on such instruments is negative, in an account fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then- current market rates. The Settlement Fund shall bear all risks related to investment of the Settlement Fund.

ii. The Settlement Fund shall not be disbursed except as provided in the Stipulation or by an order of the Court.

iii. The Settlement Fund shall be deemed and considered to be in *custodial legis* of the Court, and shall remain subject to the exclusive jurisdiction of the Court, until such time as such funds shall be distributed in accordance to the Stipulation and/or further order(s) of the Court.

(e) **No Liability**: Except as expressly provided in the Stipulation, the Settling Defendant Parties and Defendants' Counsel shall have no responsibility, obligations, or liability relating to the investment, distribution, allocation, or disbursement of the Settlement Fund and Net Settlement Fund.

III. SCOPE OF THE SETTLEMENT AND RELEASES

3. Upon entry of the Judgment, and subject to the occurrence of the Effective Date, Defendants shall be dismissed with prejudice from the Action without the award of any damages, costs, or fees or the grant of further relief except for the payments provided in this Stipulation.

4. Upon the Effective Date, Lead Plaintiffs and all Class Members, on

behalf of themselves and their successors and assigns, shall thereupon be deemed to have fully, finally, and forever released, settled, and discharged the Released Defendant Parties from and with respect to every one of the Released Plaintiffs' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, instigating, or continuing to prosecute, or in any way participating in the commencement or prosecution of, any Released Plaintiffs' Claims, either directly or indirectly, representatively, derivatively, or in any other capacity, against any and all of the Released Defendant Parties.

5. Upon the Effective Date, each of Defendants, on behalf of themselves and their successors and assigns, shall thereupon be deemed to have fully, finally, and forever released, settled, and discharged the Released Plaintiff Parties from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

6. The contemplated releases given by the Settling Parties and the Class Members in this Stipulation extend to Released Plaintiffs' Claims and Released Defendants' Claims (collectively, "**Released Claims**") that the Settling Parties did not know or suspect to exist at the time of the release, including those which, if known, might have affected the decision to enter into this Stipulation.

7. Regarding the Released Claims, the Settling Parties and the Class

Members shall be deemed to have waived all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of Unknown Claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

8. The obligations incurred pursuant to this Stipulation and Settlement shall be in full and final disposition of the Action and the Released Claims. It is the intention of the Settling Parties that the Settlement eliminate all further risk and liability relating to the Released Claims, and that the Settlement shall be a final and complete resolution of all disputes asserted or which could be or could have been asserted with respect to the Released Claims.

IV. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL

9. As soon as practicable after execution of this Stipulation, Lead Plaintiffs shall (i) apply to the Court for entry of an Order in the form attached hereto as Exhibit A (the "**Scheduling Order**"), providing for, among other things: (a) the

dissemination by mail of the Long-Form Notice, substantially in the form attached hereto as Exhibit B; (b) the publication of the Publication Notice, substantially in the form attached hereto as Exhibit C; and (c) the scheduling of the Settlement Hearing to consider: (1) the proposed Settlement, (2) the request that the Judgment be entered in all material respects in the form attached hereto as Exhibit D, (3) Class Counsel's application for an award of attorneys' fees, costs and expenses, and (4) any objections to any of the foregoing; and (ii) take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order.

10. Lead Plaintiffs shall request at the Settlement Hearing that the Court approve the Settlement and enter the Judgment.

11. The Settling Parties shall take all reasonable and appropriate steps to obtain Final entry of the Judgment in all material respects in the form attached hereto as Exhibit D.

12. Notice shall be provided in accordance with the Scheduling Order. Lead Plaintiffs shall retain the Settlement Administrator to disseminate Notice and for the disbursement of the Net Settlement Fund to Eligible Class Members. The Settling Defendant Parties shall cooperate with Lead Plaintiffs in providing the Notice, including, but not limited to, Defendants, Defendants' agents and transfer agent, and providing the stockholder information for Eligible Class Members to the Settlement Administrator in accordance with Paragraph 2(b) above.

V. CONDITIONS OF SETTLEMENT

13. The Effective Date of the Settlement and Stipulation means the first day after all of the following events and conditions have been met or have occurred or have been mutually waived by written agreement of the Settling Parties, which the Settling Parties shall use their best efforts to achieve:

- a. All Settling Parties have executed the Stipulation;
- b. the Court has entered the Scheduling Order in all material respects in the form attached hereto as Exhibit A;
- c. the Court has entered the Judgment in all material respects in the form attached hereto as Exhibit D;
- d. the Action is dismissed with prejudice regarding all Class Members (including Lead Plaintiffs) without the award of any damages, costs, or fees or the grant of further relief except for the payments and conduct contemplated by this Stipulation and Settlement;
- e. the Judgment has become Final; and
- f. the full amount of the \$22,000,000 Settlement Payment has been paid into the Account accordance with Paragraph 2(a) above.

14. Upon the occurrence of the Effective Date, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

VI. ATTORNEYS' FEES AND EXPENSES

15. Class Counsel will apply for an award of attorneys' fees in an amount not to exceed 23% of the Settlement Fund as well as reimbursement of litigation expenses (the "**Fee Application**"). Class Counsel's Fee Application is not the subject of any agreement between Defendants and Lead Plaintiffs other than what is set forth in this Stipulation. Class Counsel may also petition the Court for an incentive fee award to Plaintiff Eschbach in connection with the Action and in an amount not to exceed \$5,000, to be paid solely from any Fee and Expense Award granted to Class Counsel (the "**Incentive Award**"). Any Fee and Expense Award and Incentive Award shall be determined by the Court.

16. The Fee and Expense Award shall be paid from the Settlement Fund to Class Counsel following receipt of the Settlement Payment in the Account in accordance with Paragraph 2(a)(i)(c) above, notwithstanding the existence of any timely filed objections to the Fee and Expense Award or any appeal or potential for appeal therefrom, or collateral attack on the Fee and Expense Award, the Settlement, or any part thereof, subject to Class Counsel's joint and several obligation to make refunds or repayments to the Settlement Fund in the amount of (a) the Fee and Expense Award, plus interest thereon, if the Settlement is terminated pursuant to the terms of this Stipulation or (b) the difference between the Fee and Expense Award on the one hand, and any attorneys' fees and expenses ultimately and finally awarded

on appeal, further proceedings on remand, or otherwise on the other hand if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the award has become Final. Class Counsel shall make the appropriate refund or repayment in full, including, for the avoidance of doubt, any Plaintiff service awards, no later than ten (10) business days after: (a) receiving from the Settling Defendant Parties a notice of termination of the Settlement pursuant to the terms of this Stipulation; or (b) any order disapproving, reducing, reversing, or otherwise modifying the Fee and Expense Award has become Final.

17. The disposition of the Fee Application is not a material term of this Stipulation, and it is not a condition of this Stipulation that such application be granted. The Fee Application may be considered separately from the proposed Stipulation. Any disapproval or modification of the Fee Application by the Court or on appeal shall not affect or delay the enforceability of this Stipulation, provide any of the Settling Parties with the right to terminate the Settlement, or affect or delay the binding effect or finality of the Judgment and the release of the Released Plaintiffs' Claims. Final resolution of the Fee Application shall not be a condition to the dismissal, with prejudice, of the Action as to Defendants or effectiveness of the releases of the Released Plaintiffs' Claims.

18. Class Counsel warrants that no portion of any Fee and Expense Award

shall be paid to Lead Plaintiffs or any Class Member, except as may be approved by the Court, such as in the case of a plaintiff incentive or service award.

19. Class Counsel shall allocate the Fee and Expense Award amongst plaintiffs' counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.

VII. TAXES

20. The Settling Parties agree that the Settlement Fund together with all interest earned on the Settlement Fund is intended to be a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Article VIII, including, if necessary, the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986, as amended (the "**Code**"). It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. DraftKings shall provide, or shall cause to be provided, the statement described in Treas. Reg. § 1.468B-3(e) to Class Counsel within the time

period required thereunder.

21. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in Paragraph 20 above) shall be consistent with this Article VIII and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 22 below.

22. All taxes shall be paid out of the Settlement Fund, and shall be timely paid by Class Counsel without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth herein) shall be consistent with this Article VII and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund, as provided herein. Any costs for the preparation of applicable tax returns shall be paid from the Settlement Fund. Neither the Settling Defendant Parties nor any of the Released Defendant Parties shall have any liability or responsibility for any Taxes relating to the Settlement Fund or the Account, including any liability for income taxes (including any interest, penalties, additions to tax or additional amounts imposed thereon) owed by any Class Member by virtue of their receipt of payment from the Settlement Fund.

23. The Settling Defendant Parties agree to cooperate with Class Counsel, as administrators of the Settlement Fund, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section; provided that there is no additional cost to the Settling Defendant Parties.

VIII. TERMINATION OF SETTLEMENT; EFFECT OF TERMINATION; EFFECT OF PARTIAL APPROVAL OF SETTLEMENT

24. Subject to Paragraph 25 below, if either (i) the Court finally refuses to enter the Judgment in any material respect or alters the Judgment in any material respect prior to entry, or (ii) the Court enters the Judgment, but on or following appellate review, the Judgment is modified or reversed in any material respect, the Settlement and this Stipulation shall be canceled and terminated unless each of the Settling Parties to this Stipulation, within ten business days from receipt of such ruling, agrees in writing with the other Settling Parties hereto to proceed with this Stipulation and Settlement, including only with such modifications, if any, as to which all other Settling Parties in their sole and absolute discretion for any reason or no reason may agree. In addition to the foregoing, Lead Plaintiffs shall have the right to cancel and terminate the Settlement and this Stipulation in the event that the Settlement Payment is not timely paid in accordance with this Stipulation. For purposes of this paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing by each of the Settling Parties. Neither a modification

nor a reversal on appeal of the amount of fees, costs and expenses awarded by the Court to Class Counsel shall be deemed a material modification of the Judgment or this Stipulation.

25. If this Stipulation is disapproved, canceled, or terminated pursuant to its terms or the Effective Date of the Settlement otherwise fails to occur, (i) the Settling Parties shall be deemed to have reverted to their respective litigation status immediately before January 24, 2024, they shall negotiate a new trial schedule in good faith, and they shall proceed as if the Stipulation had not been executed and the related orders had not been entered; (ii) all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way; and (iii) the statements made in connection with the negotiations of this Stipulation shall not be deemed to prejudice in any way the positions of any of the Settling Parties with respect to the Action, or to constitute an admission of fact of wrongdoing by any Settling Party, shall not be used or entitle any Settling Party to recover any fees, costs, or expenses incurred in connection with the Action, and neither the existence of this Stipulation nor its contents nor any statements made in connection with its negotiation or any settlement communications shall be admissible in evidence in any matter or proceeding or shall be referred to for any purpose in the Action, or in any other litigation or judicial proceeding.

26. If this Stipulation is disapproved, canceled, or terminated pursuant to

its terms or the Effective Date of the Settlement otherwise fails to occur, the Settlement Fund and all interest earned thereon—less all Notice Costs and Administrative Costs paid, incurred, or due consistent with this Stipulation—shall be returned to DraftKings within five business days of the disapproval, cancellation or termination of the Settlement in accordance with the terms of this Stipulation.

IX. STAY PENDING COURT APPROVAL

27. Lead Plaintiffs hereby agree to stay the proceedings in the Action, to file no further actions against the Released Defendant Parties asserting any Released Plaintiffs' Claims, and to stay and not to initiate any and all other proceedings other than those incident to the Settlement itself, pending the occurrence of the Effective Date. Lead Plaintiffs and Defendants agree to use their reasonable best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Class Member in, any other proceedings which challenge the Settlement or the Transaction or otherwise assert or involve the commencement or prosecution of any Released Plaintiffs' Claim, either directly, representatively, derivatively, or in any other capacity, against any Released Defendant Party.

28. The Settling Parties will request that, pending final determination of whether the Settlement should be approved, the Court order that Lead Plaintiffs and all Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any

Released Plaintiffs' Claim, either directly, representatively, derivatively, or in any other capacity, against any Released Defendant Party.

X. NO ADMISSION OF LIABILITY

29. It is expressly understood and agreed that neither this Stipulation or the Settlement nor any act or omission in connection therewith is intended or shall be deemed or argued to be evidence of or to constitute an admission or concession by: (a) Defendants or any other Released Defendant Parties as to (i) the truth of any fact alleged by Lead Plaintiffs, (ii) the validity of any claims or other issues raised, or which might be or might have been raised, in the Action or in any other litigation, (iii) the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation, or (iv) any wrongdoing, fault, or liability of any kind by any of them, which each of them expressly denies; or (b) Lead Plaintiffs that any of their claims are without merit, that any of Defendants had meritorious defenses, or that damages recoverable from Defendants under the Complaint would not have exceeded the Settlement Amount.

30. The Released Defendant Parties may file this Stipulation and/or the Order and Final Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or

counterclaim or in connection with any insurance litigation.

XI. MISCELLANEOUS PROVISIONS

31. All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, if there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of this Stipulation shall prevail.

32. DraftKings warrants that, as to the payments made or to be made on its behalf, at the time of entering this Stipulation and at the time of such payment it is not insolvent, nor will the payment required to be made by it render DraftKings insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 5457 thereof. This representation is made by DraftKings.

33. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of DraftKings to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Lead Plaintiffs, Lead Plaintiffs and Defendants shall jointly move the Court to vacate and set aside the Settlement and this Stipulation, including, without limitation, the Releases given and the Judgment entered in favor of Defendants and

the other Releasees pursuant to this Stipulation, in which event the releases and Judgment shall be null and void, and the Settling Parties shall be restored to their respective positions in the litigation (as set forth and contemplated by Paragraph 25 above) and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice Costs and Administrative Costs actually incurred, paid or payable) shall be returned.

34. The Settling Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Lead Plaintiffs and any other Class Members against the Settling Defendant Parties with respect to the Released Plaintiffs' Claims. Accordingly, Lead Plaintiffs and their counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Lead Plaintiffs or Class Counsel or defended by the Settling Defendant Parties in bad faith or without a reasonable basis. The Settling Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties, including through a mediation process supervised and conducted by Greg Danilow, Esq., of Phillips ADR Enterprises, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

35. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both Lead Plaintiffs and the Settling Defendant Parties (or their successors-in-interest).

36. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

37. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain exclusive jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Class Counsel and enforcing the terms of this Stipulation and Settlement, including the distribution of the Net Settlement Fund to Class Members.

38. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

39. This Stipulation and its exhibits constitute the entire agreement among the Settling Parties concerning the Settlement and this Stipulation and its exhibits and supersede all written or oral communications, agreements or understandings that may have existed prior to the execution of this Stipulation by the Settling Parties. All Parties acknowledge that no other agreements, representations, warranties, or

inducements have been made by any Party hereto concerning this Stipulation or its exhibits other than those contained and memorialized in this Stipulation and its exhibits.

40. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

41. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Settling Parties, including the Released Plaintiff Parties and the Released Defendant Parties, and any corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate or reorganize.

42. The construction, interpretation, operation, effect and validity of this Stipulation and all documents necessary to effectuate it shall be governed by the internal laws of the State of Delaware without regard to conflicts of laws.

43. Subject to Paragraph 30, above, any action arising under or to enforce this Stipulation or any portion thereof shall be commenced and maintained only in this Court.

44. This Stipulation shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it

is the result of arm's-length negotiations between the Settling Parties and that all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

45. All counsel and all other persons executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

46. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Scheduling Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

47. If any Settling Party is required to give notice to another Settling Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand or overnight delivery or facsimile transmission, with confirmation of receipt or successful transmission, respectively. Notice shall be provided as follows:

**If to Lead Plaintiffs or
Class Counsel:**

Block & Leviton LLP
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Boston, MA 02110
(617) 398-5600
jason@blockleviton.com

Friedman Oster & Tejtel PLLC
Attn: David Tejtel
493 Bedford Center Road, Suite 2D
Bedford Hills, NY 10507
dtejtel@fotpllc.com

**If to Defendants
or Defendants' Counsel:**

Sullivan & Cromwell LLP
Attn: Brian Frawley
125 Broad Street
New York, NY 10004
frawleyb@sullcrom.com

Young Conaway Stargatt & Taylor, LLP
Attn: Barr Flinn
1000 North King Street
Wilmington, DE 19801
bflinn@ycst.com

Richards, Layton & Finger, P.A.
Attn: Raymond DiCamillo
920 North King Street
Wilmington, DE 19801
dicamillo@rlf.com

48. Except as otherwise provided herein, each Settling Party shall bear its own costs.

49. Whether or not the Stipulation is approved by the Court and whether or

not the Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their counsel agree to keep all non-public settlement negotiations, discussions, drafts, agreements and proceedings in connection with the Stipulation confidential.

50. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

51. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by the Settling Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

IN WITNESS WHEREOF, the Settling Parties, through their undersigned counsel, have executed this Stipulation effective as of the date first set forth above.

[SIGNATURES ON NEXT PAGE]

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*Counsel for Non-Party Estate of
G. Michael Stevens*

SCHEDULE 1

<u>Excluded Stockholder</u>	<u>Excluded Shares</u>
Tilman J. Fertitta	<u>Class A Common Stock</u> : 4,223,958 <u>Class B Common Stock</u> : 31,657,545 <u>Restricted Stock Units</u> : 266,667 <u>Private Placement Warrants</u> : 2,941,667
Richard H. Liem	<u>Class A Common Stock</u> : 30,000 <u>Restricted Stock Units</u> : 123,626
Steven L. Scheinthal	<u>Class A Common Stock</u> : 30,000 <u>Restricted Stock Units</u> : 123,626
Michael S. Chadwick	<u>Class A Common Stock</u> : 1,283 <u>Restricted Stock Units</u> : 3,626
G. Michael Stevens	<u>Class A Common Stock</u> : 1,283 <u>Restricted Stock Units</u> : 3,626
Scott Kelly	<u>Class A Common Stock</u> : 1,283 <u>Restricted Stock Units</u> : 3,626
Thomas Winter	<u>Class A Common Stock</u> : 162,381 <u>Restricted Stock Units</u> : 825,529
Michael Harwell	<u>Class A Common Stock</u> : 5,296 <u>Restricted Stock Units</u> : 28,000