



GRANTED WITH MODIFICATIONS

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Case No. 2022-0797-JTL



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

[PROPOSED] SCHEDULING ORDER

WHEREAS, a consolidated stockholder class action is pending in this Court, styled *In re Golden Nugget Online Gaming, Inc. Stockholders Litigation*, Consol. C.A. No. 2022-0797-JTL (the “Action”);

WHEREAS, lead plaintiffs 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”), have determined to settle all claims asserted against the Released Defendant Parties with prejudice on the terms and conditions set forth in the Stipulation and Agreement of

Settlement, Compromise and Release entered into by the Settling Parties dated March 1, 2024 (the “Stipulation”);¹

WHEREAS, on October 20, 2023, the Court certified the following class:

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

WHEREAS, in the same order, the Court certified Lead Plaintiffs as representatives of the Class, and appointed Block & Leviton LLP and Friedman Oster & Tejtel PLLC as Class counsel (“Class Counsel”);

WHEREAS, in accordance with the Stipulation, the Settling Parties have made an application, pursuant to Court of Chancery Rule 23, for entry of a scheduling order in accordance with the Stipulation, approving the form and content of the notice of the Settlement to the Class, and scheduling the date and time for the Settlement Hearing; and

WHEREAS, the Court having read and considered the Stipulation and the exhibits attached thereto; the Stipulation being sufficient to warrant notice to the Class; and all Settling Parties having consented to the entry of this Order.

NOW THEREFORE, IT IS HEREBY ORDERED, this ____ day of _____, 2024, as follows:

¹ Any capitalized terms used in this Order that are not otherwise defined herein shall have the meanings given to them in the Stipulation.

1. Definitions: Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.

2. Jurisdiction: The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over Lead Plaintiffs, Defendants, and each of the Class Members.

3. Class Definition: Pursuant to Paragraph 1 of the Court's October 20, 2023 order granting class certification, the Court certified a non-opt class as follows:

[A]ll record and beneficial holders of Golden Nugget Online Gaming, Inc. ("GNOG") who received 0.365 shares of New DraftKings Class A common stock for each GNOG stock they owned (the "Transaction"), excluding all Defendants and all Company directors and officers at the time the Transaction closed (the "Class").

4. Settlement Hearing: The Court will hold a Settlement Hearing (the "Settlement Hearing") on _____, 2024, at _____ .m., at the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, to:

a. determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class, and should be approved by the Court;

b. determine whether a Judgment substantially in the form attached as **Exhibit D** to the Stipulation should be entered dismissing the Action with prejudice against Defendants;

c. determine whether the application by Class Counsel for an award of attorneys' fees and reimbursement of litigation expenses, including the request for an incentive award to Lead Plaintiff Steven Eschbach, should be approved; and

d. consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Class Members as set forth in Paragraph 7 of this Order.

5. The Court may adjourn the Settlement Hearing without further notice to the Class, and may approve the proposed Settlement with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the Class.

6. Retention of Settlement Administrator and Manner of Notice: Class Counsel is hereby authorized to retain A.B. Data, Ltd. as the settlement administrator (the "Settlement Administrator") to provide notice to the Class and administer the Settlement, including the distribution of the Net Settlement Fund. Notice of the Settlement and the Settlement Hearing shall be given as follows:

a. Within 14 business days of the date of entry of this 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 Transaction Records and DTC Records upon the terms set forth in Paragraph 2(b)(i) of the Stipulation. The information to be provided to the Settlement Administrator and

Class Counsel pursuant to Paragraph 2(b)(i) of the Stipulation is referred to herein as the “Stockholder Information”;

b. No less than 60 days prior the Settlement Hearing (the “Notice Date”), the Settlement Administrator shall cause a copy of the Long-Form Notice, substantially in the form attached to the Stipulation as **Exhibit B**, to be mailed by first-class mail to potential Class Members at the addresses set forth in the Stockholder Information or who otherwise may be identified through further reasonable effort;

c. Not later than the Notice Date, the Settlement Administrator shall post a copy of the Long-Form Notice on the website established for the Settlement;

d. Not later than ten business days after the Notice Date, the Settlement Administrator shall cause the Publication Notice, substantially in the form attached to the Stipulation as **Exhibit C**, to be published once in *Investor’s Business Daily* and to be transmitted once over the *PR Newswire*; and

e. Not later than ten business days prior to the Settlement Hearing, Class Counsel shall serve on Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of compliance with Paragraph 6(b)-(d) above.

7. Approval of Form and Content of Notice: The Court (a) approves, as to form and content, the Long-Form Notice, attached to the Stipulation as **Exhibit B**, and the Publication Notice, attached to the Stipulation as **Exhibit C**, and (b) finds

that the mailing and internet distribution of the Long-Form Notice, and publication of the Publication Notice in the manner and form set forth in Paragraph 6 of this Order: (i) are the best notice practicable under the circumstances; (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of Class Counsel's application for an award of attorneys' fees and litigation expenses, including their request for an incentive award to Lead Plaintiffs, of their right to object to the Settlement, and of their right to appear at the Settlement Hearing; (iii) constitute due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfy the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Long-Form Notice and Publication Notice before they are mailed, posted, and published, respectively.

8. Nominees Procedures: Brokers and other nominees that hold or held shares of GNOG common stock as record holders for the benefit of another person or entity shall either (a) within seven (7) calendar days of receipt of the Mailing Notice, request from the Settlement Administrator sufficient copies of the Mailing Notice to forward to all such beneficial owners and within seven (7) calendar days

of receipt of those Mailing Notices forward them to all such beneficial owners; or
(b) within seven (7) calendar days of receipt of the Mailing Notice, send a list of the names and addresses of all such beneficial owners to the Settlement Administrator, in which event the Settlement Administrator shall promptly mail the Mailing Notice to such beneficial owners.

9. Appearance at the Settlement Hearing: At the Settlement Hearing, any Class Member who desires to do so may appear personally or by counsel, and show cause, if any, why the Settlement in accordance with and as set forth in the Stipulation should not be approved as fair, reasonable and adequate and in the best interests of the Class; why the Judgment should not be entered in accordance with and as set forth in the Stipulation; or why the Court should not grant Class Counsel's application for an award of attorneys' fees and expenses; provided, however, that unless the Court in its discretion otherwise directs, no Class Member, or any other person, shall be entitled to contest the approval of the terms and conditions of the Settlement or (if approved) the Judgment to be entered thereon, or the allowance of fees and expenses to Class Counsel, and no papers, briefs, pleadings or other documents submitted by any Class Member or any other person (excluding a party to the Stipulation) shall be received or considered, except by order of the Court for good cause shown, unless, no later than ten business days prior to the Settlement Hearing, such person files with the Register in Chancery, Court of Chancery, 500

North King Street, Wilmington, DE, 19801, and serves upon the attorneys listed below: (a) a written notice of intention to appear that includes the name, address, and telephone number of the objector and, if represented by counsel, the name and address of the objector's counsel; (b) proof of membership in the Class; (c) a detailed statement of objections to any matter before the Court; and (d) the grounds therefor or the reasons for wanting to appear and be heard, as well as all documents or writings the Court shall be asked to consider. These writings must also be served by File & ServeXpress, by hand, by first-class mail, or by express service upon the following attorneys such that they are received no later than ten (10) business days prior to the Settlement Hearing:

Representative Plaintiffs' Counsel

Kimberly A. Evans, Esq.
Lindsay K. Faccenda, Esq.
Robert Erikson, Esq.
BLOCK & LEVITON LLP
3801 Kennett Pike, Suite C-305
Wilmington, DE 19807
(302) 499-3600

Representative Defendants' Counsel

C. Barr Flinn, Esq.
Paul J. Loughman, Esq.
YOUNG CONAWAY STARGATT
& TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6600

Counsel for the Settling Parties are directed to promptly furnish each other with copies of any and all objections that might come into their possession.

10. Unless the Court otherwise directs, any person who fails to object in the manner described above shall be deemed to have waived and forfeited any and all rights it/she/he may otherwise have to object to the Settlement and/or any award of

attorneys' fees and expenses to Class Counsel (including any right of appeal) and shall be forever barred from raising such objection in the Consolidated Stockholder Action or any other action or proceeding. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

11. Stay and Temporary Injunction: Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination by the Court of whether the Settlement should be approved, the Court bars and enjoins Lead Plaintiffs, and all other members of the Class, from commencing, instituting, prosecuting, instigating, or continuing to prosecute, or in any way participating in the commencement or prosecution of any and all of the Released Plaintiffs' Claims, either directly, representatively, derivatively, or in any other capacity, against any and all of the Released Defendant Parties.

12. Briefing Schedule: At least thirty business days prior to the Settlement Hearing, Class Counsel shall file any opening brief in support of the proposed Settlement, and Class Counsel shall file their application for an award of attorneys' fees and expenses, including their request for an incentive award for Lead Plaintiffs, along with any supporting affidavits. Any objections to the application for attorneys' fees and expenses or the incentive award to Lead Plaintiffs shall be filed and served

no later than fifteen business days prior to the Settlement Hearing. Any reply papers in support of the Settlement and any reply in support of Class Counsel's application for an award of attorneys' fees and expenses or the incentive award to Lead Plaintiffs shall be filed at least five business days prior to the Settlement Hearing.

13. Effectiveness of Judgment: If the Settlement is approved by the Court following the Settlement Hearing, the Court shall enter the Judgment substantially in the form attached to the Stipulation as **Exhibit D**. The effectiveness of the Judgment shall not be conditioned upon the approval of an award of attorneys' fees, costs, expenses, and/or an incentive award to Lead Plaintiffs, either at all or in any particular amount, by the Court.

14. Termination of Settlement: If the Settlement is terminated pursuant to the terms of the Stipulation or the Effective Date otherwise fails to occur, then this Scheduling Order and any related orders entered by the Court shall be treated as vacated, *nunc pro tunc*; the Stipulation shall be null and void and of no force and effect (except as otherwise provided for in the Stipulation); Lead Plaintiffs and Defendants shall be deemed to have reverted to their respective litigation status immediately prior to January 24, 2024; Lead Plaintiffs and Defendants shall negotiate a new trial schedule in good faith; Lead Plaintiffs and Defendants shall proceed as if the Stipulation had not been executed and the related orders had not been entered; all of their respective claims and defenses as to any issue in the

Consolidated Stockholder Action shall be preserved without prejudice; 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.

15. Retention of Jurisdiction: The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to the Class, and the Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

16. No Admission: The Stipulation and any and all negotiations, statements, or proceedings in connection therewith are not and shall not be deemed or argued to be evidence of or to constitute any 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.

17. Other Proceedings. The Released Defendant Parties may file this Order and/or the Stipulation 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.

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

19. Extensions: The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Class members.

Vice Chancellor J. Travis Laster

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: J Travis Laster

File & Serve

Transaction ID: 72222474

Current Date: Mar 06, 2024

Case Number: 2022-0797-JTL

Case Name: CONF ORDER - CONS/w. 2022-0799-JTL - IN RE GOLDEN NUGGET ONLINE GAMING, INC STOCKHOLDERS LITIGATION

Court Authorizer: J Travis Laster

Court Authorizer

Comments:

A hearing (the "Settlement Hearing") will be held on July 9, 2024, at 11:00 a.m.

The Publication Notice will be revised to include the following disclaimer in bold all caps font following the contact information for Class Counsel: "DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE."

/s/ Judge J Travis Laster