

PROVISIONAL SETTLEMENT AGREEMENT

I. PARTIES

This Provisional Settlement Agreement and Release (“Agreement”) is entered into as of March 21, 2016 (the “Effective Date”), by and among the New York Attorney General (the “Attorney General”) and FanDuel, Inc. (“FanDuel”). The Attorney General and FanDuel are each referred to herein as a “Party” and the Attorney General and FanDuel collectively as the “Parties.”

II. AGREEMENT

In reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

Terms of Provisional Settlement:

A. Definitions

1. The “Actions” shall refer collectively to *FanDuel v. Schneiderman*, Index No. 161691/2015, and *People v. FanDuel*, Index No. 453056/2015.
2. The “Pending Appeal” means FanDuel’s appeal from an Order of the Supreme Court (Mendez, J.), entered December 11, 2015, granting the Attorney General’s motion for a preliminary injunction.
3. The “False Advertising Claims” shall include Counts Six, Seven, Eight, and Nine in the Attorney General’s First Amended Complaint in the *People v. FanDuel* action, relating to false and misleading advertisements, marketing, and representations as defined under New York General Business Law §§ 349 and 350, but shall not include subparts (a) and (d) of each such Count, or subpart (c) of each such Count, to the extent it constitutes a challenge under the definition of a game of skill for purposes of New York Penal Law § 225. For avoidance of doubt, the False Advertising Claims shall include any claim by the Attorney General based on statements by FanDuel relating to the ability of novice or unskilled players to win contests.

B. Contests in New York

1. Beginning on the Effective Date, FanDuel shall block people located in New York (based on geoblocking and/or IP address) from entering FanDuel's DFS contests involving an entry fee or payment of any kind ("Paid Contests"), using the same platform FanDuel uses for IP intelligence for blocking users from other states in which it has undertaken not to permit people to participate in paid contests ("Closed States").
2. FanDuel shall include New York on the list of states on its website where contestants may not deposit funds or enter Paid Contests while physically located in New York.
3. FanDuel shall process requests for users who have an address in the State of New York to withdraw their account balances within seven (7) days of receiving such requests. FanDuel may not place any obstacles or delay in paying withdrawals; however, FanDuel may continue to condition withdrawals on reasonable requirements for Know-Your-Customer, tax or other legal compliance, anti-fraud or anti-money laundering purposes, and the seven-day period referenced above shall commence upon the individual's satisfaction of such requirements (such as the provision of information required for tax reporting, if applicable).
4. FanDuel will not resume offering its Paid Contests to individuals physically located in New York except as authorized by this Agreement.

C. Litigation

1. On the Effective Date, the Parties will jointly move the Appellate Division to adjourn the Pending Appeal to that court's September Term. The joint motion to be submitted to the Appellate Division is attached hereto as Exhibit A.
2. Also on the Effective Date, the Parties will jointly seek a stay of the Actions before Supreme Court until 30 days after the entry of an order by the Appellate Division deciding the Pending Appeal. Copies of the joint stipulations to be submitted to Supreme Court are attached hereto as Exhibits B and C.

D. In the Event of No Change in Law

1. In the event that New York State does not expressly legalize DFS Paid Contests on or before June 30, 2016, the Parties will continue the Actions, and FanDuel shall maintain the restrictions on participation in DFS Paid Contests enumerated in Section II, Part B, (1)-(3) of this Agreement, through the receipt of the decision on the Pending Appeal.
2. If the Appellate Division (i) affirms the decision of Supreme Court and reinstates a preliminary injunction against FanDuel or (ii) reverses the decision of Supreme Court while ruling that the Attorney General has shown a likelihood of success on the merits in the Action:
 - a. FanDuel shall:
 - i. within ten days of receipt of the decision, dismiss the *FanDuel v. Schneiderman* action with prejudice and execute a release of the State in the form attached as Exhibit D;
 - ii. maintain the restrictions on participation in DFS Paid Contests enumerated in Section II, Part B, (1)-(3) of this Agreement unless and until DFS Paid Contests are expressly legalized in the State of New York; and
 - iii. not seek further judicial review or a further stay of the Appellate Division's ruling.
 - b. The Attorney General will:
 - i. Terminate all of its claims against FanDuel in the Actions with prejudice, except that the Attorney General shall have no obligation to terminate the False Advertising Claims;
 - ii. execute a release of Fan Duel in the form attached as Exhibit E; and
 - iii. discharge FanDuel from any obligation to the Attorney General to pay restitution, disgorgement,

damages, civil penalties, fines, fees, expenses or costs related to the terminated claims.

3. If the Appellate Division reverses the Supreme Court decision *and* does not make an explicit finding that the Attorney General has a likelihood of success on the merits of the Action, then the Parties shall continue discussions regarding the status of the Actions, but this Agreement shall not bind either Party to any course of action.

E. In the Event of Express Legalization

1. In the event that New York State expressly legalizes and establishes a statutory framework to protect consumers and regulate DFS Paid Contests (“Daily Fantasy Sports Authorization”) on or before June 30, 2016, the following shall occur within 10 days:
 - a. FanDuel will:
 - i. dismiss the *FanDuel v. Schneiderman* action with prejudice and execute a release of the State in the form attached as Exhibit D.
 - b. The Attorney General will:
 - i. terminate all of its claims against FanDuel in the Actions with prejudice, except that the Attorney General shall have no obligation to terminate the False Advertising Claims;
 - ii. execute a release of FanDuel in the form attached as Exhibit E; and
 - iii. discharge FanDuel from any obligation to the Attorney General to pay restitution, disgorgement, damages, civil penalties, fines, fees, expenses or costs related to the terminated claims.
2. In the event of Daily Fantasy Sports Authorization, FanDuel may resume offering Paid Contests to customers physically located in New York on the later of the effective date of such Daily Fantasy Sports Authorization or July 1, 2016. Thereafter, FanDuel shall offer such Paid Contests to customers located in New York only to the extent permitted by the Daily Fantasy Sports Authorization.

F. General Provisions

1. **Contests Other Than Paid Contests:** Nothing in this Agreement shall prevent FanDuel from offering free daily fantasy sports leagues or other contests that offer prizes of value to entrants in New York or elsewhere, provided that entrants are not required to pay an entry fee or any other form of consideration to enter those contests.
2. **Third Parties:** This Agreement is not intended to confer upon any person other than the Attorney General and FanDuel any rights or remedies, including rights as a third-party beneficiary, except as provided for in a release executed pursuant to Section II(D)(2)(b)(ii) or II(E)(1)(b)(ii) of this Agreement. This Agreement is not intended to create a private right of action on the part of any person or entity other than the Attorney General and FanDuel. The Attorney General represents to FanDuel that no interest in any claim herein released has been assigned to any third party.
3. **Individual Claims:** Nothing in this Agreement is intended to prevent any individual, in his or her individual capacity, from bringing any claim related to the facts underlying the Actions against FanDuel.
4. **Confidentiality, Discoverability and Admissibility:** This Agreement, and any and all negotiations, documents and discussions associated with this Agreement, and any act performed or abstained from in relation to this Agreement, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by FanDuel or of the truth or the infirmity of any of the claims or allegations of either Party, of the validity of any legal argument or position and evidence of this Agreement's existence or terms shall not be used directly or indirectly in any way (except the provisions of this Agreement may be used by the Parties to enforce its terms), whether in New York or any other forum. The Parties agree they will not rely on the terms or existence of this Agreement, or on FanDuel's suspension of offering paid contests to customers in New York pursuant to this Agreement, to support claims or arguments in the Actions concerning the Parties' respective positions. The Parties agree they will not present or seek to admit this Agreement as evidence of any fault or liability by either of the

Parties in any investigation, administrative claim, action, suit or proceeding or federal or state court or arbitration proceeding unless ordered to do so by a court or arbitration panel.

5. **Dispute Resolution and Choice of Law:** This Agreement is governed by the laws of the State of New York. Any Party shall be entitled to enforce the terms of this Agreement in the Supreme Court of the State of New York, New York County, which shall have exclusive jurisdiction and venue over any such action.
6. **Construction of Agreement:** This Agreement shall be construed as a whole according to its fair meaning, and as if drafted equally by both Parties. The language of this Agreement shall not be construed for or against any Party on the basis of attribution of drafting.
7. **Integration:** This Agreement constitutes a single integrated written contract expressing the entire agreement of the Parties hereto relative to the subject matter hereof. No recitals, covenants, agreements, representations or warranties of any kind whatsoever have been made or have been relied upon by any Party, except as specifically set forth in this Agreement. All prior discussions and negotiations are integrated into, and are superseded by, this Agreement.
8. **Amendments:** This Agreement constitutes the entire understanding of the Parties with respect to the matters set forth herein and may not be modified except by the express written agreement of all Parties as set forth in a single document signed by all Parties.
9. **Waiver:** The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver of any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to or contemporaneously with this Agreement.
10. **Execution in Counterparts:** This Agreement may be signed in multiple counterparts, each of which shall be deemed to be an original for all purposes. An exchanged of signed electronic copies (*e.g.*, via PDF) shall constitute a binding agreement.
11. **Notification:** Unless otherwise stated in writing subsequent to the Effective Date of this Agreement, all notifications and

communications made pursuant to this Agreement shall be submitted to the entities listed below:

- a. Attorney General, for all purposes:

Kathleen McGee
Chief, Bureau of Internet and Technology

New York Attorney General's Office
120 Broadway, 3rdth Floor
New York, New York 10271

- b. FanDuel, for all purposes:

John S. Kiernan
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

12. Representations and Warranties:

- a. The undersigned Attorney General signatory represents and warrants that he is signing this Agreement in his or her official capacity and that he is authorized to execute this Agreement. The individual signing this Agreement on behalf of FanDuel represents and warrants that he is authorized by FanDuel to execute this Agreement.
- b. Each Party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

IN WITNESS WHEREOF, the Parties have approved this Agreement as to form and substance, effective as of the date set forth above.

Dated: March 21, 2016

Attorney General of the State of New York

By: 

Name: Simon G. Brandler

Title: Senior Advisor and Special Counsel

Dated: March 21, 2016

FanDuel, Inc.

By: 

Name: Christian Genetski

Title: General Counsel