

**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

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

*The Delaware Court of Chancery authorized this Notice. This is not a solicitation from a lawyer.*

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights will be affected by the above-captioned consolidated stockholder class action (the “Action”) pending in the Court of Chancery of the State of Delaware (the “Court”) if you held shares of common stock of Golden Nugget Online Gaming, Inc. (“GNOG” or the “Company”) as of May 5, 2022, the date of the acquisition of GNOG by DraftKings Inc. (“DraftKings”).

**NOTICE OF SETTLEMENT:** Please also be advised that Steven Eschbach (“Eschbach”) and Anthony Franchi (“Franchi,” and with Eschbach, “Lead Plaintiffs”), and their counsel Block & Leviton LLP, Friedman Oster & Tejtel PLLC, Labaton Keller Sucharow LLP, Andrews & Springer LLC, Grant & Eisenhofer P.A., and Julie & Holleman LLP (collectively, “Class Counsel”), on behalf of Lead Plaintiffs and the Class, have reached a proposed settlement of the Action for \$22,000,000 in cash (the “Settlement”).

**PLEASE READ THE NOTICE CAREFULLY AND IN ITS ENTIRETY. This Notice explains how Class Members will be affected by the Settlement.<sup>1</sup>**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>YOU <u>DO NOT</u> NEED TO SUBMIT A CLAIM FORM.</b>	If you are an Eligible Class Member (defined in paragraph 36 below), you are eligible to receive a <i>pro rata</i> distribution from the Settlement proceeds. Eligible Class Members <b>do not</b> need to submit a claim form in order to receive a distribution from the Settlement, if approved by the Court. Your distribution from the Settlement will be paid to you directly. See paragraphs 35-41 below for further discussion.

<sup>1</sup> Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings given to them in the Stipulation and Agreement of Settlement, Compromise, and Release dated March 1, 2024 (the “Stipulation of Settlement”), entered into by and among (i) Lead Plaintiffs, on behalf of themselves and the Class; (ii) defendants Tilman Fertitta, Steven Scheinthal, Michael S. Chadwick, Scott Kelly, and Richard Liem (collectively, “Defendants”); and (iii) non-parties DraftKings, 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”). A copy of the Stipulation is available at <http://www.GoldenNuggetStockholderLitigation.com>.

<p><b>YOU MAY OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JUNE 24, 2024.</b></p>	<p>You have the right, if you do not like the proposed Settlement or Class Counsel’s request for attorneys’ fees, reimbursement of litigation expenses, or any incentive award to any Lead Plaintiff, to write to the Court and explain why you do not like it/them.</p>
<p><b>YOU MAY GO TO A HEARING ON JULY 09, 2024 AT 11:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JUNE 24, 2024.</b></p>	<p>Filing a written objection and notice of intention to appear that is received by June 24, 2024, allows you to speak in Court, at the discretion of the Court, about your objection. You may, but you do not have to, attend the hearing. The Court will consider the objection whether or not you attend.</p>

**WHAT THIS NOTICE CONTAINS**

What Is The Purpose Of This Notice?	Page 2
What Is This Case About?	Page 3
What Was Lead Plaintiffs’ Theory of Liability?	Page 5
How Do I Know If I Am Affected By The Settlement?	Page 5
What Are The Terms Of The Settlement?	Page 6
What Are Lead Plaintiffs’ Reasons For The Settlement?	Page 6
How Will I Receive Payment From The Settlement?	Page 6
What Will Happen If The Settlement Is Approved? What Claims Will The Settlement Release?	Page 7
How Will Class Counsel Be Paid?	Page 9
When And Where Will The Settlement Hearing Be Held?	
Do I Have To Come To The Hearing? May I Speak At The Hearing If I Don’t Like The Settlement?	Page 9
Can I See The Court File? Whom Should I Contact If I Have Questions?	Page 11
Notice to Persons or Entities Holding Record Ownership on Behalf of Others	Page 11

**WHAT IS THE PURPOSE OF THIS NOTICE?**

1. The purpose of this Notice is to notify you of the terms of the proposed Settlement of the Action. The Notice also explains how the proposed Settlement affects the legal rights of Class Members. Please note: the Court may approve the proposed Settlement with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the Class.

2. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. In a class action lawsuit, the Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. Once the class is certified, the Court must resolve all issues on behalf of the class members. In this Action, the Court has previously directed that the Lead Plaintiffs and Lead Counsel (see ¶ 12 below) shall have primary responsibility for prosecuting all claims against Defendants on behalf of all Class Members.

3. The court in charge of this Action is the Court of Chancery of the State of Delaware, and the case is known

as *In re Golden Nugget Online Gaming, Inc. Stockholders Litigation*, C.A. No. 2022-0797-JTL. The judge presiding over this Action is Vice Chancellor J. Travis Laster. In litigation, the people who are suing are called plaintiffs, and those who are being sued are called defendants. In this case, Lead Plaintiffs, on behalf of themselves and the Class, sued Tilman Fertitta, Steven Scheinthal, Michael S. Chadwick, Scott Kelly, and Richard Liem. If the Settlement is approved by the Court, it will resolve all claims asserted against the Defendants and other Released Defendant Parties (as defined below in paragraph 56 of this Notice).

4. The Court has scheduled a hearing to consider the fairness, reasonableness, and adequacy of the Settlement and the application by Class Counsel for an award of attorneys' fees, reimbursement of litigation expenses and incentive award to Lead Plaintiff Eschbach (the "Settlement Hearing"). See ¶¶ 54-62 below for details about the Settlement Hearing, including the location, date, and time of the hearing. The Court has certified the Action as a non-opt-out class action, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2).

5. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, the settlement administrator selected by Lead Plaintiffs and approved by the Court (the "Settlement Administrator") will make payments pursuant to the Settlement after any objections and appeals are resolved.

## WHAT IS THIS CASE ABOUT?

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO THE FOLLOWING MATTERS AND THESE RECITATIONS SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE SETTLING PARTIES.

6. 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").

7. On October 29, 2021 and November 11, 2021, Eschbach and Franchi, respectively, sent books-and-records demands to GNOG, pursuant to 8 *Del. C.* § 220.

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

9. On September 9, 2022, an alleged GNOG shareholder 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.

10. 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.

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

12. 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 & Tejtel PLLC as Lead Counsel in the Action.

13. 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").

14. On January 13, 2023, Defendants Fertitta, Scheinthal, and Liem moved to dismiss the Complaint (the “Motion to Dismiss”) and Defendants Stevens,<sup>2</sup> Chadwick, and Kelly joined in the Motion to Dismiss. Following oral argument, the Court denied Defendants’ Motion to Dismiss in its entirety on June 8, 2023.

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

16. On September 13, 2023, Lead Plaintiffs filed their motion for class certification, which the Court granted on October 20, 2023.

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

18. The Parties and certain nonparties engaged in fact discovery beginning in January 2023 and extending until January 2024, during which the Parties propounded discovery on each other, Lead Plaintiffs issued and served subpoenas *duces tecum* and *ad testificandum* on 22 nonparties, and the parties and nonparties 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.

19. In total, Defendants and nonparties produced nearly 50,000 documents totaling over 458,000 pages in this Action.

20. 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.

21. On January 26, 2024, Lead Plaintiffs and Defendants informed the Court of the settlement-in-principle of the Action, subject to negotiation and execution of mutually agreeable definitive documentation and approval by the Court.

22. On March 1, 2024, Lead Plaintiffs and Defendants entered into the Stipulation of Settlement memorializing the final terms and conditions of the Settlement.

23. Separately, on August 12, 2022, an alleged GNOG stockholder filed a putative class action in the District Court of Clark County, Nevada captioned *Gustafson v. Golden Nugget Online Gaming, Inc.*, Case No. A-22-856870-B (the “Nevada Action”), alleging claims on behalf of himself and the same putative class against, among others, the Settling Defendant Parties concerning the Transaction. After the defendants moved to dismiss or stay that action, on May 24, 2023, the Nevada court dismissed in part and otherwise stayed the Nevada Action.

24. The Stipulation of Settlement (together with the exhibits hereto) has been duly executed by the undersigned signatories on behalf of their respective clients, and reflects the final and binding agreement between the Settling Parties.

25. 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 of Settlement 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 of Settlement, 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 of Settlement.

26. 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

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<sup>2</sup> The Complaint initially named former GNOG director G. Michael Stevens as a defendant in this Action.

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 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 of Settlement 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 of Settlement 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.

27. The Settling Parties recognize that the Action 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.

## WHAT WAS PLAINTIFFS' THEORY OF LIABILITY?

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO THE FOLLOWING MATTERS AND THESE RECITATIONS SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE SETTLING PARTIES.

28. Lead Plaintiffs' complaint alleged, among other things, that DraftKings' acquisition of GNOG was culminated through an unfair process that led to an unfair price for public stockholders. Similarly, Lead Plaintiffs alleged that GNOG's controller—Fertitta—received lucrative benefits from the Transaction that were not shared with other public stockholders, including, a commercial agreement involving other entities he owned or controlled.

29. In support of their claims that the Transaction was negotiated unfairly, Lead Plaintiffs alleged that the timing was suspect because: (i) Lead Plaintiffs alleged that at the same time as the Transaction was being negotiated, Fertitta was also discussing a possible deal whereby his private company—FEI—would go public through a “de-SPAC” merger with FAST Acquisition Corp. and Fertitta expected the Transaction to trigger substantial benefits for him in that de-SPAC transaction; and (ii) Lead Plaintiffs alleged that Fertitta was eager to leverage FEI's broad entertainment offerings and

## HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?

extensive customer database with DraftKings' mammoth network, and agreed to enter into an exclusive commercial arrangement between FEI on the one hand, and DraftKings on the other, in tandem with the Transaction.

30. If you are a member of the Class, you are subject to the Settlement. The Class certified by the Court consists of:

all 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.

**PLEASE NOTE:** The Class was certified as a non-opt-out class pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2).

## WHAT ARE THE TERMS OF THE SETTLEMENT?

31. In consideration of the settlement of the Released Plaintiffs' Claims (defined in ¶ 44 below) against the Settling Defendants and the other Released Defendant Parties (defined in ¶ 45 below), DraftKings shall deposit or cause to be deposited \$22,000,000 in cash (the "Settlement Payment") into an interest-bearing escrow account maintained by Class Counsel. Paragraphs 35-41 below describe the distribution of the Settlement proceeds to Eligible Class Members.

## WHAT ARE LEAD PLAINTIFFS' REASONS FOR THE SETTLEMENT?

32. Lead Plaintiffs and Class Counsel state that they continue to believe that their claims have legal merit, and that their diligent prosecution of the claims asserted in the Action has led to a Settlement that provides a substantial recovery for the Class.

33. Lead Plaintiffs and Class Counsel have conducted an extensive investigation relating to the claims and the underlying events and transactions alleged in the Action. Class Counsel have analyzed the evidence adduced during their investigation, consulted with industry and valuation experts, and have also researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto.

34. In negotiating and evaluating the terms of the Settlement, Lead Plaintiffs and Class Counsel considered the significant legal and factual defenses to Lead Plaintiffs' claims and the expense, length, and risk inherent in such litigation. In light of the risks of continued litigation, Lead Plaintiffs and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. Lead Plaintiffs and Class Counsel believe that the Settlement provides a significant benefit to the Class, namely \$22,000,000 in cash (less certain deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller or no recovery after trial and appeals, possibly years in the future.

## HOW WILL I RECEIVE PAYMENT FROM THE SETTLEMENT?

35. **Please Note: If you are eligible to receive a payment from the Net Settlement Fund, you do not have to submit a claim form or take any other action in order to receive your payment.**

36. If the Settlement is approved by the Court and the Effective Date (as defined in the Stipulation of Settlement) occurs, the Settlement Payment plus any and all interest earned thereon (the "Settlement Fund"), less any Notice Costs and Administrative Costs, and Court-awarded attorneys' fees and litigation expenses, including any incentive award to Lead Plaintiff Eschbach (the "Net Settlement Fund"), will be distributed on a *pro rata* basis to "Eligible Class Members." The "Eligible Class Members" consist of Class Members who received or were entitled to receive the Transaction Consideration for their Eligible Shares.<sup>3</sup> For the avoidance of doubt, Eligible Class Members excludes all Excluded Stockholders, including Defendants and certain of their affiliates identified in the Stipulation of Settlement. Pursuant to the terms of the Stipulation of Settlement, each Eligible Class Member will be eligible to receive a *pro rata* payment from the Net Settlement Fund equal to the product of (i) the number of Eligible Shares held by the Eligible Class Member and (ii) the "Per-Share Recovery" for the Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by the total number of Eligible Shares.

37. Pursuant to the terms of the Stipulation of Settlement, payments from the Net Settlement Fund to Eligible Class Members will be made in the same manner in which Eligible Class Members received the Transaction Consideration.

<sup>3</sup> As defined in the Stipulation of Settlement, "Eligible Shares" means shares of Class A GNOG 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 (as defined in the Stipulation of Settlement).

Accordingly, if your shares of GNOG common stock were held in “street name” and the Transaction Consideration was deposited into your brokerage account, your broker will be responsible for depositing your Settlement payment into that same brokerage account.

38. Class Counsel will work with the Settlement Administrator to oversee the administration of the Settlement and distribution of the Settlement Fund. Following the Effective Date, the Net Settlement Fund will be disbursed 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.

39. For most stockholders, the Settlement Fund will be distributed in the same manner as the Transaction Consideration. If you held shares through Cede & Co., as nominee for the Depository Trust Company (“DTC”) (which is likely true of the large majority of stockholders, including those who held shares through a brokerage firm) and were paid Transaction Consideration in connection with the Transaction, the Settlement Administrator will pay your *pro rata* share of the Net Settlement Fund to you through DTC, by paying the money to DTC with instructions to distribute such payment to the brokers (for further credit to their customers) on whose behalf DTC owns the stock of record. If you held shares of record, the Administrator will pay your *pro rata* share of the Net Settlement Fund directly to you.

40. If there is any balance remaining in the Net Settlement Fund after six (6) months from the initial distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), the Settlement Administrator shall, if feasible, distribute such balance among Settlement Payment Recipients who cashed the checks they received in connection with the initial distribution in an equitable and economic fashion in the same manner as the initial distribution. Thereafter, any balance that still remains in the Net Settlement Fund that is not feasible to be re-distributed shall be distributed, after provision for all anticipated expenses, in accordance with Delaware’s unclaimed property law.

41. No payment under the Settlement shall be made (a) in respect to GNOG common stock held by Defendants or any other Excluded Stockholder, or (b) to any former stockholder of GNOG for any shares of GNOG common stock that such stockholder sold into the market, rather than exchanging in the Transaction.

## **WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

42. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). Pursuant to the Judgment, the Action will be dismissed with prejudice and the following releases will occur:

43. **Release of Claims by Lead Plaintiffs and the Class:** Upon the Effective Date of the Settlement (as defined in the Stipulation of Settlement), 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 (as defined below) from and with respect to every one of the Released Plaintiffs’ Claims (as defined below), 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 of the Released Defendant Parties.

44. “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 the Stipulation of Settlement 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 the Stipulation of Settlement; provided, however, that the Released Plaintiffs' Claims shall not include claims to enforce the Stipulation of Settlement.

45. "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.

46. Release of Claims by Defendants: Upon the Effective Date of the Settlement, 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 (as defined below) from and with respect to every one of the Released Defendants' Claims (as defined below), 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.

47. "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 of Settlement.

48. "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.

49. Regarding the Released Plaintiffs' Claims and Released Defendants' Claims, upon the Effective Date of the Settlement, 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 (as defined below) 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.



50. The obligations incurred pursuant to the Stipulation of 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 final and complete resolution of all disputes asserted or which could be or could have been asserted with respect to the Released Claims.

51. “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.

52. By Order of the Court, (i) all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation of Settlement, have been stayed; and (ii) pending final determination by the Court of whether the Settlement should be approved, Lead Plaintiffs and all other Class Members are 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, representatively, derivatively, or in any other capacity, against any and all of the Released Defendant Parties.

## HOW WILL CLASS COUNSEL BE PAID?

53. Class Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Class, nor have Class Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Class Counsel will apply to the Court for an award of attorneys’ fees to Class Counsel from the Settlement Fund in an amount not to exceed 23% of the Settlement Fund. Class Counsel will also apply to the Court for reimbursement of litigation expenses. Class Counsel may also request that the Court approve incentive awards to Lead Plaintiff Eschbach, not to exceed \$5,000. Any incentive award paid to Lead Plaintiff Eschbach shall be deducted from the fees paid to Class Counsel. The Court will determine the amount of any award of attorneys’ fees, reimbursement of litigation expenses, or incentive award. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees, expenses, or awards.

## WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON’T LIKE THE SETTLEMENT?

54. **Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing. You can receive a payment from the Settlement without attending the Settlement Hearing. Please Note: The date and time of the Settlement Hearing may change without further written notice to the Class. You should monitor the Court’s docket and the website maintained by the Settlement Administrator, <http://www.GoldenNuggetStockholderLitigation.com>, before making plans to attend the Settlement Hearing. You**

**may also confirm the date and time of the Settlement Hearing by contacting Class Counsel as indicated in paragraph 63 below.**

55. The Court will consider the Settlement and all matters related to the Settlement at the Settlement Hearing. The Settlement Hearing will be held on July 9, 2024 at 11:00 a.m. at the Court of Chancery in the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, to determine, among other things, (i) whether the proposed Settlement on the terms and conditions provided for in the Stipulation of Settlement is fair, reasonable and adequate to the Class, and should be approved by the Court; (ii) whether the Action should be dismissed with prejudice and the Releases specified and described in the Stipulation of Settlement (and in the Notice) should be granted; and (iii) whether Class Counsel's application for an award of attorneys' fees, reimbursement of litigation expenses, and incentive award to Lead Plaintiff Eschbach should be approved.

56. Any Class Member may object to the Settlement or Class Counsel's application for an award of attorneys' fees, reimbursement of litigation expenses, and incentive award to Lead Plaintiff Eschbach. Objections must be in writing. Class Members must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Register in Chancery at the address set forth below on or before June 24, 2024. Class Members must also serve the papers on Representative Class Counsel and Representative Defendants' Counsel by hand or overnight delivery at the addresses set forth below so that the papers are *received* on or before June 24, 2024:

**Representative Class 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

57. Any objection: (a) must state the name, address and telephone number of the person or entity objecting and, if represented by counsel, the name, address and telephone number of his, her, or its counsel; (b) must be signed by the objector; (c) must contain a written, specific statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; (d) must state the objection is being filed with respect to "*In re Golden Nugget Online Gaming, Inc. Stockholders Litigation*"; and (e) must include documentation sufficient to prove that the objector is a member of the Class. Documentation establishing membership in the Class must consist of copies of a brokerage account statement or an authorized statement from the objector's broker containing the transactional and holding information found in an account statement.

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

59. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement or Class Counsel's application for an award of attorneys' fees and litigation expenses and incentive award for Lead Plaintiff Eschbach, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Register in Chancery and serve it on Class Counsel and Defendants' Counsel at the addresses set forth in paragraph 56 above so that it is *received* on or before June 24, 2024. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

60. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Representative Class Counsel and Representative Defendants' Counsel at the addresses set forth in ¶ 56 above so that the notice is *received* on or before June 24, 2024.

61. The Settlement Hearing may be adjourned by the Court without further written notice to the Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Class Counsel.

62. **Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement and/or Class Counsel's application for an award of attorneys' fees and litigation expenses and incentive award to Lead Plaintiff Eschbach, or any other matter related to the Settlement, in the Action or in any other action or proceeding. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

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

63. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in the Action, you are referred to the papers on file in the Action, including the Stipulation of Settlement, which may be inspected during regular office hours at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801. Additionally, copies of the Stipulation of Settlement, the Complaint, and any related orders entered by the Court will be posted on the following website: <http://www.GoldenNuggetStockholderLitigation.com>. If you have questions regarding the Settlement, you may contact the Settlement Administrator at [info@GoldenNuggetStockholderLitigation.com](mailto:info@GoldenNuggetStockholderLitigation.com) and 877-235-9861, or the following Class 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

David Tejtel  
Friedman Oster & Tejtel PLLC  
493 Bedford Center Road  
Suite 2D  
Bedford Hills, NY 10507  
(888) 529-1108

### **NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS.**

64. Brokers and other nominees that held shares of GNOG common stock as record holders for the benefit of another person or entity shall either (a) within seven calendar days of receipt of this Notice, request from the Settlement Administrator sufficient copies of this Notice to forward to all such beneficial owners and within seven calendar days of receipt of this Notice forward them to all such beneficial owners; or (b) within seven calendar days of receipt of this Notice, send a list of the names and addresses of all such beneficial owners to *In re Golden Nugget Online Gaming, Inc. Stockholders Litigation*, Settlement Administrator, c/o A.B. Data Ltd., P.O. Box 170500, Milwaukee, WI 53217, in which event the Settlement Administrator shall promptly mail this Notice to such beneficial owners. Upon full compliance with these instructions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the

Settlement Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice may also be obtained from the Settlement website, <http://www.GoldenNuggetStockholderLitigation.com.com>, or by emailing the Settlement Administrator at [info@GoldenNuggetStockholderLitigation.com](mailto:info@GoldenNuggetStockholderLitigation.com) and 877-235-9861.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE.**

Dated: May 10, 2024

BY ORDER OF THE COURT OF CHANCERY OF  
THE STATE OF DELAWARE