## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: DAILY FANTASY SPORTS

LITIGATION

This Document Relates to:

All Cases

MDL No. 1:16-md-02677-GAO

BRIEF IN SUPPORT OF PLAINTIFFS' AND DEFENDANT DRAFTKINGS INC.'S JOINT MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT AND APPROVAL OF THE PROPOSED NOTICE OF THE SETTLEMENT



### **TABLE OF CONTENTS**

INTRODUCT	TION	•••••				
STATEMENT	Γ OF FA	ACTS				
I.	PROCEDURAL HISTORY OF THE ACTION					
II.	SETTLEMENT OF THE ACTION.					
	A.	Negotiations Producing Settlement				
	B.	The Material Terms Of The Proposed Settlement.				
		1.	Settlement Class			
		2.	Settlement Relief			
			a. Financial Benefits To Settlement Class Members 5			
			b. Incentive Payment To The Proposed Class Representative Plaintiffs			
			c. Injunctive Relief			
		3.	Released Claims			
ARGUMENT		•••••	8			
I.			STANDARDS FOR PRELIMINARY APPROVAL OF A ON SETTLEMENT ARE SATISFIED			
	A.		Standards For Preliminary Approval Of A Class Action ment			
	B.	The Se	ettlement Here Is Fair, Reasonable And Adequate 10			
		1.	Plaintiffs And Class Counsel Have Adequately Represented The Class			
		2.	The Settlement Proposal Was Negotiated At Arm's Length 11			
		3.	The Relief Provided For The Settlement Class Is Adequate, Taking Into Account Relevant Factors			
			a. The Settlement Relief Is Adequate			
			i Injunctive Relief11			



				ii	Financial Relief	12
			b.		Complexity, Expense, And Duration Of the tion Favor Settlement.	12
			c.		isks Of Establishing Liability And Damages Settlement.	13
			d.		roposed Attorneys' Fees Are Fair And onable.	14
		4.			Settlement Treats Class Members Equitably Each Other	14
II.					ONDITIONALLY CERTIFY THE CLASS LEMENT	15
	A.	The R	Lequiren	nents O	f Rule 23(a) Are Satisfied	15
		1.			So Numerous That Joinder Of All Members Is	15
		2.		~	nestions Of Law And Fact Common To All	16
		3.	Plaint	iffs' Cl	aims Are Typical Of Those Of The Class	17
		4.	Will (	Continu	l Class Representative Plaintiffs Have And e To Fairly And Adequately Protect The The Class	17
	B.	The R	Lequiren	nents of	Rule 23(b) Are Satisfied	18
		1.	Quest	ions Inv	nes Predominate Because Legal And Factual volve Proof Common To Plaintiffs And Class	18
		2.	Class	Treatm	ent Is Superior To Individual Resolutions	19
III.	CIRC	CUIT ST	ANDA	RDS A	NOTICE IS CONSISTENT WITH FIRST ND PROVIDES ADEQUATE NOTICE TO LAIMS, OBJECTIONS AND OPT OUTS	20
IV.	BE P	RELIM PLAIN	INARIL TIFFS'	Y APP Coun	REPRESENTATIVE PLAINTIFFS SHOULD OINTED AS CLASS REPRESENTATIVES SEL SHOULD BE PRELIMINARILY OUNSEL.	22
V.					ARING SHOULD BE SCHEDULED	



Case 1:16-md-02677-GAO Document 436 Filed 03/03/21	ı raye <i>i</i>	+ 01 34
--	-----------------	---------

CONCLUSION	2
CONCLOSION	Z.,



### **TABLE OF AUTHORITIES**

#### Cases

Amchem Prods. Inc. v. Woodward, 521 U.S. 591 (1997)	19
Amgen Inc. v. Conn. Ret. Plans & Trust Funds, 133 S. Ct. 1184 (2013)	18
Andrews v. Bechtel Power Corp., 780 F.2d 124 (1st Cir.1985)	17
Bezdek v. Vibram USA Inc., 79 F. Supp. 3d 324 (D. Mass.), aff'd, 809 F.3d 78 (1st Cir. 2015)	8, 9
Brown v. Am. Honda (In re New Motor Vehicles Canadian Exp. Antitrust Litig.), 522 F.3d 6 (1st Cir. Me. 2008)	15, 18
Bussie v. Allmerica Fin. Corp., 50 F.Supp.2d 59 (D. Mass. 1999)	8
City P'ship Co. v. Atl. Acquisition Ltd. P'ship, 100 F.3d 1041 (1st Cir.1996)	9
Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir.1974)	9
Elkins v. Equitable Life Ins. of Iowa, No. Civ A96-296-Civ-T-17B, 1998 WL 1333741 (M.D. Fla. Jan 27, 1998)	19
In re Evergreen Ultra Short Opportunities Sec. Litig., 275 F.R.D. 382 (D. Mass. 2011)	17
Gintis v. Bouchard Transp. Co., 596 F.3d 64 (1st Cir. 2010)	19
Gulbankian v. MW Mfrs., Inc., 2014 WL 7384075 (D. Mass. 2014)	9
Hochstadt v. Bos. Sci. Corp., 708 F. Supp. 2d 95 (D. Mass. 2010)	18
In re Initial Pub. Offering Sec. Litig. ("In re IPO"), 471 F.3d 24 (2d Cir. 2006)	17
Lannan v. Levy & White, 186 F. Supp. 3d 77 (D. Mass. 2016)	15, 16, 19
In re Lupron Mktg. and Sales Practices Litig., 228 F.R.D. 75 (D. Mass. 2005)	18



# DOCKET A L A R M

## Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## **Real-Time Litigation Alerts**



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## **Advanced Docket Research**



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## **Analytics At Your Fingertips**



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

#### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

#### **LAW FIRMS**

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

#### **FINANCIAL INSTITUTIONS**

Litigation and bankruptcy checks for companies and debtors.

#### **E-DISCOVERY AND LEGAL VENDORS**

Sync your system to PACER to automate legal marketing.

